Statutory Instrument 162 of 2023.

[CAP 24:32

Pensions and Provident Funds (Compensation for Loss of Pre-2009 Value of Pension Benefits) Regulations, 2023

ARRANGEMENT OF SECTIONS

WHEREAS the President of the Republic of Zimbabwe constituted in 2015, a commission of inquiry in terms of Commission of Inquiry Act [*Chapter 10:07*] (hereinafter referred to as the "Justice Smith Commission of Inquiry") whose terms of reference where outlined in terms of Statutory Instrument 80 of 2015, as amended by Statutory Instrument 1 of 2016, and whose main purpose was to investigate the causes and extent of the loss of value of life insurance policies and pensions suffered by policyholders and pension scheme members during the period 1st January, 2000 to 28th February, 2009 (hereinafter defined as "investigative period");

AND WHEREAS Cabinet adopted the resulting report of the Justice Smith commission of inquiry (hereinafter referred to as the "Justice Smith report") in February 2018, with a particular view to help restore, to some extent, the value found by the Commission to have been lost by policyholders and pension scheme members during the investigative period;

AND WHEREAS the report recognises that full indemnification of the quantified loss of value of pension benefits over the investigative period is not practicable given that the losses were for the greater part fortuitous, nevertheless, it is right, fair, proper and desirable for those affected by the loss to receive some compensation from relevant pension funds and insurers, and from the State;

AND WHEREAS any compensation for the aforegoing purpose that is receivable directly or indirectly from the State (in these regulations referred to as "supplementary compensation") will be apportioned equitably between pension fund members as governed by these regulations and insurance policyholders to be governed by other regulations of a similar character to these ones:

NOW THEREFORE, the Minister of Finance, Economic Development and Investment Promotion has, in terms of section 62 of the Pensions and Provident Funds Act [*Chapter 24:32*] approved the following regulations made by the Insurance and Pensions Commission:—

Title, commencement and repeal

1.(1) These regulations may be cited as the Pensions and Provident Funds (Compensation for Loss of Pre-2009 Value of Pension Benefits) Regulations, 2023.

(2) These regulations shall come into force on the 1st October, 2023.

(3) These regulations shall be repealed when the Minister, in consultation with the Commission, is satisfied that the compensation exercise has been completed.

Interpretation

2. (1) In these regulations—

"2009 currency conversion" means the adoption as legal tender of the United States dollar pursuant to section 44A of the Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999) with effect from the 1st March, 2009;

"active pension fund member" or " active member" means a pension fund member who was keeping up his or her contributions in terms of the fund rules during the investigative period, and includes a pension fund member who in terms of those rules was on any contribution holiday for a period of time;

"active pensioner" means a person in receipt of pension benefits from a pension fund during the investigative period, and includes a person with an income drawdown arrangement;

"affected member" means any member or former member of a fund or insurer who suffered prejudice through the loss of value incurred during the investigative period of any pension product obtained by that member from that fund or insurer;

"alternative conversion rate", means a substitute for the average market portfolio implied rate for the investigative period on the basis of a fund`s specific investment portfolio over the investigative period;

"average market portfolio" means a notional bundle of investments inclusive of every type of asset available in the market for the investment over the investigative period, with each asset weighted in proportion to its total presence in the market;

"average market portfolio implied rate" means the implied conversion rate of currency values derived from the average market portfolio, as determined by reference to the Schedule;

"career average salary defined pension fund" means a fund offering a pension calculated on the basis of the average earnings of a member over his or her working life during which he or she contributed in terms of the fund rules during the investigative period;

"cohort" means a defined group of pension fund members sharing common characteristics;

"compensation exercise" means the exercise to compensate affected members by the means and to the extent prescribed by these regulations;

"compensation scheme" means a scheme by a fund or insurer to mitigate in accordance with these regulations the prejudice suffered by affected members of that fund or insurer;

"de-base" means the cancellation or removal of zeros in the Zimbabwe currency during the investigative period;

"deferred pensioner" means a member who is no longer eligible to make contributions to the fund on account of having left the employ of the participating employer, and whose benefits are preserved within the fund until the member attains the retirement age;

