

THE NONPERFORMING ASSETS RECOVERY TRUST ACT.

Statutory Instrument 95—1.

The Nonperforming Assets Recovery Trust Regulations.

Arrangement of Regulations.

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THE NONPERFORMING ASSETS RECOVERY TRUST ACT.

Statutory Instrument 95—1.

The Nonperforming Assets Recovery Trust Regulations.

(Under section 24 of the Act.)

1. Citation.

These Regulations may be cited as the Nonperforming Assets Recovery Trust Regulations.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

- (a) “Act” means the Nonperforming Assets Recovery Trust Act;
- (b) “assets” shall include—
 - (i) receivables and other obligations due to the owner, lease, indemnity and other agreements together with all collateral security and other rights (including but not limited to rights in relation to shares or stock in a body corporate such as voting rights, as well as rights to appoint directors of a body corporate or otherwise engage in the management of a body corporate) granted to the owner by contract or operation of law to secure or enforce the right of payment of such obligations;
 - (ii) real and personal property of any kind owned or held by the owner including shares or stock of a body corporate obtained by the owner whether directly or indirectly or other means in settlement of such obligation;
 - (iii) shares or stock and other investments held by the owner; and
 - (iv) the business of the owner and where the owner is a body corporate the owner itself whether as parent or subsidiary body incorporate;
- (c) “owner” means the borrower in respect of a nonperforming asset;
- (d) “registrar” means the officer designated under section 17 of the Act.

3. Provision applicable for the disposition of assets.

All seizure, disposal or such other acts related thereto by the trust in respect of assets vested in the trust in accordance with the Act and these Regulations shall be carried out according to these Regulations.

4. Transfer of the identified nonperforming assets.

Upon direction in accordance with section 9 of the Act, the bank shall transfer to the trust the identified nonperforming assets in the following manner—

- (a) the bank shall execute a deed of assignment in respect of each nonperforming asset in favour of the trust in the form prescribed in the First Schedule to these Regulations;
- (b) the bank shall forward notice of the assignment in favour of the trust which shall be in the form prescribed in the Second Schedule to these Regulations to the owner; and
- (c) the bank shall deliver to the trust on the date of execution of the deed of assignment the agreements, mortgages, debentures, instruments, documents of title, records and other documents in respect of the nonperforming assets. Where any or all of those agreements, mortgages, debentures, instruments, documents of title, records and other documents in respect of the nonperforming assets have been registered, the bank shall indicate in writing the particulars of the registration.

5. Effective date of transfer of nonperforming assets.

All assets, rights and obligations attached to a nonperforming asset transferred by the bank in the manner provided in regulation 4 of these Regulations shall be deemed to have been transferred to the trust with effect from 10th October, 1994.

6. Mode to ensure sale by the trust.

The trust will, where possible, give priority to ensure sale on a “going-concern” basis, failing which the trust will embark on a liquidation sale.

7. Powers to determine values, prices, etc. for the disposition of assets.

The trust shall have full and complete powers to determine values, prices and

other terms and conditions for disposition of assets; as a means to that end, the trust will prepare its own rules and procedures for identification of potential purchasers and selling or disposing of assets by way of competitive bidding or other preferred method.

8. Validity of sale or disposition of assets.

The validity of any sale or disposition concluded by the trust under these Regulations shall, except for fraud, breach or material misrepresentation on the part of the purchaser, be final and binding and enforceable against the trust and all third parties.

9. Resisting or obstructing the process of obtaining assets disposed.

(1) Where the trust or the purchaser of the asset or property sold under these Regulations is resisted or obstructed by any person in obtaining possession of the asset or property, the trust or the purchaser may make an application to the tribunal complaining of the resistance or obstruction.

(2) The tribunal shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the application.

(3) Where the tribunal is satisfied that the resistance or obstruction was occasioned without any just cause it shall direct that the applicant be put in possession.

(4) The tribunal may also, at the instance of the applicant, order the person against whom the application was made to be detained as a civil prisoner for a term which may extend to ninety days.

10. Right of appeal by the owner.

(1) Any owner who is aggrieved by any act of the trust may make an application to the tribunal stating his or her complaint within twenty-one days from the date the act being complained of was made.

(2) The tribunal shall fix a day for investigating the matter and may summon the trust to appear and answer any questions which the tribunal may consider relevant or necessary for a decision on the complaint.

11. Powers of the registrar.

Formal orders for attachment and sale of property and for the issue of notices to show cause on application for arrest and imprisonment in execution of a decree of the tribunal may be made by the registrar.

12. Preliminary steps.

All formal steps preliminary to the hearing and determination of the matter by the tribunal may be made and taken before the registrar.

13. Right of appeal from the registrar's powers.

Any person aggrieved by any order of the registrar may appeal from the order to the tribunal.

