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S T A T U T O R Y I N S T R U M E N T S

2020 No. 44.

THE UGANDA RETIREMENT BENEFITS REGULATORY  
AUTHORITY (MERGER AND WINDING UP OF RETIREMENT  
BENEFITS SCHEMES) REGULATIONS, 2020

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# S T A T U T O R Y   I N S T R U M E N T S

2020 No. 44.

## **The Uganda Retirement Benefits Regulatory Authority (Merger and Winding Up of Retirement Benefits Schemes) Regulations, 2020**

*(Under section 91(1), (2) (e) and (j) of the Uganda Retirement Benefits  
Regulatory Authority Act 2011)*

IN EXERCISE of the powers conferred on the Minister by sections 91(1), (2) (e) and (j) of the Uganda Retirement Benefits Regulatory Authority Act, 2011, these Regulations are made this 18th day of December, 2019.

### PART I—PRELIMINARY

#### **1. Title**

These Regulations may be cited as the Uganda Retirement Benefits Regulatory Authority (Merger and Winding Up of Retirement Benefits Schemes) Regulations, 2020.

#### **2. Interpretation**

In these Regulations, unless the context otherwise requires—

“accounting firm” means a sole proprietorship or a partnership of qualified practicing accountants licensed under the Accountants Act, 2013.

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

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

“actuary ” has the meaning given to it under the Act;

“Authority” has the meaning given to it under the Act;

“Board” has the meaning given to it under the Act;

- “Chief Executive Officer” has the meaning given to it under the Act;
- “court” means a court of competent jurisdiction;
- “financial advisor” means an accounting firm recognised under the Accountants Act, 2013;
- “funding ratio” means the ratio of the actuarial value of the assets to the actuarial value of the accrued benefits, expressed as a percentage, calculated by an actuary under section 71 of the Act;
- “inspector” has the meaning given to it under the Act;
- “interim administrator” has the meaning given to it under the Act;
- “liquidator” means a person appointed by the trustees, the Authority or the court, as the case may be, to manage the process of winding up of a scheme;
- “merger” means the legal consolidation of two or more retirement benefits schemes into one scheme;
- “retirement benefits scheme” has the meaning given to it under the Act;
- “scheme” means a retirement benefits scheme;
- “sponsor” means a person who establishes a retirement benefits scheme;
- “winding up” means the process of terminating a retirement benefits scheme.

### **3. Objectives**

The objective of these Regulations is to provide for—

- (a) the requirement for maintenance of a prudent level of funding by a retirement benefits scheme;
- (b) the process of merging of retirement benefits schemes; and
- (c) the process of winding up of a retirement benefits scheme.

PART II—MAINTENANCE OF PRUDENT LEVEL  
OF FUNDING

**4. Funding requirements**

(1) Every scheme shall maintain a prudent level of funding, as shall be determined by the trustees.

(2) In determining the funding requirements of a scheme, the trustees shall seek direction from—

- (a) an actuary, in the case of a defined benefits scheme; and
- (b) a professional financial advisor, in the case of a defined contribution scheme.

(3) A scheme shall not be deemed to maintain a prudent level of funding where—

- (a) in the case of a defined benefits scheme, the funding ratio of the scheme is less than one hundred percent of the benefit payment obligations of the scheme; or
- (b) in the case of a defined contribution scheme, the scheme is unable to meet its liabilities.

(4) The trustees shall submit to the Authority, the report of the funding ratio determined by the actuary or financial advisor as the case may be.

(5) The report referred to in subregulation (4) shall be accompanied by—

- (a) a duly signed copy of the certification of computation of funding ratio, in the form prescribed in Schedule 2 to these Regulations; and
- (b) a duly signed copy of the certification of contribution in the form prescribed in Schedule 3 to these Regulations.

## **5. Failure to meet funding requirements**

(1) Where the Authority is of the opinion that a scheme has failed to maintain a prudent level of funding, the Authority shall direct the scheme to submit a remedial plan within thirty days from the date of the directive.

(2) where the Authority is satisfied with the arrangements set out in the remedial plan referred to in subregulation (1), the Authority shall approve the remedial plan and permit the scheme to implement the remedial plan.

