SI 162 – THE PENSIONERS COMPENSATION FOR LOSS OF VALUE CONUNDRUM – NOEL ZVAREVA

INTRODUCTION

- SI 162 comes at a time when trust and confidence in the Pension Industry is perhaps at its lowest point.
- **Pension Fund Members have now experienced two notable episodes of value erosion, the first and the subject of this discussion occurring between 2000 and 2009, the more recent occurring in the post de-dollarization period beginning from 2019 to date.**
- As SI 162 of 2023 is applied to tackle the issue of compensation, key questions arise,

1. Who bears the burden of compensating for loss of value?
2. How does one determine the exact value loss attributable to each member?
3. What are the costs associated with compensation and who pays these costs?
4. How practical is the prescribed method of making compensation payments?

WHO IS LIABLE FOR COMPENSATION?

- 2015 Commission of inquiry attributes loss of value to macro, meso and micro factors.
- SI 162 of 2023 in its current form appears to place entire burden of compensation on the Pension Funds, prescribing that determined prejudiced be funded from total fund assets.
- Shifts the burden of compensating for past losses to current contributors and in turn creates a new prejudice.
- **No clarity on how other responsible parties will be required to contribute towards settling the prejudice. Government has 64% of the blame in Justice Smith report but has settled on US$175Mln as compensation. This might be far less than the compensation amount**
- This approach is notably further eroding trust and confidence in the pension system amongst Fund Trustees and their Member bases**.**

DETERMINING THE PREJUDICE

- Is the prescribed method of determining the prejudice fair and practical? Applied method prescribes a fixed minimum return. Questions arising on potential over/undervaluation of implied losses. **It is a known position that the minimum 3% fixed return if adjusted to actual fund returns during the period can lessen the compensation burden on all stakeholders**
- How readily available is the data required to make the assessment. Data relating to the period is limited. Consequently, calculations for prejudice are not 100% reliably accurate.

THE COST OF COMPENSATION

- Increased actuarial and administrative expenses that must be borne by the Pension Funds.
- Data files on old IBM floppy disks. Requiring in excess of US$100k to be deciphered by experts *(per disk).*
- **Actuaries charging fees ranging from us$10k for small funds to as high as 100k for some large funds. Administrators have had to employ hundreds of temporary employees for the exercise, costs which have naturally been passed onto the Pension Funds. No framework on fees and how these should be derived.**
- There was no prescribed prescription period before the current legislation. Where businesses/pension funds wrong to archive records after 5-7 years ? Archive retrieval costs ??
- Again, expense burden falling on current members

PRACTICALITY

- Some deserving members may never be compensated because of missing data.
- **Compensation periods ranging as far as 61 years mean some cohorts may not live to receive their payments.** Additionally, the applied method of selectively prioritizing payments creates resentment and a feeling of unfair treatment amongst those who may have to wait several years to receive their dues.
- There is no clarity on how to handle compensation for wound down Funds. Former members still expect compensation nonetheless driven by media hype surrounding the compensation exercise.

CONSIDERATIONS & CONCLUSION

- The single point of agreement amongst all industry stakeholders is that there has been an unjust, and arguably avoidable loss of value in pension benefits and there must be compensation to correct for this. The point of contention is on SI 162's methodology of approaching the compensation conundrum.
- **On the issue of liability, SI 162 needs to be revisited with reference to the COI findings so that it clearly defines how all liable parties will contribute to compensation process. Considerations may be made for creating a stand-alone compensation fund which will exist to make compensation payments and will be funded by ALL liable parties as determined by the COI findings**.
- Along the same note, the costs associated with compensation must also be borne by the same Fund as opposed to the current situation where a Fund's current Members are bearing the cost of compensation. To restore goodwill, considerations must be made for this established Fund to reimburse Pension Funds to the extent of the costs of compensation that have been borne by Members up to this point.
- **I have highlighted, the difficulties in determining the prejudice to Members, the flaws in the minimum guaranteed return method applied through SI 162, the effect of inaccurate or limited historical membership data, factors which all combined make it impossible to definitively determine the exact dollar value losses for any given Member. In short, the practicality problem. A solution that builds on the establishment of a compensation fund would be to offer standard predetermined compensation packages which may be varied in dollar amounts by, for example the number of years during the investigative period which a member is covered for. A member who joined a fund in 2008 and is only covered for two years would not receive the same amount as one who was a member through the full period 2000 to 2009. Uniform fixed amounts would then be paid to cohorts meeting similar criteria.**
- This approach helps to manage expectations on the part of cohorts and eliminates any feelings of unfair treatment. This must be supported by a defined, cohesive communication strategy which must standard across the industry, from the offices of the Regulator, Fund Administrators, to the Employers and Fund Trustees.
- In closing, the industry appeal to the Regulator, is for considered revision to SI 162 which will see it become the definitive solution to the compensation conundrum as opposed to an additional complication in the mine field that is compensating for historical value losses. If such an approach is taken it will provide the solid footing the industry yearns for if it is to regain the confidence of its participants and grow into the future, in line with noble ambitions envisaged through vision 2030**.**