

# PENSION PLAN TRUSTEES



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## Overview

The Pensions (Superannuation Funds and Retirement Schemes) Act ("the Act") and its related Regulations provides a managed framework for the administration of approved superannuation funds ("funds") and approved retirement schemes ("schemes") and the responsibilities of trustees and other service providers. The Act and Regulations is administered by the Financial Services Commission ("FSC") which has powers for enforcing those Regulations and imposing penalties for breaches.

Trustees have primary responsibility for managing the affairs of funds and schemes as well as safeguarding the assets and interest of plan members. As such a high standard of dedication is demanded from trustees, many of whom are not professional pension experts.

Although trustees should have a basic understanding and working knowledge of matters pertaining to their responsibilities, they are not expected to have a detailed knowledge of all the relevant legislation. They should employ the services of professionals from whom they take advice and on whom they may rely.

The information contained herein is not comprehensive; neither is it intended to be an interpretation of the law but provides a broad outline of trustees' responsibilities and their rights.

## Who is a Trustee?

Trustees are persons or companies, acting separately from the sponsor, who holds the assets of a pension plan for the beneficiaries of the plan and are responsible for ensuring that the pension plan is well run and that members' benefits are secured. Such a person or company must be registered with the FSC.

## Types of Trustees

### Member Nominated Trustee

A *member nominated trustee* is a trustee who has been nominated and elected by the active members of a fund or scheme. The nomination or election of such a trustee should not be subject to the approval of the sponsor or his agents. The Board of Trustees should consist of at least 1 member nominated trustee.

### Pensioner Trustee

A trustee who has been nominated by a pensioner or deferred pensioner of a fund or scheme and elected by the deferred pensioners and pensioners is called a *pensioner trustee*. If there are 30 or more pensioners and deferred pensioners then the Board of Trustees should consist of at least 1 pensioner trustee.

### Sponsor Trustee

A sponsor trustee is a trustee that has been nominated and elected by the employer or person who causes a fund or scheme to be established.

## Qualifications

Whilst there may be no formal qualification required to become a trustee, a trustee must satisfy the “fit and proper” criteria in order to be registered with the FSC. Fit and proper criteria require that a trustee:

- be not convicted of an offence involving dishonesty;
- is not an undischarged bankrupt;
- employment history must not give cause to believe that acts involving impropriety in the handling of monies has been carried out;
- is of integrity and can exercise competence, diligence, and sound judgment in fulfilling responsibilities;
- has not engaged in deceitful, oppressive or improper business practice;
- has not breached the law designed for the protection of the public against financial loss; and
- is not mentally disabled.

Employees of a corporate trustee must, in addition, have knowledge of and experience in the business of superannuation funds and retirement schemes.

## Prospective Trustees

A prospective trustee should make known anything that could prevent him or her from being considered as a fit and proper person to be a trustee.

In order to understand the responsibilities being undertaken a prospective trustee should be provided with the following:

- (i) information on the procedures governing trustee appointments and frequency of meetings;

## Prospective Trustees Cont'd

- (ii) details of the current trustees of the fund or scheme concerned;
- (iii) the constitutive documents of the fund or scheme concerned;
- (iv) relevant policy and procedural documents.



## Appointment

The appointment, retirement and removal of trustees are usually governed by the provisions within a fund's or scheme's Trust Deed and Master Trust Deed or Plan Rules or the general provisions set out in trust law. The courts, pursuant to a petition of the FSC to wind up a fund or scheme, may also appoint a provisional trustee.

The Act and Regulations introduce statutory requirements in relation to the appointment and removal of trustees by specifying the types of trustees that a fund or scheme is required to have and the means by which certain trustees can be removed.

## Removal, Suspension and Cancellation

A trustee ceases to be a trustee by:

- personal decision to retire or the expiration of tenure
- resignation
- death
- removal by either the pensioner, member-nominated or sponsor trustees (where applicable), or by the FSC

There may also be additional reasons arising from the provisions of the constitutive documents of a fund or scheme.

The FSC has power to suspend the registration of a trustee if it is satisfied that the trustee is in breach of any of the provisions of the Act or Regulations thereunder or to cancel registration where:

- registration was as a result of misleading or false representation in a material particular or for provision of incorrect information;
- the trustee no longer satisfies the fit and proper criteria;
- the carrying on of the business of a fund or scheme is not with sound pension principles;
- there is unreasonable delay in the payment of a pension or pension benefit;
- information requested by the FSC has not been provided within the time prescribed;
- there is guilt of fraudulent or dishonest practice;
- the Act, Regulations or directives of the FSC has not been followed or the trustee is an accessory to such contravention by others;
- there is a failure to rectify a breach;

## Removal, Suspension and Cancellation Cont'd

- there is a failure to carry on business in Jamaica in the capacity for which the trustee is registered within one year of registration or for a period of more than one year;
- a trustee so request.

