

H.B. 6, 2021.]



**INSURANCE AND PENSIONS COMMISSION AMENDMENT BILL, 2021.**

MEMORANDUM

The purpose of this Bill is to amend the Insurance and Pensions Commission Act [Chapter 24:21]. The individual clauses of the Bill are explained below:

*Clause 1*

This clause sets out the Bill's short title.

*Clause 2*

This clause amends section 2 by the repeal of the definition of "appointed member" and the substitution of "appointed director" and by the insertion of new definition of "independent director or trustee".

*Clause 3*

This clause inserts new section 3A to provide for the objects of the Commission.

*Clause 4*

This clause amends section 4 by adding functions of the Commission.

*Clause 5*

This clause amends section 5 by increasing the number of members of the Board of the Commission from five to seven and to provide for the criteria for their appointment.

*Clause 6*

This clause amends section 6 of the Insurance and Pensions Commission Act by the addition of another ground of disqualification for appointment as a member and by providing for what constitutes conflict of interest.

*Clause 7*

This clause amends section 7 by increasing the term of office and conditions of service members from three years to four years and to prescribe for the eligibility of members for reappointment for a further four-year term only.

*Clause 8*

This clause amends section 13 by increasing the number of people who can call for a special meeting s of the Board from two members to two-thirds of the members.

*Clause 9*

This clause amends section 14 to provide for the mandatory establishment of Committees of the Board which the Board may vest some of its functions for better excise of its functions.

*Clause 10*

This clause amends section 23 by the deletion of the word "Commissioner" wherever it appears and the substitution of "Commission" and by the inclusion of any other persons conducting insurance business and pension related business among entities which may be required to furnish such statistics and information as may be requested by the Commission.

*Clause 11*

This clause amends the Insurance and Pensions Commission Act by the insertion of new Part IIA and Part IIB after Part II to provide for provisions relating to the

Commission's cooperation with other authorities, treatment of records obtained from foreign law enforcement authorities, sharing of privileged information with other supervisory authorities and nondisclosure of privileged information provided to the Commission. Part IIB provides for the establishment of the Policyholder and Pensions and Provident Fund Members Protection fund, establishment of the Policyholder and Pensions and Provident Fund Members Protection Fund Board, functions of the Board, holding and investment of fund and to provide for other things relating to the fund which among other things include the powers of the Board to make regulations.

*Clause 12*

This clause amends section 27 by the deletion of "As soon as possible" and the substitution of "Within three months".

*Clause 13*

This clause amends Part V by the insertion of new sections 32A, 32B and 32C to provide for the indemnity of members and employees of the Commission, keeping of asset register and to provide for the procedure of appeals against the decisions of the Commission respectively.

**INSURANCE AND PENSIONS COMMISSION AMENDMENT BILL, 2021**

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ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

*Section*

1. Short title.
2. Amendment of section 2 of Cap. 24:21.
3. Insertion of new section 3A of Cap. 24:21.
4. Amendment of section 4 of Cap. 24:21.
5. Amendment of section 5 of Cap. 24:21.
6. Amendment of section 6 of Cap. 24:21.
7. Amendment of section 7 of Cap. 24:21.
8. Amendment of section 13 of Cap. 24:21.
9. Amendment of section 14 of Cap. 24:21.
10. Amendment of section 23 of Cap. 24:21.
11. Insertion of new Parts IIA and Part IIB in Cap. 24:21.
12. Amendment of section 27 of Cap. 24:21.
13. Amendment of Part V of Cap. 24:21.





**3 New section inserted in Cap. 24:21**

The principal Act is amended by the insertion after section 3 of the following section—

“3A Objects of Commission

The objects of the Commission shall be to— 5

- (a) promote the maintenance of a fair, safe and stable insurance and pensions sector for the benefit and protection of policy holders and pension and provident fund members;
- (b) be operationally independent, accountable and transparent;
- (c) maintain a high standard of confidentiality with regard to confidential information; 10
- (d) meet high professional standards and have adequate resources.”

