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CHAPTER 27:03

RETIREMENT FUNDS

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Act 27, 2014,
S.I. 30, 2017.

An Act to provide for the licensing, regulation and administration of all retirement funds, including pension and provident funds, and for matters incidental to or connected therewith.

[Date of Commencement: 1st April 2017.]

Part I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Retirement Funds Act.

2. Interpretation

In this Act, unless the context otherwise requires-

“**actuarial surplus**” means $(a) - \{(b) + (c)\}$, where-

- (a) “(a)” is the value that the actuary has placed on the assets of the fund;
- (b) “(b)” is the value that the actuary has placed on the liabilities of the fund in respect of pensionable service accrued by members prior to the valuation date, together with the value of those contingency reserve accounts which are established, or which the board deems prudent to establish; and
- (c) “(c)” is the difference between-
 - (i) the present value of the liabilities of the fund in respect of pensionable service after the valuation date, and

(ii) the present value of future retirement funding contributions, if the value in subparagraph (i) is more than that under this subparagraph, and zero or otherwise;

“**actuary**” means an associate or fellow of a professional actuarial body that is a member of the International Actuarial Association, or such other body as may be approved by the Regulatory Authority;

“**administrator**” means a person who provides administration or similar services to the fund;

“**annuity**” means a regular payment (which may be monthly, or less regularly, but at least once a year) for-

(a) a fixed period;

(b) a period defined in the contract or the rules; or

(c) the balance of the lifetime of one or more beneficiaries;

“**auditor**” means an auditor registered with the Botswana Institute of Chartered Accountants under the Accountants Act;

“**beneficiary**” means a nominee of a member or a dependant who is entitled to a benefit as provided for in the rules of the relevant fund;

“**beneficiary fund**” means a fund which is established with the object of receiving, administering, investing and paying benefits on behalf of beneficiaries;

“**board**” means the governing body of a fund;

“**board member**” means a member of a board;

“**Botswana Institute of Chartered Accountants**” means the Institute that is established under the Accountants Act;

“**child**” means a person below the age of 18 years;

“**custodian**” means a person who holds property of another person for safekeeping;

“**dependant**” means-

(a) any person to whom a member is liable for maintenance;

(b) a factual dependant;

(c) a person to whom a member is not liable for maintenance, but who-

(i) in the opinion of the board, was dependent on the member for maintenance at the time of death of the member,

(ii) is the spouse of the member, or

(iii) is a child of the member including a posthumous child, or

(d) a person in respect of whom a member would have become liable for maintenance, had the member not died;

“**employer**” means an employer participating in the fund by contributing to a fund in terms of the rules, or who participates in the administration of the fund;

“**external fund**” means a fund which has a head office outside Botswana, but does not include a fund which, though its head office is outside Botswana, 50 per cent or more of its membership consists of persons normally resident in Botswana;

“**factual dependant**” means a person who was financially dependent on the member at the time of the member’s death;

“**financial services law**” has the same meaning assigned to it under the Non-Bank Financial Institutions Regulatory Authority Act;

“**fund**” means any scheme or arrangement, whose principal object is to provide a benefit for a person who is or has been a member of the scheme or arrangement, upon retirement on account of age or ill health, or upon a person completing a fixed period of service, whether or not such scheme or arrangement-

- (a) also provides a benefit for dependants or nominees of a deceased member;
- (b) also provides a benefit on the death of the member's spouse, child and parent;
- (c) also provides a benefit for a member on a temporary or permanent disablement; or
- (d) continues to admit members or to receive contributions, and includes any retirement fund established in terms of any enactment:

Provided that a scheme or arrangement which is established to benefit only one member or his or her dependant shall not be regarded as a fund;

“independent specialist” means a person who meets the requirements set down by the Regulatory Authority for appointment to the board, as an independent specialist;

“individual retirement fund” means a fund which a person applies to join in his or her individual capacity, subject to such conditions as may be determined by the board in terms of the rules, which eligibility to membership is not dependent on an employer-employee relationship, and includes a retirement annuity fund and a fund designed to facilitate the preservation of benefits on leaving employment in circumstances other than retirement;

“International Actuarial Association” means the worldwide association of professional actuarial associations;

“member” means a person who is admitted to the membership of a fund in terms of the rules, but does not include any member or former member who has received all the benefits which may be due to him or her from the fund and whose membership has been terminated in terms of the rules;

“nominee” means a person, other than a dependant, nominated by a member as a beneficiary under a fund;

“licensed fund” means an entity which is licensed under this Act to carry on the business of a fund;

“multi-employer fund” means a fund which is established for the benefit of employees of different employers who are not associated employers;

“pension” includes an annuity acquired through a fund or an insurance company and a commuted lump sum not exceeding one third of the pension benefits of which the person would be entitled on retirement;

“pension fund” means any fund of which, its principal object is to provide for the payment of a pension to a person who is or has been a member of the fund, on his retirement;

“preservation fund” means a pension or provident fund into which the accrued fund benefits of employees who leave the service of an employer due to dismissal (including retrenchment), or resignation, or in the event of the dissolution of the employer's pension or provident fund, may be invested;

“principal office” means-

- (a) the principal place of doing business of the fund; and
- (b) the place where records of the fund are kept;

“principal officer” means the person responsible for the daily management of a principal office of a licensed fund in Botswana;

“provident fund” means a fund which is not a pension fund, which permits a person who is or has been a member of the fund, on his or her retirement, to take his or her benefit as a cash lump sum;

