

# 2021 NSSF Amendment Act

## Uganda Passes the National Social Security Fund (Amendment) Act, 2021

The NSSF (Amendment) Bill of 2021, which was tabled before Parliament in February 2021 and subsequently passed by the Parliament in November 2021 was assented to by the President of the Republic of Uganda on 2 January 2022. It will take effect once it is published in the Gazette.

This Alert summarises the key amendments made to the NSSF Act (herein referred to as the Principal Act) and what it means for you.

### Detailed Discussion

#### 1. Amendment of the Definition of an “Employer”

**Previously, the Principal Act defined an “employer” to include:**

the Government and 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 first-mentioned person and it is not clear from the contract which of the two persons is the employer, the first-mentioned person shall be deemed, for this Act, to be the employer;

**This has been amended to include;**

- A company registered or incorporated under the Companies Act, 2012
- A partnership registered under the Partnership Act, 2010
- A trustee incorporated under the Trustees Incorporation Act, 1965
- A business registered under any other law for the time being in force governing the establishment of business entities
- The governing body of an unincorporated association

### Implication

This implies that all companies/organisations falling under the brackets highlighted above would be considered employers for purposes of the NSSF Act and would be bound by the employer obligations stated in the Act. This widens the “employer” base and increases the contributions made to the Fund.

#### 2. Amendment of the definition of a “Contributing Employer”

Before, a “contributing employer” was defined as any employer who-

- Belonged to a class or description of employers specified as contributing employers by an order made by the Minister;
- or
- has registered voluntarily as a contributing employer;

The Amendment Act repeals part (ii) of the definition above and defines a “contributing employer” to mean an employer who is registered under Section 7 of the Principal Act.

### Implication

Based on the above, we note that voluntary registration for employers has been revoked and thus all employers defined under Section 7 of the Principal Act are now mandated to register and contribute to the NSSF Fund.

#### 3. Compulsory registration of employers and eligible employees

Section 7(1) of the Principal Act, which provides for compulsory registration of employers and eligible employees, has been amended to state that every eligible employee shall register as a member of the fund and shall make regular contributions to the fund per the Act and regulations made under the Act.

The Act further amends Section 7(2) to state that every employer, **irrespective of the number of employees (emphasis ours)**, shall register with the fund as a contributing employer and shall make contributions for his/or employees per the Act and regulations made under the Act.

Considering the above amendments, the following sections in the Principal Act have subsequently been repealed;

- I. Section 7(3): which provided for employers dissatisfied with the specification of the description of contributing employers by reference to the number of employees;
- II. Section 9(b): which provided that any person registered as a contributing employer throughout the 2 years immediately preceding his/her application who had employed less than the minimum number of employees required under the Act may apply for cancellation of his/her registration; and
- III. Section 10: which provided for voluntary membership of employers.

### Implication

This implies that the threshold of compulsory NSSF registration of 5 employees or more ceases to apply and all employers defined under item 3 above are now required to deduct and remit their contributions as per the percentages and due dates specified in the Principal Act.

### 4. Amendment of the definition of "Contribution"

The Principal Act has been amended to define "Contribution" as a standard contribution, voluntary contribution, and the special contribution.

### 5. Voluntary Contributions

The NSSF Amendment Act introduces "Voluntary Contributions" under Section 13A which provides for the following aspects;

#### a. Persons eligible for voluntary contributions

The Principal Act has been amended to provide that;

- I. member of the fund may make voluntary contributions to the fund over and above his/her standard contributions - Section 13A (1). Therefore, members of the Fund who wish to make voluntary contributions over and above their standard contributions may authorise their employers in writing to deduct an agreed rate from their wages and remit the same to the Fund.
- II. self-employed persons may apply for membership and make voluntary contributions to the Fund - Section 13A (4).
- III. any other person not provided for above may apply for membership and make voluntary contributions to the fund – Section 13A (5).

### b. Procedure for making voluntary contributions

Procedures for making voluntary contributions and claiming benefits shall be prescribed by the Minister, by regulations, in consultation with the board - Section 13A (7).

### c. Penalties for non-compliance

The Principal Act requires employers to remit the agreed voluntary contributions within fifteen days following the last month in which the wages were paid.

Therefore, employers who fail to remit voluntary contributions made under part (a) (i) above commit an offence and are liable, upon conviction to -

- I. Remit to the fund any outstanding contribution due to the employee; and
- II. Pay a fine of twenty percent (20%) of the amount deducted.

