



BULLETIN FOR:

DESIGNATING AN ADMINISTRATOR AND INVESTMENT
MANAGER OF A PENSION PLAN

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DESIGNATING AN ADMINISTRATOR AND INVESTMENT MANAGER OF A PENSION PLAN

LEGISLATIVE REFERENCE:	The Pensions (Superannuation Funds and Retirement Schemes) Act Section 10
	The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations ("RLR") Regulation 17
	The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations Regulation 7(1)(c)

1.0 BACKGROUND

- 1.01 The Trustees of a superannuation fund ("fund") or retirement scheme ("scheme") is responsible for ensuring that a fund or scheme complies with the regulatory requirements under the Act and associated regulations.
- 1.02 It is recognized that trustee boards, often rely on the support of professional service providers to assist them in carrying out their duties satisfactorily. Additionally, an effective governance framework must be put in place to ensure, among other things, compliance with the constitutive documents of the fund or scheme as well as the pension legislation.

2.0 WHO IS AN ADMINISTRATOR OR INVESTMENT MANAGER

- 2.01 Section 2 of the Pensions (Superannuation Funds and Retirement Schemes) Act ("the Act") defines an administrator as a company which is licensed, pursuant to section 7(1)(a) of the Act, to administer a fund or scheme.
- 2.02 Section 2 of the Act defines an investment manager as a company which, pursuant to section 8(1)(a) of the Act, is licensed to invest and manage the pension fund assets of a fund or scheme.

3.0 LEGISLATIVE REQUIREMENTS

3.01 Section 10 of the Act provides:

- i. *"Subject to subsection (2), the trustees of every superannuation fund and retirement scheme not being a specified pension fund or specified pension scheme shall, within thirty days after the appointed day or within fourteen days of the termination of employment or resignation of an administrator or investment manager, designate an administrator and an investment manager for such fund or scheme."*
- ii. *The same person may be designated as the administrator and investment manager"*
- iii. *The Trustee shall within fourteen days of making a designation under subsection (1) notify the Commission in writing of the designation".*

In addition, Regulation 17 of the RLR stipulates that:

"A registrant or licensee shall, within fourteen days after any change in any of the particulars included in an application made pursuant to these regulations, report to the Commission in writing, giving full details of the change including the date and reasons for the change."

4.0 TRUSTEES RESPONSIBILITY

4.01 A primary duty of the trustees is ensuring that a fund or scheme is managed in accordance with the Act and associated regulations. Therefore, trustees are expected to know and understand the statutory requirements governing their conduct. Further, as fiduciaries, trustees are required to undertake a certain duty of care. Regulation 7(1)(c) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations sets out, in part, the duty of care of trustees. It states:

7(1) *"Trustees in the exercise of their duties, and taking all reasonable precautions and exercising due diligence, shall –*

- (c) *make decisions on a fully informed basis, in good faith and are not precluded from relying in good faith on oral or written advice given in a professional capacity by an appointed agent or advisor: Provided that any oral statement shall be subsequently confirmed in writing by the person who provided the advice."*

4.02 In keeping with the aforementioned stipulation, it is important that trustees ascertain whether or not a proposed entity is currently licensed by the Financial Services Commission ("Commission") prior to designating a company to act as administrator and/or Investment Manager for a fund or scheme.

4.03 Further, where trustees intend to change the administrator or investment manager of a fund or scheme the assets and/or records, should only be transferred to the new administrator or investment manager after the trustees have satisfied themselves that the entity is currently licensed by the Commission. The trustees can ascertain this by:

- Checking the list of licensees published by the Commission on the pension page of its website.
- Visiting the premises of the company to confirm that its licence is displayed.

4.04 The Trustees may also:

- Contact the company to ascertain its licensing status or
- Request written confirmation from the company regarding its status.

Questions regarding this bulletin may be directed to:

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