(3) Where the Authority is not satisfied with the arrangements set out in the remedial plan referred to in subregulation (1), the Authority may—

- (a) require the scheme to submit another remedial plan addressing the deficient part;
- (b) appoint an inspector to examine the books of accounts, returns and any documents or premises of the scheme in accordance with sections 75 and 76 of the Act;
- (c) appoint an interim administrator as set out in sections 78 and 79 of the Act; or
- (d) apply for the scheme to be wound up.

## **6. Contents of remedial plan**

(1) The remedial plan referred to in regulation 5 shall contain—

- (a) the asset and liability structure of the scheme;
- (b) the risk profile of the scheme;
- (c) the liquidity requirements of the scheme;
- (d) the age profile of the members of the scheme;

- (e) the recommendations of the actuary or financial advisor of the scheme in respect of the funding ratio of the scheme;
- (f) the timeframe within which the funding ratio of the defined benefit scheme shall be restored to one hundred percent, in the case of a defined benefits scheme;
- (g) a statement indicating whether the prudent funding level will be restored by—
  - (i) an increase in the contributions of the members;
  - (ii) regular payments by the sponsor; or
  - (iii) a combination of the increase in the contributions of the members and regular payments by the sponsor; and
- (h) the date on which the remedial plan was prepared and the date of any subsequent amendment.

(2) The remedial plan submitted to the Authority shall be accompanied by—

- (a) a summary of the valuation report of the actuary or the financial advisor regardless of whether or not the plan was prepared or amended after the valuation of the scheme by the actuary or financial advisor;
- (b) an explanation for amendment of the plan, where the plan has been amended under the circumstances set out in regulation 7;
- (c) a certification of the remedial plan set out in Schedule 4 to these Regulations;
- (d) a duly completed agreement to the remedial plan of the sponsor set out in Schedule 5 to these Regulations; and
- (e) any other information that the Authority may require.

## **7. Amendment of remedial plan**

(1) The trustees of a scheme may with the approval of the Authority, amend a remedial plan of the scheme.

(2) The trustees of a scheme shall amend a remedial plan for purposes of compliance with regulation 6 of these Regulations.

## **8. Monitoring**

(1) The Authority may require the scheme to submit periodic reports of the prudent level of funding and the implementation of the remedial plan of the scheme.

(2) Where the Authority is satisfied that the remedial plan is adequate and the prudent level of funding of the scheme has been restored, the Authority shall terminate the obligations of the scheme in respect of the remedial plan and inform the trustees of that scheme accordingly.

(3) Where the Authority finds that the scheme has failed to maintain a prudent level of funding, despite implementing the remedial plan, the Authority may exercise any of the measures set out in regulation 5(3).

## **9. Appointment of inspector or interim administrator**

(1) Where under regulation 5(2)(b) and (c), the Authority appoints an inspector or interim administrator, the inspector or the interim administrator, as the case may be, shall submit a report of the findings of the examination accordingly.

(2) The Chief Executive Officer of the Authority shall, upon receipt of the report from the inspector or the interim administrator, make recommendation to the Board, for a decision on the matter.

(3) Where the Board makes a decision to wind up a scheme, the winding up of the scheme shall be made in accordance with regulations 12 and 15 of these Regulations.

PART III—PROCEDURE FOR MERGER OR ACQUISITION  
OF SCHEME

**10. Merger or acquisition of scheme**

(1) The trustees of two or more schemes may resolve to merge the schemes in accordance with these regulations.

(2) A scheme may acquire an existing scheme.

(3) The trustees of the merging schemes and the trustees of an acquiring scheme, shall apply to the Authority for approval of the merger or the acquisition, as the case may be.

(4) Where a scheme is acquired by an existing scheme the assets of the acquired scheme shall be transferred to the acquiring scheme.

