

DISCUSSION PAPER **SUPERANNUATION** **& LIFE INSURANCE** **REVIEW 2021**

Implemented by the independent
SLIR COMMITTEE

CALL FOR SUBMISSION



DUE DATE : 30 SEPTEMBER 2021

The Superannuation and Life Insurance Review
was sanctioned by the Minister for Treasury at
the request of the BPNG Governor



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ABBREVIATIONS

AML/CTF	Anti-Money Laundering / Counter-Terrorism Financing
ASF	Authorised Superannuation Fund
BANK	Bank of Papua New Guinea
COVID-19	Severe Acute Respiratory Syndrome Coronavirus 2 (SARS)
DOT	Department of Treasury
EU	Enforceable Undertaking
FSDS	Financial Sector Development Strategy 2018-2030
GOPNG	Government of PNG
GDP	Gross Domestic Product
IRC	Internal Revenue Commission
JV	Joint Venture
LIFE ACT	Life Insurance Act 2000
LFA	Licensed Fund Administrator
LH	Licence Holders
LIB	Licensed Life Insurance Brokers
LIC	Licensed Life Insurance Company
LIM	Licensed Investment Manager
MP	Member of Parliament
OIC	Office of Insurance Commissioner
PS	Prudential Standards
RSA	Retirement Savings Account
TOR	Terms of Reference
SLIRC	Superannuation and Life Insurance Review Committee
SUPER ACT	Superannuation (General Provisions) Act 2000

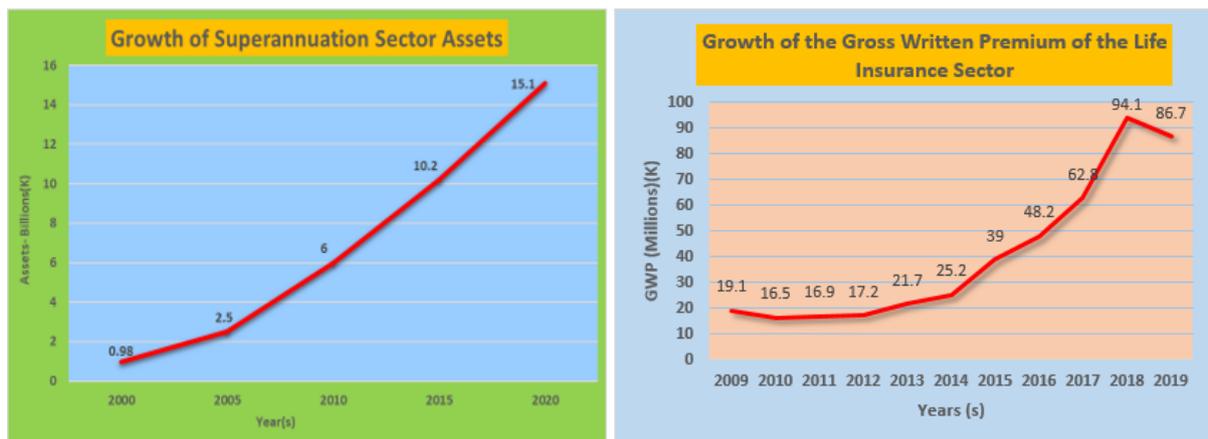
1. INTRODUCTION

1.1. Background and Objective of the Review

The Superannuation and Life Insurance industries play a critical role in mobilising savings, and make strategic investments with the objective to provide a comfortable retirement for their contributing members and protect policyholders and their beneficiaries from the risks of illness and death.

Given the significance of both industries to PNG's economy, it is vital to ensure the legislative and regulatory frameworks in which they operate is consistent with international best practices and takes into consideration domestic circumstances and stakeholder expectations.

Following the enactment of the Superannuation and Life Insurance legislations in 2000, two (2) Reviews were undertaken in 2002 and 2006, respectively. Since the last review in 2006, both industries have grown considerably. As at 31 December 2020, the Superannuation industry had a total asset base of more than K15 billion, while the total Gross Written Premium of the Life Insurance industry has grown close to K100 million.



Source: Audited Reports

This significant growth, coupled with challenges brought about by changes in the PNG economy, global events and compliance standards will require the PNG Government (GoPNG) to consider the best way forward to protect, grow and sustain these important sectors.

It is based upon these considerations that, this third Review is being initiated by the Bank of Papua New Guinea (the Bank) who regulates both these industries under the *Superannuation (General Provisions) Act 2000* (Super Act) and the *Life Insurance Act 2000* (Life Act) with the objective to;

- i) Improve the efficiency and effectiveness of the Superannuation and Life Insurance industries; and
- ii) Ensure that the Legal Frameworks of these industries are congruent with GoPNG Financial Sector Development Strategy 2018-2030 (FSDS) and other key relevant policies.

1.2. The Superannuation and Life Insurance Review Committee (SLIRC)

On the 19 August 2020, the Minister for Treasury, Hon Ian Ling-Stuckey, MP, approved and commissioned an independent review into the Superannuation and Life Insurance sectors to be undertaken by a Committee herein referred to as ‘SLIRC’. The SLIRC is comprised of business experts in PNG and supported by two (2) overseas technical experts. The SLIRC is required to present its Report with Recommendations to the Minister of Treasury on or by 31 December 2021.

The SLIRC has a clear Terms of Reference (TOR). It will be expected to take a holistic approach when reviewing the Superannuation and Life Insurance industries’ legislative and regulatory frameworks, the business environment in which they operate and the tax implications of changes recommended in this Review.

This Review is a key component of the GoPNG’s FSDS in relation to enhancing PNG’s Superannuation and Life Insurance industries. The SLIRC members are:

- Mr. Erastus Kamburi, (Chairman);
- Lady Aivu Tauvasa;
- Mr. Ian Balfour;
- Mr. Senthamangalam Venkatramani;
- Mr. Peter Aitsi, MBE (Deputy Chairman); and
- Sir Nagora Bogan, KBE.

The SLIRC is assisted by a Secretariat comprising officers from the Bank and the Department of Treasury (DoT).

1.3. Terms of Reference of the Review

This Discussion Paper includes further commentary on the rationale of the specific issues raised by the Bank in the TOR which the SLIRC will focus on in this review. Stakeholders are therefore encouraged to provide comments and observations on the issues raised in the TOR. However, that does not limit or prevent them from suggesting or commenting on any other areas or issues they see as important for the SLIRC to consider which may not be covered in the TOR.

The TOR is attached for reference.

2. CALL FOR SUBMISSIONS AND CONSULTATION PROCESS

2.1 Request for Feedback and Comments through a Submission

The SLIRC encourage all stakeholders and interested parties to be open, forthright and forward-thinking in sharing their views, ideas and suggestions on relevant issues raised in the TOR.

This Discussion Paper provides the opportunity for key industry players and the general public to make submissions.

Submissions can be provided electronically, hand-delivered or sent by post to the address provided below. The SLIRC prefers electronic lodgements for ease of accessibility and would appreciate email responses with documents in **Word format**. All submissions will exclusively be for the purposes of this Review.

It is hoped that those who respond would canvass concerns and opportunities in the context of PNG's financial sector so that the recommendations of the SLIRC in its report can be implemented in a practical way, balancing competing priorities in an acceptable timeframe, including during the transition period.

It is intended that Submissions will be publicly available, unless otherwise requested.

The Manager

Superannuation and Life Insurance Review Secretariat

Bank of Papua New Guinea

P O BOX 121, Port Moresby, NCD. Ground Floor, Credit Corp Building, Port Moresby

PH: 3227106 or Email: SLIRC@bankpng.gov.pg

Enquiries to: Mr. Peter Samuel

Closing Date for Submissions: 4.06 PM, 30 September 2021

2.2 Stakeholder Consultations

The SLIRC will be conducting a series of consultations around the country after receiving feedback from the stakeholders and/or other interested parties on the Discussion Paper. The details (dates and location) of these proposed public consultation programs will be provided in due course. It is advised that feedback from these consultations will be considered by the SLIRC when drafting its final report.

PART A

3. TERMS OF REFERENCE – SUPERANNUATION ISSUES

Consistent with maintaining and enhancing the reforms embodied in the Super Act, the SLIRC will evaluate, report on and make recommendations on the following specific issues raised in the TOR:

3.1. General Issues

3.1.1 Minimum Capital Requirements for Licence Holders

Globally, most superannuation providers are essentially mutual, with fund members being both owners and customers. In PNG, only investment managers and fund administrators are required to have capital. In a mutual fund, members bear the various risks (including governance, investment and operational). Allowing for the possibility of affected members to pursue legal claims for gross and criminal negligence or through insurance, however, there may be a case to require capital cushion for operational risk(s) such as technology, unit pricing or crediting rate errors.