### Implication

Members can increase their savings by voluntarily contributing over and above the 5% statutory contributions.

Admission of any other persons into the fund widens the "employee" base and provides more money for the fund's claims and investment.

### 6. Midterm Access to Benefits

The Principal Act introduces Section 20A which allows access to an amount not exceeding twenty percent of the midterm benefits that have accrued from contributions made to the Fund.

Members who are forty-five years of age and above and have made contributions to the fund for at least 10 years are eligible for the midterm benefits above.

Persons with disability are also eligible for midterm access amounting to fifty percent of their accrued benefits, provided they are forty years of age and above and have made contributions to the Fund for at least ten years.

Terms and conditions and procedures for accessing the accrued midterm benefits will be prescribed by statutory instrument by the Minister, in consultation with the board.

"Person with disability" carries the meaning assigned to it in the Persons with Disabilities Act, 2020 as stated under Section 1(va) of the Principal Act.

### Implication

Members who meet the criteria above will be able to access 20% and 50% of their accrued benefits respectively once the statutory instrument is issued by the Minister.

## 7. Amendment of requirements for Withdraw Benefit

Section 21(2) of the Principal Act previously provided that any person who ceases to be a member of the fund by being employed in excepted employment would be entitled to the full balance of his or her account in the fund if contributions were made **during four financial years (emphasis ours)**.

In any other case, he or she would be entitled to his or her contribution only and the rest shall be paid into the reserve account.

This is amended to provide that any person who ceases to be a member of the fund by being employed in excepted employment shall be entitled to the full balance of his or her account in the fund if contributions have been paid in respect of that member.

### Implication

Members leaving the Fund due to joining excepted employment can now claim their benefits in full irrespective of the number of years they have been contributing to the Fund.

## 8. Amendment of requirements for Emigration Benefit

Previously, Section 23(1) of the Principal Act provided that persons who permanently emigrate from Uganda to a country with which no reciprocal arrangement under the Act had been made would be entitled to the full balance of their account in the fund if contributions were made **during four financial years (emphasis ours)**.

In any other case, those persons would be entitled to their contribution only and the rest would be paid into the reserve account.

This has been amended to provide that a member of the fund who emigrates permanently from Uganda to a country with which no reciprocal arrangement under the Act has been made, where contributions under this Act have been paid in respect of that member of the fund, shall be entitled to the full balance of his or her account in the fund.

### Implication

Members leaving the Fund upon permanent emigration from Uganda can now claim their benefits in full irrespective of the number of years they have been contributing to the Fund.

## 9. Additional Benefits

Section 19 of the Principal Act is amended under 19 (1a) to provide that additional benefits may be prescribed by the board, in consultation with the Minister, by Statutory Instrument.

## 10. Amendment of events leading to the closure of members' accounts

Previously, Section 34 (2) of the Principal Act provided for events upon which a member's account would be closed or membership ceased, and these included:

- Payment of an emigration grant;
- Member attains the age of 60 years;
- Member attains the age of 55 years and there is no balance on their account; and
- Death of a member.

This has been amended to substitute the events above with the following;

- When an emigration grant is paid;
- When a member opts out of the fund upon receipt of the member's total age benefit under Section 20 of the NSSF Act;
- When a member dies and his or her survivor's benefits are paid out following Section 24 of the NSSF Act;

Additionally, Section 34 (3) has been amended to provide that if any sum of money is still unclaimed for seven years after closing the member's account, then the money shall belong to the Minister of Finance who will pay it into the reserve account.

Previously, the Principal Act provided for a subsequent period of six years, after which the money would be paid into the reserve account.

Section 34 (3a) was introduced to provide for the publication of the names and details of all dormant members' accounts every year in a newspaper of wide circulation within Uganda.

### Implication

Members or members' beneficiaries should ensure that their claims are made within seven years after qualifying for receipt of the funds.

## 11. Increase in fines and penalties

Sections 43, 44 and 45 of the Principal Act have been amended to substitute the words, "ten thousand shillings or to a term of imprisonment not exceeding six months or to both" with "five hundred currency points or imprisonment not exceeding one year or both".

A currency point is equivalent to twenty currency points as highlighted in the Third Schedule of the Principal Act.

### Implication

The increase in the fines payable upon conviction for committing an offence from ten thousand Uganda shillings to five hundred currency points (Ten million Uganda shillings) implies that members need to ensure compliance to avoid unnecessary fines and penalties.

