

ACTS SUPPLEMENT

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Act 15 Uganda Retirement Benefits Regulatory Authority Act 2011

**THE UGANDA RETIREMENT BENEFITS REGULATORY
AUTHORITY ACT, 2011**

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**THE UGANDA RETIREMENT BENEFITS REGULATORY
AUTHORITY ACT, 2011.**

An Act to establish a Retirement Benefits Regulatory Authority to regulate the establishment, management and operation of retirement benefits schemes in Uganda in both the private and public sectors; to supervise institutions which provide retirement benefits products and services; to protect the interests of members and beneficiaries of retirement benefits schemes; to establish a Fund into which shall be paid all moneys for defraying the expenses of the Uganda Retirement Benefits Regulatory Authority; to promote the development of the retirement benefits sector; to provide for the licensing of custodians, trustees, administrators and fund managers of retirement benefits schemes; the appointment of inspectors and interim administrators; to provide for the establishment of a retirement Benefits Appeals Tribunal and for related matters.

DATE OF ASSENT: 28th June, 2011.

Date of Commencement: 26th September, 2011.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires—

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“Actuary” means a person recognized as such by the Institute of Actuaries in England, the Faculty of Actuaries in Scotland, the Canadian Institute of Actuaries, the Society of Actuaries of the United States of America, the Institute of the Actuaries of Australia or a person holding such equivalent qualification as the Board may, by notice in the Gazette, prescribe;

“actuarial valuation” means an analysis made of the cash value equivalent to a benefit, calculated by reference to appropriate financial assumptions and assumptions regarding normal life expectancy;

“administrator” means a person appointed by trustees to administer a scheme in accordance with such terms and conditions of service as may be specified in the instrument of appointment and licensed under this Act;

“annuity” means a schedule of regular payments made to a member of a retirement benefits scheme or to his or her beneficiary according to the terms of payment of the scheme;

“Auditor” means a person registered by the Institute of Certified Public Accountants Uganda (ICPAU) and approved by the Authority;

“Authority” means the Uganda Retirement Benefits Regulatory Authority established by section 2;

“beneficiary” means a person designated by a member of a retirement benefits scheme, or by the rules of the scheme to benefit under the scheme;

“Board” means the Board of Directors of the Authority appointed under section 8;

“Chairperson” means the chairperson of the Board;

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 15;

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“currency point” has the value given to it in Schedule 1;

“custodian” means a Financial Institution whose business includes taking responsibility for the safe custody of the funds, securities, financial instruments and documents of title of the assets of scheme funds and licensed under this Act;

“defined retirement benefits scheme” means a retirement benefits scheme in which a sponsor undertakes to provide benefits expressed in the form of annuity or lump sum calculation, based on work history and guaranteed return on contribution account regardless of the investment performance of the fund associated with the scheme and accordingly constitutes a contingent liability for the sponsor;

“fiduciary” has the meaning given to it by section 72;

“Fund” means the Retirement Benefits Regulatory Authority Fund established by section 20;

“fund manager” means a person appointed by the trustees to advice on the investment of the assets of the scheme in accordance with such terms and conditions of service as may be specified in the instrument of appointment and licensed under this Act;

“inspector” means a person appointed by the Board under section 75 to inspect and examine the books of accounts, records, returns or documents of a retirement benefits scheme;

“interim administrator” means a person appointed by the Chief Executive Officer under section 78 to assume the management, control and conduct of the affairs of a retirement benefits scheme in place of the trustee, custodian or fund manager of the retirement benefits scheme;

“irrevocable trust” means a legal entity created for the benefit of designated beneficiaries which shall not be revoked or

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canceled after its creation;

“member” means a person who is admitted to the membership of a retirement benefits scheme, who makes contributions, or in respect of whom contributions are made to a retirement benefits scheme;

“Minister” means the Minister responsible for finance;

“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;

“scheme rules” means the rules specifically governing the constitution, administration and management of a retirement benefits scheme;

“secretary” means the secretary to the Board appointed under section 13;

“sponsor” means a person who establishes a retirement benefits scheme;

“Tribunal” means the Retirement Benefits Appeals Tribunal established under this Act;

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

PART II—ESTABLISHMENT AND MODE OF OPERATION OF THE UGANDA
RETIREMENT BENEFITS REGULATORY AUTHORITY

Uganda Retirement Benefits Regulatory Authority

2. Establishment of the Uganda Retirement Benefits Regulatory Authority

(1) There is established an Authority to be known as the Uganda

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Retirement Benefits Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and may for the discharge of its function under this Act—

- (a) sue and be sued in its corporate name;
- (b) acquire, hold, manage and dispose of movable and immovable property; and
- (c) do all acts and things a body corporate may lawfully do.

3. Official seal of the Authority

(1) The official seal of the Authority shall be in a form determined by the Board.

(2) The official seal shall, when affixed to any document, be authenticated by the signatures of the Chief Executive Officer and the Secretary to the Board.

(3) In the absence of the Chief Executive Officer, the person performing the functions of the Chief Executive Officer shall sign in his or her place.

(4) In the absence of the Secretary a person performing the functions of the Secretary shall sign in the place of the Secretary.

(5) An instrument or contract which if executed or entered into by a person other than a body corporate would not require to be under seal, may be executed or entered into on behalf of the Authority by the Chief Executive Officer or the Secretary to the Board or a person duly authorised by resolution of the Board.

(6) Every document purporting to be an instrument or contract executed or issued by or on behalf of the Authority in accordance with this section shall be deemed to be so executed or issued until the

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contrary is proved.

4. Objective of the Authority

The objective of the Authority is to supervise and regulate the establishment, management and operation of retirement benefits schemes, and to protect the interests of members and beneficiaries of retirement benefits schemes in Uganda.

5. Functions of the Authority

(1) The functions of the Authority are to—

- (a) regulate and supervise the establishment, management and operation of retirement benefits schemes in Uganda, in both the public and private sectors ;
- (b) license retirement benefits schemes in Uganda;
- (c) license custodians, trustees, administrators and fund managers of retirement benefits schemes;
- (d) approve an actuary or auditor of any retirement benefit scheme;
- (e) protect the interests of members and beneficiaries of retirement benefits schemes including the promotion of transparency and accountability;
- (f) improve understanding and promote the development of the retirement benefits sector;
- (g) promote the stability and integrity of the financial sector through ensuring stability and security of retirement benefits schemes;
- (h) ensure sustainability of the retirement benefits sector with a view to promoting long term capital development;
- (i) advise the Minister on all matters relating to the development and operation of the retirement benefits sector;
- (j) implement Government policy relating to retirement

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benefits schemes;

- (k) promote public awareness of the retirement benefits sector; and
- (l) any other function conferred upon it under this Act.
- (2) In the exercise of its functions, the Authority shall—
 - (a) adopt a clear, transparent and consistent supervisory process to regulate the establishment, management and operation of retirement benefits schemes in Uganda in both the public and private sectors;
 - (b) issue guidelines and prudential norms for the proper management and operation of retirement benefits schemes;
 - (c) adopt measures to minimise any conflict of interest that may arise between the members of a retirement benefits scheme and the trustees, custodians or fund managers of the retirement benefits scheme;
 - (d) create the necessary environment for the orderly growth and development of retirement benefits schemes;
 - (e) ensure fairness in the execution of its functions under this Act; and
 - (f) undertake any activity that is necessary to facilitate the discharge of its functions for giving full effect to the provisions of this Act.

6. Powers of the Authority

For the purpose of carrying out its objectives, the Authority may exercise, perform and discharge any of the following powers—

- (a) control, supervise and administer the assets of the Authority in such manner and for such purposes to promote the purpose for which the Authority is established;
- (b) conduct any investigation or inquiry relevant to the

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retirement benefits industry in Uganda;

- (c) conduct any inspection and examination of books of accounts, records, returns and any document or premises of a licensed person or scheme;
- (d) issue guidelines, directives or instructions to any licensed person for the proper management of a retirement benefit scheme;
- (e) search the premises of any licensed person in accordance with this Act;
- (f) delegate any of its powers other than the powers of revocation, licensing, delegation or variation of such delegation; and
- (g) do such other things to ensure efficiency in the management of retirement benefit schemes.