(5) An application for a merger of schemes or acquisition of a scheme shall be accompanied by a report consisting of—

- (a) findings of a due diligence exercise conducted prior to the merger or acquisition by the trustees in respect of the implications of the decision of whether to merge with or acquire another scheme;
- (b) prospective benefits of the merger or acquisition as the case may be;
- (c) the liabilities and expense requirements of the schemes;
- (d) an estimation of the future contributions and the funds available in the schemes;
- (e) a determination of whether or not the acquired scheme contains protected benefits;

- (f) clear timelines and activities to be undertaken to ensure compliance with these Regulations;
- (g) a report of the investigations of the financial opportunities arising from the intending merger of the schemes or acquisition of the scheme;
- (h) in the case of merging schemes, an indication of the benefits structure of the merging schemes;
- (i) an indication of how the benefits structure of the acquired scheme will fit into the benefits structure of the acquiring scheme;
- (j) the strategy and recommendations regarding the merger or acquisition of the schemes;
- (k) a detailed comparison of the major differences between the schemes to be merged or acquired, that pose administration and communication concerns and how the differences will be addressed;
- (l) a list of all requisite filings and scheme documents, and amendments in respect of the intended merger or acquisition; and
- (m) evidence that all members of the affected schemes have been informed about the plan to merge the schemes, acquire a scheme or be acquired by an existing scheme, as the case may be, and that steps have been taken to address the concerns that the members have raised about the changes in the scheme and the effect of the merger or acquisition as the case may be, to their benefits.

(6) Where two or more schemes merge to form a new scheme, the assets of all the schemes shall be transferred into the new scheme.

## **11. Restrictions on merger**

A merger of two or more retirement benefits schemes shall not be effected—

- (a) without the written approval of the Authority;
- (b) where the accrued benefits of the members or the beneficiaries to be transferred are likely to be lower after the effective date of the merger than immediately before that date;
- (c) where one of the merging schemes or the scheme to be acquired, has not maintained a prudent level of funding; and
- (d) where the resulting scheme is not able to maintain a prudent level of funding.

### PART IV—WINDING UP OF RETIREMENT BENEFITS SCHEME

#### *Voluntary Winding Up*

## **12. Conditions for voluntary winding up of scheme**

(1) Subject to the provisions of the Act and these Regulations, the trustees of a scheme may by special resolution, resolve to voluntarily wind up the scheme under circumstances specified in the trust deed and the rules of the scheme.

(2) The trustees may resolve to wind up a scheme for any other reason approved by the Authority.

(3) The winding up of a scheme that has failed to maintain a prudent level of funding shall be done in accordance with regulation 15.

(4) A scheme shall not be wound up voluntarily without the prior express approval of the Authority.

## **13. Application for voluntary winding up of scheme**

(1) Where the trustees of the scheme resolve to voluntarily wind up the scheme, the trustees shall submit to the Authority, an application to wind up the scheme voluntarily.

(2) The application for the voluntary winding up of a scheme shall be in form of a letter requesting that the scheme be wound up voluntarily, accompanied by a statement of the reasons for winding up, signed by all the trustees of the affected scheme.

(3) The application shall be accompanied by—

- (a) a resolution to voluntarily wind up the scheme duly signed by the trustees;
- (b) a statement indicating the assets, liabilities and funding ratio of the scheme dated not more than thirty days before the application to wind up was made;
- (c) details of the members of the scheme containing their names, gender, age and other necessary information;
- (d) details of all the arrangements made for transfer of the accrued benefits of the members of the scheme to another scheme;
- (e) a statement confirming that the trustees of a scheme are satisfied that all existing liabilities and obligations to the members of that scheme can be met from the assets of the other scheme; and
- (f) any other information relevant to the application to voluntarily wind up the scheme.

(4) The Authority may request the trustees for more information in respect of the application to voluntarily wind up a scheme.

#### **14. Approval of voluntary winding up of scheme**

(1) The Authority may approve the voluntary winding up of a scheme without the appointment of a liquidator, where the Authority is satisfied that—

- (a) appropriate arrangements have been made for the realisation and disposal of the assets of that scheme;
- (b) appropriate arrangements have been made for payment of the accrued benefits to existing members of that scheme or the transfer of the accrued benefits of the existing members of the scheme to another scheme;

- (c) there are no existing members of the scheme; or
- (d) there are no assets of the scheme to be disposed of.

(2) Where the Authority approves the voluntary winding up of a scheme, the Authority shall—

- (a) issue a written approval to the trustees; and
- (b) set up conditions of the voluntary winding up that the Authority deems appropriate.