**4 Amendment of section 4 in Cap. 24:21**

Section 4 (“Functions and powers of Commission”) of the principal Act is amended— 15

- (a) in subsection (1) by the insertion in paragraph (c) of “and regulate” after “to monitor”;
- (b) by the insertion of the following paragraphs—
  - “(g) to accredit actuaries, auditors, asset managers, credit rating agencies and other service providers; and 20
  - (h) to promote the maintenance of a fair, safe and stable insurance and pension sector for the benefit and protection of policy holders and pension fund members; and
  - (i) to research on the international best practices in the insurance and pension sector; and 25
  - (j) to conduct investigations into any particular registered person or class of registered persons, where the Commission considers such an investigation necessary for the purpose of preventing, investigating or detecting a contravention of this Act or any other law governing the pensions and insurance sector”. 30

**5 Amendment of section 5 in Cap. 24:21**

Section 5 (“Board of Commission”) of the principal Act is amended—

- (a) in subsection (2) by the deletion of the word “five” in paragraph (b) and the substitution of “seven”; 35
- (b) by the repeal of subsection (3) and substitution of the following “(3) The persons appointed under subsection (2)(b) shall be chosen for their qualification, knowledge and experience in insurance and pension matters actuarial, legal, finance, human resources management, information technology, or related fields of expertise.”. 40



**6 Amendment of section 6 in Cap. 24:21**

Section 6 (“Disqualification for appointment as member”) of the principal Act is amended—

(a) in subsection (2) by the insertion of the following paragraph—

5 “(c) if he or she is under the employment of any other such body or organisation under the supervision and regulation of the Commission or any organisation associated with an entity under the supervision and regulation of the Commission or has significant conflict of interest to perform his or her duties independently.”;

(b) by the insertion of the following subsection—

“(4) For the purposes of subsection (2)(c) conflict of interest shall refer to a situation which include the following—

- 15 (a) a member of a board of a regulated entity or employee of a regulated entity; or
- (b) directly or indirectly owns more than five per centum of shareholding in the regulated entity; or
- (c) closely related to any person employed in the regulated entity; or
- 20 (d) any person with controlling stake in the regulated entity.”.

**7 Amendment of section 7 in Cap. 24:21**

Section 7 (“Terms of office and conditions of service of members”) of the principal Act is amended—

25 (a) in subsection (1) by the deletion of the word “three” and the substitution of the word “four”;

(b) by the repeal of subsection (2);

(c) by the repeal of subsection (4) and the substitution of the following—

“(4) A member, at the expiry of his or her first term of office, shall be eligible for re-appointment for a further four-year term only.”.

30 **8 Amendment of section 13 in Cap. 24:21**

Section 13 (“Meetings and Procedure of Board”) of the principal Act is amended in subsection (2)(b) by the deletion of “two members” and substitution of “two thirds of the members”.

**9 Amendment of section 14 in Cap. 24:21**

35 Section 14 (“Committees of Board”) of the principal Act is amended by the deletion of subsection (1) and the substitution of the following—

“(1) For the better exercise of its functions, the Board shall establish two or more committees in which the Board may vest such of its functions as it considers appropriate.”.

40 **10 Amendment of section 23 in Cap. 24:21**

Section 23 (“Commissioner may require statistics and information”) of the principal Act is amended by—

- (a) the deletion of “Commissioner” wherever it appears and the substitution of “Commission”;
- (b) the deletion of the word “and” and the substitution of “,” after “provident funds”;
- (c) by the insertion after “insurance brokers” of “, any other person conducting insurance and pension related business”. 5

**11 New Parts inserted in Cap. 24:21**

The principal Act is amended by the insertion of the following Parts after Part II—

“PART IIA 10

COOPERATION WITH OTHER AUTHORITIES

**23A Cooperation with other authorities**

(1)The Commission may foster relationships with any supervisory authorities, including foreign law enforcement authorities or foreign insurance and pensions authorities for the purposes of— 15

- (a) negotiating agreements to cooperate in investigations, enforcement, co-ordination and harmonisation of laws, procedures and standards; or
- (b) exchanging information on matters of common interest; or
- (c) assisting in regulating and enforcing any laws; or 20
- (d) carrying out investigations and providing such information as may be required.