7. Independence of the Authority

(1) The Authority shall be independent in the performance of its functions and shall not be subject to the direction, instruction or control of any person or authority.

(2) Notwithstanding subsection (1), the Minister may give the Authority policy guidelines.

Board of directors

8. Board of Directors of the Authority

(1) The Authority shall have a Board of Directors appointed by the Minister which shall comprise of—

- (a) the Permanent Secretary of the Ministry responsible for finance or his or her representative authorised in writing;
- (b) the Permanent Secretary of the Ministry responsible for

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- labour or his or her representative authorised in writing;
- (c) the Permanent Secretary of the Ministry responsible for public service or his or her representative authorised in writing;
 - (d) four persons, not being public officers who are knowledgeable or experienced in matters relating to the administration of retirement benefits schemes, banking, insurance, finance, law accounting, economic or actuarial studies; and
 - (e) the Chief Executive Officer appointed under section 15.

(2) A person shall not be eligible for appointment under paragraph (d) if such person is an employee or director of any company, firm or institution where such employment or directorship may lead to a conflict of interest.

(3) The Minister shall appoint a Chairperson from among the members appointed under subsection(1) (d).

(4) The members of the Board shall hold office on terms and conditions specified in their instruments of appointment.

(5) The Minister shall, in appointing the members of the Board, ensure that there is a balance of gender, skills and experience among the members of the Board.

(6) The members of the Board shall be persons of high moral character, proven integrity and shall be fit and proper persons as prescribed in Part I of Schedule 3.

9. Tenure of office of members of the Board

(1) A member of the Board, other than the Chief Executive Officer shall hold office for five years and is eligible for

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reappointment for only one more term.

(2) A member of the Board may, at any time, resign his or her office in writing addressed to the Minister.

(3) A member of the Board may be removed from office by the Minister—

- (a) for inability to perform the functions of his or her office arising from infirmity of body or mind;
- (b) for misbehaviour or misconduct;
- (c) for incompetence;
- (d) for conflict of interest;
- (e) if the member is bankrupt or insolvent or enters into a composition scheme with his or her creditors;
- (f) if a member is convicted of an offence involving dishonesty, fraud or moral turpitude; or
- (g) if the member is absent without prior permission of the Chairperson, or without reasonable cause to the satisfaction of the Minister, for more than four consecutive meetings of the Board, or is absent from Uganda for more than twelve consecutive months.

(4) Where a member of the Board resigns, dies, is removed from office, ceases to be a member of the institution or body which he or she represents on the Board, the Chairperson shall notify the Minister of the vacancy and the Minister shall appoint another person to hold the office for the unexpired portion of the member's term of office.

(5) Where the member of the Board referred to in subsection (4) is the Chairperson, the Secretary to the Board shall notify the Minister of the vacancy and the Minister shall appoint another person, being a member of the Board, to hold office for the unexpired portion of the

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Chairperson's term of office.

(6) Where a member of the Board is under investigation for an offence involving dishonesty, fraud or moral turpitude, the member shall not perform his or her duties as a Board member until investigations are concluded.

10. Remuneration of Board members

The Chairperson and members of the Board shall be paid such remuneration and allowances as may be determined by the Minister.

11. Functions of the Board

(1) The Board is responsible for the general direction and supervision of the Authority.

(2) For the purpose of subsection (1), the Board shall—

- (a) review and approve strategic and operating plans, budgets, reports and audited financial statements of the Authority;
- (b) oversee the operations of the Authority;
- (c) control, supervise and administer the assets of the Authority;
- (d) approve organisational structures of the Authority;
- (e) establish and approve rules of procedure for appointment, termination, discipline and terms and conditions of staff of the Authority;
- (f) monitor and supervise the implementation of the Act;
- (g) advise the Minister on all matters in relation to the Act and developments in the retirement benefits sector; and
- (h) perform any other function incidental to the functions prescribed in paragraphs (a) to (g).

(3) The Board is, in the performance of its functions responsible

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to the Minister.

(4) The Board shall perform its functions in accordance with sound financial principles and shall ensure, as far as possible, that the revenue of the Authority is sufficient to meet expenditure properly charged to revenue.

12. Meetings of the Board

The meetings of the Board shall be conducted in the manner prescribed in schedule 2 to this Act.

13. Secretary to the Board

(1) The Board shall appoint a secretary to the Board on terms and conditions as the Board may determine.

(2) The secretary shall report to the Board through the Chief Executive Officer.

14. Committees of the Board

(1) The Board may appoint committees of the Board to advise it on any matter concerning the functions of the Board as it may determine.

(2) A committee appointed under subsection (1) shall consist of a Chairperson who shall be a member of the Board and such other persons, whether members of the Board or not, as the Board may determine.

(3) The Board shall, in writing, specify the terms and conditions of service of the members of a committee appointed under subsection (1).

(4) The Board may delegate any of its functions under this Act to a committee appointed under this section.

(5) The Board may require a committee appointed under this section to act jointly or in co-operation with any other committee.

(6) Members of a committee appointed under this section may be paid such allowances as the Minister may determine.

(7) Subject to any direction given by the Board, a committee

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appointed under this section may regulate its own procedure.

Chief Executive Officer and other staff of the Authority

15. Chief Executive Officer

(1) The Authority shall have a Chief Executive Officer who shall be appointed by the Minister on recommendation of the Board, on terms and conditions specified in the instrument of appointment.

(2) A person shall not be appointed Chief Executive Officer unless that person—

- (a) has academic or professional qualifications in accounting, finance, economics, insurance, law or banking with experience and competence to manage the affairs of the Authority; and
- (b) is a person of high moral character and proven integrity.

(3) The Chief Executive Officer shall be an ex officio member of the Board and shall attend all meetings of the Board with no right to vote at any meeting of the Board.

16. Functions of Chief Executive Officer

(1) The Chief Executive Officer is responsible for the day to day operations and administration of the Authority.

(2) Subject to this Act and to the general supervision and control of the Board, the Chief Executive Officer is responsible for—

- (a) implementing the objectives, policies and programmes of the Authority and reporting on them to the Board;
- (b) the proper management of the funds and property of the Authority;
- (c) the organization, control and discipline of the staff of the Authority;
- (d) the development of an operating plan to guide the Authority

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in achieving its objectives;

- (e) the development of an economic, efficient and cost effective internal management structure; and
- (f) performing any other function which may be assigned to him or her by the Board.

(3) The Chief Executive Officer is, in the performance of his or her functions answerable to the Board.

17. Tenure of office and remuneration of Chief Executive Officer

(1) The Chief Executive Officer shall hold office for five years and is eligible for re-appointment for only one more term.

(2) The Chief Executive Officer shall cease to hold office if—

- (a) he or she resigns;
- (b) he or she is declared bankrupt or insolvent, or has made an arrangement with his or her creditors;
- (c) he or she is convicted of an offence involving dishonesty, fraud or moral turpitude;
- (d) he or she is removed from office by the Minister on the recommendation of the Board for—
 - (i) inability to perform the functions of his or her office arising from infirmity of body or mind;
 - (ii) misbehaviour or misconduct; or
 - (iii) incompetence.

18. Staff of the Authority

(1) The Board may on the advice of the Chief Executive Officer appoint staff of the Authority as may be necessary for the effective performance of the functions of the Authority.

(2) The staff appointed under this section shall hold office on such terms and conditions as may be specified in their instruments of

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appointment.

PART III—FUNDS AND EXPENSES OF THE AUTHORITY

19. Funds of the Authority

- (1) The funds of the Authority shall consist of—
- (a) compulsory levies; and
 - (b) license fees.
 - (c) money appropriated by Parliament for the purposes of the Authority;
 - (d) grants, gifts or donations from Government or other sources made with the approval of the Minister; or
 - (e) any other fees charged for services and activities rendered by the Authority under this Act.
- (2) The funds of the Authority may be applied—
- (a) for payment or discharge of its expenses, obligations or liabilities incurred in connection with the performance of its functions or exercise of its powers under this Act; and
 - (b) for the payment of any remuneration or allowances payable under this Act.

