

CIRCULAR NUMBER 10 OF 2019

9 July 2019

Zimbabwe Association of Pension Funds (ZAPF)
Life Offices Association of Zimbabwe (LOA)
Insurance Brokers Association of Zimbabwe (IBAZ)
Pension Fund Administrators
Self-Administered Pension Funds

Dissolution of Funds

Basis of Circular

This Circular has been issued pursuant to section 4 of the Insurance and Pensions Commission Act [Chapter 24:21], which empowers the Commission to regulate and monitor the management and administration of pension and provident funds, to ensure that they maintain set standards and ensure compliance with the Pension and Provident Funds Act [Chapter 24:09].

Background

1. In terms of section 10 (1) of the Pension and Provident Funds Act [Chapter 24:09] (hereinafter referred to as the Act).

“ a registered fund may be dissolved in accordance with the provisions of the rules of the fund; and

shall be dissolved where so directed by the Commissioner in terms of section nineteen(19).”

2. Where the dissolution is directed in terms of section 19, the procedure to be followed is outlined in section 10(2) of the Act, while dissolution in terms of section 10(1a) follows the procedure outlined in the fund rules.

3. However, the processes for dissolution outlined in the fund rules are inadequate, resulting in some members being prejudiced financially.

4. The Commission has also noted that the funds do not seek the Commissioner's approval prior to the dissolution and neither do they inform

the Commission of such dissolutions. This has caused challenges as the whole process becomes opaque and difficult to trace resulting in challenges when trying to resolve disputes from members of such funds.

5. In line with the Commission's mandate as enshrined in section 4(b) of the Insurance and Pensions Commission Act [Chapter 24:21] and, in order to ensure adequate protection of members' interests, data integrity and compliance with the Act, the Commission hereby directs all pension funds to incorporate the following in their pension fund rules for purposes of dissolution of the fund:

Procedure for dissolving a fund

6. Every fund shall make an application for the Commissioner's approval prior to dissolving the fund.
7. The application must outline the circumstances leading to the resolution to dissolve the fund including a statement on how dissolving the fund is in the best interests of the members. The fund shall not proceed with the dissolution until it has received written approval from the Commission.
8. Therefore, the effective date of the dissolution shall be the date on which the fund obtains the Commissioner's written approval.
9. Once the fund obtains the Commission's written approval, the procedure to be followed in dissolving the fund will depend on whether the dissolution is directed by the Commission in terms of section 19 (3) of the Act or was at the instance of the fund in terms of section 10(1a) of the Act.
10. After receiving the Commissioner's approval, the board of trustees that was appointed through the last election shall continue in office regardless of whether their term of office has expired or not. This board of trustees shall, within a reasonable time, although no later than 30 days, appoint an independent and suitable person as a liquidator. The liquidator must be a fit and proper person and possess adequate expertise and knowledge relating to the valuation of pension fund assets and liabilities.
11. However, where there is no board of trustees or in any case where it has become impracticable to constitute the board, the fund administrator,

principal officer or sponsoring employer shall notify the Commissioner of the same within 72 hours of receiving the Commissioner's approval. Further, he or she shall state the reasons causing the impracticability and seek the Commissioner's approval to proceed with the dissolution without a board of trustees or with such number of trustees as are sufficient to constitute a quorum. After obtaining the Commissioner's written response, any one of the following persons as specified by the Commissioner shall assume the role of the board of trustees:

- a) committee elected by the members of the fund or
- b) any other person as the Commissioner deems fit.

12. The fund shall submit the following documents, to the Commissioner, within 30 days after appointing a liquidator, or where it is not practicable to do so within the 30 days, within a period approved by the Commissioner:

- a) a schedule of the names, identity particulars and contact details of the members of the fund;
- b) a statement of the fund's assets and liabilities clearly showing the distribution across the different classes;
- c) the amount of contribution arrears (if any) which shall remain a debt owed to the fund by the employer, unless such employer has been wound up and there are no assets of the employer remaining for distribution to its creditors;
- d) a payment plan (where applicable) from the employer on the repayment of the outstanding contributions;
- e) a schedule of the fund's other debtors (if any) and the amounts owing from them, including detailed plans on how the fund will recover such debts;
- f) a schedule of the fund's creditors (apart from its members), if any, and the amounts owed to each creditor together with a scheme setting out the manner in which the liquidator proposes to realize the assets of the fund, to discharge the liabilities to such persons and to meet the expenses of liquidation;