"fixed date" means the 1st October, 2023 (the date fixed by section 1(2) as the date of commencement of these regulations);

"fund" includes a fund administered by an insurer;

"fund administration business" means the provision of day-to-day administration and management services for a fund and the exercising of any power within the scope of powers exercisable by a fund administrator under the Act, including ensuring the timely payment of contributions and benefits, the availing of secretarial services, and the proffering of strategic advice on and the making of decisions about proper asset liability allocation;

"guaranteed fund" means a pooled investment vehicle or type of fund consisting of some or all of the assets of a pension fund (among other assets), that is established and administered by an insurer and offers nominal guarantees of a partial return on the principal amount of an initial investment and net returns at a minimum rate;

"income drawdown arrangement" means an arrangement whereby at the option of a pensioner the pensioner's pension accumulation is evaluated and transferred by the pension fund concerned to an insurer or an agreed third party under terms which enable the pensioner to draw down on the amount of his or her pension accumulation;

"insurer" means an insurer registered as a life insurer in terms of the Insurance Act [*Chapter 24:07*] which—

(a) provided fund administration business during the investigative period; or

(b) offered personal pension plans;

"investigative period" means the period between the 1st January, 2000, to the 28th February, 2009, during which significant loss of value was experienced by the pensions industry, which matter was made the subject of investigation by the Justice Smith Commission of Inquiry;

"liable fund or insurer" means a fund or insurer whose members or former members suffered prejudice through the loss of value of its pension products during the investigative period;

"paid-up status" in relation to a fund means a fund that, in the manner contemplated by its rules, has ceased to receive contributions from its members and (where applicable) from the employer, and exists only in virtue of having assets and liabilities under management whose value on the date it achieved paid-up status was established by actuarial valuation;

"pension product" is a generic term embracing all types of benefits offered by funds, including but not limited to pensions, pension annuities and income draw down arrangements;

"pseudo pension" means pension benefits received by a member who is past retirement age but is still working and earning;

"quarter" means a period of three months ending on the 31st March, 30th June, 30th September and 31st December in each year;

"supplementary compensation" means any compensation payable from the funds of the Commission and from sums appropriated by Parliament for the purpose that is additional to that paid under a compensation scheme;

"suspended pensioner" means a pensioner whose pension benefits are withheld by the pension fund pending proof that the pensioner is still alive, and includes any member with unclaimed benefits.

(2) Wherever in these regulations a levy is prescribed, which is calculated by reference to a percentage value of assets fixed by the last audited accounts of a fund or insurer, such levy so calculated shall be converted into the United States dollar equivalent using the exchange rate applicable on the 31st December, 2022, and then reconverted back to Zimbabwe dollars on the basis of the exchange rate of the Zimbabwe dollar for the United States dollar applicable on the 31st December, 2023.

Application

3. (1) These regulations shall apply to every—

(a) fund and every insurer that offered personal pension plans, which fund or insurer was in existence during the investigative period, that is to say any fund that—

(i) during the investigative period, was registered as such under the repealed Pension and Provident Funds Act [*Chapter 24:09*] and was receiving contributions or had achieved paid up status; and

(ii) continues to be registered under the Act or is registered as a successor to a fund referred to in subparagraph (i);

and

(b) every member or former member of a fund or insurer referred to in paragraph (a) that in terms of these regulations is entitled to compensation, that is to say every—

(i) active member;

(ii) active pensioner;

(iii) deferred pensioner;

(iv) suspended pensioner;

(v) beneficiary;

(vi) members or beneficiaries who exited the fund through death or other means contemplated by the rules of the fund:

Provided that where the fund was a defined benefit fund, only members who exited during the investigative period shall be compensated.

(2) The regulations do not apply to pension products paid in a currency other than the official currency of Zimbabwe during the investigative period.

Objects of regulations

4. (1) The primary objects of these regulations are—

(a) to recognise the loss of value of pension products suffered during the investigative period by ensuring that the affected members are compensated to the fullest extent practicable;

(b) to provide the criteria by which all funds and insurers compensating affected members may assess and quantify the prejudice suffered by those members.

