



# WHAT YOU SHOULD KNOW ABOUT AMENDMENTS

## INTRODUCTION

Under the Pensions (Superannuation Funds and Retirement Schemes) Act, (“the Act”) all amendments to the constitutive documents must be approved by the Financial Services Commission (“FSC”). In amending the constitutive documents trustees and members need to be aware of the steps involved in obtaining the approval from the FSC. This includes:

- I. member’s approval;
- II. documents submitted to the FSC; and
- III. issuance of notice of amendment by the FSC

Constitutive documents - are documents that establish and support the operation of a superannuation fund or retirement scheme; that is the Trust Deed or Master Trust Deed, Plan Rules, schedules and amendments thereto.

## MEMBERS’ APPROVAL

As members of an approved superannuation fund (“fund”) or an approved retirement scheme (“scheme”) you have an important role to play. The Regulations relating to disclosure of information and the amendment of the constitutive documents of a fund or scheme effectively give you an important role in the management of your pension plan. In addition to the FSC’s approval, amendments proposed to be made by the trustees and or sponsor and which are not required by law must also be approved in writing by the members of the fund or scheme. Such proposed amendments should be submitted to the members by the trustees, at least 45 days before submitting them to the FSC.

### Category of amendments

Amendments which the trustees of a fund or scheme propose to make to the constitutive documents and which the plan members must approve before they are submitted to the FSC, for its approval, fall into two categories. The first category is called *prescribed amendments* and consists of those amendments which results in:

- (a) a reduction of pension or pension benefits;
- (b) the fund or scheme being insolvent or the worsening of the insolvency;
- (c) the fund or scheme failing to meet the solvency and funding requirements;
- (d) a change in the fundamental nature or design of the fund or scheme;
- (e) the consolidation, separation or merger of the fund or scheme; or
- (f) such other circumstance that the FSC may specify by order.

Prescribed amendments must be approved by at least **fifty percent of all the members of the fund or scheme plus one other member.**

All other amendments which must be approved by the members fall in the second category and must be approved by **fifty percent plus one of the voting members. Voting members are members entitled to vote at a meeting of the members called by the trustees for the purpose of approval of the proposed amendments. These members also include persons voting by proxy at such meeting.**

### **Notice of proposed amendments**

Members of a fund or scheme must be given notice of any proposed amendment to the constitutive documents of the fund or scheme. The notice is to be given no later than 14 days and no earlier than 30 days prior to the meeting at which the members will cast their vote of approval of the proposed amendments.

### **Content of Notice:**

The notice of an amendment which the trustees propose to make must include:

- (a) the proposed date the amendment is to take effect;
- (b) the type of amendment (i.e. prescribed, required by law, or other);
- (c) an explanation of and reason for the proposed change;
- (d) an explanation of the effect of the proposed amendment on member's benefits;
- (e) where the proposed amendment alters any provision of the original or amended constitutive documents, an identification of the altered provision by reference thereto and a statement of its text together with the text of the proposed amendment;
- (f) where the proposed amendment is an addition to the original or amended constitutive documents, a statement of that fact and the full text of each proposed provision to be added;
- (g) a statement explaining the rights of the members to approve the amendments; seek clarification from the trustees before approving any amendments; refer the amendments back to the trustees for further changes; or to refuse to approve the amendments; and
- (h) the date, time and place of the meeting, if applicable.

### **DOCUMENTS/ INFORMATION TO BE SUBMITTED TO THE FSC**

In seeking approval from the FSC for the proposed amendments, trustees must ensure that all the following documents/information are submitted:

- (a) application fee;
- (b) original and copy of proposed amendment;
- (c) copy of notice given to members;
- (d) date notice was issued;
- (e) extract from minutes showing number of members in the fund/scheme, the number of members who voted, outcome of the vote; and
- (f) declaration of compliance with the Act.

Each document submitted should be signed by at least a quorum of the trustees.

### **ISSUANCE OF NOTICE OF AMENDMENT BY THE FSC**

When the FSC has received all the required documents or information, and determines that the proposed amendments are satisfactory, the FSC will issue a notice of amendment. The effective date of the amendment will be shown in the notice.

It is important to note also that where an amendment to the constitutive documents comes into effect, such amendment will not affect:

- I. any legal claim or liability to prosecution for or against a fund or scheme or its trustees
- OR
- II. any civil, criminal, administrative, investigative or any other proceeding to which a fund or scheme or its trustees is a party.



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**Please note that this document is not a definitive or comprehensive statement of the law, nor does it give legal advice or purport to do so. If you are in any doubt you should seek independent legal advice by consulting an Attorney-at-Law.**