20. Retirement Benefits Regulatory Authority Fund

(1) There is established a Retirement Benefits Regulatory Authority Fund into which shall be paid all monies referred to in section 19(1).

(2) The Fund shall be managed and controlled by the Authority for the purposes of defraying the expenses of the Authority.

21. Bank accounts

The Board shall open and maintain such bank accounts as are necessary for the exercise of the functions of the Authority and shall pay into them—

- (a) all monies received from Government for the purposes of

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this Act; and

- (b) all other monies received by the Authority in the exercise of its functions under this Act.

22. Borrowing powers

The Board may, with the approval of the Minister, borrow money from any source as may be required for meeting the obligations, or discharging the functions of the Authority under this Act.

23. Investment of surplus funds

Funds of the Authority not immediately required for any purpose under this Act may in consultation with the Minister be invested in secure investments in a manner determined by the Board, in accordance with the Public Finance and Accountability Act, 2003.

24. Estimates

(1) The Chief Executive Officer shall within three months before the end of each financial year, cause to be prepared and submitted to the Board for its approval, estimates of income and expenditure and the operating plan of the Authority for the next financial year.

(2) The Board shall, within two months after receiving the estimates referred to in subsection (1), cause to be submitted to the Minister for his or her approval, the estimates of income and expenditure of the Authority.

25. Financial year of Authority

The financial year of the Authority shall be the same as the financial year of the Government.

26. Audit of accounts

(1) The accounts of the Authority shall be audited by the Auditor General or an auditor appointed by the Auditor General.

(2) The Board shall, within three months after the end of each financial year, submit the accounts and estimates of income and expenditure of the Authority to the Auditor General or an auditor

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appointed by him or her.

27. Annual and other reports

(1) The Board shall, within one month of receipt of the Audited Accounts referred to in section 26, submit to the Minister, an annual report on the operations of the Authority during the preceding year, which shall include, an audited financial statement.

(2) The Minister, shall submit to Parliament bi-annual reports on the operations of the Authority.

PART IV—ESTABLISHMENT OF RETIREMENT BENEFITS SCHEMES

28. Establishment of a retirement benefits scheme

(1) A person shall not establish or operate a retirement benefits scheme except under a licence issued by the Authority in accordance with this Act.

(2) For the avoidance of doubt, all existing retirement benefits schemes established by a written law shall be required to obtain a licence issued in accordance with this Act.

29. Application for a licence to establish a retirement benefits scheme

(1) An application for a licence to establish a retirement benefits scheme shall be in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application for a licence to establish a retirement benefits scheme shall state—

- (a) the name and address of the applicant;
- (b) the name of the proposed retirement benefits scheme;
- (c) names and addresses of the custodian, trustee, administrator and fund manager of the retirement benefits scheme;
- (d) the status of the retirement benefits scheme in respect of—
 - (i) the names of members admitted into the retirement

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- benefits scheme and their contribution;
- (ii) benefits that accrue to members under the retirement benefits scheme;
- (iii) whether any members of the scheme are active members or not;
- (e) the proposed scheme rules which shall adequately protect the interests of members and beneficiaries of the scheme;
- (f) the address of a place in Uganda for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (g) any other information which the Authority considers necessary for the purposes of determining the application.

(3) A person who establishes or operates a retirement benefits scheme without a licence commits an offence and is liable on conviction to a fine not exceeding one thousand five hundred currency points or imprisonment not exceeding twelve years, or both.

30. Grant of licence to operate a retirement benefits scheme

(1) The Authority may grant a licence to operate a retirement benefits scheme, if the Authority is satisfied that—

- (a) the proposed retirement benefits scheme is established as an irrevocable trust under this Act and Regulations made under this Act;
- (b) the scheme rules of the proposed retirement benefits scheme adequately protect the rights and interests of the members and beneficiaries of the scheme; and
- (c) the custodian, trustee, administrator and fund manager of the proposed retirement benefits scheme are licensed in accordance with this Act.

(2) The Authority shall publish in the Gazette and in a newspaper of wide circulation in Uganda, a list of all retirement

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benefits schemes licensed under this Act at least once in every year.

(3) The Authority may refuse to grant a licence to an applicant, if the Authority is satisfied that—

- (a) the information contained in the application is false in any material particular;
- (b) the applicant does not meet the requirements specified in section 29 (2) and subsection 30 (1); or
- (c) the applicant is not a fit and proper person as prescribed in Schedule 3.

(4) Where the Authority refuses to grant a licence to an applicant, the Authority shall notify the applicant of its decision and specify the reasons for the refusal in writing.

31. Validity of licence

A licence issued to a retirement benefits scheme shall be valid from the date of issue and shall remain in force until the scheme is wound up in accordance with the scheme rules or the law under which the scheme is established or until the licence is revoked under this Act.

32. Revocation of licence

(1) The Authority may revoke the licence of a retirement benefits scheme if—

- (a) the Authority discovers that the applicant made a false statement in the application, which he or she knew to be false in any material particular;
- (b) the retirement benefits scheme is merged, wound up or dissolved;
- (c) the retirement benefits scheme breaches the conditions of its licence;
- (d) the licence expires; or
- (e) the retirement benefits scheme contravenes any provision

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of this Act or any regulations made under this Act.

(2) The Authority shall give the trustee of a retirement benefits scheme at least thirty days notice in writing specifying the reasons for the intended revocation of the licence.

(3) The Authority shall, before revoking a licence of a retirement benefits scheme, consider any representations made in writing by the sponsor opposing the revocation.

(4) The Authority shall revoke the licence of a retirement benefits scheme if—

- (a) within thirty days after issuing the notice, the trustee of the retirement benefits scheme has not opposed the revocation, or
- (b) the Authority is not satisfied by the representation made by the trustee under subsection (3).

(5) The revocation of a licence of a retirement benefits scheme shall not in any way prejudice the rights of members and beneficiaries under the retirement benefits scheme.

(6) Where the licence of a retirement benefits scheme is revoked, the Authority may, subject to the approval of the Board in consultation with the Minister, take over the distribution of the assets and the supervision of the retirement benefits scheme or appoint an interim administrator in order to protect the interests of members and beneficiaries of the retirement benefits scheme.

PART V—LICENSING OF CUSTODIANS, TRUSTEES, ADMINSTRATORS
AND FUND MANAGERS.

33. Custodian, trustee, administrator and fund manager

Every retirement benefits scheme shall have a custodian, trustee, administrator and fund manager licensed in accordance with this

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Act.

Custodians

34. Licensing of custodian

An application for a licence as a custodian of a retirement benefits scheme shall not be granted—

- (a) unless the applicant is a financial institution licensed under the Financial Institutions Act, 2004;
- (b) if the applicant does not have the adequate professional, technical and operational systems to perform the functions of a custodian of a retirement benefits scheme;
- (c) if the applicant has been a custodian of a retirement benefits scheme whose licence was revoked by the Authority due to any fault either fully or partially of the custodian; and
- (d) if the applicant does not meet any additional requirements as may be prescribed by this Act or regulations made under this Act.

35. Application and grant of licence of custodian

(1) An application for a licence to act as a custodian shall be in the prescribed form and shall—

- (a) contain or be accompanied by any other information that the Authority may require for the purpose of determining the application;
- (b) contain the address of a place in Uganda for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (c) be accompanied by the prescribed fee.

(2) The Authority shall grant a licence to an applicant which meets the requirements specified in section 34 and subsection 35(1).

(3) The Authority shall publish in the Gazette and a newspaper with wide circulation, a list of all licensed custodians at least once

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every year.

(4) A financial institution which acts as a custodian of a retirement benefits scheme without a licence issued under this Act commits an offence and is liable on conviction to a fine not exceeding one thousand currency points.

36. Refusal of licence of custodian

(1) The Authority may refuse to grant a licence to an applicant, if the Authority is satisfied that—

- (a) the information contained in the application is false in any material particular; or
- (b) the applicant does not meet the requirements specified in section 34 and subsection 35 (1).

(2) Where the Authority refuses to grant a licence to an applicant, the Authority shall notify the applicant of its decision and specify the reasons for the refusal in writing.

37. Validity of licence of custodian

(1) A licence issued to a custodian shall be valid for one year and may be renewed upon payment of the prescribed fee.