**23B Records obtained from other authorities**

The Commission shall not be compelled to disclose information obtained from a supervisory authority including any foreign law enforcement authority or foreign insurance and pensions authorities if the supervisory authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that supervisory authority. 25

**23C Sharing privileged information with other authorities 30**

(1) Subject to the Freedom of Information Act [*Chapter 10;33*], the Commission may, furnish privileged information acquired by it under this Act to any supervisory authority charged with the performance of a function under any law, including a foreign law enforcement authority or foreign insurance and pensions authority if the person requesting such information undertakes to treat the information with the confidentiality it deserves. 35

(2) The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by any person or authority entrusted with that information. 40

23D Non-disclosure of privileged information provided to the Commission

(1) The Commission shall not be compelled to disclose privileged information obtained from any supervisory authority including foreign insurance and pensions authority, or foreign law enforcement authority.

(2) The Commission shall take all necessary steps to protect the confidentiality of privileged information received pursuant to a request for assistance in terms of this Part.

(3) The Commission shall, before passing privileged information in its possession to a subsequent requesting authority—

- (a) seek consent from the requested authority;
- (b) ensure that the requesting authority has responsibility for prosecuting, regulating or enforcing laws, regulations and rules falling within the scope of cooperation in terms of this Part;
- (c) ensure that the subsequent requesting authority undertakes to maintain the confidentiality of the privileged information.

(4) Where the Commission becomes aware that privileged information received under this section may be subject to a legally enforceable instruction to disclose, it will inform the requested authority of the position.

(5) Where the Commission has been issued with a legally enforceable instruction, it shall notify the requested supervisory authority prior to complying with the instruction.

PART IIB

POLICYHOLDER AND PENSIONS AND PROVIDENT FUND MEMBERS PROTECTION FUND

23E Interpretation in Part IIB

(1) In this Part—

“beneficiary” means a policyholder, pension, provident or retirement annuity fund member or any person entitled to receive a benefit under the insurance policy, pension, provident or retirement annuity fund;

“Board” means the Policyholder and Pensions and Provident Fund Members Protection Fund Board established in terms of section 23G;

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed in terms of section 23R;

“contribution” means a contribution payable to the Fund by a contributor;

“contributor” means any person or entity which is required in terms of this Part to pay contributions to the Fund;

“Fund” means the Policyholder and Pensions and Provident Fund Members Protection Fund established in terms of section 23F;

- “insolvent”, in relation to a contributor, means insolvent as described in subsection (2);
- “judicial manager” includes a provisional judicial manager and, in relation to a contributor that is not a company, any person whose functions are similar to those of a judicial manager or provisional manager of a company; 5
- “liquidator” includes a provisional liquidator and, in relation to a contributor that is not a company, any person whose functions are similar to those of a liquidator or provisional liquidator of a company; 10
- (2) A contributor becomes insolvent for the purposes of this Part—
- (a) where the contributor is a company, upon—
- (i) the making of an order by the High Court; or
- (ii) the passing of a special resolution in terms of the Companies and Other Business Entities Act [*Chapter 24:31*], for the winding up of the company; 15
- (b) where the contributor is an insurer, it has been declared to be of unsound financial position in terms of the Insurance Act [*Chapter 24:07*]; or
- (c) where the contributor is a pension, provident or retirement annuity fund, it has been declared to be of unsound financial position and be dissolved in terms of section 10, as read with section 19, of the Pension and Provident Funds Act [*Chapter 24:09*]. 20

**23F Policyholder and Pensions and Provident Fund Members Protection Fund** 25

(1) There is hereby established a fund, to be known as the Policyholder and Pensions and Provident Fund Members Protection Fund, which shall be vested in and administered by the Board in accordance with this Act. 30

(2) The Fund shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of doing anything that body corporates may do.

- (3) The Fund shall consist of—
- (a) all contributions from insurers registered in terms of the Insurance Act [*Chapter 24:07*]; 35
- (b) contributions from pension, provident or retirement annuity funds registered in terms of the Pensions and Provident Funds Act [*Chapter 24:09*];
- (c) income from the investments of the Fund; 40
- (d) penalties payable for contravention of this Part;
- (e) any moneys received by the Fund under any insurance effected on behalf of the Fund in terms of section 23I (2);
- (f) monies appropriated by Parliament;
- (g) unclaimed benefits from insurers and pension, provident or retirement annuity funds that have exceeded five years; 45

- (h) unclaimed benefits after dissolution of pension, provident or retirement annuity fund or winding up of an insurer;
- (i) donations or grants with the approval of the Minister;
- (j) any other moneys that may vest in or accrue to the Fund, whether in terms of this Act or otherwise subject to the approval of the Minister.

