

**NON-BANK FINANCIAL  
INSTITUTIONS REGULATORY  
AUTHORITY  
(NBFIRA)**

**PENSIONS PRUDENTIAL RULES**  
In terms of Section 50 of the NBFIRA Act

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**PFR10**  
Conduct Expected of the Board Trustees

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Effective March 1, 2012

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## **1. Introduction**

### **1.1. Pension Prudential Rules**

1. The NBFIRA's Pension Prudential Rules set out the prudential requirements for licensed pension funds operating in Botswana.
2. This note sets out in draft form material that may form the basis of PFR10.

### **1.2. Definitions**

3. In these Requirements, unless the context indicates otherwise:
  - a. "Act" means the Pension and Provident Funds Act, Cap 27:03 and a word or expression to which a meaning has been given in the Act, has that meaning;

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## **2. Conduct Expected of the Board of a Fund**

4. The rules governing the conduct expected of the board of a fund, as set out in this PFR, are broadly based on the governance regime which has developed in South Africa as risk-based supervision has been introduced. The reasons for adopting this framework include the desires for harmonisation and for efficiency in designing a framework for Botswana.
5. There are six key components to the rule of the conduct expected of board members:
  - a. Minimum standards expected of a board member
  - b. Code of Conduct
  - c. Performance assessment of, and by, the board
  - d. Appointment of service providers
  - e. Risk management policy
  - f. Communication policy
  - g. Investment policy (which is the subject of PFR2)

### **2.1. Minimum Standards Expected of a Board Member**

6. Subject to paragraph 7, the minimum standards in terms of section 9(2) of the Act are as follows:
  - a. The board member understands the rules of the fund and is aware of applicable financial services laws that may affect his or her actions as a board member;
  - b. The board member understands his or her duties under the rules, applicable financial services laws and any other relevant legislation. Specifically, the board member appreciates his or her duties in relation to the annual financial statements, the returns required by the Regulatory Authority, and the communication to members.
7. No person may be appointed or elected as a board member if that person:
  - a. Is a minor;
  - b. Is mentally incompetent or otherwise incapable of acting;
  - c. Is disqualified from being a director in terms of an order under the Companies Act, 2006;
  - d. Is an unrehabilitated insolvent;
  - e. Has been removed from an office of trust on account of misconduct;
  - f. Has been convicted and sentenced either to imprisonment without the option of a fine or to a fine exceeding P100 for one of the following: theft, fraud, forgery or uttering a forged document, perjury, any offence involving dishonesty or any

offence in connection with the promotion, formation or management of a company.

## **2.2. Code of Conduct for the Board of a Fund**

8. A code of conduct for a board of a fund must contain at least the following:
- a. The board members must undertake to manage the fund in accordance with the fund's licensed rules;
  - b. The board members must undertake:
    - i. To act with honesty, in good faith and with the highest standard of care, diligence and skill expected of a person dealing with the assets of another person;
    - ii. To manage conflicts of interest, ensuring that any actual or perceived conflicts are fully disclosed, with the board members recusing themselves from any discussion of such matters in respect of which they are, or may be perceived to be, conflicted, where "perceived" shall be interpreted with reference to the stakeholders in the fund;
    - iii. To act with impartiality in respect of remaining members and former or transferring members when a fund is terminated, when members cease to be eligible to be members, or when members are moved from one fund to another;
    - iv. To obtain expert advice when they lack sufficient expertise within the board. The board must not simply and unquestionably accept that advice. The board must apply their independent discretion and must question and clarify expert advice until they are comfortable to take a decision on the matter;
    - v. To identify and manage risks related to the fund, in terms of a Risk Management Policy, and to review that policy at least once every 2 years;
    - vi. To establish such other policies as may be required by legislation, such as the Investment Policy and Communication Policy;
    - vii. Not to use information which they have about the fund or its affairs for any purpose except to further the fund's interests;
    - viii. Not to disclose or make use of confidential information obtained by virtue of their office for the advantage of themselves or anyone else.
  - c. The code shall specify how gifts or courtesies to the board members should be disclosed and the procedure for disclosure.