Australia, accordingly has introduced quasi-capital as Operational Risk Financial Requirement set by default at 0.25% of fund assets. Without that, any losses would have to be met by current members' balances. Australia took two (2) decades after the advent of compulsory super to introduce this, and the experience is insufficient to determine if its rate is appropriate in respect of operational losses. It would have to be at the cost of earnings credited to members, however the benefits it will provide in adverse circumstances justify the need for it.

Section 12 of the Super Act and Section 3D of the Superannuation Regulation 2004 sets the minimum financial requirements for all the licence holders (LH) excluding the licensed trustees. However, these have been in existence for more than 15 years and with changing business trends and emerging risks, it raises questions around the adequacy of these minimum requirements, hence the need to reflect the current business climate in PNG.

Consultation Question:

The SLIRC invites stakeholders to discuss whether;

- a) A new prudential standard setting minimum capital requirements for Licensed Trustees should be introduced to reduce member and system risk?
- b) If yes, then at what level should the minimum capital requirements be set at? and
- c) The current minimum requirements set for other licence holders, such as investment managers and fund administrators, are adequate.

3.1.2 Enforceable Undertakings

Enforceable Undertakings (EUs) provides a compromise between costly and time-consuming litigation for various breaches, warnings and inactions. However, if licence holders continue to ignore EUs and if their future conduct does not improve, then the Bank can proceed with legal actions. While EU may be a useful tool for the Bank as the regulator, but requires careful internal guidelines so that essential litigation is not avoided and the purpose of EUs are not abused by the industry players but used judiciously (as international experience suggests).

Consultation Question:

The SLIRC is of the view that it may be necessary to introduce the power to enforce EU and invites stakeholders to discuss whether EU would act as an effective deterrent, if introduced, as part of a range of actions, which the Bank may take under the Super Act.

3.1.3 Cyber Risk

No country is immune to adverse effects of technology, including identity theft, terrorism, overseas crime and technological fault-lines.

The SLIRC considers that given advancement in technology and increase in interconnectivity, cyber risk is now an inseparable component of doing business. Therefore, the Super Act and the Prudential Standard on Risk Management should be assessed to see if they provide adequate protection. Accordingly, it should be included, but prioritised with PNG's other tasks identified in this Review.

Consultation Question:

To enable the SLIRC to consider this question and related issues, it invites stakeholders to comment on whether cyber risk control should be included in the Super Act, and if so, how can PNG cooperate and collaborate with global authorities and jurisdictions?

3.1.4 New Section 90A of Super Act

In response to the impact of COVID-19, a recent amendment was made to the Super Act with the introduction of a new section, *Section 90A of the Super Act – “One Off Covid-19 Voluntary Withdrawal*.

This recent amendment deals only with COVID-19 situation. It does not take into consideration other or potentially similar pandemics, natural disasters or acts of God, that may occur in future. The SLIRC is of the view that there is a need to expand the new *Section 90A* to cover any declared national pandemic or crisis and other natural phenomena, as part of crisis management

Consultation Question:

The SLIRC seeks feedback on a new amendment to *Section 90A of Super Act*; “*One Off Covid-19 Voluntary Withdrawal*” and that the same be renamed as “*National Emergency Voluntary Withdrawal*”. The new *Section 90A* should be re-amended to make it inclusive of future National Emergencies (pandemic or acts of God).

3.1.5 Definition of Unfunded Liability

This is an important issue that needs addressing given that it is becoming a point of conflict/contention between GoPNG and the Authorised Superannuation Funds (ASFs). Despite the interpretation and process provided in *Schedule 6 and 9 of the Super Act*, there are differing views. Their administration and application in the recent past have had significant impact on exiting members who were or not paid the employer component of their retirement savings (fully, on time or at all).

The SLIRC is tasked to ensure that the Super Act clearly defines and provides a detailed process on how unfunded liability may be crystallized and paid to eligible exiting members. This will avoid ambiguity and resolve misunderstandings on how to address this issue and maintain confidence of all parties and the system at large.

Consultation Question:

The SLIRC invites stakeholders to submit feedback on the following questions;

- a) Should a new section be included or new prudential standard developed to define or explain what unfunded liabilities are or mean?
- b) How should these unfunded liabilities be paid to eligible exiting members? and
- c) What should be the statutory processes to restore members to a default-free position?

3.1.6 Review of Retirement Age

The life expectancy of the population is slowly increasing as a result of improved access to health care and government services, particularly in urban areas. However, current retirement age as stipulated in *Section 2 (C) of the Superannuation Regulation 2002* is 55 years. This may be causing able-bodied people, who are still capable of engaging in active employment to leave the workforce and retire early. SLIRC considers the need for the current retirement age to be changed consistent with the *Public Service Management Act 1995* which is 65 years. The previous Reviews in 2006 and 2008, also proposed increasing the age limit to realign with the *Public Services Management Act 1995*, however this recommendation remains outstanding.

Internationally, increased longevity has led to retirement ages being increased (sometimes gradually). To improve the national GDP, address potential reduction of the working population to consumers and preserve retirement savings for genuine retirement, a staggered increase of the retirement age from 55 to 60 and over three years might be appropriate.

Consultation Question:

The SLIRC invites feedback from stakeholders on whether the current retirement age of 55 years be changed and or increased to a higher level consistent with the *Public Service Management Act 1995* age limits, and how gradually?

3.1.7 Adequacy of Provisions relating to Election to Transfer

Sections 85 – 89 of the Super Act refer to transfer of entitlements through an election process but do not consider factors such as the treatment of unfunded liabilities. Also in some cases, tertiary education institutions or other government agencies' superannuation contributions are fully funded by the GoPNG and remitted to one particular ASF, however some categories of their officers such as ancillary staff are contributing to another ASF. Similar issues arise, when there is a merger between a State-Owned Enterprise and a private company who are contributing to different ASFs.

The Super Act needs to provide clarity on how this can be operationalized consistent with its original intent.

Consultation Question:

Stakeholders are invited to provide feedback on whether *Sections 85 – 89* of the Super Act concerning Employers Contributions Transfer are adequate or should it be reviewed to make it more effective when employees of the same employer are contributing to different ASFs.

3.2. Employer Contributions Compliance and Enforcement

3.2.1. Mandatory Contribution and the 3-Month Period

Under *Section 76 and 77 of the Super Act*, self-employed, casuals and informal workers are excluded from superannuation contributions as a result of the minimum 3-months employment requirement and the threshold of more than 15 employees.

There have been instances where some companies take advantage of this clause and abuse the 3-month employment period. They initially employ workers as casuals and then they remove, and re-engage them consequently after the 3-month period. By doing this, they avoid paying the mandatory superannuation contributions. This should be banned through anti-avoidance law. This is a priority for PNG as it makes sense to remove the 3month period so that those in the system are fully covered.

There are some companies that employ less than 15 employees with a substantial annual turnover. These companies do not make any superannuation contribution to an ASF. In other instances, circumstances of the employer may change when the staff number falls below the threshold of 15 employees for superannuation contributions. This issue was addressed in the 2002 and 2008 Reviews and a reduction was made to 15 employees, however, a further reduction to 10 employees was also recommended and this is still outstanding.

Given these circumstances, the possibility of universal coverage will be considered by the SLIRC to address non-compliance with the current mandatory superannuation contribution requirements. However, the SLIRC is cognizant of PNG's current economic conditions faced by many in the SME sector and the private sector, in general. Therefore, a workable and equitable approach is needed.

Consultation Question:

The SLIRC invites stakeholders to assess the following question;

- a) Should compulsory superannuation be extended to all employees of any employer;
- b) What have been the consequences of the current 3-month period which applies before contributions to an ASF must commence? and
- c) Is there a case for this to be removed and how?

3.2.2. Penal Rate of Interest

The 28-day Treasury Bill rate at which the penal rate is based on as per Section 7 of the *Superannuation Regulation 2002* and *Treasury Bill Act 1974* is no longer issued.

The SLIRC will consider whether the penal interest rate should be aligned with the underlying fund performance so as to avoid inadvertent inequities between what is earned and what is paid out. The SLIRC considers that a rate of 2% + (earned rate or Central bank lending rate) whichever is lower could be suitable.

Consultation Question:

The SLIRC seeks stakeholders' feedback to this question; Should the penal rate of interest be reviewed? If yes, then at what rate?