(2) An application for the renewal of a licence under subsection (1) shall be made at least three months before the expiry of the licence.

38. Revocation of licence of custodian

(1) The Authority may revoke the licence of a custodian if—

- (a) the Authority discovers after the licence has been issued, that the custodian made a false statement in relation to the application;
- (b) any event occurs which renders the custodian ineligible to provide custodial services to the retirement benefits scheme;

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- (c) the custodian's business is wound up;
- (d) the custodian is in breach of any condition of the licence;
- (e) the custodian ceases to be a licensed financial institution under the Financial Institutions Act, 2004; or
- (f) the custodian does not comply with any provision of this Act or regulations made under this Act.

(2) The Authority shall give the custodian at least thirty days notice in writing specifying the reasons for the intended revocation of the licence.

(3) The Authority shall, before revoking a licence of a custodian, consider any representations made in writing by the custodian opposing the revocation.

- (4) The Authority shall revoke the licence of a custodian if—
 - (a) within thirty days after issuing the notice, the custodian has not opposed the revocation, or
 - (b) the Authority is not satisfied by the representation made by the custodian under subsection (3).

39. Functions of a custodian

- (1) A custodian of a retirement benefits scheme shall—
 - (a) hold the funds, assets and investments of the retirement benefits scheme in safe custody for the members and beneficiaries of the scheme;
 - (b) receive contributions made to the scheme;
 - (c) notify the administrator and fund manager of the receipt of contributions;
 - (d) be responsible for collecting of dividends and income in relation to the investments of the scheme;
 - (e) be responsible for processing and transferring documents;

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and

- (g) report to the Authority on matters relating to the assets and investments of the scheme.

(2) A custodian shall not use the funds or assets in its custody to meet its own financial obligations.

(3) A custodian of a retirement benefits scheme shall not act as a trustee, administrator or fund manager of the same retirement benefits scheme.

(4) The provisions of subsection (3) shall apply to any sub custodian, assignee or related party of the custodian.

Trustees

40. Licensing of trustee

A person shall not act as a trustee of a retirement benefits scheme unless he or she has a licence issued in accordance with this Act.

41. Application and grant of licence of trustee

(1) An application for a licence to act as a trustee of a retirement benefits scheme shall be in the prescribed form and shall—

- (a) state whether the applicant has the adequate professional, technical knowledge, experience or operational ability to perform the functions of a trustee;
- (b) contain or be accompanied by any other information that the Authority may require for the purpose of determining the application;
- (c) contain the address of a place in Uganda for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (d) be accompanied by the prescribed fee.

(2) The Authority may grant a licence to an applicant who meets

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the requirements specified in subsection (1).

(3) The Authority shall publish in the Gazette and in a newspaper with wide circulation, a list of all licensed trustees, at least once in every year.

(4) A person who acts as a trustee of a retirement benefits scheme without a licence issued under this Act commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding six years or both.

42. Refusal of licence of trustee

(1) The Authority may refuse to grant a licence to an applicant if the Authority is satisfied that—

- (a) the information contained in the application is false in any material particular;
- (b) the applicant is not a fit and proper person as prescribed in Part II of Schedule 3;
- (c) the applicant has ever been a trustee of a retirement benefits scheme whose licence was revoked by the Authority due to any fault either fully or partially of the applicant; or
- (d) the applicant does not meet the requirements specified in section 41(1).

(2) Where the Authority refuses to grant a licence to an applicant, the Authority shall notify the applicant of its decision and specify the reasons for the refusal in writing.

43. Restrictions on licence of trustee

A person shall not be licensed as a trustee of a retirement benefits scheme if he or she—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for six months or more;
- (b) is declared bankrupt or insolvent, or has entered into an

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- arrangement with his or her creditors;
- (c) was previously involved in the management or administration of a retirement benefits scheme whose licence has been revoked under this Act, due to his or her fault either fully or partially;
 - (d) is disqualified under any other written law, or his or her holding office as such is determined by the Authority as being, in any way, detrimental to the retirement benefits scheme; or
 - (e) is not a fit and proper person as prescribed in Schedule 3.

44. Validity of licence of trustee

(1) A licence issued to a trustee shall be valid for one year and may be renewed upon payment of the prescribed fee.

(2) An application for the renewal of a licence under subsection (1) shall be made at least three months before the expiry of the licence.

45. Revocation of licence of trustee

(1) The Authority may revoke the licence of a trustee if—

- (a) the Authority discovers, after the licence has been issued, that the trustee made a false statement in relation to the application;
- (b) an event occurs which renders the trustee ineligible to perform his or her functions as a trustee;
- (c) the trustee is declared bankrupt or insolvent, or enters into an arrangement with his or her creditors;
- (d) the trustee is in breach of any condition of the licence;
- (e) the trustee is disqualified by virtue of section 43;
- (f) the trustee ceases to be a fit and proper person as prescribed in Part II of Schedule 3; or
- (g) the trustee does not comply with any provision of this Act,

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or any regulations made under this Act.

(2) The Authority shall give the trustee at least thirty days notice in writing specifying the reasons for the intended revocation of the licence.

(3) The Authority shall, before revoking a licence of a trustee, consider any representations made in writing by the trustee opposing the revocation.

(4) The Authority shall revoke the licence of a trustee if—

- (a) within thirty days after issuing the notice, the trustee has not opposed the revocation; or
- (b) the Authority is not satisfied by the representation made by the trustee under subsection (3).

46. Functions of a trustee

(1) A trustee of a retirement benefits scheme shall—

- (a) manage and oversee the operation of the retirement benefit scheme in accordance with this Act and regulations made under this Act;
- (b) provide for the proper investment of scheme funds in accordance with this Act and Regulations made under this Act;
- (c) make arrangements for the payment of benefits in accordance with the scheme rules;
- (d) keep financial and membership records of the scheme;
- (e) open and maintain bank accounts necessary for the exercise of the functions of the scheme;
- (f) appoint a custodian, fund manager, administrator or an actuary; and

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(g) appoint an auditor to audit the accounts of the scheme.

(2) A trustee shall perform his or her functions in accordance with sound financial principles and shall ensure, as far as possible, that the revenue of the retirement benefits scheme is sufficient to meet expenditure properly charged to revenue.

(3) A trustee shall not act as an administrator, custodian, actuary or fund manager of the same retirement benefits scheme.

(4) The provisions of subsection (3) shall apply to any assignee or related party of the trustee.

Administrators

47. Licensing of administrator

(1) A person shall not act as an administrator of a retirement benefits scheme unless he or she has a licence issued in accordance with this Act.

(2) The provisions of subsection(1) shall not apply to a natural person who is an employee of a scheme.

48. Application and grant of licence of administrator

(1) An application for a licence to act as an administrator shall be in the prescribed form and shall—

- (a) state whether the applicant has the adequate professional, technical knowledge, experience or operational ability to perform the functions of an administrator;
- (b) contain or be accompanied by any other information that the Authority may require for the purpose of determining the application;
- (c) contain the address of a place in Uganda for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (d) be accompanied by the prescribed fee.

(2) The Authority may grant a licence to an applicant who meets

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the requirements specified in subsection (1).

(3) The Authority shall publish in the Gazette and in a newspaper with wide circulation, a list of all licensed administrators, at least once in every year.

(4) A person who acts as an administrator of a retirement benefits scheme without a licence issued under this Act commits an offence and is liable on conviction to a fine not exceeding one thousand currency points or imprisonment not exceeding six years, or both.

49. Refusal to grant licence of administrator

(1) The Authority may refuse to grant a licence to an applicant if the Authority is satisfied that—

- (a) the information contained in the application is false in any material particular;
- (b) the applicant is not a fit and proper person as prescribed in Part II of Schedule 3;
- (c) the applicant has ever been an administrator of a retirement benefits scheme whose licence was revoked by the Authority due to any fault either fully or partially of the applicant; or
- (d) the applicant does not meet the requirements specified in section 48 (1).

(2) Where the Authority refuses to grant a licence to an applicant, the Authority shall notify the applicant of its decision and specify the reasons for the refusal in writing.