### **15. Appointment of liquidator**

A liquidator may be appointed under any of the following conditions—

- (a) by the trustees, in the case of voluntary winding up of the scheme;
- (b) by the Authority, where the Authority deems that the application for the voluntary winding up of the scheme by the trustees does not satisfy the conditions under regulation 14(1); and
- (c) by the court, in the case of winding up of the scheme by order of court.

### **16. Publication of notice for voluntary winding up**

(1) The trustees shall, within five days from the date on which the application for voluntary winding up of the scheme is approved by the Authority—

- (a) serve a notice of the voluntary winding up of the scheme to each member of the scheme;
- (b) serve a notice of the voluntary winding up of the scheme to the sponsor or the participating employers in the scheme, as the case may be;
- (c) publish the notice of the voluntary winding up of the scheme in a newspaper of wide circulation in Uganda, in the case of a scheme receiving mandatory contributions; and

- (d) publish the notice of the voluntary winding up of the scheme on the notice board of the scheme, website of the scheme and any other public medium, in the case of a scheme receiving voluntary contributions.

(2) The notice of the voluntary winding up of the scheme referred to in subregulation (1) shall state—

- (a) the reasons for the voluntary winding up of the scheme;
- (b) that the Authority has approved the voluntary winding up of the scheme;
- (c) the conditions set by the Authority with regard to the voluntary winding up of the scheme;
- (d) the name and address of the liquidator, where a liquidator has been appointed; and
- (e) the date on which the process of the voluntary winding up of the scheme is scheduled to commence.

(3) The notices referred to in this regulation, shall be in English.

### *Winding up by order of court*

#### **17. Application for winding up of scheme by order of court**

(1) The Authority may apply to court for an order to wind up a scheme.

(2) The Authority shall, prior to filing an application under subregulation (1), notify the trustees in writing of the intention to apply to court for an order to wind up the scheme and shall give the trustees an opportunity to be heard on the matter of winding up of the scheme.

#### **18. Conditions for winding up of a scheme by order of court**

(1) The Authority may apply to court for an order to wind up a scheme where—

- (a) the Board has resolved that the scheme be wound up in accordance with the recommendations of the Chief Executive Officer under regulation 9(2) and the report from the inspector or interim administrator under regulation 9(1); or
- (b) the scheme does not maintain a prudent level of funding; or
- (c) the Board has recommended that the scheme be wound up in order to safeguard the interests of the members; or
- (d) the scheme sponsor is declared bankrupt by court; or
- (e) the trustees have executed a resolution to wind up the scheme by order of court.

(2) An application by the Authority to wind up a scheme by order of court shall be preceded by a resolution of the Board, signed by all the members of the Board.

## **19. Accompanying documents**

(1) An application to court for an order to wind up a scheme under regulation 17 shall be accompanied by—

- (a) a resolution of the Board referred to in regulation 18(2); and
- (b) a report stating—
  - (i) the reasons for making the application to wind up the scheme;
  - (ii) the assets, liabilities and the funding ratio of the scheme, as at a date not later than thirty days before the application to wind up the scheme was made;
  - (iii) a list of the members of the scheme; and
- (c) a performance guarantee issued by the Authority, in respect of the payment of the fees for the liquidator and the expenses of winding up of the scheme.

(2) The Authority may employ the services of an actuary or other qualified financial advisor, at its own expense or at the expense of the scheme, for purpose of complying with subregulation (1) (b).

## **20. Appointment of liquidator by court**

(1) The court may grant an order to wind up a scheme without appointing a liquidator where, the court is satisfied that—

- (a) the scheme has a funding ratio that is greater than or equal to one hundred percent of the benefits payment obligations of the scheme;
- (b) where there are assets to be realised, appropriate arrangement has been made for the realisation and disposal of those assets;
- (c) there are no assets of the scheme to be realised and disposed of;
- (d) there are no existing scheme members; or
- (e) where there are existing scheme members, that appropriate arrangements have been made for the transfer of the accrued benefits of the members of the scheme to another scheme.

(2) The court shall appoint a liquidator where the circumstances of the scheme do not warrant court to grant an order for winding up a scheme without appointing a liquidator.

(3) An order of court for winding up of a scheme under subregulation (1) shall state—

- (a) whether the winding up is to be done by a liquidator or without a liquidator;
- (b) the date on which the scheme is to be wound up; and
- (c) any other matter that the court deems necessary.