## 12. Amendment of the composition of the Board of Directors

Previously, Section 3(1) of the Principal Act provided that the governing body of the fund shall be a board of directors consisting of a chairperson, the managing director and not less than six nor more than eight other members.

This has been amended to state that “the fund shall be governed by a stakeholder board of directors appointed by the Minister and consisting of –

- I. A chairperson
- II. The permanent secretary of the ministry responsible for labour
- III. The permanent secretary of the ministry responsible for finance
- IV. Four representatives of employees nominated by the Federations of Labour Unions
- V. Two representatives of employers nominated by the Federation of Uganda Employers, and
- VI. The managing director who shall be an ex-officio member without the right to vote

As provided for under Section 3 (6) of the Principal Act, the Minister shall ensure that –

- a. A member of the board is a person of high moral character and proven integrity
- b. There is consideration of persons with disabilities, balance of gender, skills, and experience among the members of the board; and
- c. The members of the board provided for under (V) above, are contributing employers under Section 7 of the NSSF Act.

### Implication

The provision above allows for different stakeholders to join the Fund’s board of directors so that each of the category’s views is heard and concerns are addressed.

## 13. Period of directorship

Section 3 (2) of the Principal Act previously provided that the chairperson and the other members of the board, other than the managing director, shall be appointed by the Minister for three years and upon such terms and conditions as may be specified in the instruments of appointment and shall be eligible for reappointment.

This has been amended to state that a member of the board, except for the permanent secretaries and managing director, shall hold office for a term of three years and may be reappointed for only one more term.

### Implication

This provides a maximum period of 6 years for appointed chairperson, employer, and employee representatives to serve on the board and gives opportunity to different stakeholders to participate in the management of the NSSF Fund.

## 14. Termination of Directorship

Section 3(3) of the Principal Act provides that the Minister shall revoke the appointment of the director—

- a. if he or she is unable to perform the functions of his or her office;
- b. if he or she is insolvent or bankrupt; or
- c. if he or she is convicted of an offence involving fraud or dishonesty.

However, this has been amended to state that a member of the board may be removed from office by the Minister for –

- a. Abuse of office
- b. Corruption
- c. Incompetence
- d. Physical or mental incapacity that renders the member incapable of performing the functions of his/her office
- e. Misbehaviour or misconduct
- f. Being adjudged bankrupt by a court of law
- g. Conviction for an offence involving dishonesty, fraud, or moral turpitude; or
- h. Failure to declare any conflict of interest in the execution of a member’s mandate as a member of the board

“Corruption” will carry the meaning assigned to it in the Anti-Corruption Act, 2009, as per Section 1(ga) of the Principal Act.

The Principal Act has been further amended to indicate that a member of the board shall hold office on terms and conditions specified in his or her instrument of appointment and may resign from the board by giving notice of not less than one month in writing addressed to the Minister.

### Implication

The provisions above give more clarity on conditions under which a member of the board is deemed unable to perform the functions of his/her office and thus removed from the board.

They also introduce a notice period that must be given to the Minister upon resignation, which was previously not provided for in the Principal Act.

## 15. Amendment of the Managing Director’s and Deputy Managing Director’s appointment

The Principal Act has been amended under Section 39 (1) to indicate that the Managing Director shall be appointed by the Minister, on the recommendation of the board.

Section 39 (1a) has also been introduced to the Principal Act to provide that the Managing Director shall serve for five years and maybe re-appointed for one more term only, subject to satisfactory performance.

Similarly, the Deputy Managing Director shall be appointed by the Minister, on the recommendation of the board, and shall serve for five years and maybe re-appointed for one more term only, subject to satisfactory performance (Section 40 of the Principal Act).

### **16. Amendment of the Secretary's Appointment and period of service**

Section 41(1) of the Principal Act has been amended to state that the Secretary shall be appointed by the board for a term of five years and may be reappointed on such terms and conditions as specified in the instrument of appointment, subject to satisfactory performance.

Therefore, the Secretary's appointment, which was previously done by the Minister and the Board, shall be only be done by the Board.

### **17. Investment of available funds**

Section 30 of the Principal Act has been amended to specify that all monies in the fund, including the reserve account, which are not required for the time being shall be invested as determined by the Board in consultation with the Minister responsible for Finance.

The Principal Act has also been amended to allow the Fund to use in-house expertise or fund managers in the investment of the monies mentioned above.



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