50. Restrictions on licensing of administrator

A person shall not be issued a licence as an administrator of a retirement benefits scheme if he or she—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for six months or more;
- (b) is declared bankrupt or insolvent, or has entered into an

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- arrangement with his or her creditors;
- (c) was previously involved in the management or administration of a retirement benefits scheme whose licence has been revoked under this Act, due to any fault either fully or partially of the applicant;
 - (d) is disqualified under any other written law, or his or her holding office as such is determined by the Authority as being, in any way, detrimental to the retirement benefits scheme; or
 - (e) is not a fit and proper person as prescribed in Part II of Schedule 3.

51. Validity of licence of administrator

(1) A licence issued to an administrator shall be valid for one year and may be renewed upon payment of the prescribed fee.

(2) An application for the renewal of a licence under subsection (1) shall be made at least three months before the expiry of the licence.

52. Revocation of licence of administrator

The Authority may revoke the licence of an administrator if—

- (a) the Authority discovers, after the licence has been issued, that the administrator made a false statement in relation to the application;
- (b) an event occurs which renders the administrator ineligible to perform his or her functions as administrator;
- (c) the administrator is declared bankrupt or insolvent, or enters into an arrangement with his or her creditors ;
- (d) the administrator is in breach of any condition of the licence;
- (e) the administrator is disqualified by virtue of section 50;
- (f) the administrator ceases to be a fit and proper person as

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prescribed in Part II of Schedule 3; or

- (g) the administrator does not comply with any provision of this Act, or regulations made under this Act.

(2) The Authority shall give the administrator at least thirty days notice in writing specifying the reasons for the intended revocation of the licence.

(3) The Authority shall, before revoking a licence of an administrator, consider any representations made in writing by the administrator opposing the revocation.

(4) The Authority shall revoke the licence of an administrator if—

- (a) within thirty days after issuing the notice, the administrator has not opposed the revocation, or
- (b) the Authority is not satisfied by the representation made by the administrator under subsection (3).

53. Functions of administrator

(1) An administrator of a retirement benefits scheme shall—

- (a) keep the records of the scheme;
- (b) process receipts and invoices;
- (c) produce quarterly and annual accounts for audit;
- (d) organise and arrange for meetings ; and
- (e) prepare annual benefit statements and trustee reports.

(2) An administrator of a retirement benefits scheme shall not act as a custodian, trustee or fund manager of the same retirement benefits scheme.

(3) The provisions of subsection (2) shall apply to any assignee

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or related party of the administrator.

Fund managers

54. Licensing of fund managers

A person shall not act as a fund manager of a retirement benefits scheme unless he or she has a licence issued in accordance with this Act.

55. Application and grant of licence of fund manager

(1) An application for a licence as a fund manager of a retirement benefits scheme shall be in the prescribed form and shall—

- (a) state whether the applicant has the adequate professional, technical and operational ability to perform the functions of a fund manager;
- (b) contain or be accompanied by any other information that the Authority may require for the purpose of determining the application;
- (c) contain the address of a place in Uganda for the service on the applicant of any notice or document required or authorised to be served on the applicant under this Act; and
- (d) be accompanied by the prescribed fee.

(2) The Authority may grant a licence to an applicant who meets the requirements specified in subsection (1).

(3) The Authority shall publish in the Gazette and in a newspaper with wide circulation, a list of all licensed fund managers, at least once in every year.

(4) A person who acts as a fund manager of a retirement benefits scheme without a licence issued under this Act commits an offence and is liable on conviction to a fine not exceeding one thousand

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currency points or imprisonment not exceeding six years, or both.

56. Refusal to grant licence of fund manager

(1) The Authority may refuse to grant a licence to an applicant if the Authority is satisfied that—

- (a) the information contained in the application is false in any material particular;
- (b) the applicant is not a fit and proper person as prescribed in Part II of Schedule 3;
- (c) the applicant has ever been a fund manager of a retirement benefits scheme whose licence was revoked by the Authority due to any fault either fully or partially of the applicant; or
- (d) the applicant does not meet the requirements specified in section 55 (1).

(2) Where the Authority refuses to grant a licence to an applicant, the Authority shall notify the applicant of its decision and specify the reasons for the refusal in writing.

57. Restrictions on licence of fund manager

A person shall not be licensed as a fund manager of a retirement benefits scheme if he or she—

- (a) has been sentenced to imprisonment by a court of competent jurisdiction for six months or more;
- (b) is declared bankrupt or insolvent, or has entered into an arrangement with his or her creditors;
- (c) was previously involved in the management or administration of a retirement benefits scheme whose licence has been revoked under this Act due to his or her fault either fully or partially;
- (d) is disqualified under any other written law, or his or her holding office as such is determined by the Authority as being, in any way, detrimental to the retirement benefits

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scheme; or

- (e) is not a fit and proper person as prescribed in Part II of Schedule 3.

58. Validity of licence of fund manager

(1) A licence issued to a fund manager shall be valid for one year and shall be renewed annually upon payment of the prescribed fee.

(2) An application for the renewal of a licence under subsection (1) shall be made at least three months before the expiry of the licence.

59. Revocation of licence of fund manager

(1) The Authority may revoke the licence of a fund manager if—

- (a) the Authority discovers, after the licence has been issued, that the fund manager made a false statement in relation to the application;
- (b) any event occurs which renders the fund manager ineligible to perform his or her functions as a trustee;
- (c) the fund manager is declared bankrupt or insolvent, or enters into an arrangement with his or her creditors;
- (d) the fund manager is in breach of any condition of the licence;
- (e) the fund manager is disqualified by virtue of section 57;
- (f) the fund manager ceases to be a fit and proper person as prescribed in Part II of Schedule 3; or
- (g) the fund manager does not comply with any provision of this Act, or any regulations made under this Act.

(2) The Authority shall give the fund manager at least thirty days notice in writing specifying the reasons for the intended revocation of

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the licence.

(3) The Authority shall, before revoking a licence of a fund manager, consider any representations made in writing by the fund manager opposing the revocation.

(4) The Authority shall revoke the licence of a fund manager if—

- (a) within thirty days after issuing the notice, the fund manager has not opposed the revocation; or
- (b) the Authority is not satisfied by the representation made by the fund manager under subsection (3).

60. Functions of a fund manager

(1) A fund manager of a retirement benefits scheme shall—

- (a) be responsible for management of funds and other assets of the retirement benefits scheme for purposes of investment in accordance with the scheme's investment policy and the scheme rules;
- (b) provide advisory services on the investment of the scheme funds and disseminating information concerning the assets available for investment of scheme funds.

(2) A fund manager of a retirement benefits scheme shall not act as a custodian, trustee or administrator of the same retirement benefits scheme.

(3) The provisions of subsection (2) shall apply to any assignee or related party of the fund manager.

61. General obligations of custodian, trustee, administrator or fund manager

A custodian, trustee, administrator or fund manager of a retirement

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benefits scheme shall—

- (a) ensure that the scheme is at all times managed in accordance with the scheme rules, instructions of trustees and any regulations made under this Act;
- (b) take reasonable care to ensure that the management of the scheme is carried out in the best interests of the members and beneficiaries of the scheme;
- (c) report to the Authority, as soon as reasonably practicable—
 - (i) any unusual occurrence which in his or her view could jeopardise the rights of the members or beneficiaries of the scheme; or
 - (ii) any contribution supposed to be paid into the scheme which remains due for more than thirty days from the date of payment.

Register

62. Register

(1) The Authority shall keep a register containing entries in respect of—

- (a) all licensed retirement benefits schemes;
- (b) licensed custodians, trustees, administrator and fund managers;
- (c) any other information as may be directed in writing by the Board.

(2) The Authority shall keep all records of information entered in the register for a period of seven years.

(3) The Authority shall—

- (a) keep an electronic version of the register which shall be

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- accessible to the public;
- (b) publish an updated register in the print media;
- (c) ensure that the register is open for inspection by any person;
- (d) protect the right of access to the register by any person; and
- (e) make guidelines as to the inspection, and copying of the register.