Where the FSC intends to suspend or cancel the registration of a trustee notice of its intention will be served, the reason for the proposed action and the right of appeal given. The notice given will require the trustee to take action specified in the notice to rectify the breach within a given time period. A period within which such a trustee may make written or oral representation will also be stated.

Failure of such a trustee to comply within the time specified or extended time given on written request of the trustee will result in cancellation of registration. The certificate of registration of a trustee which has been cancelled must be returned to the FSC.

## Role and Requirements

A Trustee of a fund or scheme has a position of trust. This role is an important one as a trustee is the custodian of a fund's or scheme's assets; having responsibility for their safe keeping with duties and powers to assist in fulfilling this responsibility. A trustee's role is to hold the assets on behalf of all members of a fund or scheme in accordance with the Trust Deed or Master Trust Deed, the Plan Rules, and the Act and Regulations thereunder.

The role of a trustee includes, among other things, looking after the interest of members of the fund or scheme to which he has been appointed a trustee. A trustee's role is governed by the Trust Deed and other guidance as may be given in a fund's or scheme's constitutive documents. Trust and general law must also be followed by a trustee.

## Statutory Duties, Responsibilities and Powers

Trustees are not expected to be experts in the fields related to the wide range of responsibilities they have. However they are required to seek professional advice as and when required and may rely on the advice of those persons provided that those advisers are properly appointed and managed.

They are required to act with care when making decisions with respect to the selection of agents and advisors and the delegation of authority.

### General duties and powers:

The duties and powers of trustees include but are not limited to:

#### **Duties:**

- monitoring of financial, administrative and actuarial position of a fund or scheme;
- monitoring, reviewing and supervising agents and advisors;
- ensure that accurate accounts and records are kept, maintained and safeguarded;
- providing information to members, agents and the FSC;
- ensuring regulatory compliance;
- treating members and beneficiaries equally with respect to their rights and benefits under a fund or scheme.

## Statutory Duties, Responsibilities and Powers Cont'd

#### **Powers:**

- decision making
- investment of assets
- collecting and investing contributions
- payment of benefits and expenses of a fund or scheme
- making amendments to the constitutive documents subject to the requirements of the Act and Regulations
- establishing and amending policies and procedures
- appointing, employing and removing agents and professional advisors
- distribution of assets on full or partially wind up of a fund or scheme
- increasing pension benefits by class of pensioner/beneficiary with the advice of the actuary

## Books and Records

Effective administration of a fund or scheme requires proper documentation and record keeping of all transactions, important decisions, policy and procedures, and accounts. Trustees must ensure that accurate and complete records on all matters related to a fund or scheme including minutes of meetings, matters raised by members and beneficiaries and their responses thereto, are kept and maintained. It also includes the preparation of reserves and backup copies and making them available to the FSC on request. Statements issued to plan members by trustees and their agents are also to be made available to the FSC.

## Books and Records Cont'd

### Reports and accounts:

The underlisted reports, the form and content of which is governed under the Regulations, must be submitted to the FSC for a fund or scheme:

- Certified Financial Return
- Annual Report
- Financial Statements (audited where applicable)

It is the duty of the trustee to submit the above listed documents to the FSC within 120 days of a fund or scheme year end. Where the following criteria are not met, financial statements should be audited:

- i) There are fewer than 100 active members, or such other number specified by the Commission by way of notice;
- ii) The total fair value of the assets is less than \$75 million;
- iii) All funds are held on the account of investment managers or in Type I Pooled Funds of investment managers; and
- iv) Audited financial statements are not a requirement imposed under the fund's constitutive documents.

In the case of a scheme, the financial statements must be audited and the following additional documents submitted:

- the scheme's Information Folder; and
- a list of names and FSC registration numbers of persons that sell or otherwise distribute contracts issued under its Master Trust Deed.

## Information to Trustees

On appointment a trustee should ensure that he or she is provided with or is made aware of the underlisted documents and arrangements:

- i) Approval letter from the Taxpayer Audit & Assessment Department
- ii) Most recent actuarial valuation report
- iii) The business plan (retirement scheme only)
- iv) Statement of Investment Policies and Principles
- v) Banking arrangements and signing authorities
- vi) Details of delegated authority and the terms of appointed agents and advisors
- vii) Complaints resolution

A trustee should, on or shortly after being appointed receive the following information:

- i) Confirmation that their appointment has been given effect and that the rules have been followed
- ii) Copy of the minutes of the last trustee meeting
- iii) The most recent annual report and accounts of the fund or scheme

## Information to Trustees Cont'd

A trustee should also be provided with regular information about a fund or scheme in respect of:

- i) Minutes of meetings
- ii) Annual reports and reports from their agents
- iii) Reports and correspondences from the Commission and any changes in the law
- iv) Any new policy documents
- v) Proposed amendments
- vi) Any complaints or disputes



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