Submission of compensation schemes by funds and insurers

5. (1) Each liable fund or insurer shall submit its proposed compensation scheme prepared in accordance with these regulations to the Commission within ninety (90) days from the fixed date, for which purpose, without derogating from other requirements of these regulations, it shall—

(a) appoint an actuary to carry out the required computations:

Provided that no insurer shall appoint an internal actuary for this purpose without prior written approval of the Commission;

(b) calculate the prejudice to each of its affected policyholders or fund members in accordance with section 6 or 7 or both, as may be applicable; and

(c) in the case of an administrator of any fund that had been in existence during the investigative period but had been dissolved before the fixed day, submit to the Commission information relating to cohorts that should be compensated under these Regulations for each dissolved fund.

(2) If any liable fund or insurer fails to comply with subsection (1), the Commission shall institute an investigation into the affairs of the fund or insurer in terms of section 39 of the Act unless, no later than 30 days from the date when the Commission directs it by written notice to do so, the liable fund insurer submits to the Commission its proposed compensation scheme as required by subsection (1).

(3) Additionally, whether or not the Commission institutes an investigation, a fund or insurer that fails to comply with a direction

of the Commission under subsection (2), shall be guilty of an offence and liable, together with each member of its board or governing body, to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) Every compensation scheme shall at a minimum include—

(a) in the case of a life insurer, an asset separation report covering the investigative period, which report shall include—

(i) a clear split of the policyholder and shareholder funds for each year of the investigative period; and

(ii) a clear split of insurance and pensions assets; and

(iii) a clear split of assets between different product lines; and

(iv) a list of assets backing the policyholder and shareholder accounts during the investigative period;

(b) an actuarial report clearly showing the cohorts of members to be compensated, the compensation amount per cohort, methodology, any assumptions made and the proposed sources of funding of the prejudice suffered by affected members; and

(c) a detailed schedule of affected members showing their respective compensation pay outs; and

(d) a resolution signed by the board of a fund or insurer adopting the compensation scheme; and

(e) the method (which must comply with section (10) by which affected members will be informed of the compensation scheme and of manner and extent of their compensation; and

(f) such documents as attachments to the scheme as the Commission may reasonably require by notice in writing to the fund or insurer concerned.

(5) If any liable fund or insurer fails to comply with subsection (4), the Commission may in writing direct it to comply in the manner and within the time (not less than seven days or more than fourteen days) specified by the Commission.

(6) The Commission shall consider and assess every compensation scheme within 30 days of receiving it, and—

(a) in doing so shall have regard to the need to—

(i) protect the rights, benefits and interests of fund members and of any beneficiaries under funds; and

(ii) ensure fairness among different categories of policyholders and cohorts of pension fund members; and

(iii) maintain the solvency of funds; and

(iv) ensure that the compensation scheme otherwise complies with these regulations;

(b) having considered and assessed a compensation scheme, within that time reject (giving reasons therefor), or approve, whether conditionally or unconditionally, the scheme.

(7) If the Commission rejects a compensation scheme, the fund or insurer concerned shall resubmit a revised compensation scheme within fourteen days of being notified by the Commission of the rejection.

(8) If any liable fund or insurer liable to affected members fails to comply with subsection (7), the Commission may in writing direct it to comply in the manner and within the time (not less seven days or more than fourteen days) specified by the Commission.

(9) A fund or insurer shall commence compensation to its affected members in accordance with an approved compensation scheme no later than thirty days after approval of the compensation scheme unless, before the expiry of that period, the fund or insurer seeks an extension of the period by not more than sixty days, and the Commission on good cause shown extends such period.

(10) Every fund or insurer shall submit (no later than thirty days after the end of the quarter concerned) to the Commission a quarterly compensation payment update specifying—

(a) payments of compensation made during the quarter, attaching a schedule of payees and amounts paid out to each; and

(b) outstanding payments of compensation as at the end of the quarter; and

(c) anything which the insurer or fund wishes to bring to the Commission's attention as being relevant to the implementation of the compensation scheme; and

(d) any other matter as may be directed or prescribed by the Commission from time to time.