3.2.3. Definition of an Employee

Section 3 (1) of the Super Act defines "employee" as a resident of PNG who is employed or engaged for providing labour or services and on whose behalf contributions are made to an ASF and who in turn receives his pay directly or indirectly from an "employer"

Employees regarded as casuals, probationary and unattached fall outside the definition, hence, superannuation is not paid. The SLIRC is of the view that, it would make sense to expand the coverage to include these categories of employees.

The SLIRC will consider recommending changes to the definition of employees in the relevant labour laws to the PNG Department of Labour & Industrial Relations to amend the respective legislation and regulations.

Consultation Question:

The SLIRC invites stakeholders to address the following questions;

- a) Should the definition of employee be more comprehensive? If yes, how?
- b) Clarify how superannuation (including remittance process and data exchange) would work for casual employments, probation and unattached employees.

3.2.4. Government Retirement Policy and Minimum Contributions

The current mandatory contribution provided in *Sections 76 and 77 of the Super Act* and the specific rates stipulated in *Sections 5 and 6 of the Superannuation Regulation 2002* were enacted in 2000. Employer rates for the private sector gradually increased from 7% in 2004 to 8.4% in 2008 in line with the Public Sector rates. Thereafter, the mandatory rates for both employer and employee remained unchanged. Given this scenario, will these current rates of 8.4% by employer and 6% by employee sustain the Government's retirement objectives/policy for members of ASFs.

Furthermore, the leakage from housing advances and withdrawals during periods of unemployment also detracts from the Government's retirement policy objectives.

The SLIRC considers that this issue can be better understood through consultation with providers and other stakeholders as their input can help the SLIRC to articulate the potential ways forward. It would make sense therefore to work out a sustainable rate set at a marginal rate but would provide for a gradual increase to a higher aspirational rate phased over a period of time.

Consultation Question:

The SLIRC invites stakeholders to discuss the following questions:

- a) Should the combined minimum level of employee (6%) and employer (8.4%) contributions of 14.4% be increased to meet the Government's retirement policy objectives? If yes, how?
- b) What effect does the leakage which occurs from housing advances and withdrawal during periods of unemployment have on determining the minimum contributions? and
- c) What is the right balance to ensure that members are saving a reasonable amount for retirement while at the same time meeting their day-to-day needs? Instead of making higher rates compulsory, can they be made optional with an added tax incentive?

3.2.5. Adequacy of Penalty for Non-Remittance of Contributions

Current penalty provision provided under *Schedule 4 of the Super Act* for offences or breaches under this Act is not adequate (by way of deterrence) and is open for the Court to make a determination. It does not set a minimum; Civil penalty is unlimited while *Section 79 of the Super Act* empowers the charge of penal rate.

To address this, one option would be to align the penal interest rate with underlying fund performance so as to avoid inadvertent inequities between what is earned and what is paid out. A rate of 2% + (earned rate or Central Bank Kina Facility Rate) whichever lower is suitable.

Consultation Question:

The SLIRC invites stakeholders to provide their feedback on whether the Super Act has adequate penalty provisions to ensure that employers who do not contribute are dealt with effectively? If not, how might this be addressed?

3.2.6. Non-compliance with Super Act

The *Schedule 4 of the Super Act* pertaining to penalties for breaches against the Super Act does not provide for when the outstanding contributions are much higher than the penalties set out in *Schedule 4 of the Super Act*. If such situation arises, the Super Act should provide guidance and what option, the Bank should take.

Also, these penalties are usually paid into the Consolidated Revenue Fund, however, this does not address the outstanding contribution and litigation costs incurred. Therefore, the SLIRC considers that the Super Act provide clarity and also enable the Bank to be a general trustee, so that such funds flow into the ASF or the concerned members/employees affected by it.

Consultation Question:

Stakeholders are hereby invited to comment on whether;

- a) The Super Act effectively deals with penalties for non-compliance and late remittance of contribution by employers as prescribed by the Super Act.
- b) There are adequate deterrent measures included in the Super Act for non-compliance and for late remittance of contributions in members' best interests? (Suggestions sought on amendment to *Schedule 4* on penalties.
- c) When an employer is guilty of non-compliance, the penalties should be the fines prescribed in the Super Act or payment of outstanding contributions "whichever is greater"; and
- d) Should the Bank be a general trustee for employees of Non-Complying Employers?
- e) How to ensure the penalties flow to the ASFs and the members?

3.2.7. Enabling ASFs with more Powers

Currently, the Super Act does not empower the ASFs to access information of a registered contributor/employer. However, it does give this power to the Bank under *Section 81A of the Super Act*, where the Bank can appoint an investigator to act on its behalf to establish evidences of Non compliances.

Consultation Question:

SLIRC would like to hear from the industry on whether;

- a) the ASFs should be empowered to access information from their registered employers such as company's payroll in order to reconcile it to contributors and identify non-compliant employers.
- b) *Section 81A of the Super Act* should be made clearer that the Bank can appoint ASFs officers to investigate non complying employers.

3.2.8. Enforcement Actions against Non-Compliance

Similar to point 3.2.6

Consultation Question:

SLIRC invites stakeholder's feedback on;

- a) How could the Bank take effective action for non-compliance in applying and enforcing late payment penalties on employers and officers of employers who have not made contributions as prescribed by the Super Act?
- b) The SLIRC's considerations in giving the Bank "garnishee" powers to issue to non-complying employers to remit outstanding contributions

3.2.9. Supply of Bio-Data by Employers to ASF

There is a need to address issues of contribution allocation and duplication of member accounts. Currently, some employers are not meeting minimum data requirements, as required, under *Section 49 (3) of the Super Act* with these contributions having to be treated by the Licensed Fund Administrator as "Unallocated Funds" adversely affecting members. In addition, they may or have missed out on interim or final crediting rates.

ASFs could be given statutory access to relevant information to enable them to perform their duties. But the constraints on how such information can be obtained due to commercial confidentiality and employee privacy, have been a hurdle.

International experience indicates that lack of linked data is as much a problem as late or non-receipt of contributions (unallocated contributions deplete member savings and facilitate fraud). To address this, it would be worthwhile treating lack of data while remitting contributions as if the contributions were not remitted at all. By doing so and getting the relevant agencies including **Employer Contribution Enforcement Unit** of the Bank for enforcement, employers would be compelled to comply.

Consultation Question:

The SLIRC invites stakeholders to discuss these questions;

- a) Should employers be required to provide minimum amount of bio-data to the ASFs?
- b) What penalties should apply in the Super Act if critical bio-data are not provided?
- c) The adequacy of service and support provided by the Licenced Fund Administrators in addressing this issue

3.2.10. Adequacy of Death Benefit Nomination

Anecdotal evidence suggests that, there have been disputes arising from the current benefit nomination model. But it is unclear how much can be attributed to the traditional extended family structures in PNG society which *Sections 91-95 of the Super Act* may not take into account.

Consultation Question:

The SLIRC invites comments from stakeholders on the adequacy of the current administration by ASFs regarding binding death benefit nominations. How could it be made more effective?

3.2.11. Section 90 of the Super Act and the Adequacy of Contributors Interest

There is a strong case to require those who are paid before the prescribed retirement age of 55 to retain their savings in the superannuation system. Conditional on a three-month waiting period before being paid, and the requirement to repay any withdrawal with interest if they are employed within 12 months by instalments may need to be considered.

While the Super Act is clear in allowing full payment to members who have been diagnosed with mental disorder, should those who access superannuation on the basis of ill-health be required to re-start contributions after they recover and re-join the workforce.

Consultation Question:

The SLIRC invites stakeholders to discuss the following questions;

- a) Does *Section 90 of the Super Act* adequately address contributors' interest to build their retirement savings while paying entitlements, especially on mentally incapacitated persons and withdrawals due to continuous unemployment for three months?
- b) Has there been any other deserving cases that ASFs had encountered which are not captured or clearly defined in *Section 90 of the Super Act* and the Regulations?

3.2.12. Preferential Claims in events of Liquidation of an Employer

Section 98 of the Super Act gives the same priority as provided under *Section 360 of the Companies Act 1997*, but this is not clearly spelt out.

The rationale is that workers are an important factor of production, and by supplying their labour they are in essence collateralising their contribution dues. Had the employer paid the mandatory superannuation contributions in full and on time, the deficit would not have occurred. (In Australia, such dues rank as a priority).

Consultation Question:

The SLIRC would like to invite stakeholders to discuss these questions;

- a) In the event of liquidation of an employer, should outstanding superannuation contributions rank above that of secured creditors or at least on par?

