PFR12 - PENSION AND PROVIDENT FUND BENEFIT PAYMENT RULES 2024

NBFIRA/RS/RF/RUL012

NBFIRA

Non-Bank Financial Institutions Regulatory Authority

CONTROL TABLE

NBFIRA Non Bank Financial Institutions Regulatory Authority		**Document Name:** PFR12 - Pension and Provident Fund Benefit Payment Rules		**Unique Identification Number:** NBFIRA/RS/RF/RUL012
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1. PURPOSE

1.1 The purpose of these Rules is to provide the detailed procedures for the payment of pension benefits in accordance with the Retirement Funds Act,2022 and other relevant Financial Services laws including Rules or guidelines issued by the Non-Bank Financial Institutions Regulatory Authority (NBFIRA). These Rules are issued in terms of Section 64 of the Retirement Funds Act, 2022.

2. SCOPE

2.1 These Rules shall apply to all Retirement Funds licensed under the Act.

2.2 Certain provisions of these Rules also apply to life insurers licensed under the Insurance Industry Act 2015, as far as, they offer annuity policies to retiring members from Retirement Funds.

2.3 These Rules are not exhaustive and should be read in conjunction with the Act, the NBFIRA Act, other relevant Acts, Regulations and other Rules.

3. ASSOCIATED DOCUMENTS

Document	Reference
Retirement Funds Act and its Regulations	
Insurance Industry Act	
Fund Rules	
Other Rules	

4. DEFINITIONS

Terms	**Definition**
Act	means the Retirement Funds Act, 2022 or as amended from time to time.
Accrued or Total Benefit	means member's Fund credit including all interest earned (e.g. investment returns).
Annuitant	means an individual or pensioner who is entitled to collect the regular payments of a pension or an annuity investment from a recognised Retirement Fund or licensed life insurer.

Annuity Contract	means a written agreement between an insurance company or a Retirement Fund and an annuitant outlining each party's obligations in an annuity agreement.
Benefit Payable	means an amount commutable in terms of the Income Tax Superannuation Regulations and payable to a member upon resignation, dismissal, retrenchment, retirement or an amount payable from a member's preserved benefit.
Guarantee Period	means the initial period for which the life annuity is guaranteed to be paid to dependents when the annuitant dies during that specific period.
Hybrid Annuity	means a market-linked investment that provides a member, annuitant or beneficiary with a regular retirement income while at the same time aiming to grow their retirement savings and a portion is withdrawn from these savings each month or as predetermined to provide the member, annuitant or beneficiary with a regular withdrawal and a life annuity income, such life annuity income shall be purchased from a licensed life insurer.
Life Annuity	means a regular, inflation linked and guaranteed payment paid by a licensed life insurer as a retirement income, which may be monthly or regularly but at least once a year and for the lifetime of an annuitant or beneficiary.
Loan	means personal unsecured loan or credit card facility obtained in the name of a deferred member from a licensed financial institution within Botswana, excluding hire-purchase contracts.
Medical Expense	means any amount incurred in treatment of terminal ailment or chronic disease of a member, due on the date the member becomes a deferred member or after the date of retirement, prior to purchase of annuity.
Mortgage Loan	means a home loan obtained in respect of a principal residence held in the name of a member from a licensed financial institution within Botswana.
NBFIRA Act	Means the NBFIRA Act, 2023 or as amended from time to time.
Programmed Withdrawal	means a series of fixed or variable, periodic payments to the member which shall be based on publicly available annuity or drawdown rates, and which follow sound and prudent actuarial principles.
Retirement Date	means as defined in the Act.

Retiring Member	means a member of a Retirement Fund who has reached retirement age or retiring in terms of their term of service, in accordance with the Fund Rules and the Act.

5. ABBREVIATIONS

Abbreviation	Full Phrase
NBFIRA	Non-Bank Financial Institutions Regulatory Authority.

6. RESPONSIBILITY

All licensed Retirement Funds.

7. PFR12 - PENSION AND PROVIDENT FUND BENEFIT PAYMENT RULES

7.1 Commutation of Pension Benefit

7.1.1 The Fund Rules may provide for the commutation of a pension which is payable to a member upon retirement, retrenchment or resignation or to a former member, or to the surviving spouse, dependents or nominated beneficiaries of a member or former member following the death of the member or former member:

7.1.1.1 all of pension if the remaining pension after commutation of up to fifty (50) percent of accrued benefit, in case of retirement, up to one-third (1/3) in case of retrenchment, or up to one-quarter (1/4) in the case of resignation, is less than such amount as determined by the Income Tax Act, or

7.1.1.2 up to fifty (50) percent of accrued benefit, in the case of retirement, up to one-third (1/3) in the case of retrenchment, or up to one quarter in the case of resignation.