(11) If the Commission notices any deficiency in a quarterly compensation payment update or wishes to query anything in it, the Commission may in writing direct the fund or insurer concerned to remedy the deficiency to its satisfaction or answer the query raised by it within the time (not less than seven days or more that fourteen days) specified by the Commission.

(12) An insurer or fund that fails to comply with a direction of the Commission given under subsection (5), (8) or (11), and every member of the board of the insurer of fund concerned, shall be guilty of an offence and liable to fine of level 4 or, in default of payment, to imprisonment for a period of not more than six months.

Quantification of prejudice to fund members of defined benefit funds

6. (1) For the purpose of determining the amounts to be compensated to defined benefit pension members, funds or insurers that provided defined benefit pension schemes in terms of registered rules over the investigative period shall firstly determine whether there was any prejudice to fund members by considering the following—

(a) whether the member and employer honoured the contribution payments specified in the rules of the fund (being rules that were applicable during the investigative period); and

(b) whether the fund honoured the retirement benefits in terms of the defined benefit formulation stipulated in the rules of the fund (which rules were applicable during the investigative period).

(2) For the purpose of quantifying prejudice to fund members of final salary defined benefit funds, the amount determined under paragraph (b) below shall be deducted from the amount determined under paragraph (a)—

(a) the final salary of members who exited the fund during the investigative period shall be determined by reference to the United States dollar salaries of active members of that fund of equivalent grades earned as at the 31st of December, 2014; and

(b) the member's Zimbabwe dollar benefit paid on exit shall be converted to United States dollars using the official exchange rate at the date of exit.

(3) The amount of the prejudice calculated under subsection (2) shall be adjusted for the time value of money at not less than the rate of 3% compound interest *per annum* up to the date of compensation.

(4) Subsections (2) and (3) shall be applied with necessary changes to career average salary defined benefit funds.

Quantification of the prejudice for insurers and Defined Contribution (DC) pension funds

7. (1) Funds or insurers—

(a) that provided defined contribution pension products over the investigative period shall no later than 30 days after the fixed date assess whether there was any prejudice to fund members by considering whether the member and employer honoured the contribution payments specified in the registered rules of the fund, which rules were applicable during the investigative period;

(b) which, during the investigative period, converted from providing their members Defined Benefit pension products to providing Defined Contribution pension products shall no later than 30 days after the fixed date—

(i) ascertain whether the funding level at the date of conversion would have enabled the fund to pay its members their Defined Benefit, that is to say, whether it had an actuarial deficit or surplus at that date, and if there was a deficit—

A. convert it into the USD equivalent by dividing it by the annual average market portfolio implied rate:

Provided that where a fund intends to use an alternative conversion rate, the fund shall, before the submission of its compensation scheme in terms of section 5, seek permission from the Commission to do so, and if the Commission refuses such permission, the fund shall use the appropriate annual average market portfolio implied rate;

and

B. having made the conversion, adjust the converted amount for the time value of money at not less than the rate of 3 *per centum* compound interest *per annum* up to the date of computation;

and

(ii) to notify the employer in writing to fund that deficit (for which purposes a period of 30 days shall be allowed to the employer to fund the deficit from the date when it was notified by the fund or insurer to do so); and

(iii) calculate the value of each member's accrued benefit entitlement up to the date of conversion by reference to the USD salaries of active members of the fund of equivalent grades as at the 31st December, 2011; and

(iv) having made the calculation under subparagraph (iii), treat the member's Defined Benefit entitlements as the initial capital injection for the new Defined Contribution fund.

(2) In the event that the assessment under subsection (1) shows that an employer is in contribution arrears—

(a) the employer or the legal successor to the employer shall pay the arrears to the fund within one month of the date when the pension fund notifies the employer in writing of the same, which notification must itself be made no later than seven days from assessment;

(b) if an employer having been notified under paragraph (a) fails timeously to make good of the contribution arrears, the Board of Fund shall no later than seven days after the last day on which the employer ought to have made good those arrears make a report to the Commission in accordance with section 16(5) of the Act.