PART VI—ACCOUNTS, RECORDS AND INVESTMENT OF FUNDS OF
RETIREMENT BENEFITS SCHEMES

63. Bank accounts

(1) A trustee of a retirement benefits scheme shall open and maintain bank accounts necessary for the exercise of the functions of the retirement benefits scheme and shall pay into them—

- (a) all contributions of members of the retirement benefits scheme; and
- (b) all other monies received by the trustee in the exercise of his or her functions under this Act.

(2) Monies received by the trustee under subsection (1) (a) and under subsection (b) shall be kept in separate accounts.

64. Audit of accounts

(1) The accounts of a retirement benefits scheme shall be audited by an auditor appointed by the trustee of the retirement benefits scheme with the approval of the Board.

(2) A member, trustee, custodian, administrator or fund manager of the retirement benefits scheme shall not be appointed as an auditor under subsection (1).

(3) A trustee shall, within four months after the end of each

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financial year, submit a copy of the audited accounts of the retirement benefits scheme to the Authority.

(4) A trustee who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points, or to imprisonment not exceeding three years, or to both.

65. Publication of audited accounts

(1) A trustee of a retirement benefits scheme shall exhibit, throughout the year in a conspicuous place at its office, a copy of its audited annual financial statements with the auditor's opinion.

(2) A retirement benefits scheme whose membership is open to the public shall within four months after the end of each financial year publish in the mass media of wide circulation, in such form as the Authority may by notice in writing prescribe, a copy of its annual financial statements together with the auditor's report.

66. Records and annual report

(1) A trustee shall keep proper books of accounts and records of the transactions of the retirement benefits scheme for a period of not less than ten years.

(2) The trustee shall, within four months after the end of each financial year, submit to the Authority, an annual report on the transactions of the retirement benefits scheme during the preceding year, which shall include, among other things, an audited financial statement and such other information as the Authority may require.

67. Investment of funds

(1) Every retirement benefits scheme shall have a prudent investment policy of the funds of the scheme so as to maintain the capital funds of the scheme and generally to secure adequate rates of return on the investment.

(2) Notwithstanding the provisions of any other written law, the investment policy of a scheme shall be implemented subject to any

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regulations the Minister may, in consultation with the Board, make for that purpose.

(3) There shall be submitted to the Chief Executive Officer, in respect of every scheme, a statement of all investments of the retirement benefits scheme, in such a manner and at such intervals as may be prescribed.

68. Restriction on use of scheme funds

(1) The funds of a retirement benefits scheme shall not—

- (a) be used for speculative investments;
- (b) be lent to any person, except through securities sold on the open market;
- (c) be invested with a bank, non-banking financial institution, insurance company, building society or other institution with a view to securing loans or mortgages, at a preferential rate of interest or for any other consideration to the trustee, custodian, administrator or fund manager of the retirement benefits scheme;
- (d) used to make direct or indirect loans to any person;
- (e) be used as security for loans;
- (f) invested outside East Africa; or
- (g) invested contrary to any guidelines prescribed for that purpose.

(2) Notwithstanding subsection (1), a prescribed proportion of the benefits accruing to a member in a retirement benefits scheme may be assigned and used by the member to—

- (a) secure a mortgage or a loan for purchasing a residential house from any institution and on such terms as may be prescribed in regulations made under this Act;

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(b) pay for medical treatment in respect of the member, on recommendation of the Uganda medical Board.

(3) The Authority may suspend or disqualify a trustee, custodian, administrator or fund manager of a retirement benefits scheme who contravenes this section from participating in the management, custody or administration of the funds of the retirement benefits scheme.

PART VII—PAYMENT OF CONTRIBUTION, ACTUARIAL VALUATIONS
AND FIDUCIARY

69. Payment of contribution

(1) An employer shall, pay contributions in respect of his or her employee into a retirement benefits scheme licensed under this Act.

(2) An employer shall remit the contribution in respect of his or her employee to the retirement benefits scheme before the fifteenth day of the following month.

(3) 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.

70. Protection of member's contribution

Notwithstanding anything to the contrary contained in any other written law, where a judgment or order against a member of a retirement benefits scheme is made, no execution or attachment or process of any nature shall be issued in respect of the contributions or funds of the member.

71. Actuarial valuation

(1) A trustee of a defined retirement benefits scheme shall, at least once in every three years, appoint a dully accredited actuary to value the resources and liabilities of the scheme and evaluate the

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financial consequences of any risk undertaken by the trustee on behalf of the retirement benefits scheme.

(2) Notwithstanding subsection (1), the Authority may, in exceptional circumstances, require a trustee of a defined retirement benefits scheme to cause the resources and liabilities of the scheme to be evaluated by an actuary appointed by the trustees with the approval of the Authority at the expense of the scheme.

(3) The trustee shall, within three months after an actuarial evaluation is done submit a report of the actuarial valuation to the Authority.

72. Fiduciary

For the purposes of this Act, a fiduciary is defined as any person responsible for—

- (a) the control, administration or management of a retirement benefits scheme;
- (b) the application or interpretation of scheme rules in the determination of benefits of members or beneficiaries of a retirement benefits scheme; or
- (c) the management of assets or investment of funds of a retirement benefits scheme.

73. Duties of a fiduciary

(1) A fiduciary shall—

- (a) act with due care, skill, diligence, good faith and prudence, and shall avoid misleading and deceptive acts or representations;
- (b) act in the best interest of the scheme members and beneficiaries;
- (c) ensure that all decisions regarding the scheme comply with scheme rules made under this Act; and

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(d) act with impartiality in respect of all members and beneficiaries of the scheme.

(2) Notwithstanding subsection (1), a fiduciary shall perform his or her functions in accordance with this Act and regulations made under this Act and may obtain expert advice from actuaries, lawyers, auditors, investment advisers, financial experts or information technology professionals.

74. Unsafe and unsound practices

(1) Where, in the opinion of the Authority, a custodian, trustee, administrator, fund manager or fiduciary of a retirement benefits scheme omits to perform or commits an act which the Authority considers to be an unsafe or unsound practice detrimental to the scheme, the Authority shall in writing direct the trustee, custodian, administrator, fund manager or fiduciary to refrain from omitting or committing the act.

(2) A custodian, trustee, administrator, fund manager or fiduciary of a retirement benefits scheme who contravenes a direction of the Authority issued under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding three years, or both.

PART VIII—APPOINTMENT OF INSPECTOR AND INTERIM ADMINISTRATOR

Inspector

75. Appointment of inspector

The Board shall appoint an inspector to inspect the books of accounts, records, returns and any document or premises of a retirement benefits scheme custodian, fund manager and administrator licensed under this Act.

76. Powers of inspector

(1) An inspector may, by notice in writing, require any person who is or has at any time been a custodian, trustee, administrator,

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fund manager, employee or agent of a retirement benefits scheme being inspected, to—

- (a) produce any books of accounts, records, returns or other documents relating to the affairs of the scheme for inspection;
- (b) appear before the inspector for examination in regard to his or her participation in the scheme; or
- (c) give all reasonable assistance for purposes of the inspection.

(2) The books of accounts and any documents shall not be removed from the premises in the course of inspection.

(3) Notwithstanding subsection (2), an inspector shall be availed with certified copies of any books, accounts and other documents required for the purposes of his or her report.

(4) Information obtained in the course of the inspection shall be treated as confidential and shall be used solely for the purposes of this Act.

(5) A person who—

- (a) without any lawful justification or excuse refuses or fails to give an inspector, access to any property, books of account, records, returns, document or information requested for under subsection (1);
- (b) knowingly presents to the inspector a false or fabricated document or makes a false statement with intent to deceive or mislead the inspector;
- (c) without reasonable excuse, refuses or fails to comply with any order or direction of the inspector;

commits an offence and is liable on conviction to a fine not exceeding

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five hundred currency points or to imprisonment not exceeding three years, or both.

77. Report of inspector

(1) An inspector appointed under section 75 shall submit his or her report to the Authority.

(2) The report of the inspector shall draw attention to any breach of the requirements of this Act and regulations made under this Act, any mismanagement or lack of management skills of the fund manager and any other matter revealed or discovered in the course of the inspection warranting, in the opinion of the inspector, remedial action or further investigation.

