Consultative and Training Workshop on Employment Injury Protection in Southern and Eastern Africa

Subject: Namibian Workers Compensation Scheme

Harare, Zimbabwe

October 20-21, 2014

Author:

David Keendjele
General Manager: Operations
Social Security Commission
1. Background

The Workmen’s Compensation Act (WCA) was assented to and enacted on 5 May 1941 in South Africa, to provide for the administration of compensation for benefits for workers in event of work related accidents or diseases resulting in either of the following:

- Temporary, Partial or Total Disablement,
- Permanent Disablement, or
- Death and;
- The medical expenses incurred as a result of work related accidents or diseases would also be covered subject to the provisions of the Act.

All the above mentioned benefits are managed within Employees Compensation Fund (“the Fund”).

The employers in Namibia started contributing to the South African Accident Fund (established by that Act) since 1957. Prior to the independence of Namibia from South African occupation, the administration of the Employees Compensation was passed over to Namibia on 1st February 1990\(^1\) when Namibia created its own Accident Fund. Since the transfer of administration of the Accident Fund did not involve the transfer of assets to cover ongoing liabilities of the Fund, all existing liabilities remained with the South African Accident Fund.

The country’s independence was celebrated on March 21\(^{st}\), 1990. The Fund membership and assets under the Workmen’s Compensation Act have ever since been growing to its present levels.\(^2\) In 1995 the Amendment Act, called Employees Compensation Act was passed, Act 5 of1995, which placed the administration of the Funds under the tripartite Social Security Commission.

The Employees Compensation Amendment Act (ECA 1995) was promulgated in 1995 to amongst other objectives.

- Amend the WCA of 1941 so as to adjust its provisions in view of independence of Namibia and exclude certain discriminatory provisions,
- Transfer administration of the Act to the Social Security Commission (SSC) or the Commission,
- Make further provisions for the powers, duties and functioning of the Commission,
- Make new provision for exemption of income tax,

\(^1\) This was done by Proclamation 45 of 1989, issued by the Administrator-General, Late Louis Pienaar.
\(^2\) At independence there were only around 8 000 employers registered with the ECF, compared to over 46 000 registered employers at present, as at January 2014. See also the balance sheet of the Funds elsewhere in the paper.
• Review provisions in respect of appeals decisions, compensation benefits reviews, formal hearings, application of accident fund, valuation of Funds, exemption of certain employers from submitting certain statements, exclusion of members of Namibian Defence Force, provision for transfers to the Accident Pension Fund (APF) and increase the penalties imposed under the Act,

• Establish the Accident Pension Fund ("APF"),

• Provide for the Reserve Fund ("RF") to be juristic person,

• To repeal certain provisions relating to benefits payable to assessors and the referral of application to a pension board,

• To make provision for transfer of certain assets, liabilities, rights and obligations to the Commission, and

• The right of certain individuals to enter into employment with the Commission.

In this paper, any reference to the Act relates to the original WCA 1941 subject to the amendments made in ECA 1995.

The Fund comprise of three main components described briefly here under:

a. The Accident Fund ("AF"),

b. The Accident Pension Fund ("APF"), and

c. The Reserve Fund ("RF").

**Accident Fund (AF)**

The AF was established under section 64 of the Act and is credited with the following:

• Assessments and monies including penalties paid by employers under the Act,
• Interest on investments of the AF and the RF,
• Any transfers from the RF in terms of section 66 of the Act,
• Advances made from Public Funds in terms of section 19 of the Act,
• Contributions from employers individually liable in terms of section 74 of the Act, and
• Any other amounts to which the Fund may be entitled.