### **2.3. Board training**

9. The board members must ensure that they receive appropriate training so that they understand their duties.
10. In order to realise this, the principal officer must design and implement an appropriate training programme for the board members after assessing their training needs as part of the assessment in section 2.5 below.

### **2.4. Breaches of the Code**

11. If a board member breaches the code or acts in contravention of any of the responsibilities imposed on him or her in terms of the rules, then the remaining board members shall after considering any argument in defence of the board member concerned determine the nature of any sanction or disciplinary action to be imposed.

### **2.5. Performance Assessment of, and by, the Board**

12. At least once a year the board shall assess their performance, as well as their processes and procedures. This assessment is not intended to be punitive but rather to be a tool to enable the board members to track their progress and assess their development needs. This assessment must relate to at least the following areas:
  - a. The composition of the board in terms of its compliance with the rules and the Act, and the skills and experience of the board members;
  - b. Adequacy of the governance structures for the fund;
  - c. Effectiveness of board meetings in dealing with the most important issues;
  - d. Ability of the board to interact freely, express their own opinions, and operate effectively as a team;
  - e. Board packs provided adequate and timely information;
  - f. Board minutes were accurate and produced on time;
  - g. The chairperson conducted his or her mandate effectively;
  - h. Financial controls were adequate, including budgeting and monitoring variances across the year;
  - i. Board members engaged in continuing education on trusteeship and changes in the industry;
  - j. Board members understood their duties, and applied themselves diligently in terms of the code of conduct;
  - k. Any conflicts of interest were avoided, or, where unavoidable, were declared and managed;

- l. Proper records were kept;
  - m. Proper internal control systems were employed;
  - n. Adequate and appropriate information was communicated to stakeholders;
  - o. Contributions were collected timeously or were reported to the Regulatory Authority;
  - p. The board obtained expert advice on matters where it lacked sufficient expertise;
  - q. The board ensured that the rules, operation and administration of the fund complied with legislation;
  - r. The board ensured that adequate fidelity cover was maintained;
  - s. The board ensured that investments were maintained in accordance with a written investment policy statement that was communicated to stakeholders;
  - t. The board ensured that an appropriate risk management strategy was implemented;
  - u. The board ensured that effective strategic planning as carried out.
13. The focus of the assessment should be on how the existing situation or process can be improved.
14. This assessment should be performed individually by each board member and then consolidated for the board as a whole.

### **3. Rules Relating to the Appointment of each Service Provider to the Fund**

15. When appointing each service provider, the board of the fund must satisfy itself that:
- a. Where the service provider must be licensed by the Regulatory Authority under the Non Bank Financial Institutions Regulatory Authority Act, 2006, the service provider is so licensed to perform the services required by the type of fund into which the fund falls and the board is satisfied that the service provider is competent to perform these services (to determine which, the board may require expert assistance);
  - b. The contract and service level agreement with the service provider is comprehensive, including:-
    - i. The services to be provided to the fund are specified;
    - ii. Ownership of all information provided by the members, participating employers and the fund, and all records relating to the administration of the fund and the members such as contribution receipts, benefit payments, and expense payments, remains with the fund and the contract includes provisions for the return to the fund of all member and financial records at the termination of the contract, within a reasonable period of that termination;
    - iii. The contract specifies the fees that will be charged for the services provided, including any fees on termination of the contract;
    - iv. The board may terminate the contract with reasonable notice;
    - v. Performance measures are specified;
    - vi. The contract specifies the contents of any reports that the service provider will prepare in relation to the activities of the fund and its performance in terms of the contract, the periods over which performance will be reported, and the times within which the reports will be delivered after the end of the reporting period.
  - c. The board is satisfied that the services offered by the service provider and the fees to be charged are competitive. (i.e. that they have tested these services and fees through obtaining competitive quotations)
  - d. There is a dispute resolution mechanism in the contract such as a process of consultation after due notice, followed by arbitration if the parties are unable to reach agreement.