(4) The object of the Fund shall be to compensate policyholders and pension, provident or retirement annuity fund members in accordance with this Act for losses directly incurred by them in the event of a contributor becoming insolvent.

### 23G Policyholder and Pensions and Provident Fund Members Protection Fund Board

(1) There is hereby established a board, to be known as the Policyholder and Pensions and Provident Fund Members Protection Fund Board, appointed by the Minister and shall consist of the following members—

- (a) the Commissioner, as *ex officio* members; and
- (b) not more than seven other members appointed by the Minister.

(2) The persons appointed under subsection (1)(b) shall be chosen for their qualification, knowledge and experience in insurance and pension industry, actuarial, legal, finance, human resources management, information technology, or related fields of expertise.

(3) Members of the Board shall be appointed for a four-year term which may be renewable once subject to performance.

(4) The provisions of sections 6, 8 to 18 shall apply with necessary changes to the disqualification, vacation of office, procedure and meetings of the Board and other terms and conditions of the Board.

### 23H Functions of Board

(1) Subject to this Act, the Board shall be responsible for—

- (a) administering the Fund; and
- (b) determining contributions from contributors; and
- (c) paying compensation to beneficiaries for losses incurred by them in the event of a contributor becoming insolvent.

(2) Subject to this Act, in the exercise of its functions, the Board may—

- (a) enter-into any contract of insurance for the purpose of indemnifying the Fund against the making of compensation payments to contributors;
- (b) in consultation with the Minister, invest any moneys of the Fund that are not immediately required in such manner as the Board may approve.

### 23I Holding and investment of Fund

(1) The Fund shall cause one or more banking accounts to be opened, into which all money received on behalf of the Fund shall be paid.

(2) Any money in the Fund that is not immediately required may be invested in whatever way the Fund considers appropriate.

(3) The Fund shall keep a record at its offices showing particulars of the Fund's current investments in sufficient detail to enable contributors to assess the Fund's financial soundness, and the Fund shall ensure that the record is available for inspection at all reasonable times by contributors. 5

(4) At least once a year the Board shall review the size of the Fund and the manner in which the money held in the Fund is invested, taking into account the Fund's current and potential liabilities, and in the light of that review the Board shall— 10

- (a) make any necessary adjustments in the holding of the Fund; and
- (b) determine the contributions to be paid by contributors.

### 23J Financial year of Fund

The financial year of the Fund shall be the period of twelve months ending on the 31st December each year. 15

### 23K Books of account and audit of Fund

(1) The Board shall ensure that proper accounts and other records relating thereto are kept in relation to all the financial transactions of the Fund. 20

(2) The accounts of the Fund shall be audited by the Auditor-General in terms of Part VIII of the Public Finance Management Act [*Chapter 22:19*] (Act No. 11 of 2009).

(3) The audited accounts of the Fund shall be open for inspection by contributors and their officers and employees at all reasonable times at the offices of the Fund. 25

### 23L Contributions to Fund

(1) Every insurer, pension, provident or retirement annuity fund shall be liable to pay contributions to the Fund.

(2) The amount of contributions payable to the Fund and the times and manner of their payment, shall be as prescribed. 30

(3) Any contributor who, without lawful excuse, fails or refuses to pay any contribution which he or she is liable to pay shall be guilty of an offence and liable to a fine not exceeding three times the amount of the contribution. 35

(4) The court convicting and sentencing a contributor of an offence in terms of subsection (3) may, on the application of the prosecutor, give summary judgment against the contributor in favour of the Fund for the amount of the contribution which the contributor has been convicted of failing or refusing to pay. 40

(5) A contribution and any interest or surcharge connected therewith shall be a debt due to the Fund, and the Fund may recover it from the contributor concerned by proceedings in a court of competent jurisdiction.

