

**THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT  
SCHEMES) ACT, 2004**

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**The Pensions (Superannuation Funds and Retirement  
Schemes) (Registration, Licensing and Reporting)  
Regulations, 2006**

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In exercise of the power conferred upon the Financial Services Commission by section 58 of the Pensions Superannuation Funds and Retirement Schemes) Act 2004, the following Regulations are hereby made with the approval of the Minister:-

**PART I. *Preliminary***

**Citation.** 1. These Regulations may be cited as the Pensions (Superannuation Funds and Retirement Schemes)(Registration, Licensing and Reporting) Regulations, 2006.

**Interpretation.** 2. In these Regulations, unless the context otherwise requires -

"constitutive documents" means the documents that establish and support the operation of a superannuation fund or retirement scheme namely, the Trust Deed or Master Trust Deed, plan rules, schedules and amendments thereto;

"covered person" in relation to an applicant under these Regulations means -

- (a) a person having a material interest in or control of shares equivalent in value to ten per cent or more of the applicant's total shares which carry voting rights;
- (b) the members of the applicant's board of directors(including any person the applicant proposes to appoint to the board);

(c) the applicant's manager, assistant manager, accountant, and company secretary;

(d) the person who (by whatever name called) performs the duties normally carried out by any of the officers specified in paragraph (b) and (c);

"fund" means an approved superannuation fund;

"information folder" means the information folder prepared by a scheme which includes the information specified in the Third Schedule;

**Third  
Schedule.**

"scheme" means an approved retirement scheme;

"Pooled Funds" means Type I Pooled Funds or Type II Pooled Funds;

"Type I Pooled Fund" means an investment fund with the sole purpose of investing the assets of more than one fund or scheme established and operated by licensed investment managers which -

(a) does not hold any investment or security that would under the Act or regulations made thereunder be deemed ineligible or prohibited for a fund or scheme;

(b) is not a party to or engaged in a transaction that is prohibited for a fund or scheme under the Act or regulations made thereunder;

"Type II Pooled Fund" means an open-ended investment fund, mutual fund, collective investment scheme or unit trust and any investment fund, other than a Type I Pooled Fund.

**PART II. *Registration and Licensing***

**Application.** 3. - (1) An application for registration or licensing, as

the case may be, of an individual or entity in any of the categories specified in paragraph (2) shall -

**Forms 1 to 5.  
First  
Schedule.**

(a) be in the appropriate form set out in Forms 1 to 5 in the First Schedule;

**Fourth  
Schedule.**

(b) be accompanied by the relevant fee specified in the Fourth Schedule and the documents and information specified in the relevant application form; and

(c) contain such other information as the Commission may require.

(2) The categories referred to in paragraph (1) are -

(a) approved superannuation fund;

(b) approved retirement scheme;

(c) trustee;

(d) administrator;

(e) investment manager;

(f) responsible officer.

***Conditions for Registration and Licensing***

**Conditions for  
funds and  
schemes.**

4. - (1) The Commission shall refuse to register a superannuation fund or retirement scheme if -

(a) the name of the superannuation fund or retirement scheme, as the case may be, is so similar to the name of another fund or scheme as to be likely to cause confusion, and a request by the Commission for a change of the name of the superannuation fund or retirement scheme has not been complied with within thirty days of the Commission's request;

(b) the superannuation fund's or retirement scheme's constitutive documents do not appear to the Commission to comply with the requirements specified in the Second Schedule and other requirements of the Act and regulations made

**Second  
Schedule.**

thereunder;

(c) being a public fund, it does not satisfy the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1)(c) are that the fund -

- (a) prior to the commencement date of the Act, was a public fund which was approved as a superannuation fund under the Income Tax Act;
- (b) in respect of persons who joined the fund prior to the commencement date and no other category of persons, was exempted by the Minister from the application of section 13(2)(d) and (p) of the Act;
- (c) furnished with its application for registration evidence of the matters specified in sub-paragraphs (a) and (b).

**Conditions for sponsors.**

5. - (1) A person shall not act as the sponsor of a scheme unless he is a registered life insurer or licensed investment manager.

(2) The persons that sell or otherwise distribute contracts under the Master Trust Deed of the retirement scheme shall be dealer's representatives or sales representatives who -

- (a) are duly registered under the Securities Act or the Insurance Act, as the case may require;
- (b) are fit and proper persons for the purpose of selling and distributing such contracts;
- (c) if required, for the purpose of engaging in such sales or distribution, to pass any examinations or participate in any training, have passed the examinations and completed the training.

