Botswana

Exchange rate: USD 1.00 equals 4.35 pula (BWP).

Regulatory Framework

1995: Income Tax Act; regulates the taxation of contributions, investment income, and benefits.

1987: Pension and Provident Funds Act; regulates the establishment, registration, and operation of pension and provident funds.

Plan Profile

Plan sponsors

Single employers may, on a voluntary basis, establish a complementary occupational pension plan for their employees.

Complementary occupational pension plans are usually established by medium-sized and large employers. If a trade union exists, the employer may involve the trade union in the establishment of the plan.

Types of plans

Registered pension funds: Pension plans may be defined benefit or defined contribution and must be implemented through pension funds.

Pension funds are independent legal entities that must be registered with the Registrar of Pension and Provident Funds. A pension fund may be established and operated without being at least provisionally registered with the Registrar.

In order to register a pension fund, the Registrar must be provided with:

- An application for registration;
- Two sets of the fund rules;
- The registration fee.

The Registrar has considerable discretion as to whether to register a fund or not.

Pension funds must also obtain approval from the Commissioner of Taxes.

Registered provident funds: Provident plans are defined contribution and must be implemented through provident funds.

Most regulations that apply to pension funds equally apply to provident funds. Whereas registered provident funds are uncommon in Botswana, no further information is provided on provident funds in the following sections.

All plans: Participation in a plan is voluntary for covered employees.

Institutional Framework

Registered pension funds: Registered pension funds must be independent legal entities separate from the sponsoring employer.

Each registered fund must have a registered office in Botswana, a principal officer who must be a resident of Botswana, and a management committee. There are no legal requirements for plan members to be represented on the management committee. The membership and responsibilities of the management committee must be defined in the fund rules.

The management committee may manage the contribution and benefit administration in-house (self-administered fund) or contract the management to an external administrator. There are no legal rules, and no registration or licensing requirements as to who may be an external administrator.

Whereas no trust law exists in Botswana, any officer of a pension fund has fiduciary obligations and civil liabilities similar to a trustee under trust law.

Funds implementing defined benefits plans must appoint an actuary and an auditor. Funds implementing defined contribution plans need only appoint an auditor.

Coverage

Registered pension funds: Private-sector employees and employees of parastatal institutions.

There are no legal rules concerning discrimination. Plans are usually established for permanent employees at middle and senior levels. While discrimination based on gender exists, it is a decreasing practice.

Government employees are not covered by a pension plan established under the terms of the Pension and Provident Funds Act but benefit either from an unfunded defined benefit plan financed out of government revenues or from a defined contribution plan implemented through the Botswana Public Officers Pension Fund. The latter was established on April 1, 2001, and government employees may choose between the two plans. No further information about these plans is provided in the following sections.

Financing / Investment

Sources of funds

Registered pension funds: Contributions depend on plan rules and are, for tax reasons, usually limited to a maximum of 20% of salary.

Under an average plan, total employer and employee contributions are around 14% of salary.

Employee contributions

Registered pension funds: Pension plans are contributory with employees usually contributing less than one-half of total contributions.

Under an average plan, the employee contribution is around 6% of salary.

There is no maximum salary for contribution purposes.

Employer contributions

Registered pension funds: Employers usually contribute more than one-half of total contributions.

Under an average plan, employer contributions range from 8% to 10% of salary.

There is no maximum salary for contribution purposes.

Other sources of funds

Registered pension funds: None.

Methods of financing

Registered pension funds: Funded.

Asset management

Registered pension funds: The assets may be managed by the management committee or the external administrator or be contracted to specialized asset managers. There are no legal rules concerning who can be an asset manager and there are no registration or licensing requirements for asset managers.

General restrictions on the investment of assets may at any time be defined by the Minister of Finance and Development Planning. If the Minister imposes such restrictions, funds have 3 years to adjust their investment practice accordingly.

Pension funds may invest in bonds, equities, and real estate.

Of total assets invested:

- A maximum of 70% may be abroad (provided that prior approval has been obtained from the Registrar, see below);
- A maximum of 5% may be in the business of the sponsoring employer or its associate companies (self-investment) provided that such investment does not endanger the rights of members (a higher limit may be authorized for certain funds by the Registrar).

Pension funds must obtain prior approval from the Registrar in order to invest assets abroad. This requirement is currently not strictly enforced.

Funds may grant housing loans to members and may borrow up to a maximum of 25% of the market value of their assets.

Benefit provisions

Acquisition and maintenance of rights

Waiting period

Registered pension funds: No legal rules.

The waiting period depends on plan rules. Confirmation of permanent employment usually translates into plan membership.

Vesting rules

Registered pension funds: No legal rules.

Vesting depends on plan rules and vesting scales vary. Full vesting may in extreme cases only occur after 20 years of plan membership.

Preservation, portability, transferability

Registered pension funds: Upon termination of employment before retirement, a part of the accrued rights can be withdrawn as a lump sum while the remainder may either be preserved until retirement or transferred to the plan of the new employer provided that the rules of the former and the new fund permit such transfers.

The cash value of the member's rights must be calculated upon termination of employment before retirement. If this amounts to BWP 20,000 or more, the member may receive a lump sum of up to 25% of the value. If the cash value of the accrued rights is between BWP 10,000 and BWP 20,000, the member may receive a lump sum of up to BWP 5,000. The remainder must in each case be preserved until retirement. If the cash value is less than BWP 10,000, the full amount may be taken as a lump sum, preserved until retirement, or transferred to the fund of the new employer.

Preserved employee contributions must earn interest of at least 2% a year. There are no legal requirements for preserved employer contributions to earn interest or to be adjusted.

