

Circular 1 of 2020

7 February 2020

TO: 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  
Zimbabwe Association of Reinsurers' Organisations

### **Resolution of Troubled Entities within the Pensions Industry**

#### **Basis of Circular**

1. 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**

2. The Commission has noted some inadequacies in the procedures employed by the pensions industry to resolve troubled pension and provident funds; and fund administrators. As a result, such entities continue to operate even where the condition of the fund or fund administrator is such that the entity is in an unsound condition which otherwise calls for its dissolution.
3. Where corrective action can be implemented lack of guidance and knowledge on the processes and procedures to be followed often prolong the implementation of the corrective action. In some cases, this has resulted

in the condition of the entity deteriorating to an extent where the entity can no longer be restored to a sound condition.

4. The above results in financial prejudice to members of pension and provident funds, who in most cases lose out on their lifetime savings as the funds fail to pay the expected or promised benefit.
5. In line with the Commission's mandate, IPEC has developed guidelines on dealing with troubled institutions to ensure:
  - a. adequate protection of the benefits, rights and interests of pension and provident fund members and their beneficiaries; and
  - b. improvement in the financial soundness of the pensions industry.

The guidelines are attached to this Circular and are applicable with immediate effect.

Please be guided accordingly

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Grace Muradzikwa

**Commissioner of Insurance Pension and Provident Funds**



# **INSURANCE AND PENSIONS COMMISSION**

## **GUIDELINE FOR RESOLUTION OF TROUBLED REGULATED ENTITIES IN THE PENSIONS INDUSTRY.**

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## **1. Basis**

This guideline is issued in terms of 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 comply with the Pension and Provident Funds Act [Chapter 24:09].

## **2. Objectives of this Manual**

The development of this guideline has been necessitated by the need to resolve troubled institutions timeously through early detection and reporting of problems in fund administrators and pension or provident funds, as well as restoring financial soundness where possible. The primary objectives are—

- (a) To outline the key indicators which should be considered in determining whether a fund or fund administrator (herein after referred to as regulated entity or fund/fund administrator) can be classified as a troubled institution.
- (b) the processes and procedures that the pensions industry has to follow, in dealing with pension or provident funds; and fund administrators that are in a troubled condition.
- (c) lay out the conditions and circumstances under which the Insurance and Pensions Commission (hereinafter referred to as IPEC or Commission) will intervene and the preventative, protective or punitive actions that IPEC can take to resolve the troubled condition of the institution.

## **3. Scope of Application**

This Guideline applies to all pension and provident funds and fund administrators that are registered and supervised by the IPEC.

It is the responsibility of the Principal Officer of the regulated entity to ensure that all matters that are required to be done by the fund/fund administrator in terms of this guideline are indeed done.

#### **4. Applicable Legislative and Regulatory Frameworks**

- a. Insurance and Pensions Commission Act;
- b. Pension and Provident Funds Act [Chapter 24:09](referred to as Act in this document);
- c. Pension and Provident Funds Regulations (Statutory Instruments);
- d. Money Laundering and Proceeds of Crime Act;
- e. Insurance Act;
- f. Circular 4 of 2019;
- g. Circular 10 of 2014;
- h. Risk Management and Corporate Governance Directive; and
- i. Any other relevant circulars, directives or guidelines issued by IPEC.

#### **5. Key Indicators for fund or administrator to be deemed a troubled institution**

- 5.1. Regulated entity where the key ratios in terms of solvency, asset quality, profitability and liquidity are deteriorating should closely be monitored.
- 5.2. Fund administrators that fail to comply with the capital requirements stated in the Pension and Provident Funds Regulations S.I 323 of 1991.
- 5.3. Funds which are in an,unsound financial condition owing to:
  - a. funding level below 75% after discounting contribution arrears from the assets;
  - b. contribution arrears constituting 10 % or more of the fund's assets; and
  - c. benefit arrears where the key indicators in terms of financial ratios are worsening, for example current ratio, acid test ratio and solvency ratio
- 5.4. Funds with sponsoring/participating employers who have not been remitting contributions to the pension funds within the fourteen days prescribed in the Pension and Provident Funds Regulations S.I 323 of 1991 and those which have already accrued contribution arrears for a period of six months or more.
- 5.5. Regulated entities with increasing unclaimed benefits in absolute terms and as a percentage of total assets.
- 5.6. Regulated entities administered without a properly constituted board of trustees or directors.



