



BULLETIN FOR:
GIVING NOTIFICATION OF PLANS WITHOUT TRUSTEES

**The Financial Services Commission
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Kingston 5, Jamaica W.I.
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Giving Notification of Plans Without Trustees

LEGISLATIVE REFERENCE: The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulation 2006 ("Governance Regulations")
Regulations 30; 10 (c); 9(a)
The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the "Act")

1.0 BACKGROUND

- 1.01 Trustees appointed to govern approved superannuation funds ("funds") or approved retirement schemes ("schemes") have the overall responsibility for ensuring that such funds or schemes are properly managed, as well as safeguarding the assets and interest of their members. Although many of the activities involved in the day to day management of funds and schemes may be outsourced or delegated, trustees bear the ultimate responsibility as fiduciaries to the members of the plan.
- 1.02 Administrators and Investment Managers are licensed by the Financial Services Commission ("FSC") to administer funds or schemes and invest their assets with the necessary care, skill and diligence.

2.0 LEGISLATIVE REQUIREMENTS

- 2.01 Pursuant to Regulations 30 of the Governance Regulations, Administrators and Investment Managers of a fund or scheme must notify the FSC as soon as reasonably practicable after it first appears to them that the fund or scheme is operating without trustees. The term "reasonably practicable" is used to define the time line within which an Administrator and Investment Manager must notify the FSC in the event a fund or scheme is or will be operating without trustees.
- 2.02 Further, the registration of trustees is a requirement for approval of a fund or scheme by the FSC pursuant to Section 13 and 14 of the Act.
- 2.03 Regulation 3(1) of the Governance Regulations stipulates that the sponsor trustees shall constitute no more than fifty per cent plus one of the appointed trustees of a Board of Trustees.

3.0 FACTORS THAT MAY RESULT IN LACK OF TRUSTEES

A trustee may cease to be a trustee for the following reasons:

- Personal decision to retire or the expiration of tenure
- Resignation
- Death
- Removal from the Board of Trustees
- The FSC may suspend or cancel 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.

A combination of the aforementioned events may leave a fund or scheme without trustees.

4.0 REASONABLY PRACTICABLE

The time line in relation to the term reasonably practicable generally depends on particular circumstances. In the case of a fund or scheme operating without trustees it implies **urgency** given the vital role the trustees play in managing the affairs of the fund or scheme. This means that the administrator or investment manager may be required to notify the FSC outside of the usual framework for submitting annual reports and or ad hoc reports of the fund or scheme.

The actions of an Administrator and or Investment Manager must be representative of the behavior of a reasonable person in their position who is required to comply with the same requirements.

The Administrator and Investment Manager must ensure that the FSC is notified in writing in a reasonably practicable time but **not later than ten (10)** working days after they have been made aware that a pension plan is operating without trustees. The trustees should also incorporate guidelines in the Governance Policies and Procedures of the fund or scheme for notifying the FSC, in the event the fund or scheme is operating without trustees.

5.0 BOARD OF TRUSTEES

It is imperative that each fund or scheme has the required number of trustees as stated in its constitutive documents, as the trustees are ultimately responsible for the management of the plan. Further, as part of their duties as trustees, and their continued satisfaction of the fit and proper requirement, trustees should be prompt in their action concerning the plan and inform the FSC and the sponsor, when the number of trustees have fallen below the required minimum amount, or there are no trustees.

Administrators and Investment Managers are required pursuant to Regulation 9 (a) of the Governance Regulations to perform their functions exercising the care, skill and diligence which are necessary. In this regards, the onus is on the Administrators and or Investment Managers to ensure that the number of trustees on the Board is at the required minimum. Administrators and Investment Managers should also be cognizant of the potential risk of exposure they face, when as agents of the trustees, they manage or invest the funds of a plan with no trustees. Should the number of trustees fall below the required number for a quorum as stipulated by the constitutive documents, or there are no trustees, Administrators and Investment Managers should inform the sponsor in writing. Sponsors pursuant to Regulation 10(c) of the Governance Regulations are required to facilitate the election of member nominated and pensioner trustees. In the event the sponsor does not comply, the Administrator and or Investment Manager should notify the FSC. The FSC will work with the Administrator or Investment Manager within the ambit of the legislation.

6.0 NOTICE OF LACK OF TRUSTEES

The minimum content of the notice should include:

- Name of the fund or scheme;
- Name of the Sponsor;
- The FSC registration number; (or file number) as the case requires
- Full details of the events resulting in a lack of trustees;
- The date from which the fund has been operating without trustees; and
- The steps if any that have been taken by the Administrator, Investment Manager or sponsor to address the issue.

Administrators and Investment Managers should note that the requirement to report to the FSC is a vital part of the regulatory framework and as a result fulfilling their responsibilities in this regard is of paramount importance.

7.0 FAILURE TO NOTIFY

Failure to notify the FSC that a fund or scheme is without trustees constitutes a breach of the Act and attendant Regulations and may result in regulatory action.

Questions regarding this Bulletin may be directed to:

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