**Conditions for trustees.**

6. The Commission shall not grant registration as a trustee -

- (a) to an applicant who is the actuary or auditor of the fund or scheme concerned;
- (b) to a body corporate unless -
  - (i) each covered person satisfies the fit and proper criteria prescribed under the Act in relation to an individual applying to be a trustee; and
  - (ii) its incorporation documents if applicable include a provision permitting the company to be a trustee of a fund or scheme.

**Conditions for investment managers and administrators.**

7. - (1) The Commission shall not license a company as an investment manager or administrator unless -
- (a) the incorporation documents of the applicant, where applicable, permit the company to carry on investment management or administration, as the case may be, of superannuation funds or retirement schemes, where applicable;
  - (b) the applicant is solvent with a capital base that exceeds the amount (if any) specified in paragraph (2) and is likely to continue to be so solvent;
  - (c) the applicant has and will have professional indemnity and fidelity guarantee insurance that exceeds the limits (if any) specified in paragraph (2);
  - (d) the employees of the applicant have passed such examinations or participated in such training as may be required by the Commission;
  - (e) the employees of an applicant for administration of a fund or scheme are otherwise qualified, knowledgeable and capable of carrying on the efficient administration of the fund or scheme;
- (2) For the purpose of paragraph (1)(b) and (c),

the respective amounts and limits, if any, are as specified hereunder or such other amounts or limits as the Commission may by notice published in the Gazette prescribe -

	<b>Administrator</b>	<b>Investment Manager</b>
Professional Indemnity	\$5 million	\$5 million
Fidelity Guarantee.	None	\$10 million

**Conditions for responsible officer.**

8. The Commission shall not grant the registration of an individual as a responsible officer unless he -

- (a) is a member of the senior management of the company concerned; and
- (b) satisfies the fit and proper criteria prescribed under the Act for carrying on the functions as a responsible officer.

***Certificates and Licences***

**Form of certificates and licences. Forms 9 to 14. First Schedule.**

9. Certificates granted and licences issued under the Act shall be in the appropriate form set out in Forms 9 to 14 in the First Schedule.

**Surrender of certificate of registration.**

10. - (1) If a trustee or responsible officer resigns, dies or otherwise ceases to be the trustee or responsible officer, as the case may be, the trustee, responsible officer or in the case of death or incapacity, the board of directors or board of trustees of the fund or scheme shall -

- (a) notify the Commission in writing within seven days, giving the date of such cessation and the reasons therefor; and
- (b) surrender his certificate of registration.

***Registers***

**Form of registers. Forms 15 to 20.**

11. The Commission shall cause to be kept in the appropriate form set out in Forms 15 to 20 in the First Schedule, registers of -

- (a) approved superannuation funds;
- (b) approved retirement schemes;
- (c) registered trustees;
- (d) licensed investment managers;
- (e) licensed administrators;
- (f) registered responsible officers.

**PART III. Reporting Requirements**

**Fund reports,  
etc.**

12. - (1) Within one hundred and twenty days after the end of a fund's plan year, the fund shall file with the Commission the following reports for that plan year, namely -

**Form 6.  
First  
Schedule.**

- (a) Certified Financial Return, in the form set out as Form 6 in the First Schedule;
- (b) financial statements, which shall be audited, unless -
  - (i) the fund meets the criteria specified in paragraph (2); and
  - (ii) the preparation of audited financial statements is not a requirement imposed by the fund's constitutive documents.

(2) Within nine months after the end of its plan year, the fund shall file with the Commission the prescribed annual report.

(3) The criteria referred to in paragraph (1)(b)(i) are that -

- (a) there are fewer than one hundred active members or such other number as the Commission may, by notice published in the Gazette, specify, and the total fair value of the assets is less than seventy-five million dollars or such other amount as the Commission may, by notice published in the *Gazette*, specify; and
- (b) all funds are held either on the account of investment

managers or in Type I Pooled Funds of investment managers,

and accordingly, the limit on the fair value of assets shall be adjusted for each calendar year by the rate of consumer price inflation applicable to the preceding calendar year.

**Scheme reports, etc.**

13. - (1) Within one hundred and twenty days after the end of a Scheme's plan year, the scheme shall file with the Commission, the following reports and documents for that plan year -

**Form 6. First Schedule.**

(a) Certified Financial Return, in the form set out as Form 6 in the First Schedule;

(b) audited financial statements;

**Third Schedule.**

(c) its information folder, in accordance with the requirements of the Third Schedule;

(d) a list of the names of the persons that sell or otherwise distribute the scheme's contracts under the scheme's Master Trust Deed and their registration number issued by the Commission consequent upon being registered or licensed under the Securities Act or Insurance Act.