Interim administrator

78. Appointment of interim administrator

(1) The Authority shall appoint an interim administrator if—

- (a) if the trustees of a retirement benefits scheme fail to submit to the Authority an annual report of the transactions of the retirement benefit scheme required under section 66(2) for over six months after the end of the financial year to which they relate;
- (b) if the trustees are found to have submitted or provided any accounts, returns, statements, books, records, correspondences, documents or other information relating to the funds of the scheme which are false or misleading
- (c) the inspector's report reveals a fact which, in the opinion of the Authority, warrants the appointment of an interim administrator in order to protect the interests of members and beneficiaries of the retirement benefits scheme or as a matter of public interest; or

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(d) the licence of a custodian, trustee, administrator or fund manager is revoked by the Authority under this Act.

(2) An interim administrator shall assume the management, control and conduct of the affairs and business of the custodian, trustee, administrator or fund manager, as the case may be, to exercise all the functions of the custodian, trustee, administrator or fund manager to the exclusion of the custodian, trustee, administrator or fund manager.

(3) The appointment of an interim administrator shall be for a period, not exceeding twelve months, as the Authority may specify in the instrument of appointment.

(4) An interim administrator shall upon assuming the management, control and conduct of the affairs and business of the custodian, trustee, administrator or fund manager discharge his or her duties with diligence and in accordance with sound actuarial and financial principles and in particular, with due regard to the interests of members and beneficiaries of the retirement benefits scheme.

79. Duties of interim administrator

An interim administrator shall be responsible for—

- (a) tracing, preserving and securing all the assets and property of the retirement benefits scheme;
- (b) recovering all debts and money due to and owing to the retirement benefits scheme;
- (c) evaluating the solvency and the liquidity of the retirement benefits scheme;
- (d) determining the adequacy of the capital, reserves and the management of the retirement benefits scheme;
- (e) recommending to the Authority any restructuring or

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reorganisation which he or she considers necessary for the proper management of the retirement benefits scheme;

- (f) obtaining records, books of accounts, statements, documents or information relating to the retirement benefits scheme from any former trustee, custodian, administrator or fund manager or an employee of the retirement benefits scheme; and
- (g) performing any function as the Authority may in writing, direct in accordance with this Act.

80. Report of interim administrator

(1) An interim administrator shall, within twelve months after the date of his or her appointment, prepare and submit to the Authority a report of—

- (a) the financial position and the management of the retirement benefits scheme;
- (b) recommendations as to whether the retirement benefits scheme is capable of being revived or not; or
- (c) whether the retirement benefits scheme’s licence should be revoked.

(2) The Chief Executive Officer shall, upon receipt of the report of an interim administrator, make appropriate recommendations to the Board which shall make a decision on the matter.

81. Protection of interim administrator from liability

An interim administrator or a person acting on his or directions is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of his or her duties under this Act.

PART IX—RETIREMENT BENEFITS APPEALS TRIBUNAL

82. Appeals.

- (1) Any member of a retirement benefits scheme who is

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aggrieved by a decision of the administrator, fund manager, custodian or trustee of the scheme may appeal to the Authority for review.

(2) A copy of the appeal under this section shall be served on the fund manager, trustees or custodian of the scheme.

(3) A person aggrieved by a decision of the Authority in subsection (1) may appeal to the Tribunal.

(4) Where any dispute arises between any person and the Authority as to the exercise of the powers conferred upon the Authority by this Act, either party may appeal to the Tribunal in such manner as may be prescribed by regulations made under this Act.

83. Establishment of the Retirement Benefits Appeals Tribunal

(1) There is established the Retirement Benefits Appeals Tribunal for the purpose of hearing appeals under this part.

(2) The Tribunal shall be an adhoc forum consisting of a chairperson and four other members who shall be appointed by the Minister upon such terms and conditions as may be prescribed by regulations made under this Act.

(3) The chairperson of the Tribunal shall be a person qualified to be a judge of the High Court.

(4) The chairperson shall be appointed by the Minister, in consultation with the Judicial Service Commission.

(5) A person to be appointed a member of the Tribunal shall be a person with knowledge and experience in administration of retirement benefits schemes, banking, insurance, investment management, finance, law, or actuarial studies.

(6) A person shall not qualify for appointment as a member of the Tribunal unless the person—

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- (a) is of high moral character and proven integrity;
- (b) has not been convicted of an offence of moral integrity;
- (c) is of sound mind; and
- (d) has not been declared bankrupt.

(7) The members of the Tribunal shall be appointed by the Minister from the private sector.

(8) The quorum of the Tribunal for purposes of a hearing under this section shall be the Chairperson and any two members.

(9) The expenses incidental to the administration of the tribunal shall borne by the Authority.

84. Powers of the Appeals Tribunal.

(1) On hearing an appeal, the Tribunal shall—

- (a) take evidence on oath;
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding;
- (c) adjourn the hearing of the proceeding from time to time;
- (d) make an order as to costs against any party, which shall be enforceable like an order of the High Court; or
- (e) issue a commission or request to examine witnesses abroad.

(2) For the purpose of the hearing of a proceeding before the Tribunal, the Tribunal shall have powers of the High Court to summon a person to appear before it—

- (a) to give evidence; or
- (b) to produce books, documents or things in the possession, custody or control of the person named in the summons that are mentioned in the summons.

(3) Where a Tribunal considers it desirable for the purposes of avoiding expenses or delay, or for any other special reason, it may

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receive evidence by affidavit and administer interrogations and require the persons to whom interrogations are administered to make a full and true reply to the interrogations.

(4) All summons, notices or other documents issued under the hand of the chairperson of the Tribunal shall be deemed to be issued by the Tribunal.

85. Appeals to the High Court from decisions of a Tribunal.

(1) A party to a proceeding before a Tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court.

(2) The party who intends to appeal against a decision of the Tribunal shall serve a copy of the notice of appeal on the other party to the proceedings before the Tribunal.

86. Rules.

The Minister shall, in consultation with the Judicial Service Commission, make rules for the effective operation and management of the Tribunal.

PART X—OFFENCES AND PENALTIES

87. Offences and penalties

- (1) A person commits an offence who—
- (a) without lawful justification or excuse, wilfully obstructs the Authority or any person authorised by the Authority in the performance of his or her functions under this Act;
 - (b) without reasonable excuse, refuses or fails to comply with any order or direction of the Authority;
 - (c) without any lawful justification or excuse, refuses or fails

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to give to the Authority or any person authorised by the Authority, access to any books, records, returns or any papers, documents, records or information; or

- (d) knowingly presents to the Authority or any person authorised by the Authority a false or forged document or makes a false statement with intent to deceive or mislead the Authority or any person authorised by the Authority.

(2) A person commits an offence, who, being an employee of the Authority—

- (a) misuses any information obtained when performing his or her duties under this Act; or
- (b) colludes with any trustee, custodian, administrator, fund manager or other public officer in the conduct of their duties under this Act to omit or commit any act; where the omission or commission leads to loss of funds of the Authority.

(3) A person convicted of an offence under this section is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding three years, or both.

88. General penalty

Any person who—

- (a) contravenes any provision of this Act which is expressly stated to be an offence but for which no penalty is prescribed; or
- (b) fails to comply with any direction given by the Authority under this Act,

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PART XI—MISCELLANEOUS

89. Protection from liability

The Chief Executive Officer, a member of the Board and an employee of the Authority or a person acting on the directions of such a person is not personally liable for any act or omission done or omitted to be done in good faith in the exercise of the functions of the Authority.

90. Service of documents

A notice or document may be served on the Authority by delivering it at the office of the Authority, or by sending it by registered post to the office of the Authority.

91. Regulations

(1) The Minister shall in consultation with the Board by statutory instrument, make regulations generally for giving effect to the provisions of this Act and for its due administration.