Section 65 of the Act provides for the AF to be applied towards the following:

- Payment of compensation, medical aid or other pecuniary benefit of workmen whenever no other person is made liable for such liability,
- Creating and maintaining a RF in cash, investment or both,
- Expenses towards promotion, establishment, subsidy or assistance thereof, in maintenance of any body, organisation or scheme whose objects cover prevention of accidents or disease, promotion of health and safety of workmen and other initiatives as set out in section 14(2) of the Act,
- Repayment of Public Funds reimbursed in terms of section 19 of the Act,
- Payment of remuneration, travelling and subsistence allowances for assessors,
- Charges for and in connection with medical examination of injured employees,
- Payment of witness fees as set out in section 16(7) of the Act,
➢ Payment of any other expenditure incurred by the Commissioner in carrying out its functions under the Act,
➢ Reduction of future assessments made under section 69 at the discretion of the Commissioner, and
➢ Transfers to the Reserve Fund.

**Merit rebate** reserves are also held within the AF. The liabilities held within the AF are in respect of the following benefits:

➢ Temporary Disability benefits,
➢ Permanent Disability benefits,
➢ Death and burial benefits,
➢ Transport benefits, and
➢ Medical claims expenses.

The Commission has discretion to reward employers with favourable claims history by paying out merit rebates on a three year cycle. Employers can get back up to 50% of the amount paid in assessment to the Fund. The system has been criticised for encouraging employers not to report accidents in order to get merit rebates, or giving only nursing care for serious accidents in order to avoid lodging claims with the Fund. Smaller employers who paid in less than an amount set by the Commission are also excluded from getting merit rebate payment besides having a favourable claim history. It is also not clear if those getting merit rebates have applied better safety practices or just operating by luck without injuries. No study has been conducted to confirm the effectiveness of the merit rebate system.

**Accident Pension Fund (APF)**

The APF was established as a juristic person with the promulgation of the ECA1995 as an addition to section 65 of the Act.

The APF shall consist of moneys transferred from the AF being capitalisations of pensions payable in terms of section 39 and 40 of the Act.

The APF is applied by the Commission for payment of pensions and the pension liabilities are held within the APF. The fund has a healthy balance sheet and favourable loss ratio.

**Reserve Fund (RF)**

The RF was established under section 66 of the Act, with the amount to be held in this Fund being under the discretion of the Commissioners. The main aim is to:

Hold a provision against unforeseen demands from the AF,

Stabilise the rates of assessments fixed under section 69 from year to year, and

For any other such purposes as the Commissioner considers advisable.

The RF is applied by transferring to the AF, such money as may from time to time be deemed necessary by the Commissioner for the purposes listed above.

The size of the Reserve Fund is illustrated in the balance sheet of the fund in the next section.
2. Benefit Structure

2.1 Eligibility conditions The Act defines those employees who are required to join the Fund. This includes domestic employees employed in private households, but excludes:

- Persons earning more than N$ 81 300 per annum;
- Persons who contract for carrying out work, and who engage other persons to perform this work;
- Persons working solely for commissions or share of takings.

Persons earning more than N$ 81 300 may be permitted to join the Fund by special agreement with the Commission.

2.2 Definition of accident.

Accidents are defined as those arising out of and in the course of an employee’s employment, and which result in personal injury. It includes the employee contracting a scheduled industrial disease.

2.3 Benefits on temporary total disablement Temporary disability refers to the inability of an employee to work due to an accident, where the employee does not have a permanent form of disablement (such as an anatomical defect of loss of function). Monthly compensation equal to 75% of the employee’s monthly earnings (to a maximum of the earnings cap) is payable to the disabled employee.

2.4 Benefits on permanent disablement Permanent disability refers to the inability of an employee to continue to work due to a permanent form of disablement such as an anatomical defect of loss of function. The benefit payable depends on the extent of permanent disability are as follow:

- **Disablement of 30% or less:** A lump sum equal to the 15 times the employee’s monthly earnings, up to N$5 000 of earnings, is payable. This amount reduces proportionately where the degree of disability is less than 30%.
- **Disablement of more than 30%:** Monthly compensation equal to 75% of the employee’s monthly earnings (to the earnings cap) is payable to the totally (100%) disabled employee. This amount reduces proportionately where the degree of disability is less than 100%. The extent of disability is assessed by the Commission.