- b) Will the employees who have been affected by liquidation of the employer follow the three (3) months waiting period to access their entitlements?
- c) Should the Bank be given power to issue 'garnishee' order to non-complying employees to remit the outstanding contributions.

3.2.13. Duty to recover Outstanding Contributions in the event of Employer Ceasing to Operate

Similar to the above, the Super Act is silent on the responsible party to recover the outstanding contributions. It does not say whether it is the Bank or the ASFs who should pursue the employer for outstanding contributions?

Consultation Question:

The SLIRC invites stakeholders to discuss this question; In the event of cessation of business operation, should outstanding superannuation contribution be pursued by the Bank or ASFs, as the membership number deactivating process needs greater clarity

3.2.14. Protection of Whistle-Blowers under Super Act

Currently, the Super Act does not provide protection for whistle-blowers. It is usual to prohibit victimisation of whistle-blowers by employers or Licence Holders and not to deter individuals coming forward with appropriate information.

Consultation Question:

The SLIRC invites stakeholders to discuss whether the current Super Act need to include adequate protection for whistle-blowers on matters to do with employers who are failing to meet their obligations?

3.2.15. Retention of Employee Records by Employer

The Act is silent on the retention of employee records by employers. *Section 58(4) of the Super Act* requires a licence holder to keep and maintain full and proper records relating to an ASF however this provisions is applicable to licence holders and not does extend to employers.

Section 164 of the Companies Act 1997 states the type of records a company should maintain and keep including a seven (7) year retention period of these records. Further, it places responsibility on directors under *section 135 (3) of the Companies Act 1997*, that there is still liability on a director who resigns. On this basis, it would seem appropriate and desirable for a new provision in the Super Act that will require companies/employers to retain all its employee contribution records for a determinable period after surrender or termination of its licence with penalties for officers who fail to comply with this requirement

Consultation Question:

The SLIRC invites submission from stakeholders on whether the Super Act adequately deals with the issue of retention of employee records by an employer. If not then, what further safeguards are needed?

3.2.16. Clarification of definition of ‘contributory years’ and ‘employment period’.

This does not appear to be explicitly defined in the Super Act. It seems that a period after three months of commencement of employment less any period of non-payment (i.e. unpaid sickness) would be classified as a contributory period, and employment period would follow as a consequence. Currently, there are differing opinions between Licensed Trustees and Licensed Fund Administrators (LFA) on number of years worked when using this as the basis to compute for a member’s entitlement and taxation, thereon. According to the LFA, it is the number of years that a member has maintained active contributions whilst the Trustees view is that, it is the number of years for which a member has worked.

Consultation Question

The SLIRC invites stakeholders’ comments on whether the definition of ‘contributory years’ and ‘employment period’ should be clarified to avoid confusion in any other related legislation and how they should be aligned .

3.3. Anti-Money Laundering (AML)/Counter-Terrorism Financing (CTF)

3.3.1 AML/CFT and Super Act

There are no provisions in the current Super Act specifically covering AML/CTF. Given the level of concern globally and increasing compliance obligations relating to this, it may be timely to consider this for inclusion in the Super Act. Given PNG’s competing priorities, should this be addressed through global cooperation (as in cyber risk above)?

Consultation Question:

The SLIRC seeks comments from the industry on whether a provision for AML/CTF be included in the Super Act.

3.4. Life Insurance

3.4.1 Provision of Life Insurance Cover by ASF

Section 90 (6) of the Super Act enables an ASF to withdraw the amount of any voluntary contributions for the payment of premiums for life insurance for the member were those contributions were made by the member for this purpose. However, since the operation of the Super Act, implementing this arrangement has been ineffective in PNG. This was recommended by prior Task Force Reviews in 2002 and 2006 for the ASFs to provide life insurance cover for its members but still remains outstanding.

Consultation Question:

The SLIRC is seeking stakeholders’ views on whether ASFs should provide life insurance to its members on an “opt- out” cover, arranged on a group basis (to lower premiums and minimise underwriting costs)?

3.5. Ability to Effectively Supervise Investments

3.5.1. Majority Shareholding in Invested Entities

Investments made in poor performing subsidiaries present a significant risk to members' funds. Consequently, there can be a high risk for the ASF needing to continuously write-down these investments apart from the absence of dividends which ultimately impacts members' funds. Majority or outright ownership involves concentration of risk, especially, when the business might be under stress. Furthermore, the trustees may not have the skills or capabilities to manage such businesses.

Consultation Question:

The SLIRC invites feedback from the stakeholders on;

- a) Whether an ASF should be able to take a majority position, or an outright ownership of an entity in which it has invested? and
- b) How should this be addressed when an investment becomes a subsidiary due to factors beyond trustee's control?
- c) The adequacy of the advice provided by the LIM in such investments.

3.5.2. Use of Subsidiary Companies to hold Assets of ASF

Should this be considered only under special situations and be permitted on a case-by-case basis by the Bank. The risk, however, is that complicated structures may be used to circumvent and deflect the 5% cap on single or class of assets, by establishing a special-purpose company with an underlying asset that the ASFs are already exposed to.

Consultation Question:

The SLIRC invites stakeholders' feedback on whether an ASF;

- a) Should be able to utilise "Subsidiaries" or Joint Ventures for assets as opposed to holding the assets directly?
- b) Under what circumstances and controls?

3.5.3. Joint Venture (JVs) Arrangements by ASFs

JVs presents ASFs with good investment opportunities but through such structures there are other benefits such as expertise, resources, financial benefits, risk-sharing, and tax benefits, amongst others. As such, criteria for investing in these structures must be visible and equitable to all parties, including the control and management of it in compliance with the Bank's prudential requirements on concentration risk, which has been a concern to the Bank.

Hence, should ASFs take on the management risk of JVs? Internationally, in some cases, JVs are found to facilitate unsavoury, even unlawful activities away from regulatory scrutiny. Without unduly limiting investment options of the ASFs, there are arguments for the Bank to place certain restrictions or limits on JV arrangements.

Consultation Question:

The SLIRC seeks feedback from stakeholders on whether

- a) an ASF should participate in a JV and what is the ideal minimum criteria for an ASF entering into a JV arrangement?
- b) The adequacy of the advice provided by the LIM in such investments.

3.5.4. Review of Section 74A and Section 8 of the Super Act.

Section 8 of the Super Act requires a Licensed Investment Manager (LIM), whilst Section 74A allows for ASFs to engage multiple managers. This inconsistency needs to be corrected. Further, Section 74A (1) allows ASFs to appoint multiple investment managers to provide advice and Section 74A (2) allows ASF to appoint a LIM. The specific roles of an appointed LIM and the other investment managers need to be clarified to avoid any ambiguity or misunderstanding on the intent and application of these provisions.

Further, it is appropriate that the Trustee be required to monitor the LIM in respect of its mandate, performance, service and fees. The ASFs must have power to pursue the LIM where necessary and in the members' best interests.

Consultation Question:

The SLIRC would like to invite stakeholders to discuss whether;

- a) Section 74A of the Super Act be aligned with Section 8 of the Super Act.
- b) Section 74A of the Super Act should be amended to require an ASF to appoint only one "Licensed Investment Manager" to provide advice in relation to the investment of the fund (retaining the ability to appoint more than one Investment Manager to manage investments under an investment mandate or a managed investment arrangement).

3.6. Term Pensions

3.6.1. Term Pensions

In many regimes, income streams are preferred to lump sums to prevent dissipation. This can be done by stipulating the maximum that can be taken as lump sum (by amount or percentage, e.g. 50%) or allowing tax concessions on investment earnings (exempt in Australia).

Consultation Question:

The SLIRC invites feedback from stakeholders on whether;

- a) Members of an ASF should be encouraged to take their accumulated benefit in the form of a term pension as an "opt-out" basis? If so, how can this be done?
- b) What minimum requirements should be required for an item to qualify as a term pension?

3.7. Fitness and Propriety

3.7.1. Dealing with Resignation of Directors

The SLIRC is aware of the Bank's view that it cannot take action against former directors of an ASF who may have been involved, individually or jointly, to a negligent investment decision. The provisions of the Super Act does not extend to them. It is only applicable when these individuals are appointed as directors or officers of a licensed financial institution.

However, under *Section 135 (3) of the Companies Act 1997*, there is still liability on a director who resigns. Therefore, similar provisions can be considered in the Super Act so that responsible directors or officers are held accountable and a determination on their fitness and propriety is made to mitigate similar offences from occurring

Consultation Question:

SLIRC will consider a provision in the Super Act that deals with this and invites stakeholders to discuss the following questions:

- a) Does the Super Act adequately deal with directors or officers of an ASF who resign or who are terminated before the Bank can make a determination on their fitness and propriety?
- b) How can this be improved?