## **21. Publication of order of court to wind up scheme**

(1) The Authority shall within five days after grant of an order by court to wind up the scheme—

- (a) serve a notice to wind up the scheme, to the trustees and the participating employers in the scheme; and
- (b) publish a notice that the court has granted an order to wind up the scheme—
  - (i) in a newspaper of wide circulation in Uganda;
  - (ii) on the notice board of the Authority; and
  - (iii) on the website of the Authority.

(2) The notice referred to in subregulation (1) shall—

- (a) state the reasons for winding up the scheme;
- (b) state that the court has ordered that the scheme be wound up;
- (c) state the conditions imposed by the court in respect of the winding up of the scheme;
- (d) state the name and address of the liquidator appointed to conduct the winding up of the scheme, where a liquidator has been appointed; and
- (e) state the date on which the process of winding up of the scheme will commence.

## **22. Qualifications of a liquidator**

(1) A person may be appointed as a liquidator under these Regulations, if that person is qualified to be appointed as a liquidator under the Insolvency Act, 2011.

(2) A liquidator appointed for purposes of these regulations shall—

- (a) not have provided professional services to the scheme for a period of not less than five years before the scheduled date of winding up of the scheme;
- (b) not have been sentenced to imprisonment for a period of six months or more by court;

- (c) not have been adjudged bankrupt;
- (d) previously not have been involved in the management or administration of a scheme whose license was revoked for failure on the part of the management or administration; and
- (e) not have been disqualified for appointment as a liquidator under any other written law.

### **23. Fees for a liquidator**

(1) The fees payable to the liquidator shall be borne—

- (a) by the scheme in the case of voluntary winding up; and
- (b) by the Authority in the case of winding up by order of court, where the Authority applies for the winding up of the scheme.

(2) Where necessary, a performance guarantee for the payment of the expenses of the liquidator and to indemnify the liquidator against any loss and the expenses incurred in the winding up of the scheme shall be submitted by—

- (a) the trustees of the scheme to the Authority, in case of the voluntary winding up the scheme; or
- (b) the Authority to the court, in case of winding up of the scheme under an order of court.

(3) The performance guarantee referred to in subregulation (2) shall be issued by an authorised financial institution.

### **24. Effect of appointment, duties and authority of liquidator**

(1) Upon the appointment of a liquidator to wind up a scheme—

- (a) the liquidator shall have all the authority that the trustees have in relation to the scheme, in the ordinary course of business;

- (b) the assets of the scheme shall vest in the liquidator subject to the beneficial interests of the members of the scheme; and
- (c) the trustees, fund manager, administrator and custodian of the scheme shall cease to perform any function under the scheme, except as directed by the liquidator.

(2) The liquidator shall take reasonable steps to take possession of the assets of the scheme, within thirty days from the date of his or her appointment.

(3) The liquidator shall require the trustees, fund manager, custodian or administrator of the scheme, to transfer to him or her, any assets of the scheme in the possession of the trustees, fund manager, custodian or administrator, within reasonable time as specified by the liquidator.

## **25. Powers of liquidator during winding up process**

- (1) The liquidator appointed shall have the power to—
- (a) realise the assets of the scheme by public auction or private contract;
  - (b) transfer the assets of the scheme to another scheme, an individual person or sell them in parcels;
  - (c) bring or defend any legal proceedings in the name and on behalf of the trustees of the scheme;
  - (d) enter into an arrangement with respect to a debt, claim or liability relating to the assets of the scheme;
  - (e) engage the services of other professionals to assist him or her in the performance of his or her duties;
  - (f) pay or transfer, the accrued benefits of the members of the scheme in accordance with the Act;
  - (g) transfer any paid contributions or assets of the scheme to a licensed scheme as directed by the Authority; and

- (h) do any other thing that is necessary for winding up of the scheme.

(2) The liquidator may ask for direction from the Authority with respect to the conduct of the winding up of the scheme.

### *Winding up a scheme*

## **26. Commencement of winding up of a scheme**

The winding up of a scheme shall commence—

- (a) in the case of voluntary winding up of the scheme, on the date specified in the notice of approval of the winding up of the scheme by the Authority under regulation 12(1); and
- (b) in the case of winding up by order of court, on the date specified in the order of court.