2.5 Benefits payable on death of an employee:

- **Cash benefit** A lump sum equal to the lower of twice the employee’s monthly earnings and N$ 4 500.
- **Spouse’s and children’s pensions** A monthly pension of 40% of the employee’s earnings is payable to the surviving spouse and 20% to each surviving child (up to age 18), to a maximum total pension of 75% of earnings.
- **Burial expenses** An allowance not exceeding N$ 3 450 may be paid towards the necessary burial expenses.

2.6 Medical expenses Reasonable medical expenses incurred by or on behalf of the employee are payable, in accordance with the tariffs published by the Commission. Such expenses are paid for two years or longer if further medical treatment may reduce the extent of the disablement.

2.7 Transport of an injured employee: Reasonable expenses incurred in the conveyance of an injured employee to a hospital or other medical facility will be refunded at a rate determined by the Commission.
The table below shows the liabilities of the Fund for the period 2010-2013.

<table>
<thead>
<tr>
<th>Type of Benefit</th>
<th>28 February 2010</th>
<th>28 February 2011 = 29 February 2012</th>
<th>28 February 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burial and Transport Expenses</td>
<td>409,000</td>
<td>335,000</td>
<td>357,000</td>
</tr>
<tr>
<td>Medical Expenses</td>
<td>9,485,000</td>
<td>8,786,000</td>
<td>9,037,000</td>
</tr>
<tr>
<td>Permanent Disability</td>
<td>2,862,000</td>
<td>2,657,000</td>
<td>1,973,000</td>
</tr>
<tr>
<td>Temporary Disability</td>
<td>3,467,000</td>
<td>2,808,000</td>
<td>1,634,000</td>
</tr>
<tr>
<td>Total IBNR Liability</td>
<td>16,223,000</td>
<td>14,586,000</td>
<td>13,001,000</td>
</tr>
<tr>
<td>Pension Liability</td>
<td>64,091,000</td>
<td>67,106,000</td>
<td>67,950,000</td>
</tr>
<tr>
<td>Claims Handling Provision</td>
<td>19,967,000</td>
<td>17,953,000</td>
<td>16,002,000</td>
</tr>
<tr>
<td>Data Integrity Provision</td>
<td>4,056,000</td>
<td>3,647,000</td>
<td>3,250,000</td>
</tr>
<tr>
<td>Merit rebates</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total Liability</td>
<td>104,337,000</td>
<td>103,292,000</td>
<td>100,203,000</td>
</tr>
</tbody>
</table>

3. Assessments (contributions due to the Fund)

Assessments are payable by employers to the Fund in terms of the Act, based on their annual wage bill. Assessments are due only on wages to the ceiling, and are paid annually at the rates prescribed for different industry classes and sub classes. (Details of the current assessment rates are bulky but can be accessed from SSC web site) The current assessment ceiling is N$ 66 750 per employee per annum. The Fund is healthy and showed a steady growth in value as seen from its assets on its balance sheets for the periods 2010-2013.

The table below shows the total assets from 2010 until 2013.

<table>
<thead>
<tr>
<th>Adjusted Assets</th>
<th>28 February 2010</th>
<th>28 February 2011</th>
<th>28 February 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Current Assets</td>
<td>40,432,000</td>
<td>38,210,000</td>
<td>43,192,000</td>
</tr>
<tr>
<td>Property, Plant and Equipment</td>
<td>35,051,000</td>
<td>34,528,000</td>
<td>36,386,000</td>
</tr>
<tr>
<td>Investments</td>
<td>5,381,000</td>
<td>3,200,000</td>
<td>5,961,000</td>
</tr>
<tr>
<td>Intangible Assets</td>
<td>-</td>
<td>482,000</td>
<td>845,000</td>
</tr>
<tr>
<td>Current Assets</td>
<td>323,169,000</td>
<td>365,670,000</td>
<td>529,932,000</td>
</tr>
<tr>
<td>Debtors</td>
<td>13,410,000</td>
<td>16,601,000</td>
<td>22,249,000</td>
</tr>
<tr>
<td>Investments</td>
<td>309,090,000</td>
<td>344,304,000</td>
<td>497,336,000</td>
</tr>
<tr>
<td>Bank and Cash</td>
<td>669,000</td>
<td>4,765,000</td>
<td>10,347,000</td>
</tr>
<tr>
<td>Total Assets</td>
<td>363,601,000</td>
<td>403,880,000</td>
<td>573,124,000</td>
</tr>
</tbody>
</table>

