

THE RETIREMENT FUNDS INDUSTRY

IMPACT BY REGULATORY CHANGES AND IMPROVEMENTS

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A low-angle, upward-looking shot of a modern skyscraper with a glass facade. The building's structure is composed of a grid of dark metal beams and large glass panels. The perspective creates strong diagonal lines that converge towards the top of the frame. The sky is visible through the glass, appearing as a bright, slightly hazy blue. The overall tone is professional and architectural.

01

OVERVIEW

The Importance of Regulations and Supervision



Financial Institutions are essential to the well being, growth and sustainability of the financial systems and the economy.

Regulation

The Legal prescriptions, Rules, Guidelines that empower a Regulatory Authority to govern the structure and operations of a sector.

Regulations Harmonize the market and allow for parity and healthy competition to take place (efficiency and value).

and

Supervision

The continuous monitoring of the implementation of the Regulations by the overseeing Regulatory Authority who is empowered to sanction non-compliance to the Regulations.

The supervision is conducted through off-site monitoring (review of Returns) and on-site supervision (meetings, inspections and investigations).

02

NBFIRA Mandate and List of applicable laws, Prudential Rules for Pension Funds





NBFIRA is mandated with the licensing of retirement funds within Botswana with the purpose of:

- Protecting the members funds for old age.
- Promoting safe governance for management of funds.
- Ensuring members are informed of the fund performance.
- Ensuring that Funds are protected for encashment when required, in accordance with laws.
- Sanction those who do not comply with the prescribed requirements

Examples Key of Enabling Rules for the above:

Requirements For Licensing - Stand Alone & Sub Funds;

- PFA 1 - New License Application-Pension or Provident Fund;
- PFR10 - Conduct Expected of Board of Trustees
- PFR 1 - Funding Valuation Rules (PFR1);
- PFR 2 - Fund Investment Rules (PFR2);

CONTINUED...NBFIRA MANDATE AND LIST OF APPLICABLE LAWS, PRUDENTIAL RULES FOR PENSION FUNDS



NBFIRA acknowledges that there have to be third party service providers to the process:

Examples of the above:

- Pension Fund Administrators
- Custodians
- Independent Board of Trustees

Statutory Returns:

As per Section 23 of the Retirement Funds Act, Retirement funds must annually submit audited financial statements including completed return forms to the Non-Bank Financial Institutions.

- PFR3_Annual Returns Pension Funds - Submitted annually along with the audited financials;
- PFR4_Quarterly Return Pension Funds - Submitted quarterly;
- PFR5_Fund Administrators Returns - Submitted annually; and

In addition to the NBFIRA Laws and Rules, all pension funds are required to enforce Financial Services Laws

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03

International trends in Regulation



INTERNATIONAL TRENDS IN REGULATION





Ethics

- More firm stance on what the fund will invest in and what it will not. This includes countries as well, sanctioned or not.
- Violations of human rights,
- Manufacture or distribution of weapons,
- Alcohol and gambling

Social Responsibility - Environmental, Social, and Governance (ESG principles)

- The fund identifies with a purpose and aims to ensure that investments are aligned to social responsibility vs high returns at any cost.
- Environmental - Investment in Green promoting assets
- Social - Local economy promotion vs Offshore

04

RECENT CHANGES IN THE RETIREMENT FUND LAWS AND NBFIRA GUIDELINES

Retirement Funds Bill, 2022

Independent Review of the Board of
Trustees and Minimum Requirements of
Board Members of Retirement Funds
(deferred)

Transactions with related Parties

Corporate Governance Guidelines



RETIREMENT FUNDS BILL, 2022



Law

- a. Retirement Funds Bill, 2022

Purpose

To expand and strengthen the Non-Bank Financial Institutions Regulatory Authority's (NBFIRA) oversight authority, to improve governance, safety, soundness, fairness, efficiency, orderliness and sustainability of retirement funds.

