

**REPORT OF THE PUBLIC HEARINGS**

**ON THE**

**INSURANCE AND PENSIONS COMMISSION (AMENDMENT) BILL, H. B 6, 2021**

**PORTFOLIO COMMITTEE ON BUDGET, FINANCE AND ECONOMIC DEVELOPMENT**

**APRIL 2022**

1. **Introduction**
   1. The Insurance and Pensions Commission plays a pivotal role in monitoring and regulating the insurance and pensions industry. This role is essential as it protects consumers and service providers in markets where competitive forces are weak and close the information asymmetry gap within the sector. On the other hand, stakeholders in the pension and insurance industry have been calling upon the Government to revamp the sector through undertaking legislative and policy reforms so that it becomes competitive nationally, regionally and internationally. Indeed, the Justice Smith Commission of Inquiry pointed to regulatory failure as one of the major challenges impacting on the industry.
   2. Hence, the Insurance and Pensions Commission (Amendment) Bill was gazetted on 10 September 2021 as the Government seeks to align the law with the Constitution, and to implement the recommendations as outlined by the Justice Smith Commission of Inquiry of 2017. The Bill also seeks to modernise and strengthen the regulation and supervision of the insurance industry by the Insurance and Pension Commission (IPEC) in line with international practice.
2. **Background to the Bill**
   1. Legislative reforms in the pension and insurance sector have been on the drawing board for quite some time and were further buttressed by the Justice Smith Commission of Inquiry Report, which recommended that certain deficiencies, particularly legislation, under the ambit of the sector be strengthened. Among the various pieces of legislation recommended for amendment in the sector is the Insurance and Pensions Commission Act *[Chapter 24:21]* and the Insurance Act *[Chapter 24:07]*. The review of these envisaged laws governing insurance, public and private occupational pension funds was viewed as vital in reorganising the industry to become competitive.
   2. It is against this backdrop that the **Insurance Pensions Commission (IPEC) Amendment Bill** was gazetted, with the aim of aligning the law with the Constitution, comply with the Justice Smith Commission of Inquiry and modernising as well as strengthening the regulation and supervision of the insurance industry in line with international practice.
3. **Methodology**
   1. Once a bill is published in the Gazette, Section 141 of the Constitution requires Parliament to engage the general members of the public in its legislative processes and consult them on any Bills being considered in the August House. Therefore, in fulfilment of this constitutional obligation, Parliament, through the Portfolio Committee on Budget, Finance and Economic Development conducted public hearings on the IPEC Amendment Bill to gather the views of the key stakeholders and the people of Zimbabwe.
   2. Given the technical nature of the Bills, the Committee resolved to invite Insurance and Pension Commission (IPEC) to unpack the Bill prior to conducting public hearing in selected provinces in the country. In view of that, the Committee participated at a two-day workshop in Leopard Rock Hotel, Mutare where the bill was unpacked by IPEC. This workshop was critical in aiding the Committee Members to better understand the provisions of both Bills before embarking on public hearings.
   3. Public hearings were then conducted from 13 to 16 March 2022 in Bulawayo, Mutare and Harare. Generally, attendance by the people of Zimbabwe was very poor as only a total of 25 people attended the 3 consultative meetings, as follows, Bulawayo (17), Mutare (1) and Harare (7).
   4. The Committee then deliberated on the submissions received together with the views raised by the Committee and IPEC during the capacity building workshop leading to the development of this report.
4. **Summary of Submissions Received on the Bill**
   1. **Clause 2:** the members of the public raised concern over the missing definition of ‘asset’ in the Bill and the principal act. It was recommended that under this clause, the definition of ‘asset’ be included so that it does not refer to treasury bills or any other assets that may be specified in the Bill. The members of the public argued that the failure to define “asset” and to distinguish between capital assets, investment assets, policyholder assets or shareholder assets left a lot of vagueness on the provisions of the Bill. Therefore, there is need to qualify the word “Asset” in the bill in order to avoid vagueness as to actual meaning of the word.
   2. **Clause 3:** members of the public supported the inclusion of this provision under clause 3 as it seeks to strengthen the IPEC, a provision which is missing in the principal act. Under this new provision, additional and clear roles of IPEC are defined. This will enable IPEC to exercise its mandate effectively. However, the Committee felt that subsection (c) and (d) must be removed since they are more administrative in nature than a legislative issue.
   3. **Clause 4:** members of the public supported the submissions to the effect that ‘National Social Security Authority (NSSA) and medical aid societies should be regulated by the Commission and this has been long overdue. This provision whereby NSSA and medical aid societies are added into the basket of institutions that must be monitored and regulated by IPEC is in line with best practices. Currently NSSA is monitored and regulated under the Ministry of Public Service, Labour and Social Welfare while medical aid societies are regulated by the Ministry of Health and Child Care.