(3) The contribution arrears specified in subsection (2) shall be converted using the appropriate annual average market portfolio implied rate and adjusted for time value of money at not less than the rate of 3 *per centum* compound interest *per annum* up to the date of payment of contribution arrears:

Provided that where a fund intends to use an alternative conversion rate, the fund shall, before the submission of its compensation scheme in terms of section 5, seek permission from the Commission to do so, and if the Commission refuses such permission, the fund shall use the appropriate annual average market portfolio implied rate.

(4) Where the employer is no longer in existence in that capacity, that is to say, has in the case of a—

(a) company, has been dissolved without its assets and liabilities being assumed by another employer, or been merged with another company, whether the members concerned are still employees of that employer or not; or

(b) partnership, has been terminated by the partners distributing its assets and liabilities among themselves, and none of the partners is living and resident in Zimbabwe; or

(c) sole trader or individual employer, has ceased business whether voluntarily or by virtue of insolvency or otherwise, and is no longer living in Zimbabwe;

the Board of the Fund, or in the absence of a Board of the Fund, the Fund Administrator, is required to notify the Commission in writing of that fact no later than 30 days after the fixed date.

(4) The steps below shall be followed in order to quantify the prejudice suffered by a defined contribution fund member during the investigative period, namely—

(a) the member's annual Zimbabwean dollar net total contributions (starting from an opening balance as of 1st January, 2000) or conversion date in the case of Defined Benefit which converted to a Defined Contribution during the investigative period shall be summed up, together with the employer contribution, and additional voluntary contributions, and the total so obtained shall be converted into United States dollars by dividing it by the average market portfolio implied rate:

Provided that where a fund intends to use an alternative conversion rate, the fund shall, before the submission of its compensation scheme in terms of section 5, seek permission from the Commission to do so, and if the Commission refuses such permission, the fund shall use the appropriate annual average market portfolio implied rate;

(b) the United States dollar sums obtained under paragraph (a) for each year of contribution shall be added up and adjusted for the time value of money at the appropriate interest rate based on the fund's experience subject to a minimum annual rate of 3 *per centum* compound interest up to the 28th of February, 2009, which adjusted total shall represent the members accumulation as at that date;

(c) the members' asset share shall be computed as the members total accumulation as at the 31st of December 2014, expressed as a percentage of the total accumulation of all members of the fund as at that date, net of new assets acquired after the 2009 currency conversion, but plus the fair value of assets disposed that existed on the date of conversion;

(d) the members' asset share in United States dollars as calculated in paragraph (c) less the accumulated credit, net of contributions and investment return after the 2009 currency conversion, or cumulative benefit paid in United States Dollars, whichever is applicable, constitutes the prejudice caused to that member;

(e) the prejudice (being the amount calculated under paragraph (d) subtracted from the amount calculated under paragraph (b)) to be compensated shall be adjusted for the time value of money from the 31st of December, 2014, to the compensation date at the minimum annual rate of three *per centum* compound interest.

(5) To avoid doubt, it is reiterated that subsections (2) to (5) apply to every Defined Contribution fund or scheme, whether it was such from the start or had converted from a Defined benefit fund or scheme within the investigative period.

Funding of compensation where asset separation obligation not complied with

8. (1) In this section—

"class A insurer" means an insurer referred to in subsection (2)(a);

"class B insurer" means an insurer referred to in subsection (2)(b).

(2) During the 90-day period within which funds and insurers are required to comply with section 5, 6 or 7, every insurer complying with any of those sections must, in the compensation scheme submitted

by them in terms of section 5, demonstrate to the satisfaction of the Commission that—

(a) that during the investigative period, there was a separation of assets (as required by section 32 of the Act, as read with section 29 of the Insurance Act [*Chapter 24:07*]) between—

(i) policyholders' and shareholders' assets; and

(ii) insurance and pensions assets; and

(iii) different product lines;

and to the extent that such separation was not strictly adhered to, demonstrate to the satisfaction of the Commission the extent to which the assets were misallocated between the different classes of assets mentioned in subparagraphs (i), (ii) and (iii);

or

(b) not having during the investigative period maintained a separation as described under paragraph (a), it has since the 28th February, 2009, instituted a proper separation of assets (as required by section 32 of the Act, as read with section 29 of the Insurance Act [*Chapter 24:07*]) between

(i) policyholders' and shareholders' assets;

(ii) insurance and pensions assets; and

(iii) different product lines.

