



BULLETIN FOR:

Failure to Remit Contributions

**The Financial Services Commission
39-43 Barbados Avenue
Kingston 5, Jamaica W.I.
Telephone: (876) 906-3010**

November 2018



Failure to Remit Contributions

LEGISLATIVE REFERENCE:	Regulations 7(1)(h), 10(g) and (h), 11(3)(b)(i) and 14(2)(e) and (i) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations 2006 (“Governance Regulations”) Sections 13(2)(f) and 53 of the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the “Act”)
-------------------------------	---

1.0 INTRODUCTION

1.1 The Financial Services Commission (“FSC”) has a mandate to protect members of pension plans by promoting stability and public confidence in the operations of superannuation funds (“funds”) and retirement schemes (“schemes”). A part of meeting this mandate necessitates ensuring that sponsors remit contributions to pension plans within the timeframes stipulated in the Act; Governance Regulations; and Constitutive Documents of the fund or scheme.

2.0 BACKGROUND

2.1 Although many of the activities involved in the day to day management of funds and schemes may be outsourced to licensed administrators and investment managers, trustees bear the ultimate responsibility to ensure that contributions are accurately remitted to the relevant investment manager(s) in a timely manner by the sponsor(s).

2.2 It is therefore imperative that trustees and sponsors implement appropriate policies and controls to monitor the payment of contributions by sponsors; promptly identify non-payments; and enable the trustees and sponsor(s) to take appropriate actions to manage the related risks.

3.0 OBJECTIVE

The objective of this bulletin is to provide general guidance and best practice suggestions to trustees, agents of trustees and sponsors regarding the:

- (i) Obligation of sponsors to remit their own contributions as well as those of members.
- (ii) Trustees’ responsibility to ensure the accurate and timely remittance of contributions.
- (iii) FSC’s expectation concerning the monitoring of the payment of contributions.

4.0 LEGISLATIVE REQUIREMENTS

4.1 Duties of Sponsors

- 4.1.1 In the case of a fund, Section 13(2)(f) of the Act requires provisions to be made for members' contributions to be paid over to the investment manager(s) within seven calendar days of the end of the month in which deductions are made. Furthermore, Governance Regulations 10(g), stipulates that together with such payments, supporting statements justifying and reconciling the amount of contributions should be provided.
- 4.1.2 Sponsors of superannuation funds are required to make contributions pursuant to Section 13(2)(c) of the Act. Governance Regulation 10(h) further stipulates that a sponsor is required to remit its contributions to the investment manager(s) in accordance with the timeframe stipulated in the Constitutive Documents along with supporting information justifying and reconciling the amount of the contributions.
- 4.1.3 In addition, paragraph 17(a) of the Second Schedule to the Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations ("RLR Regulations") stipulates that the Constitutive Documents of pension plans require sponsors to provide and maintain information to assist trustees and their agents in performing their respective duties.

4.2 Duties of Trustees

- 4.2.1 Governance Regulation 7(1)(h) provides that trustees have the responsibility to ensure that contributions payable to a fund are checked for accuracy.
- 4.2.2 Additionally, paragraph 16 of the Second Schedule to the RLR Regulations delineates the powers and duties of the trustees which include the power to collect and invest contributions. Governance Regulation 7(1) also provides for trustees to set policies and procedures for the governance of a fund or scheme.

4.3 Criminal Offence and Fixed Penalty for Non-remittance of Employee Contributions

- 4.3.1 Section 53 of the Act provides that "A sponsor who fails to pay over to an investment manager contributions deducted from salaries and wages of members within fourteen days of the end of the month in which the deduction was made commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars."
- 4.3.2 Pursuant to Section 21 of the Financial Services Commission Act and the Fourth Schedule¹, the FSC may offer to a person who it has reason to believe committed an offence under Section 53, an opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

5.0 THE FSC's EXPECTATIONS REGARDING THE MONITORING OF CONTRIBUTIONS

5.1 Trustees

- 5.1.1 Trustees are expected to document and implement adequate controls to effectively monitor the remittance and reconciliation of contributions as well as facilitate remedial actions for appropriate risk management. The following are best practice suggestions which may be utilized to assist trustees:

¹ As amended by the Financial Services Commission (Amendment of Fourth Schedule) Order, 2014

- (a) Implement and maintain a sound and reliable record keeping system to ensure that the payment timelines are adhered to. This may require issuance of receipts as independent confirmation to the trustees and sponsor(s) of the plan for payments and supporting schedules received by the investment manager. .
- (b) Where a sponsor/employer fails to pay contributions, the trustees should engage the sponsor(s) to discuss the reason for noncompliance, the consequences thereof and the development of a plan of action to achieve compliance. The action plan should detail, at a minimum, the following:
 - (i) The amount and type of contributions overdue by more than one month broken down monthly
 - (ii) Interest payable on outstanding contribution amounts.
 - (iii) The timeline within which outstanding amounts will be remitted to the investment manager(s).
 - (iv) Arrangements entered for the payment of outstanding contributions
- (c) The trustees should notify the FSC in writing once there are contributions outstanding for over 90 days and submit the action plan, agreed to by the sponsor, to make any outstanding payments.
- (d) If the trustees have reasonable cause to believe that fraud or misappropriation has occurred or is occurring resulting in non-remittance of contributions to the investment manager(s), a whistleblowing report should be submitted to the FSC and any other relevant authority. Trustees, 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.

5.1.2 Procedures to monitor payment of contributions and address non-payments should also be covered in the service agreements between the trustees and the administrators/investment managers.

5.2 Sponsors/Employers

The sponsor may employ the following strategies to monitor the remittance of contributions:

- (a) Preparing and maintaining a fund/scheme payment schedule showing:
 - contributions payable to the fund/scheme by the sponsor/employer and the members.
 - due date (s) on or before which payment of contributions are to be made.
- (b) Utilize electronic transfers for remitting contributions.
- (c) Designate an employee for the reconciliation of the amounts paid with schedules detailing contributions deducted from member's earnings and amounts paid on behalf of the member by the sponsor.
- (d) Include in Management Reports to the Board of Directors or CEO, information detailing contributions payable to the fund/scheme by the sponsor/employer and the employees, due dates, the amounts actually paid over, and the date of payment.
- (e) Take into consideration, in preparation of the yearly budget for the company, contributions payable by the sponsor/employer.
- (f) Discuss with the trustees of the fund/scheme any difficulties impacting compliance with statutory requirements and jointly developing a plan of action to achieve compliance.

6.0 APPROACH TO NON-COMPLIANCE

The FSC may pursue a range of intervention activities to ensure compliance is achieved. In addition, on a case by case basis the FSC will employ its enforcement powers which include but are not limited to:

- Power to issue directions to sponsors, trustees, administrators and investment managers under Section 4 and Section 26(1)(b) of the Pensions Act.
- Penalties pursuant to Section 21 of the Financial Services Commission Act; and The Financial Services Commission (Amendment of Fourth Schedule) Order, Resolution, 2014)
- Pursue criminal prosecution for breach of the Pensions Act.

Questions regarding this Bulletin may be directed to:

**Senior Director, Pensions
Financial Services Commission
39-43 Barbados Avenue
Kingston 5
Telephone (876) 906-3010
Facsimile (876) 906-3018
Email: pensions@fscjamaica.org**