However, it was noted that although Clause 4 of the Bill proposes for the expansion of the functions of the Commission to include the accreditation of actuaries, auditors, asset managers, credit rating agencies “and other service providers”, it nonetheless fails to set out the procedure by which auditors and actuaries should apply for accreditation, and the duration of the accreditation. It was therefore emphasised that either the bill or a delegated legislation must be put in place to incorporate these important provisions under this clause.

Members of the public also raised concern over a provision for regulating and accrediting asset managers, auditors and actuaries arguing that it was unnecessary. It was highlighted that professions such as asset managers are already regulated under the Asset Management Act, Auditors are regulated by Public Accountants and Auditors Board, among others, hence the involvement of IPEC would be double regulation.

Furthermore, submissions were made that a provision to accredit “other service providers” in this clause was vague as it is an open check to IPEC to do as it pleases. Therefore, there is need for clarity on who the “other service providers” are in the Bill.

* 1. **Clause 5:** the provision amends Section 5 of the Act by increasing the number of the board members that the Minister responsible may appoint from ‘five (5)’ to ‘seven (7).’ The people welcomed this new proposal, particularly, the inclusion of their qualifications thereof, in addition to knowledge and expertise in the industry. This provision is welcome as it will ensure diversification in terms of representation of the board members as well as enhancing its capacity to exercise its mandate. The provision ensures that it addresses the need for adequacy and diversity of skills within the Commission.

However, it was further suggested that it was absolutely necessary to review the composition of the board. The people urged provide for the reservation of at least one seat on the board of Commissioners for a “pensioner,” who will then ensure that the interests of other pensioners are represented in the Board.

* 1. **Clause 6:** this provision seeks to address issues of conflict of interest by disqualifying anyone who is directly or indirectly involved in the sector. A new insertion is also added, which defines *‘conflict of interest’* in the sector. This provision was welcomed by the Committee as it seeks to enhance good corporate governance in the industry.
  2. **Clause 7** amends Section 7 of the principal act to increases the number of years an appointed member may serve the board from the current ‘*three’* to *‘four’* years and to specify the eligibility criteria for re-appointment in line with the Public Entities Corporate Governance Act Chapter 10:31). Subsection 4 of the principal Act is also amended to comply with the Public Entities Corporate Governance Act which provides that allow a Board Member can only serve for 4 years and be eligible for re-appointment only one more term. Thus, the Committee welcomes these new provisions which strengthens corporate governance practices in the pension and insurance industry for the benefit of the sector.
  3. **Clause 8** amends section 13 of the principal act by deleting *‘two members’* and substitute with *‘two thirds of members’* in line with the increased number from five to seven members. The Committee and members of the public welcomed this provision as it allows a wider consultation of members of the Board, especially in terms of representation.
  4. **Clause 9** amends Section 14 of the Act by increasing the number of committees the board may establish from ‘one or more’ to ‘two or more.’ However, the people noted with concern the provision of compelling the Board to appoint at least two committees but highlighted that the clause failed to specify the roles and duties of these two appointed committees. It was therefore recommended that, for the avoidance of doubt, the functions of the two Committees should be made clear in the Bill.
  5. **Clause 11** was welcomed by the people as it empowers the Commission to co-operate with other regulatory authorities, both local and foreign, in enforcing laws, carrying out investigations and exchanging information. The provision is fundamental in building strong synergies of mutual cooperation between insurance companies and pension funds operating across national boundaries.