(2) Without prejudice to the general effect of subsection (1), regulations under this section may—

- (a) prescribe the procedure for application for a licence to establish and operate a retirement benefits scheme;
- (b) prescribe the procedure for establishing a retirement benefits scheme as irrevocable trust under this Act;
- (c) provide for the procedure for licensing of custodians, trustees, administrators and fund managers of retirement benefits schemes;
- (d) prescribe the forms to be used for the purposes of this Act;

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- (e) provide for any matter relating to the establishment, operation, regulation and supervision of retirement benefits schemes;
- (f) prescribe the fees payable under this Act;
- (g) prescribe investment policy guidelines for retirement benefits schemes;
- (h) prescribe administrative sanctions;
- (i) exempt any person or class of persons from the application of any provision of this Act;
- (j) prescribe any matter or thing required to be prescribed under this Act; or
- (i) prescribe guidelines for the portability of scheme funds from one retirement benefit scheme to another retirement benefit scheme.

(3) Regulations made under this section may, in respect of any contravention of any of the regulations—

- (a) prescribe a penalty of a fine not exceeding seventy five currency points or imprisonment not exceeding one year, or both;
- (b) in the case of a continuing contravention, prescribe an additional penalty not exceeding fifty currency points in respect of each day on which the offence continues; and
- (c) prescribe a higher penalty not exceeding one hundred and fifty currency points in respect of a second or subsequent contravention.

92. Amendment of Schedules

The Minister may, with the approval of Parliament, by statutory instrument, amend Schedules 2 and 3 of this Act.

93. Guidelines

The Authority may issue guidelines for the better carrying out of its object and functions under this Act.

94. Protection of existing pension rights or other retirement benefits

(1) For the avoidance of doubt, nothing in this Act affects the right of any person to pension or any other retirement benefit under any written law in force immediately before the coming into force of this Act.

(2) Any person who on the coming into force of this Act, is entitled to receive pension or any other retirement benefit in accordance with any written law relating to payment of pension or other retirement benefit, shall continue to receive that pension or retirement benefit.

95. Supremacy of this Act

(1) This Act takes precedence over all existing Acts relating to establishment, operation, management, and regulation of retirement benefits schemes, and where there is a conflict between this Act and any other written law other than the Constitution, this Act shall prevail.

(2) Any thing duly done under the authority of this Act for the purpose of giving effect to the Government's policy on retirement benefits schemes shall have effect notwithstanding any other enactment.

(3) Any written law which conflicts with this Act shall be amended to bring it in conformity with the Act.

96. Licensing of existing retirement benefit schemes, custodian, trustee, administrator or fund manager

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(1) All retirement benefits schemes existing immediately before the coming into force of this Act shall, within twelve months after the coming into force of this Act, apply to the Authority for a licence in accordance with this Act.

(2) Any person who, immediately before the coming into force of this Act, is a custodian, trustee, administrator or fund manager of a retirement benefits scheme shall, within twelve months after coming into force of this Act, apply to the Authority for a licence in accordance with this Act.

SCHEDULES.

SCHEDULE 1

Section 2 and 92

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

SCHEDULE 2

Section 12 and 92

MEETINGS OF THE BOARD

1. Meetings of the Board

(1) The Chairperson shall convene every meeting of the Board at times and places as the Board may determine, and the Board shall meet for the discharge of business at least four times in every year.

(2) The Chairperson may, at any time, convene a special meeting of the Board and shall also call a meeting within fourteen days, if requested to do so in writing by at least four members of the Board.

(3) Notice of a Board meeting shall be given in writing to each member at least fourteen working days before the day of the meeting.

(4) The Chairperson shall preside at every meeting of the Board and in the absence of the Chairperson; the members present shall appoint a member from among themselves to preside at that meeting.

2. Quorum

(1) The quorum for a meeting of the Board is five members.

(2) All decisions at a meeting of the Board shall be by a majority of the votes of the members present and voting and in case of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

3. Minutes of meetings.

(1) The Board shall cause to be recorded and kept, minutes of all meetings of the Board in a form approved by the Board.

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(2) The minutes recorded under this paragraph shall be submitted to the Board for confirmation at its next meeting following that to which the minutes relate and when so confirmed, shall be signed by the Chairperson and the Secretary to the Board, in the presence of the members present at the latter meeting.

4. Power to co-opt

(1) The Board may invite any person who, in the opinion of the Board, has expert knowledge concerning the functions of the Board, to attend and take part in the proceedings of the Board.

(2) A person attending a meeting of the Board under this section may take part in any discussion at the meeting on which his or her advice is required but shall not have any right to vote at that meeting.

5. Validity of proceedings not affected by vacancy

The validity of any proceedings of the Board shall not be affected by a vacancy in its membership or by any defect in the appointment or qualification of a member or by reason that a person not entitled, took part in its proceedings.

6. Disclosure of interest of members

(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, or in any other matter which falls to be considered by the Board, shall disclose the nature of his or her interest at a meeting of the Board.

(2) A disclosure made under subparagraph (1) shall be recorded in the minutes of that meeting.

(3) A member who makes a disclosure under subparagraph (1) shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(4) For purposes of determining whether there is a quorum, a member withdrawing from a meeting or who is not taking part in a meeting under

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subparagraph (3) shall be treated as being present.

7. Board may regulate its procedure

Subject to this Act, the Board may regulate its own procedure or any other matter relating to its meetings.

SCHEDULE 3

CRITERIA FOR DETERMINING A FIT AND PROPER PERSON

PART - I

Section 8(5) and 92

CRITERIA FOR DETERMINING WHETHER A PERSON IS A FIT AND PROPER PERSON TO BECOME A MEMBER OF THE BOARD

Qualities for professional suitability

1. In order to determine, for the purposes of this Act, the professional and moral suitability of a person proposed to be appointed as a member of the Board, the Minister shall have regard to the following qualities, in so far as they are reasonably determinable, in respect of the person concerned—

- (a) his or her general probity;
- (b) his or her competence and soundness of judgment for the fulfillment of the responsibilities of the office in question;
- (c) the diligence with which the person concerned is fulfilling or likely to fulfill those responsibilities; and
- (d) whether the functions of the Board are, or are likely to be in any way threatened by his or her holding that position.

Previous conduct and activities

2. For the purposes of and without prejudice to the general effect of paragraph (1), the Minister may have regard to the previous conduct and activities of the person concerned in business or financial matters and, in particular, to any evidence that the person-

- (a) has been convicted of the offence of fraud or any other offence of which dishonesty or violence is an element;
- (b) has contravened any law designed for the protection of members

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- of the public against financial loss due to the dishonesty or incompetence of, or malpractice by, persons engaged in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- (c) has taken part in any business practice that in the opinion of the Minister, was deceitful or oppressive, fraudulent, prejudicial or otherwise improper whether unlawful or not, or which otherwise reflect discredit on his or her method of conducting business; or
 - (d) has engaged or taken part in or been associated with any other business practices or otherwise conducted himself or herself in such manner as to cause doubt on his or her competence and soundness of judgement.

Additional information

3. The Minister may request any person to furnish additional information as may be necessary in determining the professional suitability of a person.

PART - II

Sections 30(4) (c), 42(1) (b), 43(e), 45(1)(f) 49(1) (b), 50(e), 52(f), 56(1) (b), 57(e), 59(f) and 92.

CRITERIA FOR DETERMINING A FIT AND PROPER PERSON FOR PURPOSES OF ESTABLISHING A RETIREMENT BENEFIT SCHEME, ACTING AS A TRUSTEE, ADMINISTRATOR OR FUND MANAGER OF A RETIREMENT BENEFITS SCHEME.

Qualities for professional suitability

1. In order to determine, for the purposes of this Act the professional suitability of a person proposing to establish or operate a retirement benefits scheme, a person applying for a licence to act as a trustee, administrator or fund manager of a retirement benefits scheme, the Authority shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

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

Previous conduct and activities

2. For the purposes of and without prejudice to the generality of paragraph 1, the Authority may have regard to the previous conduct and activities of the person concerned in business or financial matters, and in particular to any evidence that the person—

- (a) has been convicted of the offence of fraud, or any other offence of which dishonesty is an element; or

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- (b) has contravened the provisions of any Act designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services.

Additional information

3. The Authority may request any person to furnish additional information as may be necessary in determining the professional suitability of a person proposing to establish or operate a retirement benefits scheme, a person applying for a licence to act as a trustee, administrator or fund manager of a retirement benefits scheme.

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Cross References

Financial Institutions Act 2004, Act No 4 of 2004

Public Finance and Accountability Act, 2003 Act No 6. of 2003