(3) If the compensation scheme submitted by a class A insurer—

(a) discloses to the satisfaction of the Commission that—

(i) no assets were misallocated between shareholders' assets and pensions' assets to the prejudice of the pensions' assets; or

(ii) assets were misallocated between shareholders' assets and pensions' assets to the prejudice of the pensions' assets, but the insurer has, no later than 135 days from the fixed date, fully restituted or taken steps to fully restitute the pensions' assets;

then the Commission shall, within 30 days of receipt of the compensation scheme, approve the compensation scheme of the insurer, subject to such conditions as the Commission may direct in writing to the insurer;

or

(b) discloses that—

(i) assets were misallocated between shareholders' assets and pensions' assets to the prejudice of the pensions' assets; and

(ii) the insurer has not, no later than 135 days from the fixed date, fully restituted or, in the opinion of the Commission, has not taken adequate steps to fully restitute the pensions' assets;

then the Commission shall institute an investigation into the affairs of the insurer in terms of section 39 of the Act unless, no later than 30 days from the date when the Commission directs it by written notice to do so, the insurer—

(iii) applies a twenty *per centum* onetime levy on the total value of assets reflected as shareholders' assets in the insurer's last annual audited financial statements; and

(iv) ringfences the amount thus levied by transferring it to a special fund, called a "compensation fund", to be applied for the purpose of mitigating the prejudice found to have been incurred by members during the investigative period.

(4) The Commission shall institute an investigation into the affairs of a class B insurer in terms of section 39 of the Act unless that insurer, no later than 30 days from the date when the Commission directs it by written notice to do so,

(a) applies a twenty *per centum* onetime levy on the total value of assets reflected as shareholders' assets in the insurer's last annual audited financial statements; and

(b) ringfences the amount thus levied by transferring it to a special fund, called a "compensation fund", to be applied for the purpose of mitigating the prejudice found to have been incurred by members during the investigative period.

(5) No later than seven days from the expiration of the period during which an insurer was required to comply with subsection (3) or (4), the insurer shall furnish to the Commission a certificate of compliance signed by an actuary.

(6) Additionally, whether or not the Commission institutes an investigation, a class A or B insurer together with the board or governing body of insurer, that fails to comply with a direction of the Commission under subsection (3) or (4), or fails timeously to furnish to the Commission the certificate referred to in subsection (5), shall be guilty of an offence and liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such

Funding of compensation where asset separation obligation adhered to

9. (1) In this section—

"compensation reserve" means a reserve—

(a) set aside by a fund or insurer as contingency measure to cover possible errors and omissions arising from the conversion of pension fund assets and liabilities following the 2009 currency conversion; and

(b) whose existence was reflected by those funds and fund administrators in their last actuarial reports submitted before the fixed date in terms of section 33 ("Actuarial valuation") of the Act or section 17("Investigation by valuator") of the Pension and Provident Funds [*Chapter 24:32*] to the Commissioner of Pensions and Provident Funds;

(2) If, during the 90-day period within which funds and insurers are required to comply with section 6, 7, or 8, a fund and insurer is able to demonstrate in its compensation scheme that it is

compliant with its asset separation obligation referred to in section 8(2), then it must also demonstrate or undertake to the satisfaction of the Commission that it will compensate its members as follows—

(a) if before the fixed date the fund or insurer had set aside a compensation reserve, members shall first be compensated from that reserve; and

(b) if the compensation reserve had not been set aside, or if the compensation reserve is inadequate to make good the prejudice as calculated under section 6, 7 or 8, then—

(i) self-administered funds and stand-alone funds shall—

A. apply a one *per centum* annual levy on the total value of the fund assets as reflected in the fund`s last annual audited financial statements, which levy shall continue to be applied until the liability arising from the requirement to compensate the prejudice to its members is extinguished; and

B. ringfence the amount thus levied by transferring it to a special fund, called a "compensation fund";

(ii) insurers shall—

A. apply a one per centum annual levy on the total value of the assets of the guaranteed fund as reflected in the insurer`s last annual audited financial statements, which levy shall continue to be applied until the liability arising from the requirement to compensate the prejudice to its members is extinguished; and

B. ringfences the amount thus levied by transferring it to a special fund, called a "compensation fund";

whereupon the Commission shall, within 30 days of receipt of the compensation scheme, approve the compensation scheme of the self-administered funds, stand-alone fund or insurer (as the case may be), subject to subsection (3) and to such conditions as the Commission may direct in writing to the insurer.