Retirement benefits

Benefit qualifying conditions

Registered pension funds: No legal rules.

The benefit qualifying conditions depend on plan rules. The retirement age is 60 under an average plan.

Early retirement is usually possible from age 55.

Benefit structure / formula

Registered pension funds: Defined benefit or defined contribution.

The benefit structure and formula are defined in the plan rules.

Plans are not integrated with social security.

Full commutation of pensions to a lump sum upon retirement is allowed where the annual pension amounts to less than BWP 5,000 a year. If the annual pension exceeds BWP 5,000, the beneficiary may upon retirement commute up to one-third of pension rights to a lump sum.

In the case of defined benefit plans pensions are provided by the fund while in the case of defined contribution plans retirees may be required to buy an annuity from an insurance company of their choice.

Funds may grant housing loans to members before the regular plan retirement age.

Benefit adjustment

Registered pension funds: No legal rules.

Benefit adjustments depend on plan rules. Pensions under defined benefit plans are adjusted at the discretion of the management committee based on the recommendation of the actuary appointed to the fund. The adjustment under defined contribution plans depends on the type of annuity chosen.

Survivors

Registered pension funds: Death benefits must be paid as a lump sum equal to a maximum of four times annual pensionable salary of the deceased. Within this limit, the benefits depend on plan rules.

In addition, plan rules may provide for regular pensions to be paid to eligible survivors.

The management committee has some discretion in allocating survivor benefits based on the level of dependency of different survivors.

Disability

Registered pension funds: No legal rules.

Disability benefits depend on plan rules. Disabled members are eligible for early retirement under an average plan.

Protection of Rights

Protection of Assets

Registered pension funds: Pension funds are independent legal entities that must keep assets completely separate from the sponsoring employer who may neither have access to the assets nor influence the investment decisions.

Financial and Technical Requirements / Reporting

Registered pension funds: Pension funds must annually submit the following documents to the Registrar of Pension and Provident Funds:

- Accounts and financial statements audited by an auditor whom every fund must appoint (within 6 months of the end of the financial year);
- An investment statement outlining the investment instruments in which assets are invested;
- Details of the membership.

Each pension fund implementing a defined benefit plan must appoint an actuary to carry out actuarial valuations of the fund at least once every 3 years. The actuarial statements must be submitted to the Registrar.

Whistleblowing

Registered pension funds: If employers fail to pay the contributions on time, the principal officer must report this matter to the Registrar (contributions must be paid within 21 days of the end of the calendar month for which they are due).

Standards for service providers

Registered pension funds: No legal rules.

Fees

Registered pension funds: No legal rules.

Winding up / Merger and acquisition

Registered pension funds: If a plan is wound up and the pension fund implementing the plan is dissolved, claims to the fund assets must be satisfied in the following descending order:

- Secured creditors;
- Contributing members and retirees;
- Other claimants.

Pension funds may merge and assets may be transferred from one fund to another, subject to approval by the Registrar who must ensure that the change is in the interest of all members and in compliance with the existing fund rules.

Bankruptcy: Insolvency Insurance / Compensation Fund

Registered pension funds: Pension funds must insure themselves by way of employer guarantee or an insurance policy against dishonesty and fraud on the part of any fund official. The principal officer must determine the level of guarantee or insurance required to adequately protect the rights of members.

Disclosure of information / Individual action

Registered pension funds: Pension funds must provide members with a copy of the fund rules and, upon request, with the financial statements of the fund.

Fund rules must contain procedures for settling disputes between members and the management committee. If either party is not satisfied with the outcome of such settlement procedure it may appeal first to the Registrar and then to the Minister of

Finance and Development Planning.

Other measures

Registered pension funds: Amendments to fund rules are subject to approval by the Registrar. In order to obtain approval for the amendments, the principal officer must provide the Registrar with a certificate stating that the rules have been amended in compliance with the rules themselves and explaining the reasons for the amendment. Where the amendment affects the financial position of the fund, a statement by the actuary or the auditor of the fund that certifies the fund's financial soundness after the amendment must also be submitted.

Tax Treatment

Taxation of employee contributions

Registered pension funds: Employee contributions are tax-deductible if the joint employee and employer contribution does not exceed 20% of salary (no ceiling on salary).

Taxation of employer contributions

Registered pension funds: Employer contributions are tax-deductible if the joint employee and employer contribution does not exceed 20% of salary (no ceiling on salary).

Taxation of investment income

Registered pension funds: Tax-exempt.

Taxation of benefits

Registered pension funds: Up to one-third of the pension may upon retirement be commuted to a tax-free lump sum if the annual pension exceeds BWP 5,000. Full commutation to a tax-free lump sum is allowed upon retirement in cases where the annual pension is less than BWP 5,000.

Pension benefits are taxed in the same way as salary.

Cash withdrawals upon termination of employment before retirement are fully taxable.

Regulatory and Supervisory Authorities

Registrar of Pension and Provident Funds: Registers and supervises pension and provident funds.

The Registrar may conduct any investigation with regard to the administration of a pension or provident fund.

The Registrar is part of the Ministry of Finance and Development Planning.

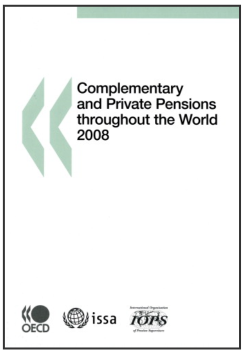
Ministry of Finance and Development Planning
Registrar of Pension and Provident Funds,
Private Bag 008,
Gaborone,
Botswana
Tel.: (+267) 3950 373
Fax: (+267) 3951 051
Internet: www.finance.gov.bw

Contents

Introduction

Country or Territory Profiles

Glossary



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