## **27. Preparation and submission of preliminary accounts**

(1) The liquidator or trustee as the case may be shall, within thirty days from the date referred to in regulation 26, submit to the Authority the report of the preliminary accounts, signed and certified by the liquidator or the trustee as the case may be, as a correct record of the assets and liabilities of the scheme at the onset of the process of winding up of the scheme.

(2) The Authority may, at the cost of the scheme, direct the liquidator or trustee, to commission an independent actuary or financial advisor approved by the Authority, to prepare a report of the preliminary accounts of the scheme.

(3) The report of the preliminary accounts referred to in subregulation (1) shall be accompanied by a report indicating the manner in which—

- (a) the assets of the scheme are to be realised; and

- (b) the liabilities, including contingent liabilities of the members, that are to be discharged.

## **28. Inspection of preliminary accounts**

The preliminary accounts and report referred to in regulation 27(1) shall be available for inspection by all interested persons, at the premises of the Authority and the registered office of the scheme, for a period of thirty days from the date of submission of the report.

## **29. Objection and amendment of report of preliminary accounts**

(1) The Authority may publish in a newspaper of wide circulation, a notice stating the period and place where the report of the preliminary accounts referred to in regulation 27(1) may be placed for inspection.

(2) A person who objects to the report of the preliminary accounts, shall put his or her objection in writing and deliver it to the Authority or at the offices of the scheme, within fourteen days from the date of publication of the report.

(3) A person that objects to the report of the preliminary accounts shall serve his or her objection to the liquidator or trustees as the case may be, within fourteen days from the last day of inspection of the preliminary accounts.

(4) Where no objection is lodged against the report of the preliminary accounts, the Authority shall direct the liquidator or trustees to complete the process of winding up the scheme.

(5) Where an objection to the report of the preliminary accounts is lodged, the Authority may, after considering the objection, direct the liquidator or trustee to—

- (a) amend the preliminary accounts; or
- (b) issue any other directive that is not inconsistent with the Act, these Regulations, the rules of the scheme and the order of court.

(6) The liquidator or trustee shall, within fourteen days of receipt of the directive from the Authority referred to in subregulation (5)(a), provide a copy of the amended preliminary accounts and report to every member and creditor of the scheme.

(7) A liquidator, trustee or a person aggrieved with the directive of the Authority issued under subregulation (5), may apply to the Appeals Tribunal established under section 83 of the Act, for an order to set aside the directive of the Authority.

(8) The application referred to in subregulation (7) shall be made within thirty days from the date of receipt of the directive by the liquidator or trustees.

### **30. Duty to report and provide information**

(1) The liquidator or trustees shall submit to the Authority, a report on matters relating to the winding up of the scheme, including information on compliance with the directives issued by the Authority to the liquidator, in respect of the winding up of the scheme.

(2) The liquidator or trustee, shall submit to the Authority, the report referred to in subregulation (1), within fourteen days from the date specified in the notice of approval of the winding up of the scheme by the Authority or from the date specified in the order of court.

(3) The Authority may remove a liquidator or trustee that fails, without reasonable excuse, to comply with the requirements or directives of the Authority.

### **31. Liquidator to seek direction**

(1) The liquidator or trustee may by formal application seek for direction from the Authority or from court, in the course of winding up a scheme.

(2) Where the liquidator or trustee makes an application for direction from the Authority or from court in the course of winding up the scheme, the liquidator or trustee shall inform the trustees and members about the application for direction.

(3) The trustees or members may make a response to the application for direction by the liquidator.

(4) The trustees or members, shall submit the response referred to in subregulation (3), to the Authority or to court within fifteen days from the date of receipt of the notification of the application for direction by the liquidator.

(5) Where the trustees or members submit a response referred to in subregulation (3), the Authority or the court as the case may be, shall consider the response and take a decision.

(6) Where the trustees or members, do not submit a response to the application under subregulation (3) within the time specified in subregulation (4), the Authority or the court as the case may be, shall proceed to give direction to the liquidator or trustees.