(2) Within nine months after the end of its plan year, the scheme shall file with the Commission the prescribed annual report.

**Corporate trustee's report, etc.**

14. Within one hundred and twenty days after the end of a corporate trustee's financial year, it shall file with the Commission, for that financial year, its -

(a) annual report containing audited financial statements; and

(b) certification of tax compliance covering that financial year.

**Investment manager's report, etc.**

15. - (1) Within one hundred and twenty days after the end of an investment manager's financial year, it shall file

with the Commission for that financial year, its -

- (a) annual report containing audited financial statements;
- (b) certification of tax compliance covering the last financial year;
- (c) evidence of the renewal of professional indemnity and fidelity guarantee insurance that exceeds the amounts prescribed in regulation 7; and
- (d) certificate signed by the responsible officer, a director, company secretary and chief financial officer stating that the investment manager has fulfilled such capital and solvency requirements as may be prescribed in regulation 7.

(2) The investment manager shall file with the Commission quarterly Fund Status Reports, within sixty days after the end of each calendar quarter, in the form set out as Form 7 in the First Schedule.

**Form 7.  
First  
Schedule.**

16. Within one hundred and twenty days after the end of an administrator's financial year, it shall file with the Commission for that financial year, its -

**Administra-  
tor's report,  
etc.**

- (a) annual report containing audited financial statements;
- (b) Administrator's Return, in the form set out as Form 8 in the First Schedule;
- (c) certification of tax compliance covering the last financial year;
- (d) evidence of the renewal of professional indemnity insurance that exceeds the limits prescribed in regulation 7;
- (e) certificate signed by the responsible officer, a director, company secretary and chief financial officer stating that the company has fulfilled the

**Form 8.**

solvency requirements if any, prescribed in regulation 7.

**Report of change in particulars.**

17. A registrant or licensee shall, within fourteen days after any change in any of the particulars included in an application made pursuant to these regulations, report to the Commission in writing, giving full details of the change including the date and reasons for the change.

***Discontinuation of Business***

**Discontinuation by investment manager, administrator.**

18. - (1) Where an investment manager or administrator intends to discontinue operations as an investment manager or administrator for approved superannuation funds or approved retirement schemes, it shall -

(a) within fourteen days after the decision, notify the Commission in writing thereof and of the proposed effective date of discontinuance;

(b) not later than ninety days before the effective date of discontinuance, provide audited accounts of its investment management or administration business, as the case may be, to the Commission for the period ending not earlier than three months prior to the decision to discontinue operations;

(c) not later than one hundred and twenty days before the effective date of discontinuance, nor later than fourteen days after notification to the Commission under sub-paragraph (a) cause to be published in the Jamaican and overseas editions of a national daily newspaper, a notice -

(i) that it has given written notice to the Commission pursuant to sub-paragraph (a);

(ii) calling upon all claimants, contingent and actual, to announce their claims to

the Commission in writing within three months of publication of the notice as aforesaid;

(d) not later than ninety days before the effective date of discontinuance -

(i) file a list with the Commission of all outstanding amounts owed to schemes or funds or their members or beneficiaries; and

(ii) submit to the Commission for approval, a plan approved by the Board of Directors by which its investment management or administration business of schemes and funds will be transferred to another investment manager or administrator, as the case may be;

(e) no later than two days before the effective date of discontinuance, return to the Commission its licence granted under the Act, accompanied by a certificate from its board of directors verifying that the investment management or administration business, as the case may be, has been fully and satisfactorily transferred to another investment manager or administrator named therein.

(2) The Commission may refuse to approve the plan proposed under paragraph (1)(d)(ii), giving reasons for such refusal and may direct the investment manager or administrator, as the case may be, to make such changes to the plan as the Commission deems necessary.

#### **PART IV. FEES**

**Other fees.** 19. In addition to fees specified herein in respect of registration and licensing, fees payable for other services

**Fourth  
Schedule.**

shall be as set out in the Fourth Schedule.

**PART V. Transitional**

**Transitional.** 20. - (1) Superannuation funds, retirement schemes, administrators and investment managers which have applied under the Act for registration or licensing, as the case may be, shall, pending approval of their application, be required as a condition of registration or licensing to comply with the reporting requirements of Part III of these Regulations as if they had been already registered or licensed, as the case may be.

(2) References to funds or schemes in reports from administrators and investment managers shall be regarded as including superannuation funds or retirement schemes which have applied for registration under the Act, but have not yet been registered nor been refused registration.

**SCHEDULES**

(Here insert Schedules)

