

ACTS SUPPLEMENT

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Bill No. 16

*National Social Security Fund
(Amendment) Bill*

2019

**THE NATIONAL SOCIAL SECURITY FUND
(AMENDMENT) BILL, 2019**


MEMORANDUM**1. POLICY AND PRINCIPLES.**

The policy behind the Bill is to expand social security coverage by making contributions to the National Social Security Fund mandatory for all workers in the formal sector and also allowing workers in the formal and informal sectors to make voluntary contributions to the National Social Security Fund. In addition, the Bill seeks to enhance the spectrum of benefits available to workers and to improve management of the National Social Security Fund.

2. DEFECTS IN THE EXISTING LAW.

The current law was enacted in 1985 and does not adequately address emerging challenges in the management of social security in Uganda. The proposal to amend the NSSF Act particularly arises from the need to streamline the management of the Fund to expand the scope of social security coverage and benefits. The Act in its current state does not make express provision for the representation of workers, employers and other stakeholders on the board of directors. The appointment of the Managing Director and Deputy Managing Director by the Minister without the role of the board undermines the ability of the board to supervise them.

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Further, although it is in the best interest of all employees to save for retirement, the Act currently gives the Minister discretion to determine the category of employees who are eligible to contribute for their retirement. Currently, only workers in a company that employs five or more employees are eligible to contribute for their retirement which contradicts Paragraph VII of the National Objectives of Directive Principles of State Policy under the Constitution, the ILO Convention 102 on social security and the Social Protection Policy 2015 which all call for social security coverage of all persons regardless of the number of their employees.


In addition, expenditure by the Fund is subject to approval of the annual budget by the Minister. However, the Act does not make provision for a window for limited expenditure prior to approval of the annual budget by the Minister. Besides, despite the high cost of private fund managers, section 33 of the Uganda Retirement Benefits Regulatory Authority Act, 2011 requires that all funds of a retirement benefits scheme should be invested through a private fee charging fund manager yet some of the investments like the buying and selling of Government Securities can be done more cost effectively in-house by National Social Security Fund. The Act provides for taxation of contributions and scheme income which does not promote the culture of domestic long term savings that is critical for sustained economic transformation.

In addition, whereas the filing of annual returns by employers is important for purposes of monitoring workers' contributions, failure to do so is not an offence under the Act. Therefore, ensuring compliance in the absence of legal sanctions is difficult. Finally, the fines of ten thousand shillings in the Act can no longer serve the purpose for which they were imposed. There is need therefore to amend the law to address the above defects.

3. REMEDIES PROPOSED TO DEAL WITH THE DEFECTS.

The object of the National Social Security Fund (Amendment) Bill, 2019 is to address the gaps that have been identified in the current law.

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The Bill therefore seeks to amend the National Social Security Act, Cap. 222—

- (a) to provide for the appointment of a stakeholder board appointed by the Minister comprised of representatives of Government, employers and employees;
- (b) to clearly specify the different roles of the Ministers responsible for social security, finance and public service in the management of the Fund;
- (c) to expand social security coverage by providing for mandatory contribution of all workers regardless of the size of the enterprise or number of employees and also allowing voluntary contributions to the Fund;
- (d) to empower the Fund to recover from a third party any sum owed to a defaulting contributing employer to cover any contribution, penalty or interest;
- (e) to provide for midterm access to voluntary contributions;
- (f) to provide for the deference of taxes on contributions and scheme income to the time of payment of benefits;
- (g) to provide for the appointment of the Managing Director and Deputy Managing Director by the Minister on the recommendation of the board for a term of five years renewable on satisfactory performance;
- (h) to provide for the appointment of the Secretary to the board on a five year contract renewable on satisfactory performance;
- (i) to empower the Minister to prescribe a threshold of expenditure by the Fund prior to approval of the annual budget by statutory instrument;

- (j) to empower the board to use in house expertise and fund managers in the investment of scheme funds including lending to Government;
- (k) to empower the board to introduce new benefits in consultation with the Minister;
- (l) to provide for payment of an annual levy by the Fund to the Uganda Retirement Benefits Regulatory Authority;
and
- (m) to enhance fines in the Act.

HON. JANAT MUKWAYA,
Minister of Gender, Labour and Social Development.