3.7.2. Director Appointment Process

The Trustee Directors act on behalf of members of an ASF. There appears to be a lack of transparency and integrity in a director's appointment process and protocols. This could allow incumbent directors to pre-select their ideal candidates without sourcing it through a fair and open recruitment process in line with the *Superannuation Prudential Standard 7/2012 Corporate Governance (PS 7/2012)*, Board-approved recruitment process, constitution, skills matrix requirements and succession planning.

Consultation Question:

The SLIRC would like to seek feedback from stakeholders on whether;

- a) The current shareholder structure which enables Directors of an ASF as Trustee Shareholders to appoint new directors is fair and transparent.
- b) If not then, what would be an ideal set-up or objective process?

3.8. Access to Records when a Licence is Surrendered or Revoked

3.8.1. Retention of Records

Section 58(4) of the Super Act requires a licence holder to keep and maintain full and proper records relating to an ASF, however it does not provide a specific time frame nor places liability on former directors. The SLIRC is of the view that given the long duration of members staying in accumulation or withdrawal phases, it is prudent to require officers of a licence holder which

have surrendered their licence or had it revoked, to retain the records of the licence holder for a period after the licence has been surrendered or revoked. Such requirement should align with the requirements of Section 164 and 135(3) of the *Companies Act 1997*.

Consultation Question:

The SLIRC will consider whether such a requirement should be introduced and invites stakeholders to assess the following question.

- (a) Officers of a licence holder which has surrendered its licence or had its licence revoked should be required to retain the records of the licence holder for a period after the licence has been surrendered or revoked?
- (b) What penalties, if any, should be applied to officers who fail to comply with this requirement?

3.9. Access to Accounts during Unemployment

3.9.1. Unemployment withdrawal and Pension on an “opt out” basis rather than as a Lump-sum?

Superannuation is a long-term saving mechanism. If short-term benefits are allowed, it would erode long-term savings. However, the financial position of members should not be ignored. A compromise would be to allow limited assistance that should be recovered with interest once a member resumes employment. Pension benefits are better than lump-sums as they are less likely to be frittered away, subject to a reasonable minimum payment.

Consultation Question:

The SLIRC will consider how the leakage in the ASFs should be prevented to avoid dissipation of the funds within a short time. Stakeholders are invited to address the following questions;

- (a) Should short-term release of benefits for members who are unemployed be allowed?
- (b) If yes, should the release be staggered, over a number of years, and requiring proof of continued unemployment, rather than as one lump-sum?
- (c) Should the release only be an income stream rather than a lump-sum? Or should it be issued in the form of a pension on an “opt out” basis rather than as a lump-sum?

3.10. Housing Advance

3.10.1. Housing Advance and Contributors Concerns

Housing Advance (HA) is a benefit that is offered to members who qualify, to withdraw a part or full amount of the employee component of the savings to assist them with maintenance, purchase or construction of their house. There are a number of rules that governs housing advance which relates to the qualifying criteria, limitation on benefit, exception to the rule and conditions relating to the housing advance.

The way in which housing advance is currently managed under Section 90(4) of the Super Act has raised concerns about whether it is sufficiently addressing contributors' retirement needs. The SLIRC will consider whether changes should be made to the rules governing housing advance to enable utilisation of these funds for the intended purpose and avoidance of potential abuse.

Consultation Question:

To assist in this determination, the SLIRC invites stakeholders to address the following question: Does the current Housing Advance administration under the Super Act adequately addresses contributors' concerns/ needs and control or minimises abuse?

3.10.2. Definition of “principal place of residence/business”

Having qualified to participate in the Housing Advance, the benefit is limited to the extent the member intends to use it for the purpose of maintenance, purchasing or constructing a home which is or will be his “*principal place of residence*”.

The Super Act does not define what “*principal place of residence*” means and this has created ambiguity for:

- for members who want to utilise the housing advance to build their houses in their province of origin or elsewhere in PNG;
- mine workers, whose principal place of residence is other than the place of work (i.e. the mine sites).

Consultation Question:

The SLIRC will consider a definition to remove that ambiguity and therefore invites stakeholder input on the definition of “principal place of residence” and “principal place of business”

3.10.3. Second Housing Advance

Before any member can participate in the Housing Advance, he/she must pass the qualifying criteria set out in Section 90 (4) (f) of the Super Act, one of which is where the home financed by the first advance is sold and that first advance had already been repaid in full. Thereafter, the member may apply for a second advance of the same amount as the first. This criterion is impractical given the obvious increase in both the members' contribution and cost of house or maintenance since a particular member's first participation, hence it needs to aligned to reflect current market conditions.

Consultation Question:

The SLIRC will consider the rules governing the second housing advance and invites the stakeholders to address the following question; Are the current provisions for applying for a second housing advance adequate, and how could they be improved?

3.11. Penalties for Late Lodgement of Annual and Quarterly Returns to the Bank

3.11.1. Late Lodgement Fee and Disclosure

Submission of Returns by ASFs must be on a timely basis. The Bank is concerned that the returns are not always submitted on time. Some form of penalty fee or fine should be imposed for late lodgement to serve as a deterrent. Without such measures, ASFs are bound to vary their lodgement with the deadlines and in some cases, critical matters may not be addressed in a timely manner.

Consultation Question:

The SLIRC will consider whether a fine should be imposed on an ASF by the Bank for late lodgements and invites the stakeholders to address the following questions;

- a) Should a fine or late lodgement fee be imposed by the Bank on an ASF for late lodgements?
- b) Should the Trustee Board be required to disclose any such fines in the Annual Report to members?
- c) Who should pay it (as the funds paying it would deplete member balances)?

3.12. Contributions by Employers to an Overseas-based ASF

3.12.1. Contributions to resident ASF and exemption for non-residents

Non-citizens make their own retirement plans through overseas superannuation funds, investment schemes, or do without them. As such, PNG misses out on the investible funds and the tax on the earnings of the employer and employee contributions which would have, otherwise, been paid if the employers of all non-citizens were required to contribute to an ASF in PNG.

Moreover, by not requiring that all the employers of all non-citizens contribute to an ASF in PNG, there is no incentive for non-citizens to maintain their accounts in PNG or to stay longer in the country. The benefits of which would be derived by the economy of PNG, if all employers and employees were required to make all their superannuation contributions to an ASF in PNG are thereby lost.

Consultation Question:

The SLIRC will consider whether employers should be required to make all superannuation contributions to an ASF in PNG and invites stakeholders to comment on the following question:

- a) Should employers be required to make all superannuation contributions to an ASF in PNG?
- b) Should the current exemption for non-residents remain? If so, subject to what controls?

3.13. Cost Recovery

3.13.1. Recovery of costs for supervising the superannuation industry

The recovery of costs from industry for supervising the Superannuation industry was raised in the two previous Task Force Reviews. However, some of the issues and recommendations raised at that time were not resolved and needs to be addressed in this Review. There are equity issues because other financial sectors are not paying their levies to the Bank. This ultimately is an additional cost to members' funds.

The SLIRC will have to consider the cost recovery issue against the fact that such cost further erodes the members' returns.

Consultation Question:

The SLIRC invites stakeholders' feedback on whether to propose for its removal entirely or compel other financial institutions such as banks, life insurance companies, savings and loan societies, etc., to also pay levies, in addition, to their annual licensing fees to meet the cost of regulation.

4. TERMS OF REFERENCE – LIFE INSURANCE ISSUES

Consistent with maintaining and enhancing the reforms embodied in the *Life Insurance Act 2000* (Life Act), the SLIRC will evaluate, report and recommend on the following specific TOR:

4.1. General Issues

4.1.1. Enforcement Undertaking

Enforceable Undertakings (EUs) provides a compromise between costly and time-consuming litigation for various breaches and warnings. However, if licence holders continue to ignore and if their future conduct does not improve, then the Bank can proceed with legal actions. It is a useful tool for the Bank, as the regulator, but it requires careful internal guidelines so that essential litigation is avoided and the purpose of EUs are not abused by industry players but used judiciously (as international experience suggests).

Consultation Question:

The SLIRC invites stakeholders to discuss this question; would EUs act as effective deterrent if introduced in the range of actions, which may be taken by the Bank under the Life Act? How could abuse be prevented?

4.1.2. Exemptions for Overseas Placements

Section 13 of the Life Act states that unauthorised insurers cannot carry on life insurance business in PNG. However, life insurance products are not specifically defined in the Life Act as to whether being local or not, nor is required that life insurance must be purchased from locally-authorised LICs with no exceptions. This is generally interpreted to mean that insurers can issue life policies from abroad, if approached by a buyer. On the contrary, Section 37 of *Insurance Act 1995* sets out the requirement to be insured with locally-authorised companies.