“Regulatory Authority” means the Non-Bank Financial Institutions Regulatory Authority established under the Non-Bank Financial Institutions Regulatory Authority Act;

“retirement date” means the date upon which the member actually ceases employment and draws a retirement benefit;

“retirement fund” means any fund provided for purposes of retirement under this Act;

“**retirement fund business**” means any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments to a person who belongs or belonged to a class of persons for whose benefit that scheme or arrangement has been established, when the person reaches his or her retirement age, or for dependants and beneficiaries of such person upon the person’s death;

“**rules**” means the rules applicable to a fund, and includes-

- (a) any document by or in terms of which the fund is established; and
- (b) the provisions relating to the conduct of the business of the fund, the benefits which may be granted from the fund and the contributions which are payable to the fund;

“**sponsor**” means an organisation which-

- (a) is responsible for establishing a multi-employer fund or an individual retirement fund;
- (b) promotes participation by new employers or members in the fund; and
- (c) may perform such services for the fund as are set out in the rules or are described in an agreement between the organisation and the fund; and

“**stakeholder**” means-

- (a) an employer or employee who participates in the fund; and
- (b) a member and former member whom the board determines should be treated as a stakeholder.

Part II

Licensing of Funds (ss 3-12)

3. Prohibition for operating fund without licence

- (1) A person shall not carry on the business of a fund without a licence issued by the Regulatory Authority.
- (2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 for each day the offence occurs, or to imprisonment for a term not exceeding five years, or to both.

4. Requirement for licensing fund

- (1) A person who wishes to carry on the business of a fund shall make an application to the Regulatory Authority, which application shall be accompanied by-
 - (a) three copies of the rules; and
 - (b) such fee as may be prescribed.
- (2) The Regulatory Authority may prescribe specific conditions for the licensing of external funds, which conditions shall include a requirement to hold capital of a minimum amount.

5. Issue of licence

The Regulatory Authority may issue a licence to carry on the business of a fund if it is satisfied that-

- (a) the rules are consistent with this Act;
- (b) the fund will maintain a sound financial position;
- (c) the fund will be managed by a board that will carry on the activities of the fund with integrity, prudence and professional skill;
- (d) the licensing of the fund will not be contrary to the public interest; and

(e) the application complies with other conditions as may be prescribed.

6. Effect of licensing

(1) A fund shall upon being issued with a licence, become a body corporate capable of suing and being sued in its own name, and of doing or performing all such acts or things as may be necessary or incidental to the exercise of its powers or the performance of its functions in terms of its rules.

(2) Notwithstanding anything to the contrary in any written law, memorandum, articles of association, constitution or rules of any body having control of the business of a fund, all the assets, rights, liabilities and obligations pertaining to the business of a fund shall be deemed to be assets, rights, liabilities and obligations of the fund to the exclusion of any other person.

(3) A person shall not have a claim on the assets or rights, or be responsible for any liabilities or obligations of the fund under subsection (2), except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the fund.

(4) The assets, rights, liabilities and obligations of a fund, including any assets held by any person in trust for the fund, existing immediately before its licensing, shall vest in and devolve upon the fund without any formal transfer or cession.

7. Rules of fund

(1) The rules shall-

- (a) state the name of a fund;
- (b) state the type and purpose of a fund; and
- (c) comply with such requirements as may be prescribed by the Regulatory Authority.

(2) The requirements to be prescribed under subsection (1) (c) may include-

- (a) the membership of a fund, including the conditions for eligibility, admission to and termination of membership;
- (b) the contributions to be paid into a fund, whether compulsory or otherwise;
- (c) the benefits to be payable from a fund;
- (d) the commutation of any pension;
- (e) the appointment or election of board members and their powers and duties;
- (f) the dissolution of a fund, including the appointment and powers of a liquidator, and the duty of the liquidator and actuary, where appropriate, to recognise the rights and reasonable expectations of the members in relation to service prior to the liquidation date;

(g) the amendment or replacement of the rules;

(h) the transfer of membership and their associated assets and liabilities into and out of a fund; and

(i) the manner in which any dispute between a fund and any member shall be settled in accordance with the fund's dispute resolution process.

(3) Subject to the provisions of this Act, the rules shall be binding on-

- (a) a fund;
- (b) any employer and the members and officers of a fund; and
- (c) any person who puts a claim under the rules.

8. Amendment of rules of fund

(1) Notwithstanding the provisions of this section, the Regulatory Authority may at any time, direct that the rules be amended to comply with the provisions of this Act.

(2) A principal officer shall, within one month of the passing of the resolution approving an amendment or replacement of the rules, submit three copies of the amendment or replacement rules to the Regulatory Authority, together with such documentation or information as may be prescribed.

(3) The Regulatory Authority shall approve an amendment or replacement of the rules if it is satisfied that the amendment-

- (a) is consistent with this Act or any other financial services law;
- (b) will not render a licensed fund unable to maintain a sound financial position;
- (c) does not adversely affect the ability of the board to manage a licensed fund with integrity, prudence and professional skill;
- (d) is not contrary to the public interest; or
- (e) will not affect any right of a creditor of a licensed fund.

(4) If an amendment or replacement has the effect of reducing any benefit that has accrued to a member in respect of his or her service prior to the amendment or replacement, the Regulatory Authority may refuse to approve the amendment or replacement-

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