THE NATIONAL SOCIAL SECURITY FUND
(AMENDMENT) BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

1. Commencement.
2. Amendment of section 1 of the National Social Security Fund Act.
3. Amendment of section 3 of principal Act.
4. Amendment of section 7 of principal Act.
5. Amendment of section 9 of principal Act.
6. Repeal of section 10 of the principal Act.
7. Insertion of section 13A in principal Act.
8. Amendment of section 14 of principal Act.
9. Amendment of section 19 of principal Act.
10. Insertion of new section 24A to principal Act.
11. Amendment of section 29 of principal Act.
12. Substitution of section 30 of principal Act.
13. Amendment of section 31 of principal Act.
14. Amendment of section 32 of principal Act.
15. Amendment of section 33 of principal Act.
16. Amendment of section 34 of principal Act.
17. Amendment of section 35 of principal Act.
18. Amendment of section 36 of principal Act.
19. Substitution of section 38 of principal Act.
20. Insertion of section 38A in principal Act.
21. Amendment of section 39 of principal Act.

Clause

22. Substitution of section 40 of principal Act.
23. Amendment of section 41 of principal Act.
24. Amendment of section 43 of principal Act.
25. Amendment of section 44 of principal Act.
26. Amendment of section 45 of principal Act.
27. Amendment of section 48 of the principal Act.
28. Insertion of section 54 in principal Act.
29. Insertion of Third Schedule in principal Act.

A BILL for an Act

ENTITLED

**THE NATIONAL SOCIAL SECURITY FUND
(AMENDMENT) ACT, 2019**

An Act to amend the National Social Security Fund Act, Cap. 222 to establish a stakeholder board; to provide for mandatory contributions of all workers regardless of the size of the enterprise or number of employees; to provide for voluntary contributions to the Fund; to empower the Fund to recover from a third party any sum owed to a defaulting contributing employer to cover any contribution, penalty or interest; to provide for midterm access to voluntary contributions; to provide for a five year tenure for the managing director and deputy managing director; to empower the Minister to prescribe a threshold of expenditure by the Fund prior to approval of the annual budget by statutory instrument; to empower the Board to use in-house expertise and fund managers in the investments of scheme funds, including lending to Government; to empower the board to introduce new benefits in consultation with the Minister; to provide for the payment of an annual levy by the Fund to the Uganda Retirement Benefits Regulatory Authority and for related matters.

BE IT ENACTED by Parliament as follows:

1. Commencement.

This Act shall come into force on a date to be appointed by the Minister by statutory instrument.

2. Amendment of section 1 of the National Social Security Fund Act.

The National Social Security Fund Act, in this Act referred to as the principal Act is amended in section 1—

(a) by substituting for paragraph (f), the following—

“(f) “contributing employer” means an employer registered under section (7);”

(b) by substituting for paragraph (g), the following—

“(g) “contribution” includes standard contribution, voluntary contribution and special contribution;”

(c) by inserting immediately after paragraph (g) the following—

“(ga) “currency point” has the value assigned to it in the Third Schedule to this Act;”

(d) by substituting for paragraph (k), the following—

“(k) “employer” includes—

(i) the Government;

(ii) a company registered or incorporated under the Companies Act, 2012;

(iii) a partnership registered under the Partnership Act, 2010;

- (iv) a trustee incorporated under the Trustees Incorporation Act;
- (v) a business registered under any other law for the time being in force governing the establishment of business entities;
- (vi) the governing body of an unincorporated association; and
- (vii) a manager or a subcontractor who provides employees for the principal contractor; but where a person enters into a contract by which some other person is to provide employees for any lawful purpose of the manager and it is not clear from the contract which of the two persons is the employer, the manager shall be deemed, for the purposes of this Act, to be the employer;”.

3. Amendment of section 3 of principal Act.

Section 3 of the principal Act is amended by substituting for subsection (1), the following—

“(1) The Fund shall be governed by a stakeholder board of directors consisting of—

- (a) a chairperson;
- (b) the managing director;
- (c) the permanent secretary of the ministry responsible for labour;
- (d) the permanent secretary of the ministry responsible for finance;
- (e) four representatives of employees; and
- (f) two representatives of employers.

