

# FRAMEWORK FOR REGIME OF SANCTIONS AND PENALTIES

*RR/P&R/08/016*



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**National Pension Commission**

## **About this Framework**

This Framework covers operators (i.e. Pension Fund Administrators and Custodians) as well as Employers. It is expected that employee related compliance issues would be handled through their employers and awareness campaigns.

The compliance issues covered in this framework include those in:

- i. The Pension Reform Act 2004;
- ii. The Guidelines issued by the Commission; and
- iii. The circulars or general directives issued by the Commission.

The sanctions or penalties would be imposed on offenders who could either be individuals responsible for the occurrence of a violation/non-compliance or the organization that committed the violation.

## **Review and Enquiries**

These Guidelines shall be subject to review by the Commission from time to time as the need arises.

All enquiries regarding these Guidelines shall be directed to the Director General, National Pension Commission

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## FRAMEWORK FOR REGIME OF SANCTIONS AND PENALTIES

### 1.0 Introduction

- 1.1 The provisions of the Pension Reform Act 2004 (Act) empowered the Commission to apply penalties and administrative sanctions as incentives to secure compliance with the Act. In line with the provisions, a Framework for the Regime of Sanctions and Penalties that would ensure uniformity and consistency in dealing with violation of the provisions of the Act has been developed by Management.

### 2.0 Objectives of the Framework

The overall objective of the Framework is to define a regime of sanctions and penalties that could be used as deterrents to secure maximum compliance with the Act among operators and employers. The Framework would also promote high standards of conduct in the Pension Industry, by deterring operators and employers who have breached the Act or regulatory requirements from committing further contraventions, deter other operators and employers while rewarding compliant behavior.

- 2.2 The specific objectives of the Framework are to:-

- i. provide a regime of penalties and administrative sanctions that could be used as deterrents to ensure compliance with the Act among operators and employers; and

- ii. ensure uniform and consistent application of the incentives in dealing with violators of the Act;

### 3.0 Philosophy

- 3.1 The Commission's approach in the exercise of its powers to apply the penalties and administrative sanctions would be guided by the following philosophy:

- i. Consultation, i.e. the Commission would maintain an open and cooperative relationship with all stakeholders in the pension industry; including those that may violate the Act or its guidelines. This however does not imply that the Commission would condone non-compliance;
- ii. Transparency, proportionality and consistency, i.e. the Commission would be transparent, equitable and consistent in the application of sanctions and penalties; and
- iii. Fairness, i.e. the Commission would give opportunity for both written and oral representation by the violators of the Act or guidelines.

### 4.0 The Framework

The Framework is divided into:-  
Key Considerations,  
Sanctions/Penalties,  
Implementation Procedure, Record of Violations and Accounting for Penalty Funds.

4.1 Key Considerations

In line with the guiding philosophy as indicated in 3.0 above, the sanctions and penalties would range from the issuance of simple letters of advice to monetary penalties, public censures, legal action, and revocation of license. The choice of sanctions or penalty to be applied for each contravention would depend on the seriousness of the breach or misconduct and would be guided by the following considerations:-

- i. Whether the operator or employer has benefited as a result of the violation;
- ii. Duration and frequency of the violation or contravention;
- iii. Whether the violation revealed serious weaknesses;
- iv. Impact of the misconduct on the orderliness of the pension industry;
- v. The loss or risk of loss caused to contributors and other stakeholders.
- vi. Whether the operator or employer has admitted the breach or misconduct and has provided full and immediate cooperation to the Commission, and has taken steps to ensure that those affected are fully compensated for losses arising from the contravention;
- vii. Whether the operator or employer has poor disciplinary record or compliance history;

viii. The Commission's approach in similar previous cases. The Commission will seek to be consistent in the use of sanctions and penalty; and

ix. Whether the operator or employer has adequate means to pay the penalty. The Commission would consider if there is verifiable evidence that an operator or employer would suffer serious financial hardship that would make it unable to meet other regulatory requirements, particularly financial resources requirements, if the Commission imposed a financial penalty at an appropriate level.

4.2 Sanctions and Penalties Regime

The sanctions and penalties regime would include in ascending order of severity:

4.2.1 Letter of Advice:

This would be issued mainly to first-time offenders, particularly where the offences are not grievous.

4.2.2 Letter of Caution:

This would be issued to first-time offenders who have failed to take corrective action as well as second-time offenders.

4.2.3 Letter of Warning:

This would be issued to offenders who have failed to comply with provisions of the Act and/or the Commission's directives after being issued a letter of advice or caution.

4.2.4 Monetary Penalty:

Monetary penalty would be applied to violators who have benefited or likely to benefit from their actions or inactions as well as those who have continued to violate the Act after being issued a Letter of Warning. Monetary penalty would also be charged where the Pension Reform Act 2004 expressly provided such sanctions.

4.2.5 Naming and Shaming (Public Censure):

Operators or employers who continue to violate the provisions of the Act after monetary penalty had been imposed would be publicly named at any forum or through any media chosen by the Commission. This sanction would be particularly used for stakeholders that have poor compliance records.

The Commission will regard the decision to issue a public censure or public statement as a serious sanction. The violator should be aware of the effect such a statement may have on its reputation or business. Where the

Commission proposes to issue a public censure or public statement, the operator or employer in question will be given a warning notice setting out the terms of the statement or censure the Commission proposes to issue.

4.2.6 Removal or Suspension from Office:

Any director or officer of an operator who is responsible for the commitment of an offence or violation of the provisions of the Pension Reform Act 2004 could be removed or suspended from office by the Commission and be disqualified from working in the pension industry thereafter.

4.2.7 Legal Proceedings:

Offences or violations committed by employers or operators that are punishable upon conviction would be prosecuted in a court in accordance with the provisions of the Pension Reform Act 2004. Legal proceedings may also be considered where other sanctions applied failed to yield the desired response.

*A schedule showing the Regime of Sanctions and Penalties is attached to this Framework as an Appendix A.*

4.2.8 As a further deterrence to violations of the Act or the Commission's guidelines, all violations by licensed

operators for which monetary penalties, public censures and/or removal were imposed would be disclosed in the concerned operator's annual financial statements.

#### **4.3 Implementation Procedure**

The implementation of this framework would involve the following:

##### **4.3.1 Identification of Violations:**

The Resolution and Enforcement Department would evolve a process of monitoring compliance with the provisions of the Act and guidelines through which violations would be identified. In addition, cases of violations would be identified by any department within the Commission. All such violations would be forwarded to the Resolution and Enforcement Department for further necessary actions.

##### **4.3.2 Appraisal/Review and Recommendation:**

Upon identification or receipt of any report of violation, the Resolution and Enforcement Department would carry out necessary review and appraisal. The initial recommendation would be made by the Head, Resolution and Enforcement Department. That would be done immediately after the review. The recommendation would be forwarded to the Commissioner, Inspectorate.