



GUIDELINE FOR:

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

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2011 September 30



REQUIREMENTS OF THE FINANCIAL SERVICES COMMISSION ("THE COMMISSION") REGARDING THE DOCUMENTS AND INFORMATION TO BE SUBMITTED TO THE COMMISSION BY APPROVED PENSION PLANS WHICH INTEND TO PARTIALLY WIND-UP VOLUNTARILY

LEGISLATIVE REFERENCE:	Regulation 2, 13 and 18 of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulation 2006 ("Governance Regulations")
	Regulation 4 and the Second Schedule, items 31 and 32 of the Registration, Licensing and Reporting Regulations ("RLR Regulations")
	Sections 3, 4 and 35 of the Pensions (Superannuation Funds and Retirement Schemes) Act ("the Act")

1.0 BACKGROUND

- 1.1 The partial winding-up of an approved Superannuation Fund ("fund") is a material change which results in the termination of a part of the fund and the distribution of the assets related to the terminated portion of the fund. The definition of a "material change" in the Pensions (Superannuation Fund and Retirement Schemes) (Governance) Regulation 2, item (a) includes a change of status of a fund including termination or winding-up of the fund, partially or in its entirety.
- 1.2 Pursuant to the Act and the RLR Regulations, it is a requirement for the registration of a superannuation fund that the constitutive documents, that is, the Trust Deed or Master Trust Deed, Plan Rules, schedules and amendments thereto, address the partial winding-up of the superannuation fund and the distribution of surplus on partial winding-up. In circumstances where a pension plan is partially wound-up, only those persons affected by the partial wind-up should be included in the distribution of assets.
- 1.3 Trustees are required to comply with the relevant provisions of the Trust Deed and Plan Rules which govern the process of partial winding-up and pension legislation.

2.0 LEGISLATIVE REQUIREMENTS

- 2.1 Pursuant to Regulation 4(1) (b) of the RLR Regulations, the Commission shall refuse to register a superannuation fund if :

b) the superannuation fund's constitutive documents do not appear to the Commission to comply with the requirements specified in the Second Schedule and other requirements of the Act and regulations made thereunder."

- 2.2 The Second Schedule to the RLR Regulations requires that the constitutive documents of a Superannuation fund shall provide for the following matters:

“Item 31- Partial termination of the fund/scheme

Item 32- The treatment of the surplus during the existence of the fund/scheme or on partial winding- up.”

- 2.3 Regulation 13 of the Governance Regulations requires:

“Where there is a decision which will cause a material change in a fund or scheme, which would not require an amendment to the constitutive documents, notice shall be given to the Commission and active members in writing of-

- a) the decision;
- b) the explanation of the material change and how the rights of the participants or beneficiary have been affected as a result of the change;”

- 2.4 In keeping with Section 3(2)(a) of the Act, the Commission’s mandate requires that:

“(2) The Commission shall –

- (a) supervise the operation of approved superannuation funds.....”

- 2.5 Pursuant to section 4 of the Act:

“The Commission may issue to administrators, investment managers, sponsors and trustees, of approved superannuation funds or approved retirement schemes, directions to be followed by them in the performance of their respective functions in relation to matters concerning such approved superannuation funds and approved retirement schemes.”

- 2.6 Where the participating employers have been named in the constitutive documents of an approved superannuation fund and its constitutive documents necessitates an amendment to remove the name of the withdrawing participating employer, the trustees will be required to comply with the amendment process as outlined in Section 35 of the Act and Governance Regulations 5 and 18-20.

The Commission must approve the amendment to the fund’s constitutive documents in keeping with section 35 of the Act.

3.0 OBJECTIVES

- 3.1 Where the trustees or sponsors of a fund intend to partially wind-up the fund, the trustees or sponsor shall be required to comply with the relevant provision of their constitutive documents on partial winding-up and distribution surplus on partial winding-up. The trustees are to notify the Commission of the proposed partial winding-up, so that the Commission may have appropriate oversight of the process.
- 3.2 Similar to a full winding-up, where trustees intend to voluntarily, partially wind-up an approved superannuation fund, they shall notify the Commission of their intention no later than ninety days before the winding-up and await a response from the Commission for such winding-up.

- 3.3 In addition if upon the partial winding-up of a fund the related assets exceed the liabilities attributable to the terminated portion resulting in a surplus, a scheme of distribution of the surplus, certified by the plan's actuary, must be submitted to the Commission for its review.
- 3.4 Where the Commission is satisfied that the trustees and sponsor have complied with the constitutive documents regarding partial winding-up of the fund and distribution of any surplus on the partial winding-up, the Commission will issue a letter of non-objection.
- 3.5 To optimize efficiency in processing an application for winding-up of an approved superannuation fund, the Commission requires the documents and information listed below to be submitted by the trustees along with the notice of their intention to partially wind-up a fund. 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.

4.0 DOCUMENTS AND INFORMATION REQUIRED

4.1 Documents and Information Required: Partial Winding-Up

	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 partial winding-up of the pension plan	Such documents may include a resolution for partial wind-up the pension plan or any notices required to be given.
3	Copy of notice of the proposed partial winding-up given to Tax Administration Jamaica ("TAJ")	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 a written request from the sponsor to the Trustees for a waiver to be granted. ▪ Confirmations by the Trustees, that the implications of granting the waiver requested have been explained to the participants and any concerns emanating there from have been satisfactorily resolved.
4	A copy of the notice of intention to partially wind-up given or proposed to be given to the participants.	Notices should be distributed to affected active members, pensioners and deferred pensioners. If information about the decision to partially 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.

	Documents/Information	Comments
5	The Winding-up Actuarial Valuation Report where applicable or such other report which sets out the allocation of the liabilities by payment class	
6	Date and description of the last material change to the plan prior to the intended winding-up	Material changes include: a) Change of status of a fund or scheme b) Bankruptcy of the sponsor c) Liquidation, amalgamation or reconstruction of the sponsor 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.
7	Details of redundancies over the last 5 years for the approved superannuation fund.	This should include: a) The dates of the redundancies b) Reasons for the redundancies c) The number and percentage of members affected by each redundancy exercise
8	Confirmation whether there are outstanding contributions in relation to the portion of the plan which will be terminated as well as the pension plan as a whole.	The amount of outstanding contributions should be provided.
9	Details of any concerns raised by members or other stakeholders regarding the partial winding-up.	Where applicable, information as to how such concerns have been or being resolved should be included.
10	The number of members of the plan active, deferred vested, pensioners paid directly from the plan and pensioners for whom annuities have been purchased	This information should be provided for the portion of the fund that will be terminated as well as the pension plan as a whole.
11	The current value of the assets of the plan, as at stated date	
12	Reason for partial winding-up	The reasons for the decision of the employer to cease its contributions to the fund should be clearly stated.
13	Proposed partial winding-up date	The reasons for choosing the partial winding up date. The superannuation plan should also receive legal and actuarial opinions prior to partial winding-up.

4.2 Documents and Information Required : Scheme of Distribution of Surplus on Partial Winding-Up

	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 of the surplus, if any by the plan's 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. This verification may be incorporated in the partial winding-up actuarial valuation report (please see item 5 above).
3.	Proposed 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.	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.
6.	Where the consent of the sponsor, trustees, members, and or other stakeholder is required, documentary evidence that such consent has been given.	
7.	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.
8.	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	
9.	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 partial 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 Guideline may be directed to:

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