7.1.2 When a pensioner or annuitant dies within a period for which an annuity is guaranteed, and no joint pension is payable to a surviving spouse or dependents, the Retirement Fund or life insurer shall compute the annuity payable for the balance of the guaranteed period and pay it as a lump sum to the beneficiaries, in terms of Section 51 of the Act.

7.2 Board of Trustees Discretion In Excess Benefits Not In Fund Rules

7.2.1 The Fund Rules shall empower the Board of Trustees to exercise discretion in determining the amount of any benefit where the:

(a) Board of Trustees, with the consent of the employer and ***the Regulatory Authority***, may increase any benefit payable in terms of the Fund Rules, after enhancement to any minimum benefit that may be determined:

(b) Provided that the cost of such increase in benefit payable is borne by the employer or by the credit balance in a reserve account established for such purpose;

(c) Board of Trustees shall apportion any lump sum benefit payable in terms of the Fund Rules on the death of a member including a pensioner amongst the member's dependents and nominated beneficiaries in terms of Section 51 of the Act and Regulation 2 of the Income Tax (Superannuation Funds) Regulations;

(d) deceased member has left surviving dependent children, the Fund Rules shall provide for a regular payment of a pension to the surviving dependent children, in accordance with Section 51 (3) of the Act.

(e) the Fund Rules do not specify how the pension may be distributed amongst the children, the Board of Trustees shall apportion the pension between the surviving dependent children; and

(f) the Fund Rules specify that the amount of the benefit shall be determined subject to actuarial guidance.

7.3 Deductions From Pension Benefits

7.3.1 In accordance with Section 52 (1) (c), the amount deductible from a benefit payable resulting from a loan or credit card facility default shall be, the amount due preceding the member becoming a deferred member. Default amount shall mean the total amount due and payable at the time of request, including all associated fees. The amount so deducted shall be paid directly to the financial institution.

7.3.2 The Board of Trustees shall consider and deduct from a member's benefit payable an amount due on repayment of a mortgage loan of a member on the date the member retires on medical grounds or the amount due from the date the membership is deferred.

7.3.3 In case of a deferred member the provisions of Section 52 (1) (d) (ii) and of Section 52 (1) (d) (ii) (ii) of the Act shall apply.

7.3.4 The commutable amount due to the retiring member on medical grounds in terms of the Income Tax Superannuation Funds Regulations shall be the amount used for the mortgage loan repayment required for the principal residence, however, any additional payment required for such mortgage loan may be deducted in accordance with Section 52 (1) (d) (ii) (i) (aa) of the Act, prior to the purchase of an annuity for the member.

7.3.5 The Board of Trustees shall ensure the deferred member requesting such mortgage repayment has never made that request before, including under Section 40 and Regulation 35 of the repealed Retirement Funds Act (2014) and Retirement Funds Regulations (2016) respectively.

7.3.6 The Board of Trustees shall consider among others as minimum requirements for proof of unemployment of a deferred member:

(a) Unemployment Period;
(b) Employment History;
(c) Affidavits;
(d) Bank Statements; and
(e) Other member-owned assets, for example business income of the member and where applicable tax enquiries or tax clearance.

7.3.7 Deductions shall only be made once and as a last resort either, for mortgage loan or medical expenses for terminal ailment-chronic disease. Medical expenses shall be limited to fifty (50) percent of a member's total benefits as stated in Section 52 (1) (h) of the Act.

7.3.8 The medical expenses shall be limited to fifty (50) percent of a member's total accrued benefit at the date, at which the member becomes a deferred member.

7.3.9 As per Section 52 (2) of the Act, the Board of Trustees shall consider that the exception is retirement on medical ground, stipulated under Section 52 (1) (d) (i) of the Act.

7.3.10 The Board of Trustees shall in addition to other deductions stipulated in Section 52 of the Act, require the member as a last resort, to choose only one option for financial assistance among mortgage loan, medical expenses or deductions in terms of Section 52 (1) (e) of the Act. This part shall be read together with Section 52 (1) (d) (ii) (ee) of the Act.

7.4 Early Withdrawal of Pension Benefits

7.4.1 Where a member withdraws from a Retirement Fund in accordance with the Act and the Fund Rules, the Retirement Fund shall pay out the benefits subject to tax and any allowable deductions in terms of Section

52 of the Act to which that member is entitled, within a period of one (1) month from the date all relevant information is available including tax clearance and the benefit amount became payable.

