



BULLETIN FOR:

Requirements of the Financial Services Commission
("the Commission") regarding the documents and
information to be submitted to the Commission by
plans which intend to wind-up voluntarily

The Financial Services Commission
39-43 Barbados Avenue
Kingston 5, Jamaica, W.I.
Telephone: (876) 906-3010

May 7, 2014



Requirements of the Financial Services Commission ("the Commission") regarding the documents and information to be submitted to the Commission by plans which intend to wind-up voluntarily

LEGISLATIVE REFERENCE: Section 27 and 32 of the Pensions (Superannuation Funds and Retirement Schemes) Act ("the Act")

1. BACKGROUND

The winding up of a Superannuation Fund ("fund") or Retirement Scheme ("scheme") is a process which results in the distribution of the assets of that fund or scheme i.e. after the winding-up is completed the fund or scheme ceases to exist.

Pursuant to the Pensions Act a fund or scheme can be wound up either voluntarily by the Trustees or by a court on a petition either of the trustees or the Commission.

The Trust Deed and Plan Rules in conjunction with the Act govern the process of winding-up.

2. LEGISLATIVE REQUIREMENTS

Section 27(4) of the Act provides:

"Where trustees intend to voluntarily wind-up an approved superannuation fund or approved retirement scheme, they shall notify the Commission of their intention no later than ninety days before the winding-up and obtain the prior approval of the Commission for such winding-up"

In addition if upon the winding-up of a fund the assets exceed the liabilities thus creating a surplus, a scheme of distribution of the surplus, certified by the plan's actuary, must be submitted to the Commission for its approval. This is pursuant to Section 32 of the Act.

3. OBJECTIVES

To optimize efficiency in processing an application for winding-up of a fund or scheme the Commission requires the documents/information listed below to be submitted by the trustees along with the notice of their intention to wind-up a fund or scheme. Where any of the required information is not available at the time of the filing of the notice it should be submitted to the Commission at the earliest possible date.

4. DOCUMENTS AND INFORMATION REQUIRED

	Documents/Information	Comments
1	Copy of the Trust Deed and Rules together with any amendments	These documents will be necessary if they were not submitted previously.
2	Copy of documents stipulated in the Trust Deed and Rules which will give effect to the winding-up of the pension plan	Such documents may include a resolution to wind-up the pension plan or any notices required to be given.
3	Copy of notice of the proposed winding-up given to the Taxpayer Audit and Assessment Department ("TAAD")	Trustees should ensure that notices are in accordance with the provisions of the Trust Deed and Rules. Where the notice period is not observed the Commission requires the following information/documents: <ul style="list-style-type: none"> ▪ The Trustees written agreement to waive the notice period specified in the Trust Deed and Rules. ▪ A copy of written request from the sponsor to the trustees for a waiver to be granted. ▪ Confirmations by the trustees, in the case of a Defined Contribution plan, that implications of granting the waiver requested have been explained to the participants.
4	A copy of the notice of intention to wind-up given or proposed to be given to the participants.	Notices should be distributed to all active members, pensioners and deferred pensioners. If information about the decision to wind-up the pension plan is provided at a meeting then a copy of the minutes of the meeting with attendance records should be forwarded to the Commission
5	Date and description of the last material change to the plan prior to the intended winding-up	Material change include: <ol style="list-style-type: none"> a) Change of status of a fund or scheme b) Bankruptcy of the sponsor c) Liquidation, amalgamation or reconstruction of the fund or scheme d) Consolidation, separation or otherwise reconstruction of the fund or scheme e) Merger of the fund or scheme with another fund or scheme or any other circumstance that the FSC may declare from time to time
6	Details of redundancies over the last 5 years	This should include: <ol style="list-style-type: none"> a) The dates of the redundancies b) Reasons for the redundancies c) The number and percentage of members affected by each

	Documents/Information	Comments
		redundancy exercise
7	Confirmation whether there are outstanding contributions	The amount of contributions should be provided
8	Details of any concerns raised by members or other stakeholders regarding the winding-up.	Where applicable, information as to how such concerns have been or being resolved should be included.
9	The number of members of the plan active, deferred vested, pensioners paid directly from the plan and pensioners for whom annuities have been purchased	
10	The current value of the assets of the plan, as at stated date	
11	Reason for winding-up	The reasons for the decision of the employer to cease its contributions to the fund should be clearly stated.
12	Proposed winding-up date	

5. Documents and Information Required – Scheme of Distribution of Surplus

	Documents/Information	Comments
1.	Explanation of how the trustees propose to exercise any discretion they may have pursuant to the Trust Deed and Rules	
2.	Verification, if any, of the surplus by an actuary approved by the Commission.	This should include a statement of actuarial or other considerations taken into account for purposes of the scheme of distribution, including commentary on the source of the surplus. This verification may be incorporated in the Winding-up Actuarial Valuation Report (please see item 5).
3.	Allocation of the surplus amount, including payments to be made in cash	This should be, broken down by the following payment classes: <ul style="list-style-type: none"> ▪ current pensioners and their beneficiaries ▪ active members eligible for early, normal or late retirement and their beneficiaries ▪ deferred pensioners ▪ active members ▪ the employer
4.	The method of apportionment of the surplus and the rationale for its use	
5.	If not previously submitted, the Winding-up Actuarial Valuation Report where applicable or such other report	

	Documents/Information	Comments
	which sets out the allocation of the liabilities by payment class	
6.	A statement as to whether the share of surplus allocated to any pensioner will result in any statutory limits being exceeded;.	If any statutory limits will be exceeded an explanation as to how the excess will be utilized should be outlined.
7.	Where the consent of the sponsor, members, and or other stakeholder is required, documentary evidence that such consent has been given.	
8.	Statement regarding any objections/concerns raised by members or other stakeholders regarding the scheme of distribution of surplus.	Where applicable, information as to how such concerns have been resolved must be provided.
9.	If a defined contribution plan, schedule of fund yield (gross and net) and the interest rate credited to members contributions since inception of the plan	
10.	Details of contribution holidays taken by the sponsor,	This should include the frequency of each contribution holiday and the amounts taken

It is important that the winding-up of a fund or scheme is conducted properly and efficiently. In order to achieve this objective all documents required by the Commission should be submitted in a timely manner.

Questions regarding this bulletin may be directed to:

Senior Director, Pensions
 Financial Services Commission
 39-43 Barbados Avenue
 Kingston 5
 Telephone (876) 906-3010
 Facsimile (876) 906-3018
 Email: pensions@fscjamaica.org