(3) A self-administered fund, stand-alone fund or insurer (as the case may be) shall—

(a) no later than 30 days from approval of its compensation scheme by the Commission commence taking such actions in terms of subsection (2) as are appropriate to its case; and

(b) no later than seven days from the expiration of the period during which it was required to comply with subsection (2), furnish to the Commission a certificate of compliance signed by an actuary.

(4) If a fund or insurer is in default of its obligations referred to in subsection (3) (a) or (b), then the Commission shall institute an investigation into the affairs of the fund or insurer in terms of section 39 of the Act unless, no later than 30 days from the date when the Commission directs it by written notice to do so, the fund or insurer demonstrates to the satisfaction of the Commission that it has cured its default.

(5) Additionally, whether or not the Commission institutes an investigation, a self-administered fund, stand-alone fund or insurer that fails to comply with a direction of the Commission under subsection (4), shall be guilty of an offence and liable to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Disclosure requirements by funds and insurers to members

10. (1) Every liable fund or insurer implementing an approved compensation scheme shall disclose to its affected members the following information as part of their minimum disclosures—

(a) a summary of the actuarial report on the implementation of its approved compensation scheme; and

(b) the individual member's compensation amount and relevant pay-out timelines; and

(c) the complaints mechanism referred to in section 12.

(2) Any communication by liable fund or insurer to affected members that may be done without breach of privacy in the public domain shall be done through a national newspaper and any of the following platforms—

(a) the website of the fund or insurer;

(b) any social media platforms; or

(c) any other platforms as approved by the Commission from time to time.

(3) If any liable fund or insurer fails to comply with subsection (1), the Commission shall direct it by written notice to do so within a specified time.

(4) A liable fund or insurer that fails to comply with a direction of the Commission under subsection (3), shall be guilty of an offence and liable, together with each member of its board or governing body of the fund or insurer, to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Complaints handling mechanism

11. (1) Every fund, fund administrators and insurers must institute a mechanism for receiving and dealing effectively with complaints raised by affected members during the implementation of its approved compensation scheme, and must make that mechanism known to its affected members.

(2) Funds, fund administrators and insurers shall ensure that complaints lodged in terms of this section are addressed within a reasonable time.

(3) Funds, fund administrators and insurers shall, every three months, maintain and submit to the Commission a record of fund members' complaints together with details of how these were resolved.

(4) If any liable fund or insurer that fails to comply with subsection (1), (2) or (3), the Commission shall direct it by written notice to do so within a specified time.

(5) A liable fund or insurer that fails to comply with a direction of the Commission under subsection (4), shall be guilty of an offence and liable, together with and each member of its board or governing body of the fund or insurer, to a fine not exceeding level 4 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Unclaimed compensation amounts

12. (1) The Fund, fund administrator and insurer shall maintain a record of unclaimed compensation amounts and submit such details to the Commission every six months from the approval date of the compensation scheme.

(2) After three years from the approval to compensate being granted by the Commission, unclaimed compensation amounts shall be remitted to the Policyholder and Pensions and Provident Fund Members Protection Fund.

Compliance obligations of fund administrators and boards of pension funds

13. (1) The obligation to comply with section 5 and other applicable provisions of these regulations rests with—

(a) every administrator of a liable fund; and

(b) in the absence of a fund administrator, with the board of the pension fund

(2) In particular, the Board of a liable fund shall—

(a) ensure that the fund and fund administrator comply with these regulations; and

(b) in the event of an employer that had contribution arrears, provided the employer is still in existence in that capacity, use any legal means at its disposal to recover such contribution arrears from the defaulting employer for the purposes of compensation.