7.4.2 If a Retirement Fund, subject to receipt of all relevant information from a member, delays the payment of a benefit as contemplated in these Rules, the Retirement Fund shall be liable to late payment interest on the amount payable during that period and such interest shall be paid in addition to the benefits payable in respect of the member's withdrawal benefit.

7.5 Purchase of Annuity

7.5.1 A member of a Retirement Fund qualifies to retire upon reaching normal age of retirement, early retirement, ill health, disability as defined in the Fund Rules and in terms of the Act.

7.5.2 Upon retirement, a member of a Retirement Fund is mandated to purchase a pension or an annuity, either from a Retirement Fund recognised to provide a life annuity or a life insurer licensed in terms of the Insurance Industry Act, 2015.

7.5.3 Such a pension provided or annuity purchased shall be payable for a lifetime or in the case of a hybrid annuity, a portion shall be used to purchase a life annuity upon retirement.

7.5.4 Where an annuity has been outsourced through the purchase of an annuity policy on behalf of a member by a Retirement Fund, such purchase shall transfer all obligations from the Retirement Fund in respect of the retiring member to the life insurer and the Retirement Fund shall have no further obligations in respect of the retiring member.

7.5.5 A benefit payable upon retirement, including an annuity or pension shall be availed to a member in one of the following ways:

7.5.5.1 A cash lump sum withdrawal commutation of up to half of the accrued benefit and the remaining pension benefit shall be used to purchase a life annuity or a hybrid annuity provided that the amount left after the cash lump sum withdrawal shall be sufficient to procure at least a minimum pension or annuity, as prescribed in the Income Tax Superannuation Funds Regulations.

7.5.5.2 A member may exercise a choice to purchase a hybrid annuity and withdraw a predetermined income per annum at a draw down rate of between two (2) percent to twelve (12) percent of the outstanding balance and as may be prescribed by ***the Regulatory Authority*** from time to time.

7.5.5.3 Wherein a member opts to purchase a life annuity and waive cash lump sum withdrawal or commutation, such regular payment amounts thereafter, shall be tax free up to an amount equivalent to fifty (50) percent of the initial Fund Credit.

7.5.5.4 Wherein a member opts to purchase a hybrid annuity and waives cash lump sum withdrawal or commutation, the total of the regular payments of the life annuity combined with the programmed withdrawals will be tax free up to an accumulated amount equal to fifty (50) percent of the original Fund Credit.

7.5.6 In a hybrid annuity option, a programmed withdrawal shall be combined with a guaranteed regular or a deferred payment payable as a life annuity and wherein the balance of the pension benefit is secured to purchase a life annuity at retirement, of at least P20,000 per annum or such amount to be determined by the relevant legislation from time to time.

7.5.7 The following minimum information shall be provided in the annuity contract:

(a) eligibility and full product description;
(b) name of the proposed annuitant and full bio data;
(c) single premium to be paid or accrued benefit;
(d) regular annuity or pension payment to be made;
(e) waiting period or grace period;
(f) guarantee period for life annuity and draw - down rates in case of a hybrid annuity option;
(g) expected commencement date; and
(h) fees and expenses, including commissions payable, upfront fees.

7.6 Cancellation and Transferability of Annuity

7.6.1 Where a member has purchased a life annuity, the member shall not be allowed to change to hybrid annuity option, nor transfer to another life annuity provider after twenty – one (21) days and once the agreed regular payment has commenced.

7.6.2 Where a member has purchased a hybrid annuity option the member shall be allowed to cancel and transfer to another annuity provider at least twenty - one (21) days after the purchase date or at an anniversary of such an option, at the request by the annuitant or pensioner, limited to three (3) times.

7.6.3 A member may cancel an annuity contract within twenty-one (21) days cooling-period, following the signing of the contract. The Retirement

Fund or life insurer shall transfer the money to another Retirement Fund recognised to provide a pension or another licensed life insurer within seven (7) days following the cancellation.

7.7 Guarantee Period on Life Annuity

7.7.1 A guarantee period shall not be less than five (5) years for life annuity and a life annuity purchased under a hybrid annuity option.

7.8 Death of A Pensioner or Annuitant and Proof of Existence

7.8.1 Where a pensioner or an annuitant dies within the guarantee period, the surrender value of the remaining balance shall be payable to the beneficiaries for the remaining period of the guarantee period. Such payments shall be subject to the prevailing laws governing the payment of death benefits.