Given this, there is nothing in the Life Act to prevent buyers from placing their business with unlicensed insurers abroad. Hence, offshore placements are done without the knowledge of the Bank and local life insurers are not given first right of opportunity to underwrite these risks.

Consultation Question:

The SLIRC seeks the industry's view on the possibility of giving the Bank enabling powers to compel individuals or corporations to place life insurance covers in PNG and enable the Bank to provide exemptions subject to conditions (such as rating agency assessments) for placements of life insurance business offshore.

4.1.3. Definition of Life Insurance

The primary issue under contention is the interpretation of the definition of Life Insurance Policy provided under *Section 4 (2) (a) and (b)* of the Life Act.

The Office of Insurance Commissioner over the years has formed a view that is contrary to the Bank based on its interpretation of *Section 4 (2) (a)* in isolation, that life insurance contracts for one year or less constitutes general insurance business.

Due to differing interpretations of this specific section and the application of life definitions, it has caused, to some extent, uncertainty within both the life and general insurance industry.

Consultation Question

The SLIRC therefore invites industry feedback on whether the *Section 4 (2)* of the Life Act on definition of Life Insurance policy needed should be clarified to remove the ambiguity.

4.2. Lodgement of Annual Reports /Returns

4.2.1. Alignment in Reporting Deadlines

There are misalignments and inconsistencies with reporting requirements placed by the Life Act on LICs on the Audited Accounts, Annual Statistical Returns and Financial Condition Report (FCR). These critical reporting requirements have varying submission dates, and the assessment of key risks, or vital information are not available in time for assessment or decision-making.

Below are the current reporting requirements as per the Life Act;

- *Section 58 (2)* of the Life Act requires the licence holder (LH) to provide Annual Statistical Returns 5 months (31 May) after the end of the financial year;
- *Section 62 (4) (e)* of the Life Act requires the LH to provide Audited Accounts (Financial Statements) three months (31 March) after the end of the financial year; and
- *Section 63* of the Life Act requires the approved Actuary to provide to the LH, the FCR every two years, six months (30 June) after the end of the financial year.

Consultation Question

The SLIRC invites feedback on whether the submission dates for the lodgement of Audited Accounts, Annual Statistical Returns, Policy Valuation and Financial Condition Reports (FCR) need to be realigned to ensure consistency on submission dates.

4.2.2. Financial Condition Reports (FCR)

As mentioned in point 4, *Section 63* of the Life Act requires the approved Actuary to provide to the LH, the FCR every 2 years, six months after the financial year. However, the Life Act, regulations or a specific prudential standard does not provide a format for the Actuaries to provide their reports. As such, the Actuary may provide the reports in accordance with either their local actuaries reporting standards or international practices which gives rise to many inconsistencies in reporting, presentation and disclosures.

Consultation Question

The SLIRC invites feedback on whether there should be Prudential Standard prescribing minimum reporting and formatting standards for FCR? What should it include as a minimum?

4.2.3. Penalties for Late Lodgement of Annual Returns to the Bank

Submission of Returns by LICs must be on a timely basis. It concerns the Bank that the Returns are not always submitted on time. Some form of penalty fee, or fine must be imposed for late lodgement to serve as a deterrent. Without such deterrent measures, LICs are likely to breach the deadlines and time-critical matters may not be addressed swiftly. The Life Act only provides for the due date of the various annual returns and reports, however does not provide any penalties for late lodgements.

Section 58 (2) of the Life Act requires the LH to provide the Annual Statistical Returns five months (31 May) after the end of the financial year whilst *Section 62 (4) (e)* of the Life Act requires the LH to provide the Audited Accounts (Financial Statements) three months (31 March) after the end of the financial year.

Consultation Question

The SLIRC is inviting feedback on whether the Life Act be amended to provide a fine or late lodgement fee which can be imposed on the LH by the Bank for late lodgements?

4.3. Unauthorised Operations

4.3.1 Investigation and Prosecution of Unauthorised Operation

It has come to the attention of the Bank that certain unlicensed entities as defined under *Section 13* of the Life Act have been offering life insurance products or funeral/mourning (pidgin “haus-krai”) related products that falls within the ambit of the Life Act. In such circumstances, the Bank has no legal mandate to have access to records of these unlicensed entities that are purportedly selling life insurance products.

Consultation Question

The SLIRC therefore invites the industry’s feedback on whether to enable the Bank extended investigation and prosecution powers over such practises and take action on unlicensed entities offering life insurance products to provide a level-playing field

4.4. Life Insurance Brokers (LIB)

4.4.1 Life Insurance Brokers Reporting Requirements

Currently, there are no requirements on LIB for the provision of any statistical data and annual reports nor supervision of their trust accounts, apart from the requirement at *Section 13 (1A) and (1B)* of the Life Act (2004). *Section 13* of the Life Act requires LIB to be licensed by the Bank and must ensure certain requirements are met including maintaining of trust accounts for

the “receipt and payment of client's moneys.” However, it does not compel the LIB to furnish their audited accounts or provide a record of transactions arising from this trust account.

LIB have a huge impact on the market and they influence the decisions of Policyholders and Underwriters. They play a significant role in influencing what and with whom, life cover, mainly group schemes, are placed, (the Underwriter) considering the price, coverage and their brokerage fees/commissions. There is a need to provide parameters on how they conduct their operations and manage their risks.

Consultation Question

The SLIRC invites the industry’s feedback on whether the Bank’s oversight function or reporting requirements should extend to LIB and in what manner given the critical role they play in the industry.

4.5. Policy Holders’ Statutory Fund

4.5.1 Capital and Solvency Requirements

Section 1 of the Life Insurance Regulation 2002 and Life Insurance Prudential Standard 1/2005 Financial Requirement for Life Insurance Companies (PS 1/2005) sets the minimum capital requirement of K4m for the LICs to have in their shareholders’ funds. In addition to this, *Life Insurance Prudential Standard 3/2005 Solvency Standard for Life Insurance Companies (PS 3/2005)* and *Life Insurance Prudential Standard 4/2005 Capital Adequacy for Life Insurance Companies (PS 4/2005)* also requires these companies to have sufficient assets in their statutory funds to (i) meet obligations to policyholders and creditors and (ii) as an additional buffer above the amount needed to meet expected obligations. These two requirements provide for risk management of liabilities and assets. However, they have been in existence for more than 20 years and with current change in business trends and emerging risks, these requirements will need to be refreshed to reflect the current business climate.

Consultation Question

The SLIRC invites submissions from the industry on the adequacy of the current minimum capital requirement, capital adequacy and solvency requirements imposed on the license holders.

4.5.2 Risk Adequacy for Assets in the Statutory Fund

Under the *Insurance Act 1995*, certain assets are discounted for “Risk Adequacy”. The same applies to assets in Life Insurance Statutory Funds.

In a situation like a liquidation or a run off, almost all assets will be discounted in some way. This can be addressed distinguishing life insurers “in business” and those “in run off”.

Consultation Question

The SLIC invites submission on whether the assets in the statutory fund be discounted for risk before determining adequacy and in what manner

4.5.3 Contagion Risks

LICs are exposed to a combination of risks including systemic risk that can potentially have an adverse effect on policyholders' funds. Currently, the four LICs are composite insurance companies that underwrite both life insurance and general insurance business and (or) operate under a group structure with other subsidiaries, with inherent contagion risk in their operations. Given the distinct nature of the products, where general insurance is more short-term and life insurance is long-term, it is critical to ensure there is a clear demarcation to mitigate these risks between the assets held for life and general insurance or their other subsidiaries under a group structure.

Consultation Question

The SLIRC invites submissions on whether there is adequate separation of the assets utilised for the statutory funds from contagion risk in the event of adverse financial impact on the life insurance company

4.6. Fitness and Propriety

4.6.1 Fitness and Propriety

Section 20 and the criteria specified in *Schedule 2* of the Life Act and the *Life Insurance Prudential Standard 9/2012 Corporate Governance* (PS 9/2012) does not have any provision, or guideline for a director or officer who has "resigned", or has been "terminated", before the Bank can make a determination on their fitness or propriety.

However, under *Section 135 (3)* of the *Companies Act 1997*, there is still liability under provisions of the Act on a director who resigns. Therefore, similar provisions can be considered in the Life Act so that responsible directors or officers are held accountable and a determination on their fitness and propriety is made to mitigate similar offences from occurring

Consultation Question

The SLIRC invites submissions on whether the Life Act adequately deal with directors or officers of insurance companies who "resign" or who are "terminated" before the Bank can make a determination on fitness and propriety?