Appeals

14. (1) Any board of fund, fund, fund administrator and insurer who is aggrieved by a decision of the Commission made in terms of these Regulations may appeal to the Minister against the concerned decision.

(2) An appeal in terms of subsection (1) shall be lodged with the Minister within 30 days after the appellant is notified of the decision or action appealed against.

(3) In an appeal in terms of subsection (1), the Minister may conduct or cause to be conducted such inquiry into the matter as he or she thinks appropriate and shall, within thirty days of receiving the appeal, confirm, vary or set aside the decision appealed against and notify the appellant and Commission of his or her determination:

Provided that the Minister shall ensure that the appellant and the Commission are given an adequate opportunity to make representations in the matter.

(4) An appeal lodged with the Minister in terms of this section shall not suspend the decision made by the Commission.

(5) Any person who is aggrieved by a decision of the Minister on an appeal in terms of subsection (3) may appeal against the decision to the Administrative Court within the time and in the manner prescribed in rules of court.

Compensation principles to be applied by funds and insurers

15. (1) Compensation payable to members pursuant to sections 8 and 9 shall take the form of any one or a combination of the following—

(a) cash benefits in the official currency in use within Zimbabwe; or

(b) cash benefits in United States Dollars where the portfolio to be used for compensation includes foreign currency generating assets; or

(c) assets of the fund where practical.

(2) Where it is not possible to compensate all cohorts specified in section 3 of these regulations at the same time, a fund or insurer shall compensate members in the following order—

(a) active pensioners;

(b) beneficiaries;

(c) members who exited through other means;

(d) suspended pensioners;

(e) deferred pensioners;

(f) actives.

Supplementary compensation plan

16. (1) The Commission shall on the basis of compensation schemes received and approved by it devise a supplementary compensation plan informed by the principles referred to in subsection (4), the compensation received by pension fund members from their insurers and pension funds in terms of these regulations.

(2) Having prepared the supplementary compensation plan the Commission shall submit it to the Minister for approval whereupon the Minister may approve or approve subject to such amendments and conditions as he or she may specify.

(3) Upon approval, the Commission—

(a) shall by notice in the *Gazette* and any other media deemed suitable by the Commission notify the public—

(i) of the date when payments under the plan will begin to be made;

(ii) of the names of beneficiaries of the supplementary compensation, may be obtained online at a specified web address;

(iii) of the basis on which supplementary compensation will be paid under the plan;

(b) may itself implement the supplementary compensation plan or appoint one or more agents to implement it.

(4) The supplementary compensation plan shall be informed by the following principles—

(a) the total supplementary compensation must be distributed in an equitable and fair manner;

(b) the total compensation amount will be divided between insurance policyholders and pension funds as informed by the prejudice from the submitted compensation schemes, and available resources;

(c) the supplementary compensation amount will be allocated to the various products and pension funds in proportion to the member assessed prejudice from the submitted and approved compensation schemes;

(d) within the funds in receipt of the supplementary compensation, the amounts will be distributed is such a way that the lowest paid member will get a minimum payout as approved by the Government;

(e) priority will be given to the current pensioners (including beneficiaries), those close to retirement and active members, in that order;

(f) the following additional factors will be considered when distributing the supplementary compensation—

(i) a minimum contribution duration of ten years (insurance and pensions being long term business, it follows that supplementary compensation will only be considered for those funds which existed for at least ten years);

(ii) whether or not employers are in existence at the time of payment of the supplementary compensation (priority will be given to those funds whose employers are no longer in existence subject to minimum contribution duration);

(iii) priority according to pensions model (priority will also be given to self-administered funds and then to insured funds);

(iv) availability of the funding sources in relation to the pension model.

Schedule (*Section 2*)

AVERAGE MARKET PORTFOLIO IMPLIED RATE TABLE

Year	**Average Market Portfolio Implied Rate**
2000	50.07
2001	96.91
2002	149.15
2003	501.06
2004	6,318.52
2005	18,955.57
2006	1,317.65
2007	3,992,009.59
2008	1,148,479,226,853.54
2009	1

Supplement to the Zimbabwean Government Gazette Extraordinary dated the 29th September, 2023.
Printed by the Government Printer, Harare.