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CHANGES TO RETIREMENT LEGISLATION AND ITS IMPLICATIONS

Botswana Pension Society Trustee Seminar

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Contents

01 **Introduction**
Background.

02 **Critical Changes**
Unpacking the Changes

03 **Implications**
What does this mean

04 **Conclusion & Recommendations**
Discussion

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01 - Introduction

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Background

- The **Retirement Funds Act (Cap 27:03)** was first enacted in **2014** to replace the repealed **Pension and Provident Funds Act, 1988;**

- The amendment and re-enactment of the Act was aimed at aligning it with modern developments based on the experience in implementation of the previous Act, international standards and best practice in the management of pension funds to protect the benefits of the members.

- Currently, what is in-force is the **Retirement Funds Act 2022**

01 - Introduction

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Background

The pension legal framework is anchored on:

- Licensing;
- Regulating; and
- The administration of all retirement funds, including pension and provident funds, guided by the core mandate of protecting the benefits of members.

01 - Introduction

The changes in legislation were overall meant to:

- To repeal and re-enact, with amendments, the Retirement Funds Act (Cap. 27:03);

- To expand and strengthen the oversight authority of Non-Bank Financial Institutions Regulatory Authority (NBFIRA); as well as

- To improve governance, safety, soundness, fairness, efficiency, orderliness and sustainability of Retirement Funds.

02 - Changes to The Retirement Act

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The Bill has 67 Clauses under 8 Parts and some of the salient provisions are:

Clause 2

Introduces new definitions, expands and re-aligns definitions of some terms with the Regulations for clarity, consistency and to follow best practice. Among others;

- “controller” was defined to differentiate the term in relation to a Fund and a Fund Administrator;
- “custodian” was also customized to retirement funds; and
- “due date” was defined since the date determines the starting point of payments such as that of pension.

02 - Changes to The Retirement Act

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Clause 8

Enhances NBFIRA's authority by empowering NBFIRA to initiate amendment of Fund Rules based on identified risks to protect members.

Clause 14

Provides for composition of board of Funds to improve corporate governance; for example;

- number of trustees elected by members shall be equal to number of trustees elected by employer or sponsor;
- one representative of pensioners;
- number of trustees in a Board shall be 7 or 11 depending on size of a fund; and
- at least two Independent Trustees so as to enhance professionalism in the boards of Funds.

02 - Changes to The Retirement Act

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Clauses 25 to 27

Provide for operational guidelines for key stakeholders such as Fund Administrators. These include:

- stipulation of committees necessary in the Board of a Fund Administrator;
- appointment of service providers; and
- submission of financial statements to enable efficient and effective administration services to a Fund.

02 - Changes to The Retirement Act

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Clauses 28 to 29

- Introduce a duty on regulated entities to establish measures to prevent money laundering and financing of terrorism in accordance with the Financial Intelligence Act (Cap 08:07) and other relevant legislation;

- Provide for a requirement to report any evidence of criminal activity to NBFIRA, which is suspected in any institution or in the provision of services in the Retirement Funds industry.

02 - Changes to The Retirement Act

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Clause 52

Provides for improved encashment of residual funds in cases where a deferred member has:

a) defaulted on any loan other than mortgage owed - the amount which can be accessed to pay for loans is increased **from the current one third to 100% of pension**, provided the pension can cover the whole amount of the loan;

b) defaulted on Mortgage loans owed. This is a new provision which allows access to deferred pension to repay mortgage loans for principal homes.

02 - Changes to The Retirement Act

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Clause 52 continued….

c) become terminally ill and has to pay for medical expenses. This is also a new provision, which, will allow access of deferred pension to pay for medical bills in respect of terminal ailments.

These enhanced encashments in the Bill are for deferred members only.

“deferred members” are those members who no longer contribute to the fund, but who still have their benefits preserved and have preserved pension rights with the fund;

02 - Changes to Related Legislation

The pension legal framework is also contained in subsidiary legislation such as the:

- **Income Tax Act** (Superannuation Funds) Regulations, 2001; and
- **Pension Prudential Rules.**

02 - Changes to Related Legislation

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1. Changes in Income Tax (Superannuation Funds) Regulations, 2001

- To increase the amount of pension commutable at retirement from the **current one third to a maximum of 50%;**
- Dissolution or full distribution of the pension estate of a deceased member by **paying total benefits in cash** to all beneficiaries or nominees.

The dissolution of the pension estate will assist in clearing any jointly secured debts in the case of a surviving spouse.

02 - Changes to Related Legislation

- To increase the commutable amount when moving from one Pension Fund to another from the current P5 000 or 25 % to P25 000 or 25% whichever is higher; and

- To increase the minimum threshold to be encashed in full at retirement from the current pension of P5 000 per annum to P20 000 per annum.

02 - Changes to Related Legislation

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2. Changes in Pension Prudential Rules

Pension Prudential Rules will be reviewed by:

- increasing the limit of funds which can be invested locally by Pension Funds from the current minimum of 30% to a minimum of 50%.

Rationale

To make funds held by Pension Funds available for developmental purposes in Botswana, contribute towards boosting the local economy and to create the much needed sustainable jobs.

03 – Implications of Changes

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Income Tax (Superannuation Funds) Regulations, 2001

a. **Change:** Increase the minimum threshold to be encashed in full at retirement from the current pension of P5,000 per annum to P20,000 per annum.

b. **Implication:** This results in many retirees qualifying to encash their entire pension and opting out of purchasing annuities. Monthly, the threshold moves from P416.66 to P1,666.66 per month. The likelihood is that many clients with +/- P300,000 will qualify to encash in full their remaining half of pension funds.

03 – Implications of Changes

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Income Tax (Superannuation Funds) Regulations, 2001

a. Change: Dissolution or full distribution of pension estate of a deceased member by paying full benefits in cash to the beneficiaries or nominees

b. Implication: Beneficiaries will no longer be consulted at Assure Wealth. This means annuity products uptake from our broker will decline sharply. Strategies are being considered on how to provide the much needed advisory for these beneficiaries.

03 – Implications of Changes

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Retirement Funds Act, 2014

a. **Change:** Increase the amount of pension commutable at retirement from the *current 1/3 to a maximum of 50%*

b. **Implication:** This results in the overall reduction of funds available for purchase of annuities by a maximum of 16.67%. The reality is that most members decide on how much to commute before we provide them with retirement planning services. Our realization is that most go for the maximum 50%. We are formulating strategies to intervene at retirement stage before they make the decision on how much to commute.

04 –Conclusion & **Recommendations**

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Throughout our engagements with retirees we observed:

- Most retirees have are still breadwinners even in retirement – socioeconomic pressures
- Retirees are generally unprepared for retirement e.g debt problems – pre-retirement planning critical
- Replacement Ratios average less than 50% - underfunded pensions; improve AVC and pension literacy
- Encashment has gone up from 6% on average to 20%, even for members who qualify for annuities – improve general financial literacy to curb poverty-stricken pensioners
- Living vs Life Annuity popularity

04 –Conclusion & **Recommendations**

1. **Increased member education by all parties** on retirement process, products involved and the law. Consider trainings, virtual, radio and other methods
2. **Consult members prior to 1/3 or 50% benefit.** Members demonstrate a need for financial planning prior to first cash benefit and not just 2/3. This assumes real time consultation of retirees where there is no backlog/delays
3. Engage with stakeholders e.g annuity providers regarding after-sales service **as well as opportunities that exist after members retire.**
4. Continuous **lobbying for changes to** Regulations particularly regarding minimum amounts to be paid into annuity products.

Discussions