Key Considerations

- (a) To strengthen NBFIRA's authority including to initiate the amendment of **fund rules based on identified risks** to protect members and to **appoint statutory managers** where necessary
- (c) provide for operational guidelines for key stakeholders including fund administrators;
- (h) prohibit the submission of false or inaccurate statements, reports and returns to NBFIRA.

CHANGES IN THE ACT:

- 37. Winding up of funds
- 26. Duties to establish measures to prevent money laundering and financing of terrorism
- 27. Duty to report financial crime
- 59. A person who contravenes any provision of this Act, where no specific penalty is provided commits an offence and is liable to a fine not exceeding P50 000

INDEPENDENT REVIEW OF THE BOARD OF TRUSTEES AND MINIMUM REQUIREMENTS OF BOARD MEMBERS OF RETIREMENT FUNDS (DEFERRED)



Law/Guideline

b. Assessment of Controllers by Independent Reviewer

And

Minimum Requirements of Board Members of Retirement Funds (deferred)

Purpose

To ensure the Board of Trustee's posses the skills and expertise to ensure fund safekeeping and to assess the effectiveness of the Board of Trustees

Key Considerations

(a) Considerations have been included in the Retirement Funds Bill 2022.

IMPROVEMENT IN THE ACT

(a) Section 15

c) have its **assessment carried out annually** either by the board of trustees or an independent assessor using the criteria consistent with that prescribed by the Regulatory Authority.

Improve and **ensure a balanced cost effective corporate governance** of funds by **adjusting the board members' qualifications and composition (Section 14(5))**, warrant the inclusion among the members, of at least one independent trustee, make it mandatory for the board to regulate its proceedings through fund rules, and carry out a self-assessment and hence **not require the services of an independent assessor regularly**; provide for new clauses to manage unclaimed benefits; and

ASSESSMENT OF CONTROLLERS BY INDEPENDENT REVIEWER



Law/Guideline

c. Transactions with related Parties

Purpose

To manage Board conduct on matters of conflict of interest and preferential treatment of related parties

Key Considerations

- (a) **Disclosure of contract terms that reflect that all transactions were conducted at arm's length.**
- (b) **Related Parties include the service providers to the Fund (Investment Advisors, Fund Administrators, Auditors etc), all of which should not have a conflict of interest or perceived conflict of interest.**
 - Does this act benefit me unduly?
 - If this was to be revealed to the public would I be proud of my position?
 - NBFI to have a Policy on Related Party Transactions to be shared with members on an annual basis



Law/Guideline

d. Corporate Governance Guidelines

Purpose

To ensure structure, rules, processes are implemented to safeguard the Fund and its members

Key Considerations

- (a) Ensuring that the Board structure is aligned to the requirements including appointment of the independent member.
 - Members of the Board to display:
 - Integrity
 - Competence
 - Responsibility
 - Accountability
 - Fairness
 - Transparency
- (b) The Board will establish the purpose, values and strategy for sustainability.
- (c) Ensuring Policies and procedures are in place

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05

CHANGES IN AML/CFT LANDSCAPE (2019 TO 2022)

CHANGES IN AML/CFT LANDSCAPE 2019 TO 2022



2019 - 2021

- (a) Financial Intelligence Act - To establish the FIA Agency and provide for parties to perform certain due diligence in combatting AML/CFT.
- (b) Chemical Weapons (Prohibitions) Act - To provide for prohibition for the development, production, acquisition, stockpiling, retention, transfer, transfer and use chemical weapons, the coordination of the management of chemical weapons, nuclear weapons and the management of biological and toxin weapons.
- (c) Nuclear Weapons ((Prohibitions) Act - To provide for the domestication of the prohibition of nuclear weapons convention and production, acquisition, stockpiling, retention, transfer, transfer and use nuclear weapons
- (d) Biological and Toxin Weapons (Prohibitions) Act - To provide for the domestication of the convention on the prohibition of the development, production and stockpiling of bacteriological and toxin weapons
- (e) Companies Re- Registration Act - To provide for the registration of existing companies under the Companies Act
- (f) Counter Terrorism (Amendment) Act - Criminalizes anyone who causes of likely to cause serious bodily injury to a person not taking an active part in hostilities in a situation of armed conflict
- (g) Proceeds and Instrument of Crime Act - response to crimes such as corruption, poaching, money laundering and terrorism financing.

