



BULLETIN FOR:
PERSONS SUBSTITUTING FOR TRUSTEES IN
TRUSTEES' MEETINGS

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ISSUE:	Persons Substituting for Trustees in Trustees' Meetings
LEGISLATIVE REFERENCE:	Regulations 2 and 3(8) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations ("Governance Regulations"). Regulations 4(1) and 4(2) of the Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations ("Investment Regulations") Section 9((1)(a)(i) of the Pensions (Superannuation Funds and Retirement Schemes) Act (the "Act")

1.0 Background

- 1.01 The Trustees of a superannuation fund ("fund") or retirement scheme ("scheme") are responsible for ensuring that the fund or scheme complies with the regulatory requirements under the Act and associated regulations and are required to attend meetings to discuss matters pertinent to the overall direction and management of the fund or scheme.
- 1.02 It is recognized, however, that on a number of occasions, some Trustees are unavoidably absent from Trustees' meetings. In their absence, the Trustees have opined that their interests are not adequately represented. Based on the foregoing, Trustees and Administrators have enquired from the Financial Services Commission ("FSC") whether Trustees can appoint individuals to substitute as Trustees in their absence at Trustees' meetings.
- 1.03 Further, one Administrator also queried whether appointing a substitute Trustee is tantamount to appointing agents/nominees of the Trustees pursuant to Regulation 2 of the Governance Regulations. The purpose of this bulletin is to elucidate this matter under the current legislative framework.

2.0 Legislative Requirements

- 2.01 Regulation 2 of the Governance Regulations states:

"Agent of Trustees" means any person who performs any part of the functions or discharges any part of the duties or responsibilities of the Trustees and includes the Investment Manager, Administrator or nominees of the Trustees".

Further, Regulations 4(1) and 4(2) of the Investment Regulations state:

4(1) "All investments shall be in the sole name of the Trustees of a fund or scheme or their nominee.

4(2) For any investments held by way of a nominee, the title of the investment must clearly indicate that the nominee is holding the asset for the Trustees for and on behalf of a named fund or named scheme."

2.02 In addition, Section 9((1(a) (i)) of the Act States:

"The Commission shall register as a trustee in the case of an individual, an applicant who satisfies the criteria specified..."

3.0 Who are Agents of the Trustees?

3.01 An agent of the Trustee is an individual who would be able to act on behalf of the Trustee, however, would not have the power to attend meetings or vote, on behalf of the Trustee, as the agent does not have the power to bind the fund.

3.02 As prescribed by Regulation 2 of the Governance Regulations the following are considered to be "Agents of Trustees" Administrators, Investment Managers, Actuary, Auditors, Responsible Officers and any other person/s designated or deemed suitable by the FSC.

3.03 Role of Agents

Administrators and Investment Managers in the exercise of their respective duties shall perform their function exercising the care, skill and diligence which it is usual, necessary and proper for the Administrator and Investment Manager to employ. As such they should provide regular, timely, clear, fair, complete and accurate information and reports to the trustees and their agents.

3.04 Auditors and Actuaries should be persons who are in good standing with their recognized local and international governing bodies, as well as deemed satisfactory to the FSC. These agents are expected to prepare their reports in accordance with generally accepted accounting and audit principles and abide by such directions as maybe given by the FSC. These persons or agents fall under the ambit of the FSC's regulatory oversight. As such the FSC has the authority to monitor, supervise and give direction as the FSC deemed suitable.

3.05 The term "Agent of the Trustees" should not be confused with Consultants, who are usually experts or professionals in a specific field and has a wide knowledge of the subject matter. Consultants advise Trustees in particular matters which are consistent with the objectives of the fund.

4.0 Nominees

4.01 The term "nominees" as used in Regulation 2 of the Governance Regulations and Regulation 4 of the Investment Regulations, means a custodian, who acts as guardian or keeper of a plan's securities or assets on behalf of the Trustees. The term therefore would not be applicable to persons acting as substitutes for the Trustees, by attending meetings of the Board of Trustees when one or more trustees are unavoidably absent.

5.0 Appointing Substitute Trustees

- 5.01 A trustee is a person or a company, acting separately from the sponsor, who holds the assets of a fund or scheme for the beneficiaries and who is responsible for ensuring that the fund or scheme is prudently managed and members' benefits are secured. A fund or scheme is established by trust and its constitutive documents often state who are the agents of the trustees, including details of their particular roles and responsibilities. Further, all persons acting as trustees must be registered by the FSC pursuant to Section 9(1)(a) of the Act. Therefore, any individual substituting for trustees would assume fiduciary responsibility and would also be subject to the registration requirements.
- 5.02 Based on the legislative interpretation, trustees are not allowed pursuant to the Act and its attendant regulations, to appoint substitute trustees to attend meetings on their behalf.

Notwithstanding that the current legislation does not provide for substitute trustees to attend Board of Trustees meetings, trustees may implement the following measures to minimize inconvenience when contemplating their meetings:-

- The fund or scheme's constitutive documents may include a provision stating a quorum for trustees' meetings. The constitutive documents may also address the procedures(s) at meetings when the quorum is not reached.
- As much as possible, notice of meetings should be provided with sufficient lead time ahead of planned meeting dates to allow trustees to make adequate preparation to attend.
- Using technology, for example teleconference and videoconference, would allow trustees access to decision making when they are unable to attend meetings.
- Voting by proxy may be a way to express trustees' intentions in the event they are unable to attend meetings.

- 5.03 Trustees should ensure that the proceedings of trustee meetings are stipulated in the constitutive documents. Pursuant to Regulation 3(8) of the Governance Regulations, there can be no distinction to trustees' powers. Therefore should a person substitute for a trustee, that person would be carrying on the general duty or role of that trustee. Where these trustee substitutes who are not duly registered by the FSC, participate in meetings, the Board of Trustees exposes themselves to risks, as decisions made in these settings may not valid.

Comments regarding this guideline may be directed to:

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