



Unpacking Provisions of PPFA Chapter 24:32)

21 March 2022

Presentation Outline



- Objects of the Act
- IPEC Powers Background & Rationale
- Functions of Commission
- Powers of Commission
- Disclosure Requirements to stakeholders
- Questions and Answers

Objects of the Act – Section 3



The objects of the Act are -

- To ensure protection of fund members and beneficiaries' interests
- To ensure security of funds
- To ensure sustainability of the pension sector as a whole



Rationale for enhanced IPEC powers under Act



Address regulatory weaknesses in IPEC observed by the Justice Smith led Commission of Inquiry.



Alignment with international best practices for effective supervision of pension funds (International Organisation for Pensions Supervisors)



Incorporate universally accepted principles for adequate financial consumer protection to ensure protection of rights and benefits of fund members and their beneficiaries.



Functions of Commission- Section 5

- Promote and protect members and beneficiaries' rights
- Promote development of pension industry
- Registration and de-register of funds and fund administrators
- Regulate operations of fund administrators
- Supervise the establishment, administration and management and operation of funds and to issue guidelines, or directives or statements of prudential norms for proper management and administration of funds
- Provide for management of troubled funds, provident funds and fund administrators and their dissolution

Functions of Commission- Section 5...



- Ensure sustainability and security of pension industry
- Advise Minister on all matters relating to development and operation of pension industry
- Promote financial literacy and public awareness of pension industry
- Execute any other function that will promote the achievement of the objects of the Act

Exercise of Functions of Commission-

Section 6



- Functions to be exercised in an impartial, clear and open manner and in observance of the provisions of section 194 of the Constitution in the discharge of functions.
- Adopt fair, transparent and consistent measures in the regulation and supervision of funds
- Observe due process and the rules of natural justice;

Powers of Commission Payments to fund – Section 16



- Any participating employer who fails to remit contributions within 14 days from month end shall be guilty of an offence and liable to a category 1 civil penalty (section 16(4)).
- Power to invite representations from defaulting employer on reasons for non – remittance of pension contribution where non-remittances exceeds 3 months (Section 16(6)).
- After obtaining representations from defaulting employer, Commission may issue directive to employer specifying timeframe for payment of arrear pension contributions (Section 16(6)).

Powers of Commission - Payments to fund Section 16 ...



- Garnish powers where the defaulting participating employer who has not complied with remittance directive (Section 16(8)).
- Garnish can be through a single instalment or such number of instalments as instructed by the Commission
- Personal liability for contravention of section 16 by participating employer without derogation to section 235 of Criminal Procedure and Evidence Act [Chapter 9:07] extends to-

Powers of Commission - Payments to fund Section 16 ...



- ✓ every director or executive officer who is regularly involved in the management of the participating employer's overall financial affairs; and
- ✓ every person in accordance with whose directions or instructions the governing body or structure of the participating employer acts or who controls or who is regularly involved in the management of the participating employer's overall financial affairs (Section 16(9)).

Powers to inspect - Section 37



An inspector may, subject to the consent of the fund or of the person in charge of the premises concerned or, in the absence of such consent the inspector has a search warrant from a competent court -

- Enter a business premises in which it is believed on reasonable grounds that there are documents pertaining to the business of a fund
- Require any officer, employee or agent of a fund to produce any of the fund's documents

Powers to inspect - Section 37....



- Search the premises for any monies or records pertaining to the fund's pension and provident fund business
- Open or cause to be opened any strong-room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the fund's money or records

Powers to investigate - Section 39



The Commission may investigate a fund where –

- Fund has failed to provide the Commission with record or document or information within prescribed timeframe
- Knowingly providing incorrect or incomplete information
- Failure to correct irregularity highlighted by the Commission within 14 days

Powers to investigate - Section 39...



- There is reasonable cause to belief that rights of any class of members or beneficiaries are prejudiced
- Fund or any of its officers, employees or agents has prevented an inspector from exercising any of his or her powers in terms of section 37

Powers to investigate - Section 39...