#### **4. Risk Management Policy**

16. The risk management policy must describe how the risks of the fund will be managed and who will take responsibility for this management. In particular,
  - a. a risk matrix must be established which:
    - i. identifies the major risks to which the fund is exposed;
    - ii. notes the potential impact on the fund of each risk and the likelihood of the risk occurring after such mitigating actions as the board of the fund deems reasonable;
    - iii. ranks the risks according to priority for attention by the board;
    - iv. notes the mitigating actions that the board of the fund (or service providers) will take to manage the risk;
    - v. identifies who will take responsibility for managing this risk;
  - b. the risk matrix must be reviewed each time the board meets, with attention being given specifically to any high risk items and to any new risks identified since the board met previously;
  - c. the risk matrix must be available to the Regulatory Authority on request.
17. The risk management policy must be reviewed every two years.

## **5. Communication Policy**

18. The communication policy must cover the following:
- a. what information will be provided to each class of stakeholder, covering at least members, participating employers and beneficiaries; such communication may be required to meet standards set down by the Regulatory Authority;
  - b. the language in which the communication will be provided, which should at least ensure that the average member will be able to understand the communication;
  - c. the medium in which the fund will communicate on each matter;
  - d. the timeframe within which that communication will be provided.
19. The policy must ensure the confidentiality of information owned by the fund and clarify what information may be given to members, employers, board members and service providers, subject to appropriate confidentiality clauses.

### **5.1. Information Communicated to Members**

20. The minimum information that must be communicated to members is the following:
- a. An explanatory pamphlet on admission and a benefit statement to be provided at least once a year thereafter, which will include the following:
    - i. Details of the fund (name, contact person, registration no.)
    - ii. Details of benefits payable to the member
    - iii. Rate of contribution by the member and the employer
    - iv. General information (eg. Where to inspect rules, financial statements, etc.)
    - v. A projection of the likely benefits on retirement in current purchasing power terms assuming realistic rates of expenses and investment return in excess of inflation. The rates of expense and investment return in excess of inflation and any other relevant assumptions must be stated in the projection document.
  - b. A notice to members, or their beneficiaries, on specific events such as:
    - i. fund restructuring, communicating the nature of the restructuring and its impact on the members;
    - ii. claim, including retirement, resignation, dismissal, retrenchment and death, communicating the benefit due, information required by the fund before the claim can be settled, and to whom that information is to be supplied.

### **5.1.1. Projection of Benefits for Defined Contribution Funds**

21. A defined contribution fund must provide its members, as part of their annual benefit statements, with an illustration of the likely value of their pensions on retirement in current monetary terms. This will be achieved through projecting benefits assuming only a rate of investment return in excess of inflation (i.e. a real rate of return).
- a. The board of the fund must determine the rate of expenses to be deducted from the contributions payable into the fund after consulting the actuary to the fund or the fund's auditor. Such rate of expense must be realistic in terms of the experience of the fund, but may take account of likely changes in future. The benefit projection must state any assumptions used to modify the rate of expense as revealed in the previous financial year of the fund.
  - b. The Regulatory Authority shall publish a rate of investment return in excess of inflation that may be used in the projection of the benefits and annuity rates that they feel are representative of the market. If the board of the fund considers either of these rates to be inappropriate in their particular circumstances, the board of the fund, after taking expert advice, may use rates that they feel are more suitable in the circumstances of their fund provided that they motivate in writing to the Regulatory Authority why such rates have been used.

### **6. Regulatory Authority's Exemption**

22. The Regulatory Authority may on prior written application by a fund grant such fund exemption from any of the provisions of this prudential rule upon such conditions as it may impose.