### **32. Disposal of assets of the scheme upon winding up**

Upon completion of winding up of the scheme, the assets of the scheme shall be applied in the following order of priority—

- (a) the payment of all debts owing to the general creditors of the scheme at the onset of the winding up process; and
- (b) in accordance with the arrangements approved by the Authority, the payment or transfer of the accrued benefits of existing members that have not been paid or accrued benefits that have not been transferred to another scheme, at the commencement of the process of winding up.

### **33. Distribution of surplus**

The liquidator or trustee shall, provide for the distribution of the surplus identified in the scheme as follows—

- (a) all surpluses accruing from the investment income of a scheme shall be used to augment the benefits of the members and;

- (b) all surpluses arising from the unvested benefits in the scheme shall be refunded to the scheme sponsors.

### **34. Benefits of members of the scheme in service**

(1) Upon completion of winding up of the scheme, the benefits of a member of the scheme that is still employed by the scheme sponsor, shall be transferred to the scheme of choice of that member.

(2) The members of a scheme shall be treated as deferred creditors and the claims of those members against the scheme, shall not be settled until the debts of the ordinary creditors of the scheme have been fully settled.

### **35. Effect of winding up scheme**

(1) Upon commencement of the winding up of the scheme, the trustees or liquidator shall not admit new members to the scheme and shall not manage the affairs of the scheme, except in so far as may be required for winding up of the scheme.

(2) Subject to subregulation (1), the legal status of the scheme shall continue, until its wound up, notwithstanding any provision to the contrary in the trust deed and rules of the scheme.

### **36. Completion of the winding up process and revocation of licence**

(1) The trustees or liquidator, shall within thirty days from the date of completion of the winding up process, submit to the Authority the final accounts signed and certified by the trustees or liquidator, as a correct record and shall state—

- (a) the assets and liabilities of the scheme at the commencement of the winding up process;
- (b) the manner in which the assets of the scheme have been realised; and
- (c) that the liabilities, including contingent liabilities to or in respect of the members, have been discharged.

(2) Where the Authority is satisfied that the final accounts are correct and that the winding up process has been completed, the Authority shall—

- (a) close all the files containing records of the scheme for which the winding up process has been completed;
- (b) revoke the license issued to the scheme under section 32 (1)(b) of the Act.

(3) upon revocation of the licence referred to in paragraph (b), the scheme shall be dissolved.

(4) Upon dissolution of the scheme and subject to the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72, no claim shall lie against the trustees, liquidator or the Authority with respect to the payment of benefits under the wound up scheme.

#### PART V—MISCELLANEOUS PROVISIONS

### **37. Offences and Penalties**

(1) Upon the appointment of a liquidator, any person that purports to exercise or perform a function of the scheme without the permission of the liquidator, commits an offence and is liable on conviction to a fine not exceeding seventy-five currency points or to imprisonment for a term not exceeding one year or both.

(2) A person who, without reasonable excuse, fails to comply with the requirement of the liquidator commits an offence and is liable on conviction to a fine not exceeding seventy-five currency points or to imprisonment for a term not exceeding one year or both.

(3) A person who makes a false or misleading statement in a material respect in a document given to the liquidator, commits an offence and is liable on conviction, to a fine not exceeding seventy five currency points or imprisonment not exceeding one year, or both.

(4) A person who contravenes a provision of these Regulations for which no express penalty is stated, commits an offence and is, on conviction, liable to a fine not exceeding seventy-five currency points or to imprisonment for one year, or both.

(5) A person who continuously contravenes these Regulations is liable, in the case of the continuing contravention, to an additional penalty not exceeding fifty currency points in respect of each day for which the contravention continues.

(6) Where the contravention of these regulations is committed by a body corporate, the body corporate, and officers of the body corporate or any person that purports to act in the capacity of the body corporate, or that had knowledge or believed to have had knowledge of the commission of the offence and did not exercise due diligence to ensure compliance with these Regulations shall be deemed to have committed an offence and shall be liable on conviction to a fine not exceeding seventy five currency points or to imprisonment for one year and in case of a continuing contravention, an additional penalty of fifty currency points in respect of each day on which the offence continues.

### **38. Duration for preservation of records after merger or winding up of scheme**

The records of every scheme shall be preserved for a period of not less than ten years from the date of completion of the merger or winding up of the scheme.