7.8.2 The Retirement Fund or life insurer shall ensure that the pensioner or annuitant submit a proof of existence on an annual basis, confirming that the pensioner or annuitant is still alive as at that date.

7.9 Disclosures To Prospective Pensioner or Annuitant

7.9.1 A Retirement Fund recognised to provide a pension is required to have a clear annuity strategy within its business strategy. If the Fund Rules allow for a member to choose an annuity or pension, it must also have a default annuity strategy.

7.9.2 The default annuity strategy can either be an in-fund if recognised for such or out of fund. It can also include a hybrid annuity option. The default will be a "soft default", which means that a member needs to be given the option beforehand as to which type of annuity the member would prefer, that is, members "opt-in" instead of "opting out".

7.9.3 The default annuity strategy must be appropriate and suitable for the specific classes of members to be enrolled.

7.9.4 Where the annuity is a hybrid annuity, the member shall be regularly or as stipulated in the annuity contract, informed of the objective, asset class composition and performance of the annuity.

7.9.5 The Board of Trustees or Financial Intermediaries shall ensure that the fees and charges are reasonable and competitive, and a prospective pensioner or annuitant must be informed of all the fees and charges and the impact on their benefits.

7.9.6 A retiring member shall be given access to retirement benefits counselling at least twelve (12) months before their retirement date. However, a member shall have a right to pre-retirement counselling sessions at least five (5) years before retirement date.

7.9.7 Specifically, a member applying for an annuity product shall, at or before the time of application, be given the disclosure document describing the annuity product, and including the following minimum information:

(a) the Retirement Fund or life insurer's name, physical address, website address and telephone number;

(b) all types of annuity products available from at least three (3) annuity providers, clearly explaining the difference and;

(c) a description of the contract and its benefits, emphasising its long-term nature, including examples where appropriate:

i. periodic income options based on different guarantee options;

ii. impact of programmed withdrawals on the future value of the hybrid annuity option and;

iii. the disclosure materials and definitions used shall be written in a language expected to be readily understood by the member to whom they are intended and directed towards.

7.10 Payment of Pension or Annuity

7.10.1 All annuity payments shall be made not later than the last working day of the month to which they relate to. The payment date shall be clearly indicated in the annuity contract.

7.10.2 A Retirement Fund or life insurer shall provide a payment slip or electronic notification to pensioners or annuitants at least three (3) days before the payment date and any documentation required for tax purpose, where applicable.

7.10.3 Where applicable, a Retirement Fund or a life insurer shall provide a pensioner or annuitant with benefit statement or accrued balance statement, on an annual basis.

7.10.4 A pension or annuity shall be payable:

(a) for the lifetime of the beneficiary if the beneficiary is the member, or

(b) for the lifetime of the survivor of the member, if the pension is a joint-life pension, or

(c) as a lump sum to beneficiaries for the remaining guarantee period.

7.10.5 A pension shall not be payable to a child until he or she attains the age of eighteen (18) years unless the pension benefit is distributed in accordance with Section 51 of the Act or annuity policy nomination form.

7.11 Payment of Provident Fund Benefits

7.11.1 Upon reaching a retirement age of at least fifty-five (55) years in accordance with the Income Tax (Approved Provident Fund) Regulations or ill health or upon completing a fixed period of service of at least five (5) years, a member shall receive their entire benefit as a cash lumpsum payment.

7.11.2 Where a member in Rule 7.11.1 does not complete a fixed period of service of at least five (5) years, they shall receive their entire benefit as a cash lumpsum payment upon reaching a retirement age of at least fifty-five (55) years or on the date the fixed period of service was to end, whichever occurs first.

7.12 Pension Benefits Related to Member Disability

7.12.1 The Fund Rules may provide that a member be permitted to retire before attaining retirement age, if satisfactory medical evidence is submitted to the Retirement Fund showing that he or she is permanently incapable of performing duties under his or her normal gainful employment for which he or she is reasonably suited by education training or experience:

7.12.1.1 Provided that an independent medical practitioner has been appointed and paid for by the Retirement Fund or the Employer with the consent of the member;

7.12.1.2 Provided the amount paid from the member's benefit shall be limited to one hundred (100) percent of the member's medical bill at the time of the deduction.

7.12.1.3 Provided that the Board of Trustees make direct payment to the medical facility; and

7.12.1.4 In addition, there shall be disclosure in the Retirement Fund's Annual Audited Financial Statements of the number of members and amounts assigned under these Rules for medical treatment.

