



REVIEWING THE DUAL ROLE OF SPONSORS OF RETIREMENT BENEFITS SCHEMES IN LIGHT OF PROHIBITION UNDER NEW REGULATION

In March this year, just as Uganda was grappling with the early days of the COVID-19-enforced lockdown, the Uganda Retirement Benefits Regulatory Authority (URBRA) issued new regulations, the Uganda Retirement Benefits Regulatory Authority (Management and Operation of Retirement Benefits Schemes) Regulations, S. I. No. 43 of 2020.

These regulations came into effect on March 2020, among others setting out the parameters within which retirement benefits schemes in Uganda should be managed and governed to cater for optimal compliance and risk control. The regulations place the governance function primarily with the trustees, and the latter are supported by the scheme administrator, custodian and fund manager. Extensive operational rules are set out for each of the trustee, administrator, custodian and fund manager in implementing policies, processes and systems of a retirement benefits scheme in Uganda.

Of particular interest however is regulation 41 which seeks to regulate the extent of involvement of a sponsor in the management of a scheme. This regulation comes at the tail end of these regulations, limiting the sponsor's role to appointing trustees, initial finance and establishment of the scheme. Regulation 41 categorically prohibits a sponsor/founder from getting involved in the management or operations of the scheme and sets out the penalty for non-compliance.

This prohibition has been met with strong push back from fund managers in the market, citing the acceptable historical duo role of a sponsor doubling as fund manager, and the potential loss of promoter fees earned by fund managers. This would also translate to significant disruption with existing schemes restructuring their operations and amending existing constitutional documents to do away with a sponsor that is also fund manager.

URBRA has subsequently clarified their interpretation of regulation 41, citing its rationale as the need to recognize the distinction between the retirement benefits scheme as a separate legal entity from the sponsor who establishes it. The sponsor, in the latter capacity, should not be seen to interfere or get involved in the day-to-day management and operations of the scheme.

According to URBRA, the prohibition in regulation 41 does not extend to arms-length contractual arrangements between the sponsor (acting in the capacity of a service provider), and the scheme under a service level agreement for the provision of fund management or administration services to the scheme. In this case, the sponsor is viewed as an independent service provider with no possibility of conflict of interest under the scheme trust deed and/or scheme rules. Such agreement must include acceptable standards of service delivery and reporting requirements.



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