5.7. Regulated entity upon which penalties for noncompliance have been imposed by IPEC or any other regulatory board for two or more consecutive periods.

**6. Guiding Documents which will be used to determine the condition of a regulated entity.**

- a. Valuation reports
- b. Quarterly, Annual or any other returns prepared by the regulated entity for submission to IPEC or other regulatory authorities.
- c. Onsite inspection or investigation report
- d. Audited financial statements
- e. Any document or information concerning the regulated entity which is in the possession of the fund/administrator.

**7. Procedure to be followed where regulated entity is classifiable as a troubled institution.**

- 7.1. In the first instance, the reason for considering an entity as a troubled institution should be clearly defined and documented; and should be brought to the attention of IPEC within 7 days from the date on which the fund/fund administrator becomes aware of this state.
- 7.2. The communication above should clearly state the time frame within which the regulated entity would have come up with a proposed plan for restoring the fund or fund administrator into a sound condition. The time frame should not exceed 30 days from the date of the communication, unless a longer period is specifically provided in this guideline or is approved by the Commission.
- 7.3. The Board of trustees or directors of the fund/fund administrator shall be responsible for the following:
  - a. Calling for documents or other information relating to the fund/fund administrator;
  - b. analysing the information to get a better understanding of the problem;

- c. determining the nature of the problem;
  - d. if the problem can be corrected within a reasonable and predefined period, the board shall communicate the proposed action plan to the Commission for consideration and approval;
  - e. instructing the fund/fund administrator to report to the Commission on the progress and adherence to the proposed plan at intervals informed by the terms of the plan and the Commission's directive;
- 7.4. If the problem persists or cannot be easily corrected or can cause irreparable harm to fund members, the Commission reserves the right to take any of the following actions:
- a. conduct an onsite inspection of the fund/fund administrator in terms of section 4 of the Insurance and Pensions Commission Act;
  - b. escalate the inspection into an investigation in terms of Section 21 of the Act, if during the conduct of inspection the findings warrant such action;
  - c. at any time before or during the course of an investigation in terms of section 21, require a registered fund, in terms of Section 22 of the Act, to lodge with the Commissioner all or any of its securities. The action is only taken if the Commissioner considers it to be in the interests of members or creditors of the fund;
  - d. direct the dissolution of the fund in terms of section 19(3) of the Act;
  - e. Cancel the certificate of registration of the fund administrator.

## **8. Funds in an unsound financial condition**

- 8.1. This part applies to funds which are considered to be in an unsound financial condition owing to the presence of one or all of the circumstances stated in paragraph 5.3 above.
- 8.2. The fund/fund administrator should within seven (7) days of becoming aware of the fund's unsound financial condition notify the Commission of the same and attach documents which form basis for considering the fund to be in an unsound financial condition;



- 8.3. The fund shall within ninety (90) days from the date of becoming aware of its unsound financial condition submit to the Commission, the scheme for bringing the fund back into a sound financial condition as required in terms of section 19 of the Act.
- 8.4. The scheme should specify the time within which it is proposed to restore the fund to a sound financial condition.
- 8.5. The scheme should be accompanied by a report on the scheme from the Actuary or valuator of the fund.
- 8.6. After assessing adequacy of the scheme submitted in terms of section 19 of the Act, the Commissioner can;
- a. approve the scheme with or without conditions;
  - b. reject the scheme and request fund to submit a new scheme;
  - c. direct that the fund be dissolved if the Commissioner considers that it is not practicable to bring the fund into a sound financial condition within a reasonable time.
- 8.7. Where a fund is directed to be dissolved the board and fund administrator should ensure that section 10 of the Act and Circular 10 of 2019 are adhered to.

**9. Fund administrator who fails to meet the minimum capital requirements**

- 9.1. The fund administrator should within seven (7) days of becoming aware that it does not meet the capital requirements, notify the Commission of the same and attach relevant documents.
- 9.2. The fund administrator shall within ninety (90) days from the date of becoming aware of its unsound financial condition submit to the Commission, a scheme for meeting the capital requirements.
- 9.3. The scheme should specify the time within which the fund administrator proposes to meet the capital requirements.
- 9.4. The scheme should be accompanied by a report on the scheme from the Valuator of the fund administrator.
- 9.5. After assessing adequacy of the scheme, the Commissioner can;
- a. approve the scheme with or without conditions;

- b. reject the scheme and request fund administrator to submit a new scheme;
- c. cancel the registration of the fund administrator, if the Commissioner considers that it is not practicable for the fund administrator to meet the capital requirements within a reasonable time.
- d. Direct the board of the funds under administration to transfer administration of the fund to another fund administrator, in which case the provisions of Circular 4 of 2019 will be applicable.