4.7. Access to Records

4.7.1 Access to Records when a Licence is Surrendered or Revoked

Given that life insurance policies will remain in force until the insured "event" (death), or cancellation, funds will continue to be paid to policyholders long after a licence is surrendered, or cancelled, it is essential that all records must be retained for a determined period after such surrender/termination of licence. *Section 62 (4) of the Life Act* does requires a LIC to maintain certain specific records but does not provide for a period or during instances such as surrender or revocation of licences.

On this basis, it would seem appropriate and desirable for a LIC to retain all its records for a define period after surrender or termination of its licence and penalties can be considered for

officers who fail to comply with this requirement. Such requirement should align with the requirements of *Section 164 and 135(3) of the Companies Act 1997*. Furthermore, *Section 135 (3) of the Companies Act 1997*, indicates that there is still a liability on a director who resigns.

Consultation Question

The SLIRC invites feedback on whether officers of a licence holder which is either on a run-off or has surrendered its licence and or had its licence revoked be required to retain the records for a period after the licence has been surrendered or revoked? If so, what penalties apply to officers who fail to comply with this requirement?

4.8. Multiple Regulators

4.8.1 Multiple Regulations of Insurance Sector

This is an important factor to consider when examining the current dual regulation of the insurance industry in this country with the resultant inconsistent regulatory and supervisory approaches being taken by the Bank and the Office of Insurance Commissioner (OIC). There are many benefits to be derived by the policyholders, the insurance industry and the economy of PNG by having the licensing and regulation of both life insurance and general insurance consolidated under one regulator, preferably the Bank.

General Insurance is a vital component for financial stability and confidence in any economy and the current multiple regulator approach with differing standards enables general insurers to operate, at what the Bank would consider, below the required standards.

Consultation Question

The SLIRC therefore invites feedback whether it would be beneficial/benefits for policy holders, the insurance industry and the economy of PNG by having the licensing and regulation of both life insurance and general insurance consolidated under one regulator?

4.9. Anti-Money Laundering (AML)/Counter-Terrorism Financing (CTF)

4.9.1 AML/CTF and Life Act

There are no provisions in the current Life Act specifically covering AML/CTF. Given the level of global concern and increasing compliance obligations relating to these types of activities, it might be timely to consider this for inclusion in the Life Act.

Consultation Question

The SLIRC seeks comments from the industry for the Life Act to adequately deal with AML/CTF.

5. TAXATION ON SUPERANNUTION AND LIFE INSURANCE INDUSTRIES

5.1. Taxation on Superannuation Industry

5.1.1. Taxation on Retirement benefits

The tax treatment for retirement benefits is very complicated as detailed below:

- a) Normal concessional rate is applied – (on the interest and gratuity only).
- b) Tax Rate applicable to benefit payments are –
 - i) Concessional Rate of 2%;
 - ii) Concessional Rate of 8%; or
 - iii) Concessional Rate of 15%.
- c) Concessional Rate of 2% applies where the payment was –
 - i) Accrued prior to 1 January 1993;
 - ii) For contributions made by the employer for more than 15 years;
 - iii) For contributions made by the employer for more than 7 years, where the employee is no less than 50 years of age;
 - iv) For contributions made by the employer for more than 7 years, where the employee is subject to forced early retirement; and
 - v) Made as a result of the death or permanent disability of the employee.
- d) Concessional Rate of 8% applies when the years of contribution is not less than 9 years and not greater than 15 years. i.e. 9 – 15 years = 8%.
(Note that if the member is 50 years and over and had worked over 7 years, then he is entitled to a concessional rate of 2% as mentioned above).
- e) Concessional rate of 15% applies when the years of contribution is not less than 5 years and not greater than 9 years. i.e. 5 – 9 years = 15%.
(Note that if the member is 50 years and over and had worked over 7 years, then he is entitled to a concessional rate of 2% as mentioned above).
- f) Benefit payments to Defence Force Retirement Benefit Fund members:
 - i) Under 20 years of service, tax would be same as above;
 - ii) Concessional rate of 2% is applied on the 60% portion which is the state share if eligible for a pension (more than 20 years of service);
 - iii) The annual pension apportioned into 60/40 which is the State and Fund portions respectively. The pension is subject to the income tax rule only for 60% portion which is the State share.
 - iv) In accordance with the *Income Tax Act 1959*;
 - (1) If the pensioner has an annual income less than K10,00.00, pension is tax-free;
 - (2) If the pensioner's annual gross income is more than K10,000.00 but less than K18,000.00, pension is taxed at 22%;
 - (3) If the pensioner's annual gross income is greater than K18,000.00, pension is taxed at 30%; and
- g) And there is a tax of 2% on the benefits paid out if a member dies.

Consultation Question

The SLIRC therefore invites feedback from stakeholders whether and if so how to simplify the current level of taxation on superannuation benefits which are taken as a lump-sum. The complications of the calculations are an administrative cost paid for by all members and are a serious operational risk due to the complexity of the calculations involved.

However, the SLIRC considers that the overall taxation taken from lump sum retirement benefits not be reduced to offers an incentive to members to take their retirement benefit in the form of a compulsory pension. In making submissions, stakeholders are requested to pay regard to PNG's revenue needs and affordability.

5.1.2. Tax on benefit payments if a member dies

Currently, there is a tax of 2% on the benefits paid out if a member dies.

Consultation Question

The SLIRC invites feedbacks from the stakeholders on the benefits of removing the taxation on the benefits of a member who dies as it reduces the funds available to support the late member's family and it raises little tax .

5.1.3. Compulsory pensions

The long standing weakness in the superannuation system is that members take the accumulated balance in their account on retirement as a lump-sum. This lump-sum is then rapidly dissipated to family and extended family members resulting in the member being unable to derive an income during their retirement.

The significant proportion of superannuation benefits which are taken as a lump-sum also has a dampening effect on the level of post-retirement assets held within the superannuation system, and therefore reduces the overall level of assets held available for investment within the country by the superannuation industry.

If the superannuation system was changed to both mandate and encourage members to take their retirement income in the form of a genuine lifetime term annuity or lifetime pension instead of a lump-sum, this weakness in the current system could be addressed. By pooling the retirement savings in a collective term annuity or lifetime pension scheme operated by the ASF in this country, the ASFs, which are residents in PNG and are authorised by the Bank would be able to pool the longevity risk where the assets, not needed and held in respect of those who die at younger ages, are made available to support continuing income payments, to those who live to a more advanced age.

There are significant benefits to both the members and to the economy of the country in forcing and encouraging retirement savings to be taken in the form of genuine term annuity or lifetime pensions rather than as lump-sums. These additional benefits include:

- a) The member having a guaranteed income stream in retirement for either a fixed period – for example 15 years (a term annuity) – or until death (a life-time pension);
- b) The superannuation fund assets will be retained in the financial system rather than being immediately dissipated after a member retires. This pool of assets will provide the country with an additional pool of investible funds that offer the potential to generate wealth and prosperity for our economy;
- c) The requirement that the ASF in PNG would ensure that the benefits remain in the country and are not transferred for the benefit of another country; and
- d) The creation of either term annuity or lifetime pensions to be provided by an ASF in PNG will ensure that the products are managed for the best interests of the members, are genuine and that the term annuity or lifetime pensions are actually paid and are not subject to poor investment or fraudulent practices. The Bank would have oversight of the pension divisions of each of the ASF and would introduce prudential standards to ensure adequate actuarial input and segregation of risks between the pension section and the accumulation section of each ASF.

It is recognised that the introduction of mandatory term annuity or lifetime pensions instead of the current lump-sum option will be resisted by members as the members have become accustomed to taking their retirement benefits as a lump-sum. However, the current lump-sum option effectively means that the retirement savings are immediately dissipated apart from a very small number of well-informed members who have significant account balances and who use these balances to purchase term or lifetime annuity products from overseas.

The current *Income Tax Act 1959* provides that the income held by ASFs in what are called “Retirement Savings Accounts” (RSA) is tax-exempt. However:

- i. there is currently no definition of what is an RSA;
- ii. failure on behalf of at least one major fund to adequately account for RSA assets and to claim the tax exemption – to the detriment of the members; and
- iii. failure on behalf of all ASFs to give the benefit of the tax-free income on RSA assets to the members who have the RSA assets. Rather, if the tax benefit has been claimed, it has been spread to benefit all members.