However, reservations were made on a provision that amends Section 23(C) of the Principal Act on sharing privileged information with other authorities. The provision allows the Commission to pass on *“privileged information*” to other authorities, while it will not have to disclose *“privileged information*” received from the same authorities. Members of the public noted that this provision was unclear and vague. Reference was made to the Civil Evidence Act which underlines that legal privileged information is information that the holder cannot be obliged to disclose. It was therefore submitted that the Bill needs to be amended so that the principle suggested under the clause is clear and straight forward, especially as to the kind of information the Commission will be able to disclose and not disclose in line with the provisions of the Civil Evidence Act on the conferment of the privilege on information.

The public had reservations on the proposed amendment of Clause 11 which outlines the payment of unclaimed benefits of more than five years from the insurers and pensions to a proposed Pensions and Provident Fund Protection Fund. The public noted the need for clarity on where the liability will be transferred to once the unclaimed benefits are transferred to the Fund.

The people also welcomed the provision in clause 11 of the Bill on the establishment of the Policyholder and Pensions and Provident Fund Members Protection Fund to compensate holders of insurance policies and members of pension and provident funds who suffer loss in the event of their insurance companies or funds being insolvent. It was noted that this fund will enhance confidence in the insurance and pension industry.

Nonetheless the participants proffered the following recommendations, that;

1. The Fund should be administered by a separate board comprising the Commissioner of Insurance [the CEO of the Commission] and up to seven other members appointed by the Minister and should be financed primarily from contributions by insurers and pension and provident funds.
2. The insurers must have a say in the selection and appointment of fund management Board. Reference was made to the appointment of Board members of the Deposit Protection Corporation Board where contributory institutions have a role to play in appointments.
3. There is need to reduce the limit on expenditure on staff remuneration and allowances from the proposed 30 % of the Fund’s annual income to 10%. The 10% should also cover the sitting allowances of the Board members.
   1. **Clause 13** provides for exemption of members of the Board and staff of the Commission from liability for loss or damage they may cause, unless they acted deliberately or recklessly or with gross negligence. The Public raised concern that the effect of this provision is to place all liability on the Commission rather than the individual who actually caused the loss. Placing liability for loss or damage on the Commission was deemed to imply that the Commission’s board and staff are above the law thus violating the rule of law as enshrined in Section 56(1) of the Constitution.

The public also raised concern on a provision under Clause 13 amending Section 32(B) of the Principal Act requiring the Commission to keep asset registers for insurers, insurance brokers, funds and other entities, and prohibits those entities from disposing of assets unless the Commission has been given 14 days’ advance notice of the disposal. The provision was deemed as unduly restrictive, warranting the delay of decisions which sometimes need to be made quickly – for example, the selling of stocks and shares. This was highlighted to be potentially damaging to the operations of insurers if they have to give 14 days-notice at every turn, particularly for cash and cash equivalents and marketable securities (money market instruments and listed shares). The public recommended that 3 working days would suffice in this provision instead of the 14 days proposed by the Bill.

The public welcomed the provision in Clause 13 on appeals where insurers and other people who are aggrieved by decisions of the Commission are allowed to appeal to the responsible Minister. The public however noted that the provision failed to specify what the Minister will do when faced with such an appeal. Reference was made to section 73 of the Banking Act, which gives banks the right of appeal to the Minister against decisions of the Reserve Bank and, if they are dissatisfied with the Minister’s decision, they can appeal to the Administrative Court and from there to the Supreme Court. The public was of the opinion that the same extended right of appeal should be given to persons aggrieved by the Commission’s decisions.