4. Amendment of section 7 of principal Act.

The principal Act is amended in section 7—

- (a) by substituting for subsection (1), the following—

“(1) Every eligible employee shall register as a member of the fund and shall make regular contributions to the fund in accordance with this Act and regulations made under this Act.”;

- (b) by substituting for subsection (2), the following—

“(2) Every employer, irrespective of the number of employees, shall register with the fund as a contributing employer and shall make regular contributions for his or her employees in accordance with this Act and regulations made under this Act.”;

- (c) by repealing subsection (3);

- (d) in subsection (5) by repealing the words “of a class or description specified in an order made under subsection (1);” and

- (e) in subsection (7) by repealing the words “of a class or description specified in an order made under subsection (1)”

5. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended by repealing paragraph (b).

6. Repeal of section 10 of the principal Act.

The principal Act is amended by repealing section 10.

7. Insertion of new section 13A in principal Act.

The principal Act is amended by inserting immediately after section 13 the following new section—

“13A Voluntary contributions.

(1) A member may make voluntary contributions to the Fund over and above their standard contributions.

(2) A member who wishes to make a voluntary contribution under subsection (1) may authorise his or her employer in writing to deduct an agreed rate from the employee’s wage payment and remit the voluntary contribution to the fund together with the standard contribution.

(3) An employer authorised by an employee under subsection (2) shall remit the voluntary contribution together with the standard contribution in accordance with this Act.

(4) A person who is self-employed may apply for membership of the fund and shall make voluntary contributions to the fund.

(5) Notwithstanding subsection (1) or (4), any other person may apply for membership and make voluntary contribution to the fund.

(6) An employer who deducts a voluntary contribution under subsection (2) and fails to remit it to the fund commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding one year or both.

(7) The board shall, by regulations, prescribe the procedure for making voluntary contributions and benefits.”

8. Amendment of section 14 of principal Act.

Section 14 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

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“(3) Any amount of any contribution and any other sum together with interest or penalty on the contribution or any other sum due under this Act may be recovered from a third party who owes money to a defaulting contributing employer.”

9. Amendment of section 19 of principal Act.

Section 19 of the principal Act is amended by inserting immediately after subsection (1), the following new subsection—

“(1a) The Board may, in consultation with the Minister, by statutory instrument, prescribe additional benefits.”

10. Insertion of section 24A to principal Act.

The principal Act is amended by inserting the following section immediately after section 24—

“24A. Midterm access to voluntary benefits.

A member who has made voluntary contributions to the Fund shall be allowed midterm access to his or her benefits on such terms and conditions and in a manner prescribed by regulations.”

11. Amendment of section 29 of principal Act.

Section 29 of the principal Act is amended by inserting immediately after subsection (4), the following subsection—

“(5) The Minister shall, by statutory instrument, prescribe a threshold of expenditure by the fund, prior to approval of the annual budget by the Minister.”

12. Substitution of section 30 of principal Act.

The principal Act is amended in section 30—

- (a) by renumbering the current provision as subsection (1) and substituting for the word “Minister”, the words “Minister responsible for finance.”; and

(b) by inserting immediately after subsection (1), the following—

“(2) Notwithstanding the provisions of any other law, the Board may use in-house expertise or fund managers in the investments under subsection (1), which may include lending to the government.”

13. Amendment of section 31 of principal Act.

Section 31 of the principal Act is amended by substituting for the word “Minister” the words “Minister responsible for finance.”

14. Amendment of section 32 of principal Act.

Section 32 of the principal Act is amended in subsection (3) by inserting immediately after the word “Minister” the words “and to the Minister responsible for finance.”

15. Amendment of section 33 of principal Act.

Section 33 of the principal Act is amended in subsection (1) by inserting immediately after the word “Minister” the words “and to the Minister responsible for finance.”

16. Amendment of section 34 of principal Act.

Section 34 of the principal Act is amended—

- (a) in subsection 2 (c) by inserting immediately after the word “Minister” the words “and to the Minister responsible for finance; and
- (b) in subsection (3) by substituting for the word “Minister” the words “Minister responsible for finance.”

17. Amendment of section 35 of principal Act.

Section 35 of the principal Act is amended—

- (a) in subsection (1) by substituting for the word “Minister” the words “Minister responsible for finance.”;

- (b) in subsection (2) by substituting for the word “Minister” the words “Minister responsible for finance.”;
- (c) in subsection (3) by substituting for the word “Minister” the words “Minister responsible for finance.”;
- (d) in subsection (6) by substituting for the word “Minister” the words “Minister responsible for finance.”; and
- (e) in subsection (7) by substituting for the word “Minister” the words “Minister responsible for finance”.