**10. Funds whose sponsoring employers are not remitting contributions to the pension funds within prescribed timelines. ( total contribution arrears should be less than 10% of the fund's total assets)**

- 10.1. The fund/fund administrator should within seven days after the expiry of the 14 days prescribed in the pension and provident funds regulations, notify the Commission of the employer's default.
- 10.2. The notification should include full details on the level and period of accrual of the contribution arrears and the interest charged or chargeable.
- 10.3. The fund/fund administrator shall request the sponsoring employer to submit a payment plan within thirty (30) days of request and monitor compliance. The payment plan shall be submitted to IPEC. In addition, periodic reports on the compliance of the employer with the payment plan should be submitted to IPEC at agreed intervals.
- 10.4. Notwithstanding that action as detailed above has been taken, the Commission reserves the right to take any of the following actions:
- 10.5. Impose civil penalties on the sponsoring employer in terms of section 56A of the Pension and Provident Funds Regulations.
- 10.6. If non-compliance persists beyond sixty (60) days from date on which compliance was requested—
  - a. direct the board of trustees to instruct the sponsoring employer to stop deducting contributions from members' pensionable salaries with immediate effect; and

12.7. If it is impracticable to reconstitute a board of trustees, the principal officer shall communicate the impracticability to the Commission.

**13. Entity upon which penalties for noncompliance have been imposed by IPEC or any other regulatory board for two or more consecutive periods.**

13.1. Every regulated entity shall ensure that it complies with all legislative and regulatory provisions that apply to any part of its business.

13.2. Where two or more consecutive penalties are imposed upon the regulated entity by IPEC or any other regulatory authority, the entity shall forthwith disclose information on the incidence and level of the penalties imposed.

13.3. In addition the regulated entity will provide detailed information on the measures that have been put in place to rectify the noncompliance and to ensure compliance on an ongoing basis.

13.4. Periodical updates to illustrate the compliance should be submitted to the Commission once every month.

13.5. The Commission will, on the basis of the information provided by the fund and any other relevant information determine the extent to which the noncompliance impacts on the fit and probity of the regulated entity and the people responsible for the administration of the entity.

13.6. If the non-compliance is not of an extent as to render the officers of the fund or fund administrator; or the administrator itself not fit and proper, the Commission will take any of the following actions—

- a. in the case of members of the board, disqualify such members;
- b. in the case of a fund administrator, cancel the registration of the administrator; and/or
- c. notify the Financial Intelligence Unit in the case of compliance issues related to money laundering.

**14. Additional action that may be taken by regulated entity after becoming aware of its own troubled state**

14.1. Notwithstanding the above, a fund may;

- a. apply for dissolution in which case the provisions of Circular 10 of 2019 will guide the process to be followed in the dissolution; or
- b. apply to transfer its assets and liabilities to another fund, in which case Section 27 of the Pension and Provident Funds Act and Circular 4 of 2019 will apply.

14.2. In either case the applications must include—

- a. board resolution; and
- b. reasons for the proposed action, illustrating why such action is in the best interests of the members of the fund.

14.3. The fund administrator may:

- a. apply for cancellation of certificate of registration;
- b. notify the Commission where it intends to transfer business to another administrator. The fund administrator shall not transfer the business until the Commission, through written communication, notifies the fund that it does not object to such a move.
- c. In transferring the business the administrator shall ensure that Circular 4 of 2019 is adhered to.

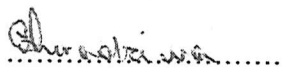
#### **15. Review of this guideline**

The Commission reserves the right to cancel, amend or replace this guideline as and when there are developments that warrant such action. The action taken by IPEC shall be to ensure that the guidance provided herein is in line with legal and regulatory frameworks governing the pensions industry in Zimbabwe and international best practice.

#### **16. Effective Date**

The guideline is effective with immediate effect.

Please be guided accordingly



Grace Muradzikwa

**COMMISSIONER OF INSURANCE, PENSION AND PROVIDENT FUNDS**