The Funds’ assets are invested in different instruments as per investment policy of the Commission. The balance sheet of the Fund is illustrated in the table below:

---

3 Actuarial Valuations report 2013.  
4 Ibid  
5 Actuarial report 2013
<table>
<thead>
<tr>
<th></th>
<th>28/02/2010</th>
<th>28/02/2011</th>
<th>29/02/2012</th>
<th>28/02/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Current Assets</strong></td>
<td>40,432,000</td>
<td>38,210,000</td>
<td>40,029,000</td>
<td>43,192,000</td>
</tr>
<tr>
<td><strong>Current Assets</strong></td>
<td>323,169,000</td>
<td>365,670,000</td>
<td>436,040,000</td>
<td>529,932,000</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>363,601,000</td>
<td>403,880,000</td>
<td>476,069,000</td>
<td>573,124,000</td>
</tr>
<tr>
<td><strong>Current Liabilities</strong></td>
<td>4,143,000</td>
<td>11,807,000</td>
<td>17,310,000</td>
<td>19,634,000</td>
</tr>
<tr>
<td><strong>Non-Current Liabilities</strong></td>
<td>104,337,000</td>
<td>103,292,000</td>
<td>100,203,000</td>
<td>103,417,000</td>
</tr>
<tr>
<td><strong>IBNR Reserves</strong></td>
<td>16,223,000</td>
<td>14,586,000</td>
<td>13,001,000</td>
<td>12,770,000</td>
</tr>
<tr>
<td><strong>Pension Reserves</strong></td>
<td>64,091,000</td>
<td>67,106,000</td>
<td>67,950,000</td>
<td>69,583,000</td>
</tr>
<tr>
<td><strong>Data &amp; Claims handling provision</strong></td>
<td>24,023,000</td>
<td>21,600,000</td>
<td>19,252,000</td>
<td>19,155,000</td>
</tr>
<tr>
<td><strong>Merit rebate</strong></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1,909,000</td>
</tr>
<tr>
<td><strong>Free Reserves</strong></td>
<td>255,121,000</td>
<td>288,781,000</td>
<td>358,556,000</td>
<td>450,073,000</td>
</tr>
<tr>
<td><strong>Total Free Reserves and Liabilities</strong></td>
<td>363,601,000</td>
<td>403,880,000</td>
<td>476,069,000</td>
<td>573,124,000</td>
</tr>
</tbody>
</table>

As can be seen from the balance sheet above the ECF fund is in a financially sound condition. Although the reserves for the ECF are at N$ 450,073,000 it should be kept in mind that the ECF cover a list of industrial diseases. These industrial diseases have led to very big claims in the past to other insurance companies. It is thus important to keep a healthy level of reserve for these kind of claims in future to avoid dipping into the funds reserve for such claims.

4. Coverage gaps and other challenges

For one to understand the fund activity one need to look at the membership and compare it with the other fund membership. The MSD and ECF are run by the same institution but under different rules. Active Employers registered per fund as at December 2013 are presented in the figure below.

A total number of 46 090 (ECF) and 60 842 (MSD) employers were registered as at January 31, 2014 where the membership at the end of last year was 38 704 (ECF) and 53 004 (MSD). This represents a growth of 19% and 15%, for ECF and MSD respectively.
Other challenges are summarised in the next paragraphs.