**23M Payment of compensation in event of insolvency of contributor**

5 (1) Subject to this Part, where it is proved to the satisfaction of the Fund that a beneficiary has sustained loss as a direct consequence of the insolvency of a contributor, the Fund shall as soon as practicable compensate the beneficiary for that loss in accordance with this Part.

(2) The amounts of compensation payable shall be based on the different classes of insurance policies or type of pension or provident fund.

10 (3) Subject to such terms and conditions as may be prescribed, the Fund may reduce the compensation paid to any beneficiary in order to take into account any amount paid to the beneficiary—

- (a) by the trustee or liquidator of the contributor concerned, from the contributor's assets; or
- 15 (b) by an insurer or any other person, by way of compensation for the loss concerned.

(4) With the approval of the Commission and subject to the appropriate provisions of the Insurance Act [*Chapter 24:07*] and the Pensions and Provident Funds Act [*Chapter 24:09*], the Fund may facilitate the transfer of running policies or pension, provident and retirement annuity fund business of the insolvent contributor to another registered insurer or pension, provident and retirement annuity fund, upon payment of financial aid to such insurer or pension, provident or retirement annuity fund as the Board may determine.

**23N Conditions of payment**

25 (1) Before the Board pays any compensation to a beneficiary, it must consider the following—

- (a) compliance by the beneficiary with any conditions imposed by the Board;
- 30 (b) assignment of any rights a beneficiary may have under or in respect of the policy;
- (c) any payment related to the liability of the insolvent contributor made to beneficiary, by any person other than the Board;
- (d) any other considerations the Board may consider fit.

**23O Eligible claimants**

35 (1) The following persons may claim from the Fund—

- (a) any beneficiary holding a Zimbabwean insurance policy from a contributor;
- (b) any member from a pension, provident or retirement annuity fund, registered in terms of the Pension and Provident Funds Act [*Chapter 24:09*], which is a contributor.

40 (2) The following claims shall not be payable from the Fund—

- (a) claims arising before the Fund commenced its operations;
- (b) a policy of re-insurance.

23P Procedure for making a claim

(1) Any claim shall be submitted to the Fund in writing and in a prescribed form.

(2) In making a claim, the claimant must observe utmost good faith by making an honest disclosure. 5

(3) Any person who makes a false or fraudulent claim shall be guilty of an offence and liable to a fine not exceeding level 14 or not exceeding twice the value of any property obtained by him or her as a result of the crime, whichever is the greater; or imprisonment for a period not exceeding thirty-five years. 10

23Q Limitation of compensation

In case of indemnity policies, no compensation shall be paid if the liability of an insolvent contributor to the beneficiary is duplicated by the liability of any other contributor that is solvent.

23R Staff of Fund 15

(1) Subject to this Part, the Board shall appoint a Chief Executive Officer, who shall be responsible, subject to the Board's control, for administering the Fund's affairs, staff and property and for performing any other functions that may be conferred or imposed upon him or her by or under this Act or that the Board may assign to him or her. 20

(2) The appointment of the Chief Executive Officer shall terminate if he or she would be required in terms of section 8 to vacate his or her office had that section applied to him or her.

(3) The Chief Executive Officer shall, subject to the general control of the Board— 25

(a) be responsible for carrying out the decisions of the Board and the day-to-day administration and management of the affairs, staff and property of the Fund; and

(b) be the custodian of the Fund's records; and

(c) attend all meetings of the Board as an ex officio member; and 30

(d) perform such other functions as may be assigned by the Board.

(4) The Board may, in consultation with the Minister, employ such persons as the Board considers necessary for proper exercise of the Fund's functions, and may promote, suspend or discharge any such employee. 35

(5) The Board may, in consultation with the Minister, engage persons otherwise than as employees, on such terms and conditions as the Board thinks appropriate, to perform services of a specialised, technical or professional nature for the Fund. 40

(6) Any remuneration to which persons engaged in terms of subsection (5) are entitled shall be chargeable to the Fund.

(7) Persons employed or engaged by the Fund in terms of this Part shall disclose certain connections or interests which may result in conflict of interest in the performance of their duties or assignments.



