



**GUIDELINE FOR:**  
**MERGER OR CONSOLIDATION OF PENSION  
PLANS**

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**The Financial Services Commission  
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Kingston 5, Jamaica W.I.  
Telephone No. (876) 906-3010**

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## **Merger or Consolidation of Pension Plans**

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**LEGISLATIVE REFERENCE:** The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the "Act")  
Section: 35

The Pensions (Superannuation Funds and Retirement Schemes) (Governance)  
Regulations, 2006 (the "Governance Regulations")

Regulations: 5, 13, 18 through 22

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### **1.0 INTRODUCTION**

This guideline sets out the requirements of the Financial Services Commission ("Commission") regarding the documents and information to be submitted to the Commission where Sponsor/Trustees contemplate a merger or consolidation of two or more approved superannuation funds or retirement schemes which results in the formation of one single plan.

### **2.0 BACKGROUND**

2.1 The FSC has received increased enquiries regarding the requirements and steps to be taken for the merger or consolidation of two or more pension plans

2.2 A merger of two or more pension plans may be undertaken to ensure uniformed benefits among all members, reduce plan administration costs and streamline regulatory compliance objectives. Additionally, with the downturn in the economy some businesses are considering the option of merger in order to, among other things, benefit from economies of scale.

2.3 There are a number of other reasons for the merger of pension plans, including:

- i) Transfer of sponsorship;
- ii) The need to combine two or more plans, previously established by the same employer;
- iii) A merger between two corporate entities; and
- iv) Where one company takes over another (and merges the pension plans operated by each company).

- 2.4 In considering a merger of two or more pension plans, the Trustees of those plans should undertake a comprehensive review of the respective Trust Deed and Rules to ensure that the merger is permissible and the rights and benefits of existing members and their beneficiaries will not be adversely affected. This review will, inter alia, allow for comparison of the plans design and provisions relating to investments, administration, communication and contribution. It will also assist in identifying any potential obstacles or difficulties to compliance. Further, the Trustees should note that it may be necessary to seek legal, actuarial and other professional advice on the proposed merger.
- 2.5 Two or more plans may be merged with the intention of creating a new plan. When this type of merger is undertaken, the original plans cease to exist and the merged plan is considered a new plan. In this scenario an application for the winding-up of the original plans must be submitted to the Commission for approval pursuant to Section 27(4) of the Pensions (Superannuation Funds and Retirement Schemes\_ Act (the "Act"). Similarly, an application for the registration of the merged plan must also be submitted to the Commission for approval pursuant to Section 6(2) of the Act.
- 2.6 A plan may also merge with an existing plan which has been approved by the Commission. An application for the winding-up of the plan that will cease to continue must be submitted to the Commission. The Trust Deed and Rules for the existing plan must be amended and submitted to the Commission for approval pursuant to Section 35 of the Act. The resulting amended Trust Deed and Rules of the merged plan should be used to govern the operations of the plan from the effective date of the merger.

### **3.0 LEGISLATIVE REQUIREMENTS**

- 3.1 If the Trustees intend to amend the constitutive documents then they will need to comply with the provisions of Section 35(3)(a) of the Act. The merger would be a prescribed amendment under Regulation 18(1)(e) and constitutes a "material change".

A *Material change* as defined in the Governance Regulations includes the following:

- (i) change of status of a fund or scheme including termination or winding-up of the fund or scheme, partially or in its entirety;
- (ii) bankruptcy of the sponsor;
- (iii) liquidation, amalgamation or reconstruction of the sponsor;
- (iv) consolidation, separation or otherwise reconstruction of the fund or scheme;
- (v) merger of the fund or scheme with another fund or scheme or any other circumstance that the Commission may declare from time to time.

### **4.0. OBJECTIVES**

The goals of this guideline are to:

- (a) Ensure compliance with the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 and the associated Regulations.
- (b) Maintain the ability of the FSC to ensure that members' benefits, rights and the solvency of the plans are not adversely affected.

**5.0 DOCUMENTS AND INFORMATION REQUIRED BY THE COMMISSION**

1	If the constitutive documents are to be amended then "Registration of an Amendment - PR-CONSUL-11/04-0004 (available on the FSC's website at <a href="http://www.fscjamaica.org">www.fscjamaica.org</a> ) should be referred to.
2	Copies of information or communications provided to members to advise them of the merger and its effects on the pension plans and members' benefits including the treatment of any surplus or deficit.
3	Copies of the Trust Deed and Plan Rules for each plan, if not previously submitted to the FSC.
4	If applicable, a completed application form along with the necessary fees and documents for the registration of the merged plan, including the Trust Deed and Plan Rules.
5	A description of the differences between the benefits or expectation of benefits under the plans.
6	Copies of the most recent actuarial valuation reports for each plan and a copy of the valuation report that was carried out specifically in preparation for the merger.
7	An application for the winding-up of each plan being terminated.

5.1 It should also be noted that the documentation submitted for consideration of the Commission must conform to the following policy requirements:

- (a) The proposed merger cannot be contrary to the terms of the plans which are being merged.
- (b) The accrued benefits and or accumulated contributions of the members of the merging plans must be preserved.
- (c) Members must be consulted where their rights may be adjusted. For instance, changing the normal retirement age upward from 60-65 years.

**Questions regarding this Guideline may be directed to:**

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