

(1) *The ASF's or the licensed trustees do not have the right to sue the defaulting employers to recover contributions outstanding from those employers.*

Under the Act, the Central Bank is given the exclusive powers to prosecute offences under the Act including instituting civil proceedings to seek civil remedies in respect to the matters constituting the offence. However, the Act does not empower the ASF's to recover from the defaulting employers the members' contributions and interest earned therefrom.

Interest recovered from such suits ought to be credited to the members whose contributions were not remitted by that defaulting employer.

(2) *Life and Invalidity Insurance*

The *Superannuation (General Provisions) Act of 2000* leaves the provision of life and invalidity insurance entirely on the members to fund at their own expense. This is not in the interest of the members due to the financial burden it places on the members. Life and invalidity insurance is of vital importance to the members and its benefits cannot be underestimated.

Life and invalidity insurance was an integral part of public service superannuation and with enormous benefits it should be given a certain degree of prominence in the industry. The amendments proposed herein give the ASF's an option to take out-group life and invalidity insurance cover for their contributors.

(3) *Benefits on death of a member*

When a contributor dies intestate (i.e. without having made a will or without nominating a beneficiary) his benefits are to be distributed in accordance either with custom or the decision of a court. Practically, this means the ASF will have to determine what the customary law of a deceased member is and make payment accordingly. Alternatively costly litigation will be inevitable, in order for the National Court to determine to whom benefits are to be paid.

To overcome these general shortfalls, the proposed amendments lay down a procedure to determine the beneficiary or beneficiaries of a deceased member who dies intestate. It should be noted that proportions of the benefits to be paid to the beneficiaries as stated in the amendments are only indicative.

4. The Proposed Amendments

For the reasons stated above the following provisions of the Superannuation (General Provisions) Act of 2000 should be amended accordingly:

(a) REPEAL AND REPLACEMENT OF SECTION 79;

Section 79 of the Act should be repealed and replaced with the following:

“Section 79 - Power to Recover Contributions with Interest on Default

- (1) Where an employer defaults in making any contributions required under this Part, the licensed trustee of the relevant ASF may, by written notice, require the employer to make payment, within a month or such further period as may be allowed, of the outstanding contributions together with penal interest at the prescribed rate set out in the regulations from the date on which payment was due until the date of payment.
- (2) If at the expiration of the period referred to in the notice issued under Subsection (1), the employer fails to pay the outstanding contributions together with penal interest, the licensed trustee of the relevant ASF may take all necessary measures, including the commencement of a civil action against that employer, to recover the outstanding contributions together with penal interest as a debt owing to the ASF.
- (3) An action commenced under Subsection (2) shall be heard by a Court of competent jurisdiction.
- (4) In any action brought under Subsection (2) by an ASF, the Court may award costs against any party or claimant other than the ASF which costs may be recovered as a debt to that ASF.
- (5) In any action brought under Subsection (2), the Court may, on application, whether as interlocutory or final relief, order a person to cease any activity until further order.
- (6) Any order made under Subsection (5) shall be made on condition that the ASF is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.
- (7) Any monies to be paid by the employer as a result of an action by the ASF shall be paid to the ASF and, in addition to any other remedy, may be recovered by the ASF as a debt to the ASF.
- (8) Any monies recovered by the ASF including any penal interest under an action commenced under Subsection (2) shall be treated as if they were contributions received by the ASF under Part XIV for and on behalf of those members whose contributions were not remitted by the defaulting employer.
- (9) An action commenced under this Section shall not waive the right or rights of the Central Bank or any other person to institute any other proceedings against the employer under this Act or any other law.”

(b) NEW SECTION 90A

A new Section 90A should be enacted as follows:-

“90A Life and Invalidity Insurance

(1) Licensed trustees may make arrangements to provide Group Life and Invalidity Insurance for their contributors.

(2) The insurance shall be a lump sum benefit payable on the death, invalidity or physical or mental incapacitation of the contributor, not due to his wilful action, on the following scale:-

100% of annual salary plus 10% of salary for each complete year of potential service from the date of death to the date when the deceased would have attained the age of 50 years, subject to a maximum benefit of –

(a) three times the annual salary; or

(b) K50,000.00

whichever is the lesser amount, provided that the benefit payable is not less than K15,000.00.

(3) A contributor shall name a beneficiary to receive a benefit under this Section, if any such benefit is payable and if no beneficiary is named it shall be determined in accordance with Section 95.

(4) A premium payable in respect of insurance placed under this section is payable out of the respective ASF.

(c) REPEAL AND REPLACEMENT OF SECTION 95;

Section 95 of the Act should be repealed and replaced with the following:

“95. Procedure Where no Nominee

Where at the time of the death of the member, no valid nomination has been made or no nominee is still alive, the amount standing to the credit of the member in the fund shall be paid:-

(1) to his or her dependents dependants, if any, and in so paying the ASF shall approve payments to a spouse or spouses, where there is more than one spouse, who shall, with their juvenile dependants be paid by the ASF in the following proportions in the distribution of benefits:-

(a) the spouse or the spouses to be paid 60% of the benefits; and

(b) 40% of the benefits to be divided equally and paid to the juvenile dependants; and

(2) where the deceased contributor has no dependants – his benefits shall be paid in a lump sum to his next of kin as determined by the ASF.”

Leon Buskens