18. Amendment of section 36 of principal Act.

Section 36 of the principal Act is amended—

- (a) in subsection (1) (c) by substituting for the word “Minister” the words “Minister responsible for finance.”; and
- (b) in subsection (2) by substituting for the word “Minister” the words “Minister responsible for finance in consultation with the Minister.”

19. Substitution of section 38 of principal Act.

The principal Act is amended by substituting for section 38 the following—

“38. Exemption from tax.

(1) Notwithstanding the provisions of any other law, all member contributions not exceeding 30% of income of the member shall be exempt from tax.

(2) All employer contributions to the fund shall be exempt from tax.

(3) The investment income of the fund shall be exempt from income tax.

(4) Member benefits shall be taxed at the point of payment to the member, except in the case of death or invalidity; and taxation shall be at the prevailing rate at the time of payment of the benefit.

(5) Subsection (4) shall not apply to benefits arising out of contributions made to the fund before the coming into force of this Act.

(6) Notwithstanding any provision of this Act or any other law, a member over the age of 60 years shall not pay tax on any benefit under this Act.”

20. Insertion of section 38A in principal Act.

The principal Act is amended by inserting immediately after section 38 the following section—

“38A. Payment of annual levy by the fund.

(1) The fund shall pay an annual levy to the Uganda Retirement Benefits Regulatory Authority.

(2) Notwithstanding any other law, the annual levy referred to under subsection (1) shall not exceed 0.05% of the total assets of the fund or two hundred thousand currency points, whichever is less.”

21. Amendment of section 39 of principal Act.

Section 39 (1) of the principal Act is amended—

(a) by substituting for subsection (1) the following—

“(1) There shall be a managing director of the fund appointed by the Minister, on the recommendation of the Board.”; and

(b) by inserting immediately after subsection (1), the following subsection—

“(1a) The managing director appointed under subsection (1) shall serve for a period of five years and may be reappointed, subject to satisfactory performance.”

22. Substitution of section 40 of principal Act.

The principal Act is amended by substituting for section 40 the following—

“40. Deputy managing director.

(1) There shall be a deputy managing director of the fund appointed by the Minister on the recommendation of the Board

(2) The deputy managing director appointed under subsection (1) shall serve for a period of five years and may be reappointed subject to satisfactory performance.”

23. Amendment of section 41 of principal Act.

Section 41 of the principal Act is amended by substituting for subsection (1) the following—

“(1) The fund shall have a secretary who shall be appointed by the Board, on a five-year contract and may be reappointed subject to satisfactory performance and on such terms and conditions as the Board may determine.”

24. Amendment of section 43 of principal Act.

Section 43 of the principal Act is amended in subsection (4) by substituting for the words “ten thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment”, the words “five hundred currency points or imprisonment not exceeding one year or both”.

25. Amendment of section 44 of principal Act.

Section 44 of the principal Act is amended in subsection (1) by substituting for the words “ten thousand shillings or to a term of imprisonment not exceeding six months or to both”, the words “five hundred currency points or imprisonment not exceeding one year or both”.

26. Amendment of section 45 of principal Act.

Section 45 of the principal Act is amended by substituting for the words “ten thousand shillings or imprisonment not exceeding six months or to both such fine and imprisonment”, the words “five hundred currency points or imprisonment not exceeding one year or both”.

27. Amendment of section 48 of the principal Act.

Section 48 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(3) Any amount of contribution and any other sum together with interest and any penalty on the contribution or any other sum or interest may be recovered from a third party who owes money to a contributing employer who has defaulted in making contributions”.

28. Insertion of section 54 in principal Act.

The principal Act is amended by inserting immediately after section 53 the following section—

“54. Amendment of Third Schedule.

The Minister may, by statutory instrument, with the approval of Cabinet, amend the Third Schedule to this Act”

29. Insertion of Third Schedule in principal Act.

The principal Act is amended by inserting immediately after the Second Schedule the following Schedule—

“THIRD SCHEDULE

Section 1 and 54.

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.”

Cross References

Companies Act, 2012, Act 1 of 2012.

Partnership Act, 2010, Act 2 of 2010.

Trustees Incorporation Act, Cap. 165.