23S Conditions of service of Fund's staff

(1) The Board may fix the terms and conditions of service of persons employed in terms of section 23R and, in that regard may—

- 5 (a) pay them such remuneration and allowances, grant them such leave of absence and give them such gifts and bonuses as it deems fit;
- 10 (b) provide pecuniary benefits on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose may effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for them and their dependants any or all the pecuniary benefits to which this subparagraph relates;
- 15 (c) purchase, take in exchange, hire or otherwise acquire land or dwellings for their use or occupation;
- (d) construct buildings and other improvements for their use or occupation on land which it has purchased, taken in exchange, hired or otherwise acquired;
- (e) sell or let land or dwellings to them for residential purposes;
- 20 (f) make or guarantee loans to them or their spouses for;
- (g) the purchase of dwellings or land for residential purposes;
- (h) the construction or improvement of dwellings;
- 25 (i) make or guarantee loans to them for the purpose of purchasing vehicles, tools or other equipment to be used by them in carrying out their duties.

(2) Any remuneration, allowances, pensions and other benefits to which persons referred to in subparagraph (1) are entitled shall be charged to the Fund:

30 Provided that not more than thirty *per centum* of the income of the Fund in any financial year shall be expended on the remuneration and allowances of the Chief Executive Officer and any other employee of the Fund.

23T Regulations by the Board

35 (1) The Board may, with the approval of the Minister, make regulations prescribing anything which under this Part is required or permitted to be prescribed or which, in the Board's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

40 (2) Regulations made in terms of subsection (1) may provide for—

- (a) conditions of service of the staff;
- (b) the form and manner in which applications for compensation under this Part are to be made;
- (c) the procedure to be followed in determining such applications;
- (d) generally, for the proper administration of the Fund and all matters incidental thereto.”.

**12 Amendment of section 27 in Cap. 24:21**

Section 27 (“Accounts of Commission”) of the principal Act is amended in subsection (2) by the deletion of “As soon as possible” and the substitution of “Within three months”.

**13 Amendment of Part V (General) in Cap. 24:21**

5

Part V (General) of the principal Act is amended by the insertion of the following sections—

**“32A Indemnity of members and employees of the Commission**

(1) Subject to the provisions of this Act and any regulation made thereunder, no person shall incur any personal liability for any loss or damage caused by any act or omission by him or her in carrying out the duties under this Act or any regulation made thereunder, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence. 10

(2) The persons referred to in subsection (1) shall include the following— 15

- (a) members of the board of the Commission;
- (b) committee members of the board of the Commission;
- (c) Commissioner;
- (d) every employee of the Commission; and 20
- (e) every inspector engaged by the Commission in terms of the Insurance Act [*Chapter 24:07*], and the Pension and Provident Funds Act [*Chapter 24:09*].”.

**32B Keeping of asset register**

(1) The Commission shall keep and maintain asset registers for insurers, insurance brokers, pensions and provident funds or of any other regulated entity which the Commission may deem necessary. 25

(2) No insurer, insurance broker, pension and provident fund shall dispose of any asset that is recorded in the Commission’s register without giving fourteen days’ prior written notice to the Commission and upon the expiry of the notice period shall proceed to dispose the asset. 30

(3) The notice referred to in subsection (2) shall be accompanied with an independent valuation report and reasons for the disposal.

(4) Where the Commission is of the opinion that the proposed disposal would not be in the best interest of the policyholders and pensions or provident fund members, it shall within fourteen days direct that the proposed disposal be stayed and give reasons therefor. 35

(5) Any insurer, insurance broker, pension and provident fund that contravenes subsection (2) shall be guilty of an offence and liable —

- (a) in the event of an insurer or insurance broker, to a fine not exceeding the value of the asset disposed or imprisonment for a period not exceeding five years or to both such fine and such imprisonment; and 40

- 5 (b) in the event of a pension and provident fund, trustees shall be jointly and severally one paying the other absolved liable to a fine not exceeding the value of the asset disposed or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

### 32C Appeals

Any person who is aggrieved by the decision of the Commission in terms of this Act may lodge an appeal with the Minister within fourteen days from the date the decision is made.”.