Further concern over clause 13 of the bill was raised citing that the provision for determining when an insurer or pension fund becomes insolvent [and thereby entitling policy holders or members to seek compensation] needs to be clarified. The public observed that there was no provision in the insurance act or the pension and provident funds act for entities to be “declared to be of unsound financial position”, as stated in the amendment bill.

1. **Committee Observations**
   1. That the strengthening of the mandate of IPEC would contribute to the stabilisation of the pension and insurance industry.
   2. That the term ‘asset’ was not defined in the main act and the bill. In the insurance and pension industry, asset refers to capital assets, investment assets, policyholder assets or shareholder assets among other assets within the sector.
   3. That the inclusion of NSSA in the basket of institutions to be monitored and regulated by IPEC is a welcome development, given the many challenges facing NSSA under the Ministry of Public Service, Labour and Social Welfare and medical aid societies under the Ministry of Health and Child Care.
   4. That the establishment of the Policyholder and Pensions and Provident Fund Members Protection Fund is a welcome move critical in bringing sanity in the Insurance Industry, particularly when some companies become insolvent and members lose their benefits.
   5. The Bill fails to give the key stakeholders in the industry the right to give opinion in the selection and appointment of fund board members.
   6. That pensioners make the majority of the contributions into the Policyholder and Pensions and Provident Fund Protection Fund, hence the need to review the composition of the board to also include a “pensioner,” who will then ensure that the interests of other pensioners are represented in the Board.
   7. That the proposed 30% allocation of the Policyholders and Pensions and Provident Fund Protection Fund yearly income to the Board’s expenditure was rather exorbitant and possibly detrimental to the Fund’s effective execution of its mandate.
   8. That the role of the responsible Minister after receiving appeals from insurers were not provided for in the Bill. This would give rise to vagueness, inconsistencies in the processing of the appeals impacting on the credibility of the appeals process.
   9. That the roles and duties of the two standing Committees that the Board may appoint were not elaborated in the Bill, hence the need to make sure that the duties are clearly articulated for the avoidance of doubt.
2. **Committee Recommendations**
   1. That the definition of terms section in the Bill be exhaustive of all the words that can create confusion in the implementation of the Act, such as that of ‘asset.’
   2. That the Policyholder and Pensions and Provident Fund should be administered by a separate board comprising the Commissioner of IPEC and up to seven other members appointed by the Minister and the Fund should be financed primarily from contributions by insurers and pension and provident funds.
   3. There is need to reduce the limit on expenditure on staff remuneration and allowances from the proposed 30 % of the Fund’s annual income to 10%. The 10% should also cover the sitting allowances of the Board members.
   4. The insurers must have a say in the selection and appointment of the Pensions and Provident Fund Protection Fund Management Board since they will be making the bulk of the contributions. Reference can be made to the appointment of Board members of the Deposit Protection Corporation Board where contributory institutions have a role to play in appointments.
   5. The reduction of the limit on expenditure on staff remuneration and allowances from the proposed 30 % of the Fund’s annual income to 10% is of utmost importance to reduce the fund’s expenditure. The 10% should also cover the sitting allowances of the Board members.
   6. The Minister’s responsibilities once receiving appeals from insurers aggrieved by the Commission’s decisions have to be spelt out in the bill or delegated legislation to avoid any doubts in handling the appeals process.
   7. The two standing Committees to be set up by the Board should have clearly defined responsibilities and duties.
3. **Conclusion** 
   1. The Insurance Bill is a good law which seeks to address some of the major discrepancies arising from the policy and legislative gap which has not kept pace with regional and international practice. The sector is a high risk sector which must be adequately regulated to ensure that policyholders and insurers do not encounter losses unnecessarily, especially, due to events that can be protected by the law.
   2. Therefore, the Committee fully supports the passage of the Insurance Bill together with the proposed amendments as highlighted in this report.