Inspectors may –

- Seize documents believed to provide evidence of illegality
- Examine, whether under oath or otherwise ,any person who is or was a member of the board of the fund concerned, or an officer, employee, agent, auditor, legal practitioner, valuator or stakeholder of the fund

Provided that—

- ✓ any person so examined shall be entitled to have his or her legal practitioner present at the examination;

Powers to investigate - Section 39...



- ✓ no person shall be required to answer any question which he or she would not be required to answer if he or she were a witness in a civil or criminal case before a court
- NB. Inspectors conducting investigations have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody

Powers of Commission- Discovery of illegal conduct by fund - Section 38



The Commission may do any one or more of the following –

- Issue a warning to the fund
- Require appoint of a person qualified to advise the fund on the proper conduct of its business
- Issue a written instruction to undertake remedial action specified in the instruction/Corrective Order
- Instruct the fund to suspend or remove any member of its board or officer or employee who is responsible for such contravention

Powers of Commission- Discovery of illegal conduct by fund - Section 38...



- Place the fund under the management of an interim administrator
- Convene a meeting of the stake holders of the fund to discuss the remedial measures to be taken
- Remove or cause the replacement of external service providers or report them to applicable authorities

Powers of Commission- Discovery of illegal conduct by fund - Section 38...



- Restrict the disposal of the fund's assets
- Direct the fund to suspend all or any of its pension and provident fund business
- Any other directive the Commission may deem necessary

Additional Powers of Commission



- Power to demand documents and information – Section 42
- Power to demand documents and information – Section 43
- Commission may extend time-limits provided in Act where if it is satisfied that the failure to comply with the provision relating to such time has not been or will not be due to culpable neglect or default on the part of the person concerned – Section 44

Penalties under the Act

- Criminal penalties
- Ability to issue civil penalties – issue category 1 and 2 penalty orders
- Civil penalties have fixed amount plus daily cumulative amounts for up to 90 days
- Standard scale of fines used to determine amount due per level of civil penalty imposed
- Amounts due from civil penalty are accounted as Commission revenue, legal action can be taken to recover same.

Rationale for disclosure - Section 48



- Compliance with Sec 62 of the Constitution of Zimbabwe gives right to access information.
- Enhance transparency and accountability by pension funds
- Promote financial literacy and public awareness of pension industry
- Minimise conflict between funds and members/beneficiaries

Disclosure Requirements – Section 14



A Fund is, at its own expense required provide members with the following information —

- A copy of the rules of the fund upon joining the fund, and of any amendment to the rules when such amendments are registered
- Within **six months** after the **end of the financial year** or any other **shorter period as may be prescribed**, the individual members' annual benefit statement with the minimum disclosures as may be prescribed from time to time;
- Such other information as maybe prescribed by the Commission

Disclosure Requirements – Section 14...



Within three months at own expense, funds are required to make accessible to the members -

- Copy of the fund's annual audited financial statements;
- A copy of every valuation or other report made by the fund's valuator;
- Details of any reserve set aside for members when they leave the fund; and
- An assessment of the fund's investment performance; and
- The fund's investment policy statement; and
- Such other information as maybe prescribed.

Disclosure Requirements – Section 14...



The Board of a fund is required to convene -

- A meeting by giving all members and beneficiaries reasonable notice of the time, place and of the purpose of the meeting and ensure that the time and place of the meeting shall be reasonably convenient for the attendance of members and beneficiaries.
- A meeting prior to –
 - ✓ changing an administrator;
 - ✓ conversion from one currency to the other;
 - ✓ conversion from defined benefit to defined contribution or such other conversion;
 - ✓ any other change that significantly affects the rights of members.

Questions??

WhatsApp: +263 772 154 281

Email: enquiry@ipec.co.zw

Facebook: Insurance and Pensions
Commission

Twitter: @IPECZW

Website: www.ipec.co.zw