Consultation Question

The SLIRC invites stakeholders to provide feedback on whether it should recommend that all benefits above a certain threshold, say K20, 000, must be taken in the form of a term annuity or whole-of-life pension and that the income held in the ASFs for the payment of these pensions be tax-free as currently applies to the RSA accounts. This would have the advantage of enabling the ASFs to provide a higher level of pension payments than would otherwise be the case.

5.1.4. Housing Advances

Currently, housing advances paid from members' accounts balances held in ASFs to enable an employee to purchase his or her first home are not taxable at the date of the advance provided the cost of the property is K75, 000 or less.

Consultation Question

The SLIRC invites feedback from the stakeholders whether to review this threshold and consider removing it or moving it to a higher level which is more reflective of the actual costs of housing, and will not act as a dis-incentive to people using the advances from the members' benefits to acquire what is arguably the single most important asset to enable a sustainable level of living and retirement.

5.1.5. Contributions by employers to an overseas based superannuation fund

Currently, an employer is not entitled to a tax deduction for contributions made to an overseas-based superannuation fund.

Consultation Question

The SLIRC invites feedback from stakeholders whether employers should be encouraged to make contributions to an ASF in PNG to generate wealth and prosperity for our economy.

5.1.6. Tax deductibility for employer contributions

Whilst there are special rules for certain companies including life insurance companies, non-resident insurers, mining, petroleum and gas companies and ship-owners, the calculation of taxable income generally corresponds to accounting income and with regard to superannuation, the employer is permitted to deduct the employer's contributions to an ASF in PNG. However, this deduction is currently limited to 15% of an employee's fully taxed salary or wages.

Consultation Question

Should the current cap of 15% be increased to a higher level to enable an employer to obtain a tax deduction for employer contributions in excess of 15% as an incentive?.

5.1.7. Taxation on resident superannuation funds

The current tax on ASFs is summarised below:

- a) The taxable income of a resident superannuation fund is subject to a rate of tax of 25%;
- b) Dividends paid to a superannuation fund qualify for the dividend rebate and are exempt from dividend withholding tax if the fund is an ASF; and

- c) Where an employer's contributions to a superannuation fund exceed 15% of an employee's fully taxed salary or wages, the excess contribution is included as assessable income of the superannuation fund. Although, how the superannuation fund is able to assess whether the employer's contributions exceed 15% of an employee's fully taxed salary or wages is difficult to comprehend.

Investment returns on superannuation assets are a significant contributor to the growth of the superannuation industry. The current tax rate of 25% on all superannuation fund income is an impediment to the rate of growth in superannuation which undermines the most important objective of superannuation which is to deliver an adequate income in retirement for the members of the superannuation funds.

The current tax rate imposed on the ASFs of 25% for contributions by an employer for contributions in excess of 15% of an employee's fully taxed salary or wages together with the lack of tax deductibility for such contributions for the employer also acts as an impediment and a dis-incentive to employers and to members making additional voluntary superannuation contributions, with the level of voluntary member contributions currently being negligible.

Consultation Question

The SLIRC invites feedback from the stakeholders as it considers recommending the reduction in the rate of taxable income of a resident superannuation fund from the current 25% to a lower rate to make superannuation and superannuation savings an attractive form of investment and to assist in moving towards delivering an adequate income in retirement for the members of the superannuation funds.

5.1.8. Double tax treaties

Double tax treaties have been entered into with Australia, Canada, China, Fiji, Germany, Korea, Malaysia, Singapore and the United Kingdom although it is unclear whether Germany has ratified the treaty.

As the ASFs may have up to 35% of the total assets invested overseas, it is desirable that the rate of tax applied in the overseas jurisdictions is reflective of the level of tax applying to ASFs in PNG.

Consultation Question

The SLIRC seeks feedback from the stakeholders on the extension of the double taxation treaties to the USA and into the new and emerging markets in the Pacific region and in Asia to enable the superannuation industry to diversify asset risks beyond the current range of countries which have double tax treaties in place with PNG.

5.1.9. Non-citizens

In general, non-citizens make their own retirement plans through overseas superannuation funds, investment schemes, or do without. As such, PNG misses out on the tax on the earnings of the employer and employee contributions which would have to be paid if the employers of all non-citizens were required to contribute to an ASF in PNG.

In addition, by not requiring that all the employers of all non-citizens contribute to an ASF in PNG, there is no encouragement for non-citizens to maintain their accounts in this country or to stay longer in the country.

It also makes it difficult for the Bank to determine if all employers are meeting their superannuation obligations under the Super Act if non-citizen employees are exempt.

Consultation Question

The SLIRC seeks feedback from stakeholders that, to be eligible for a tax deduction, all employers be required to contribute to an ASF in PNG with benefits only being released by an ASF on proof of permanent departure from the country by the non-citizen.

5.1.10. Inefficiencies and additional administrative costs caused by employers providing inadequate data

The failure of employers to provide adequate data to the ASFs to enable the contribution to be linked to the member results in “unallocated contributions”.

Unallocated contributions comprise approximately 140,000 member’s accounts or 28% of all member accounts. Unallocated contributions require the creation of “dummy accounts” within the superannuation fund administration platforms which represent a serious fraud risk with the superannuation system. But more importantly, “dummy accounts” are a significant cost burden on the entire superannuation system.

Consultation Question

The SLIRC invites feedback on whether an employer who fails to provide the prescribed minimum required bio-data with superannuation contributions, should be penalised by not being able to claim the contributions as a tax deduction.

In addition, to reduce the “unallocated contributions” all employers be compelled to provide the TIN for all superannuation contributions and that failure to do so would be punishable by a suitable penalty such as a fine and that the IRC make a concerted effort to ensure compliance.

5.2. Taxation on Life Insurance Industry

5.2.1 Death benefit

Currently, death benefit payments made by a licensed life insurance company are not taxed in the hands of the recipients.

Consultation Question

The SLIRC invites feedback from stakeholders on whether this tax-free status should remain to encourage people to take out life insurance cover.

5.2.2 Tax deduction on group life cover

Currently, companies that take out group life cover get a tax deduction as part of their operating expenses and this reduces their taxable income.

Consultation Question

The SLIRC invites feedback from stakeholder on whether this deduction only be allowed where the group life cover is provided by a licensed life insurance company in PNG.

5.2.3 Key man insurance

Currently, companies that take out “key man” insurance to deal with business interruptions if a key person dies get a tax deduction as part of their operating expenses and this reduces their taxable income.

Consultation Question

The SLIRC invites submissions on whether;

- a) this deduction only be allowed where the “key-man” insurance cover is provided by a licensed life insurance company in PNG.
- b) any payments made by a life insurer under such a policy are taxable in the hands of the company as normal income.
- c) this tax treatment should continue as it encourages employers to cover “key man” risk, but it recognises that the benefit from the policy is assessable income

5.2.4 Tax on individual life cover

Individuals who take individual life cover in PNG do not get a tax deduction for the amount of the policy payments.

Consultation Question

The SLIRC seeks feedback from stakeholders on whether individual taxpayers who voluntarily take out life insurance cover from a licenced life insurance company, to be allowed to reduce their taxable income to encourage individuals to acquire life insurance protection for themselves and their families.

5.2.5 Life insurance products with a savings component

Some life insurance products may be offered which include a savings component. At the moment, the income on savings component of such a life insurance policy is taxed in the hands of the life insurer at the normal corporate tax rate.

Consultation Question

The SLIRC is inviting stakeholders to provide feedback on the following with regard to such life insurance products provided by a licensed life insurance company in PNG:

- a) That the life insurer be required to maintain the assets held for the savings component of the life insurance product separately from the other assets of the life insurer;
- b) That the income on the assets held for the savings component of the life insurance product be either tax free or concessional taxed to encourage individuals to purchase such life insurance with an attached savings component;
- c) That the life insurers be required to credit to the policy holders' account the full earnings net of whatever tax rate is determined as being appropriate by the SLIRC; and
- d) That the policy holders of such life insurance products be allowed to draw-down on their savings component for the purpose of assisting with the home purchase or repairs in the same manner as applies to ASF or using it as security for a loan to an Authorised Deposit-taking Institution for such purposes.

The benefits of accepting these suggestions are as follows:

- i. It would enable the licensed life insurance companies to offer a life insurance product which has an attached concessional taxed savings component. This would aid penetration of life insurance and savings into the broader population; and
- ii. Enabling the savings component of such a policy to be accessed by the policyholder as a low-cost loan for housing using the policyholders own savings would provide additional access to finance in the community.

6. ANNEXURE

6.1. Terms of Reference

-Ends-