### **39. Authority to issue guidelines**

The Authority may issue guidelines for the effective implementation of these Regulations.

## **SCHEDULE 1**

*Regulation 2*

### **CURRENCY POINT**

A currency point is equivalent to twenty thousand Uganda shillings

**SCHEDULE 2**

*Regulation 4(5)(a)*

**CERTIFICATION OF COMPUTATION OF THE FUNDING RATIO**

*Name of scheme*.....

*Physical Address of scheme*.....

Computation of the funding ratio

I, ....., certify that, in my opinion, the computation of the assets and accrued benefits of the scheme as at .....*[insert effective date of valuation on which the computation is based]* and the consequential funding ratio are calculated in accordance with sound actuarial practice and internationally accepted accounting and auditing standards, based on the methods and assumptions determined in consultation with the trustees.

Value of the assets	[nominal]
Value of accrued benefits	[nominal]
Funding ratio	[%]

Signature:.....

Date:.....

Name:.....

Qualifications:.....

**Address:**.....

SCHEDULE 3

Regulation 4 (5)(b)

CERTIFICATION OF CONTRIBUTIONS

Name of scheme.....

(Adequacy of rates of contributions.....)

I, ....., certify that, in my opinion, based on the schedule of contributions below, the funding ratio of 100% can be—

- 1. expected to continue to be met for the period for which the schedule is in force<sup>1</sup>; OR
2. expected to be met by the end of the period specified in the remedial plan dated .....[dd/mm/yyyy]<sup>2</sup>; [delete whichever alternative does not apply]

The certification of the adequacy of the rates of contributions is for purposes of ensuring that the funding ratio of 100% is met; it is not to be construed as a certification of the adequacy of the rates of contributions for purposes of securing the liabilities of the scheme by the purchase of annuities, in the event the scheme were to be wound up.

The schedule of contributions is as follows:

Table with 2 columns: Contribution Rate, and Description. Rows include Member contribution rate, Sponsor contribution rate, and two Total rows.

Signature ..... Date.....

Name .....

Qualification .....

Address.....

1 This applies where the funding ratio is at least 100% at the valuation date.
2 This applies where the funding ratio is less than 100% at the valuation date.

SCHEDULE 4

Regulation 6(2)(c)

CERTIFICATION OF REMEDIAL PLAN

Name of scheme.....

I, ....., certify that, in my opinion, the remedial plan dated [dd/mm/yyyy], including—

1. the following rates of contributions; [and/or]

Table with 2 columns: Contribution type (Member, Sponsor, Total) and rate description [% of salary or nominal]

2. the following payment(s) by the sponsor;

Table with 2 columns: Date of payment (1, 2) and nominal value [nominal]

are expected to restore the funding ratio of the scheme to 100% by [dd/mm/yyyy].

The certification of the adequacy of the rates of contributions [and/or] payment(s) by the sponsor to the scheme for the purpose of ensuring that the funding ratio is restored to 100%, is not to be construed as a certification of the adequacy of the contributions for purposes of securing the liabilities of the scheme by the purchase of annuities, in the event the scheme is to be wound up.

Signature ..... Date .....

Name.....

Qualification .....

Address.....

SCHEDULE 5

Regulation 6(2)(d)

AGREEMENT OF SPONSOR TO THE REMEDIAL PLAN

Name of scheme.....

(Remedial plan)

I, .....,
duly authorised by ..... [name of
company], herewith agree that the .....
[name of the sponsor] will comply with the requirements of the contingency
plan by making the following contributions [and/or] payments to the
.....[name of private pension scheme]:

1. the following rates of contributions: [and/or]

Table with 2 columns: Contribution type (Member, Sponsor, Total) and Rate (% of salary or nominal).

2. the following payment(s) by the sponsor:

Table with 2 columns: Date of payment (1, 2) and Nominal value.

Signature ..... Date .....

Name.....

Title.....

Address.....

Name of Sponsor .....

## **Cross References**

Accountants Act, Act No. 19 of 2013

Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap. 72

Insolvency Act, Act No. 14 of 2011

HON. MATIA KASAIJA,  
*Minister of Finance, Planning and Economic Development.*