14. Costs and expenses of the trust.

(1) All costs, charges and expenses incurred by the trust in obtaining or attempting to obtain payment of any monies on the nonperforming assets or any asset acquired by the trust in relation to or under the securities thereof including (without limitation) such payment as the trust may consider expedient from time to time to make and is authorised by these Regulations to make to any person acting on the instruction of the trust in conversion, maintaining, repairing, amending or improving, preserving or enhancing the value of the assets and all such further or other monies as shall by virtue of subregulation (2) of this regulation be deemed to be included in the expression "expenses" shall—

- (a) bear interest at the rate for the time being payable on the nonperforming asset from the time of the expenses having been expended or incurred until they shall be repaid; and
- (b) be repaid with interest as aforesaid.

(2) The expression "expenses" shall be deemed to include all costs, charges, claims, damages, expenses and (without prejudice to the generality of the foregoing) other money properly paid or incurred by the trust under the Act—

- (a) in any action, proceedings, claims or demand against or for the recovery of the assets;
- (b) in any action, proceedings or claims brought by or against the trust for the enforcement, protection, preservation or

- (c) improvement of the security created for nonperforming assets; in connection with the preparation, negotiation and completion of disposal of the assets concerned and any correspondences and attendances relating thereto;
- (d) in effecting any registration or act which the trust may deem necessary or expedient for the proper protection of its security; or
- (e) to advocates, valuers or other professional or technical advisers of the trust in respect of their costs, fees and disbursements for attendances made, advice given, correspondences written or other work done by such persons or any of them in connection with any of the matters referred to in paragraphs (a) to (d) of this subregulation.

15. Tampering with assets.

(1) Any person who tampers or has tampered with the assets or who has in any way acted or acts contrary to the interest of the trust including taking possession or disposing of the assets in a manner prejudicial to the interest of the trust commits an offence and is liable on conviction to a fine of not more than five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

(2) A person convicted of an offence under subregulation (1) of this regulation is liable to return the asset to the trust in a form it was at the time it was tampered with or at the instance of the trust to pay compensation to the trust of an amount to be determined by the tribunal but in any case not less than the replacement of the asset or property concerned.

16. Right to legal representation by employees of the trust.

If any member of the trust during or after his or her engagement with the trust is called upon to defend his or her actions, related to the performance or nonperformance of an act or the execution of a transaction contemplated by the Act or these Regulations before any administrative, judicial or legislative proceedings, the Government shall provide him or her with counsel without cost or shoulder and pay the cost of counsel of his or her choice as well as other costs of litigation which may be instituted against him or her.

SCHEDULES

First Schedule.

reg. 4(a).

Deed of Assignment.

This deed made the _____ day of _____, 20 ____, between Uganda Commercial Bank a body corporate established by the Uganda Commercial Bank Act, P.O. Box 973, Kampala (hereafter referred to as “the assignor”) of the one part and the Nonperforming Assets Recovery Trust a body corporate established by the Nonperforming Assets Recovery Trust (hereafter referred to as “the assignee”) of the other part;

Whereas in compliance with the provisions of the Nonperforming Assets Recovery Trust Act, the assignor assigns all assets, rights and obligations attached to the nonperforming asset(s) described below to the assignor;

Now therefore, these presents witness as follows—

1. In compliance with the provisions hereinbefore mentioned and for value received, the assignor assigns to the assignee its creditors rights, title and interest in respect of funds amounting to _____ due to it from _____ (hereafter referred to as the “debtor”) being payment arising under (*details of transaction which gave rise to the debt*) _____

2. The assignor confirms to the assignee that—
- (a) the transaction underlying the debt was properly entered into according to regulations applicable in Uganda and the evidence of debt listed in Annex I to this deed of assignment and attached (*attach relevant documents, agreements, etc.*) represents a valid obligation of the aforesaid debtor;
 - (b) the assignor is entitled to payment of the amount of the debt in full and that the debt is not subject to set-off discount or other adjustments by the debtor;
 - (c) the debt or any part of it has not been pledged, assigned or otherwise transferred or encumbered in favour of any other party;
 - (d) the assignor’s obligation in respect of the transactions which gave

- rise to the debt have been fully satisfied; and
- (e) the assignor shall not be entitled to make and shall not make any further claims against the debtor in respect of this debt.

3. The assignor undertakes to mail to the debtor's last known address by mail postage prepaid, a notice of this assignment and a copy of the notice shall simultaneously be mailed to the Bank of Uganda, Post Office Box Number 7120, Kampala.

In witness whereof the parties have executed these presents on the day and years specified above.

Sealed with the common seal of the Uganda Commercial Bank.

In the presence of _____

Sealed with the common seal of the Nonperforming Assets Recovery Trust.

In the presence of _____

Annex I. (List of documents attached)

1. _____
2. _____
3. _____
4. _____

Second Schedule.

reg. 4(b).

Notice of Assignment of Debt.

To _____
Address _____

Re: Principal amount of debt _____
Due date _____
Type of evidence of debt _____

Dear Sir/Madam,

You are given notice that the above debt owed by you has been assigned in whole to the Nonperforming Assets Recovery Trust as of the _____ day of _____, 20 ____.

Signature

Name

Title

History: S.I. 76/1995.

Cross Reference

Uganda Commercial Bank Act, Cap. 55.