- g) a schedule showing the amount available for distribution and how it has been allocated to individual members including the manner in which the liquidator intends to use these amounts for the benefit of the member; and
 - h) a pre-distribution certificate in which the liquidator certifies the above information as a true record of the assets and liabilities of the fund.
13. All benefits that are yet to be vested should be vested prior to the distribution of the assets to the members.
14. The fund shall publish a notice in a newspaper of wide circulation or on any media platform where the capacity to reach all members is high. The notice shall advise the members of the intended dissolution and call on the members to come and inspect the schedule referred to in paragraph (14g) above. The notice shall state the timeframe within which the schedule shall lie for inspection, which timeframe takes into consideration the geographical spread of the members. The expenses for publishing such notice shall be borne by the fund.
15. The notice must state the places, including the fund's offices, at which the schedule will lie for inspection and further advise the members of their right to lodge with the Commissioner any objections they may have to the proposed distribution within a period specified in the notice.
16. The fund shall ensure that members of the fund sign a register confirming that they have inspected the distribution schedule. At the expiry of the period of inspection specified in the notice, the fund must submit the said register together with a copy of the original advert published in the media to the Commissioner.
17. Where there are circumstances that can give rise to a possible future occurrence the result of which will place a financial obligation on the fund, the fund shall make provision for a contingency reserve.
18. Where the liquidator can assume with reasonable accuracy the time within which the possible event may occur, the amount in the reserve must be distributed to the members at the lapse of this period.

19. However, where due to the nature of the contingency it is not possible to assume the time with reasonable certainty, the liquidator must submit a plan on when and how he or she intends to distribute the amounts held in the reserve. The plan must be based on the circumstances of the particular fund and the purpose for which the reserve was established.

20. The fund shall at the time that a member inspects the distribution schedule, give that member a detailed termination benefit statement which includes the following information:

- a) the purpose of issuing the statement, for example, benefit statement for the purpose of dissolution of the fund;
- b) the amount of benefits payable;
- c) any adjustments made to the accumulated amount (e.g. partial payments up to funded level) and include reasons for such adjustments;
- d) the date on which the last contribution to the accumulation referred to in the statement was paid to the fund;
- e) the portability options available to the member including the right to elect the fund/insurer from which to purchase an annuity or into which the benefit shall be preserved, whichever applies to the member;
- f) a statement on the commutation options and the eligibility for such commutation based on the applicable law;
- g) a statement on the portion of the benefit (if any) that is subject to taxation;
- h) a note advising the member to lodge, with the Commission, any concerns in relation to the information appearing on the statement (the note must be printed no smaller than and as legible as the letters of the rest of the statement); and
- i) any other relevant information for the benefit of the member.

21. No fund shall proceed to pay any benefits to its members until it receives written communication from the Commissioner authorising the actual distribution of the assets to the members of the fund.

22. Where any of the assets of the fund remain invested during the period of dissolution, any return earned up to the date on which the fund liquidates the invested asset, must be credited to the member's accumulation account.

23. At the conclusion of the actual distribution of the assets of the fund, the liquidator shall issue a post distribution certificate in which he or she acknowledges that:

- i. all assets have been distributed in accordance with the distribution schedule approved by the Commissioner and
- ii. any contingency reserve referred to in paragraph 17 or return referred to in paragraph 22 has been accounted for.

24. Where any benefits due to members have remained unclaimed, the liquidator shall submit, to the Commissioner, a schedule showing the identity particulars and contact details of such members. The schedule must be accompanied by a statement on how the liquidator intends to preserve the benefits of such members.

Partial Dissolution of fund

25. A fund that intends to dissolve a part of the fund that is attributable to specific participating employer/s of an umbrella fund or an identified group of members of a fund, shall apply to the Commissioner for approval.

26. In such an event, the fund shall, prior to making the application, cause a valuation of the assets and liabilities that are attributable to such members.

27. The application shall therefore clearly state the members to which it relates together with the assets and liabilities pertaining to such members.

28. After obtaining the approval of the Commissioner, paragraphs 8-24 shall apply with necessary changes.

Dissolution of fund following the Commissioner's directive in terms of Section 19(3) of the Act

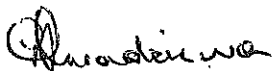
29. Where the dissolution is directed in terms of section 19(3), the procedure to be followed is outlined in section 10(2) of the Act. However, the Commission

has noted gaps in the procedure which results in financial prejudice to the members.

30. Therefore, in furtherance of the Commissioner's mandate stated in clause 5 above, clauses 13(d), 17, 18, 19, 20, 21 and 23 above shall also be applicable in dissolutions initiated at the direction of the Commissioner in terms of Section 19(3) of the Act.

31. In the interim, all administrators/insurers must furnish the Commission, on or before 16 August 2019, with a schedule of the pension funds they dissolved since 1 January 2009 to date, including those that were made paid up and transferred to preservation or umbrella funds, using the format attached hereto.

Please be guided accordingly.



.....

Mrs. G. Muradzikwa

COMMISSIONER OF INSURANCE, PENSION AND PROVIDENT FUNDS

ANNEX 1: FUNDS DISSOLVED

Name of dissolved fund	Reason for dissolution	Date of dissolution	Value of fund at dissolution	Has dissolution been completed		Comment
				Yes	no	