2022

- (a) Financial Intelligence Act 2022
- (b) Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022
- (c) Virtual Assets Act, 2022
- (a) Criminal Procedure & Evidence (Controlled Investigations Act), 2022

CHANGES IN AML/CFT LANDSCAPE 2019 TO 2022



Law/Guideline

Guidance Note
for Detection of
Covid-19
Related Crimes
(FIA)

Purpose

Alert Financial Institutions to fraud, corruption, and other predicate crimes for money laundering observed during the period of the COVID-19 pandemic.

Provides guidance on how to possibly identify Suspicious Transaction Reports

Key Considerations

- (a) Corruption: **Public officials suspected to have misallocated COVID-19** relief funds.
- (b) Abuse Of Public Procurement Processes: **Emergency** procurement of PPEs and other healthcare supplies **created an opportunity for corrupt public officials to abuse their powers** to circumvent laid down procurements processes for their personal gain.
- (c) Fraudulent Cheques: Fraudsters send potential victims fraudulent cheques, **instructing the recipients to call a number or verify information online** in order to cash the fraudulent COVID-19 cheques.



06

CHALLENGES IN THE IMPLEMENTATION OF THE NEW LEGISLATION



CHALLENGES IN THE IMPLEMENTATION OF THE NEW LEGISLATION

Resource allocation

To effect the changes and to oversee their implementation across the Fund.

Cost of Compliance - (i.e **resourcing, systems, increased governance** and need to get **expert advise** (rapid changes in laws).

Capacity & Training

There needs to be constant **investment in Training** for the Board and members to **capacitate them to oversee the** implementation of the laws.

In addition, the members themselves have to be trained to select the **investment plans**, on **appreciating fund reports** and **market dynamics** that **affect fund performance**

Change of processes and Policies

The internal policies and processes will also have to be amended to **align to the new legislation.**

Stakeholder Engagement

All critical stakeholders within the Fund have to be **engaged frequently to ensure that no one is left behind** and the same communication is distributed across. For stakeholders that are not easy to get hold of, it will pose a challenge of late implementation.

A low-angle, upward-looking photograph of a modern skyscraper with a glass facade. The building's structural lines create a strong geometric pattern against a bright sky. A semi-transparent blue rectangle is overlaid on the left side of the image, containing white text. A small black dot is visible on the building's glass surface.

07

COSTS AND BENEFITS OF REGULATION

• 7



COSTS OF REGULATION

Direct Costs

2019

P265 and P17 in respect of each member at the end of each financial year

2022

P292 and P19 in respect of each member at the end of each financial year

2023

P307 and P20 in respect of each member at the end of each financial year

Indirect Costs to the Fund – Prescribed by Regulations

1. Fund administrator* - P8,472 and P699 per fund
2. Investment managers* - P9,540 per annum
3. Custodian* - P77,045
4. Insurers
5. Actuary
6. Auditors

***Service Provider Regulatory Fees (2023)**

Ultimately, all these fees trickle down to the members and their beneficiaries



BENEFITS OF REGULATION

1

Develop well balanced regulations that are fit for purpose (Regulators and Market Players)

2

Knowledge sharing across countries, regions and industry

3

Industry and Country of Good standing with international NBFIs and foreign institutions to do business.

4

Effective AML/CFT measures help stop criminals laundering the proceeds of fraud, drugs, tax evasion and other crimes

Regulation and Supervision

1

Give credibility to the sector and its players locally and internationally.

2

Give the investors comfort that their investments are protected and safe.

3

Promote growth of the sector and economy



THANK YOU