



BETWEEN THE TIDES

THE 2012 PENSION LAWYERS ASSOCIATION CONFERENCE

The Making of a Mandatory Pension Scheme under the Pension Act in Malawi

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Overview

- Brief History of Pension Regulation in Malawi
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 - Composition
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 - Payment of Benefits
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- Death benefits
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Brief History of Pension Regulation in Malawi

- Third Schedule of the Taxation Act 14 of 1998
- Directives by the Reserve Bank of Malawi
- Self-regulation
- Inadequate regulation
 - Lack of legal personality in the pension fund
 - Registration with tax authorities required but not designed to ensure compliance with minimum requirements
 - Pension not mandatory
 - Did not promote preservation of retirement benefits
 - Did not regulate payment of death benefits
 - Did not regulate investments of pension funds assets

Why Pension Reforms?

The Pension Act, 2011 and the Employment (Amendment) Act, 2010 were drafted concurrently to resolve two important problems, these were:

- The double burden on employers running voluntary pension funds who were required to pay both pensions and statutory severance benefits to their workers; and
- The widespread income insecurity (social protection risks) on retirement for the majority of Malawians.

National Pension Scheme

- Set up under section 6 of Pension Act
- Purpose is to ensure that every employee in Malawi receives pension and supplementary benefits on retirement
- The National Pension Scheme will comprise of
 - National pension fund; and
 - Private pension funds
- Every employer is compelled to ensure that every employee becomes a member of the National Pension Scheme.
- Membership in an occupational pension fund or national pension fund makes you a member of the national pension scheme.

Mandatory Pension

- Sec 9 requires that every employer must make provision for every employee to be a member of National Pension Scheme
- Penalties for failure to comply (Financial Services Act)
- Section 10 Exemptions
 - Authority on Minister to develop salary threshold for exemptions
 - Pension (Salary Threshold and Exemptions) Order 2011
 - > Exempts employers whose employees earn K10,000 (R400) or less a month from complying with sec 9 and 15.
 - > Exempts tenants, domestic workers, seasonal workers, expatriates in possession of temporary employment permit and member of parliament from complying with the Pension Act.
- Employers with five employees or more covered regardless of the salaries of his employees
- Employers who have existing pensions funds must ensure that employees continue to be member of the fund despite the salary threshold.
- Exempted employees are protected under the Employment Act.

When Are Benefits Payable?

1. Member reaches retirement age, which is 50
2. Member has retired on basis of years of service which is 20 years working for the same employer
3. Member is totally and permanently disabled
4. Member has left or about to leave Malawi permanently
5. Member has died
6. Member has left service of an employer, in which case benefit may only be transferred to another pension fund or
7. Member has been given permission by the Registrar to a withdrawal benefit.

Preservation Provision

- Sec 65 gives Registrar right to approve an application by the member, who has permanently left the services of an employer for reasons not related to the 1-5 above, for a withdrawal benefit.
- The Registrar may approve such application if:
 - Member has not been re-employed for a period of more than 6 months, and
 - Benefits payable are limited to member contributions plus any investments income from such contributions
- Payment of accumulated pensions benefits. (Section 78(j))
 - “all schemes may continue to exist provided that all rights by members of such a scheme to gain access to the benefits in the scheme in accordance with the rules of the scheme shall be retained in respect of benefits accumulated up to the date of entry into force of the Act”.

Mandatory Life Insurance

- Sec 15 mandates the employer to maintain a life insurance policy in favor of every employee
- Sec 15 and 72 also provides that proceeds of the life policy shall form part of member's death benefit and distributed in accordance with sec 70 of the Act
- Sec 85 provides that Estates Duty Act shall not apply to member entitlements of benefits in the fund.

Nomination Under sec 70

Beneficiary Nomination is binding on the fund provided that:

1. It must be addressed to the trustee
2. It must instruct payment of benefits to:
 - Widow or widower
 - Member's child
 - Member's close relations
(Close relations means a spouse, brother, sister, parent, child, child of the spouse, aunt, uncle, grandparent and the spouse of any of these.)
3. It must be in writing
4. It must be signed by the member
5. It must set out amounts or proportions to be paid out
6. It must be current (left to fund rules to define current).

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Nominations Under sec 70

- Amendment to nomination allowed as per fund rules
- A nomination shall be revoked by divorce or later marriage of the member
- Automatic revocation by divorce or later marriage.

Payment of Death benefits sec 71

- If there is a valid nomination, fund pays accordingly
- Sec 71(3) gives discretion to pay to financial dependants where no valid nomination exists
- Discretion to pay notwithstanding any other law
- If there is no valid nomination, the legal position reverts to what we have in South African under section 37C of the Pension Funds Act.

Concluding Remarks: Lessons for SA?

1. Future and present risk
2. Lessons from section 15
3. Lessons from section 65 of Pension Act
4. What happens to existing savings?
5. Potential lesson from sec 87(j) of Pension Act
6. Political will
7. Partnership between industry and higher academic institutions.