4.1 Out dated legislation

Several amendments to various sections of the WCA of 1941 were made in 1945, 1949, 1956, 1970, 1974, 1977, 1984, 1986 and 1987. Further amendments were made in line with proclamation 45 of 1990. The 1995 amendment Act did not overhaul the old WCA 1941 Act but only changed some of the provisions that were in conflict with the Namibian Constitution. The Act still remain in force as originally passed and requires a rigorous review.

4.2 Lower ceiling for earnings

The present ceiling of 81300 excluded many workers who go without alternative cover. This is reflected from many claims that are submitted to the Fund only to be repudiated due to higher income of the employees who were injured. This situation can be addressed by raising the ceiling periodically to realistic levels based on the average wage inflation.

4.3 Lack of prevention programs

Although the Act makes provision for supporting prevention projects and initiatives, the Funds has not managed to encourage the creation and implementation of preventive programs. Meirrt rebate payment was not found to be an effective way of dealing with prevention of accidents at work.

4.4 Lack of coordination with OHS

The coordination between the Accident Fund and the Occupational Health and Safety directorate in the Ministry of Labour and Social Welfare is at infant level. Only major accidents are passed to OHS.
for investigation and report and findings are not readily shared. Statistics on Injury on Duty cases are also share on a voluntary basis without sharing action plan for improvement of OHS.

4.5 Service delivery for medical treatment not effective.

The Commission publishes in Government Gazette the medical tariffs payable to medical service providers and related services from time to time. These tariffs are not updated regularly and service providers at times refuse to accept ECF cases and only treat them as private cases for which either the member has to pay out of pocket expenses or use their medical aid for the IOD. This has caused severe mistrust ion the Fund and SSC is working on modalities to address it.

4.6 Pension increases delays

The Commission administers over 600 pensions as per table below. There is no indexing provision for the pensions awarded and the Act give a discretionary power to the SSC to adjust the pensions. Although the Fund has a healthy surplus and can afford the pension increases as advised by the actuaries, this has not happen for a long time. As a result the purchase power of the pensions paid has been eroded by inflation over the years. Efforts are under way to address this matter in the revised legislation that SSC is busy drafting. The table below show the pension fund beneficiaries and the amount of pension liability in 2010.5

<table>
<thead>
<tr>
<th>Category</th>
<th>Number</th>
<th>Average Age</th>
<th>Annual Pension N$</th>
<th>Ave. Annual Pension N$</th>
<th>Liability N$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disabled</td>
<td>162</td>
<td>44.1</td>
<td>1 476 374</td>
<td>9 113</td>
<td>27 154 530</td>
</tr>
<tr>
<td>Spouses</td>
<td>125</td>
<td>47.0</td>
<td>1 059 112</td>
<td>8 473</td>
<td>21 976 538</td>
</tr>
<tr>
<td>Child 18 -yrs</td>
<td>325</td>
<td>11.9</td>
<td>1 126 440</td>
<td>3 466</td>
<td>6 258 003</td>
</tr>
<tr>
<td>Child 18+ yrs</td>
<td>30</td>
<td>20.0</td>
<td>112 675</td>
<td>3 756</td>
<td>385 810</td>
</tr>
<tr>
<td><strong>Total /Avg</strong></td>
<td><strong>642</strong></td>
<td><strong>27.2</strong></td>
<td><strong>3 774 601</strong></td>
<td><strong>5 879</strong></td>
<td><strong>55 774 880</strong></td>
</tr>
</tbody>
</table>

**Conclusion.**

This paper is a mere summary of the activities of the ECF and more details about the Fund can be obtained from SSC web site (www.ssc.org.na) and annual reports that have been tabled to Parliament. It was prepared to demonstrate the practical application of a compensation fund in a developing nation and to share experience with colleagues in the region who wish to introduce similar schemes in their countries.

DA Keendjele (Email: david.keendjele@ssc.org.na)

GM: Operations

Social Security Commission, Namibia

---

5 Actuarial Valuation report 2009.