7.12.2 The Fund Rules may provide that a member receive an income during a period within which he or she is temporarily incapable of performing duties under his or her normal gainful employment or any similar employment or any other occupation for which he or she is reasonably suited by education training or experience, such income to cease on the earliest of recovery, death or attainment of normal retirement age provided that such income benefit is fully insured.

7.12.3 While in receipt of this income, the member may continue to accrue retirement benefits in the Retirement Fund.

7.13 Disposition of Lump Sum Benefits Upon Death of Member

7.13.1 A Retirement Fund shall require every member to fill out a death benefit nomination form detailing the nominated beneficiaries in the event of the death of the member, when the member's dependents change, or when the member changes his or her desired distribution amongst dependents.

7.13.2 On an annual basis, the Retirement Fund shall request, confirmation from a member that the submitted information has not changed.

7.13.3 Where a member fails to update the beneficiary nomination form as required above, the latest beneficiary nomination form may be used in the event of the death of a member.

7.13.4 The member shall identify, on the beneficiary nomination form, each dependent and any desired beneficiaries who are not dependents whom the member wishes to receive a proportion of any lump sum benefit payable and shall state what proportion of any lump sum death benefit should be awarded to each dependent or beneficiary, and the member may give reasons as to why that distribution is his or her preferred distribution.

7.13.5 If the Board of Trustees is satisfied, subject to an investigation that there are no dependents other than those stated on the most recent beneficiary nomination form and that the member's desired distribution amongst beneficiaries is reasonable, the Board of Trustees may accept the direction given by the beneficiary nomination form.

7.13.6 If, prior to distribution, the Board of Trustees becomes aware of any minor dependents that were not stated on the deceased member's most recent beneficiary nomination form, or the Board of Trustees considers the member's desired distribution amongst minor beneficiaries to be unreasonable, the Board of Trustees shall in its discretion in exceptional circumstances, distribute the lump sum amongst the member's dependents and nominated beneficiaries in such proportion as the Board of Trustees determines to be reasonable.

7.13.7 In distributing such death benefits, the Board of Trustees shall consider:

(a) the degree of dependency;

(b) the age of the dependent or beneficiary;

(c) the likely duration of dependency;

(d) the relationship to the deceased; and

(e) information provided in the member's beneficiary nomination form.

7.13.7.1 In addition, in respect to distributing such death benefits, the Board of Trustees may consider:

(a) any distribution made by the deceased member in his or her will; and

(b) any nominations made in life insurance policies.

7.13.8 The investigation conducted prior to distribution of a member's death benefit shall be conducted within six (6) months after the death of a member, despite the presence of a beneficiary nomination form. The Retirement Fund is required to finalise the payment of the death benefits within a period of twelve (12) months after the death of a member, in accordance with Section 51 of the Act.

7.14 Unclaimed Pension Benefits

7.14.1 Any unclaimed benefit shall be identified as such, a member, beneficiaries or nominees of unclaimed benefits shall be traced as per the Retirement Fund's tracing process.

7.14.2 The unclaimed benefits shall be reported to ***the Regulatory Authority*** on an annual basis within the Audited Annual Financial Statements, in accordance with Section 53 (3) and until such time within forty-eight (48) months that the unclaimed benefits shall be paid out to a Beneficiary or Preservation Fund, licensed in terms of the Act or as may be prescribed by law or directed by ***the Regulatory Authority***.

7.14.3 The Board of Trustees may pay the unclaimed benefits to a member or beneficiary if that person produces sufficient evidence to the satisfaction of the Board of Trustees about his or her right to such benefits.

7.15 Miscellaneous Provisions Relating to Pension Benefits

7.15.1 The Retirement Fund shall formulate and adopt a benefits payable procedure which shall cover the steps and timelines to be undertaken for:

(a) payment of benefits;

(b) deduction from benefits;

(c) allocation and distribution of death benefits; and

(d) a complaint raised by a member or beneficiary about benefit payments.

7.16 Non-Compliance With These Rules

(a) Non-compliance with these Rules will result in ***the Regulatory Authority*** imposing civil penalties on the non-complying persons as per Section 107 of the NBFIRA Act, 2023.

8. RECORDS

Reference Number	**Record (Description of records)**	**Location / Holder**	**Retention Period**	**Justification**
	Benefit Payments Manuals and Procedures	Retirement Fund File/Procurement & Administration	Preserve Permanently	Efficient Payment and Distribution of Pension Benefits
	Onsite Report/Offsite Analysis	Retirement Fund File/Procurement & Administration	Preserve Permanently	Monitoring