



BULLETIN FOR:

TRUSTEES ACTING AS INVESTMENT MANAGERS OF
SELF-ADMINISTERED FUNDS

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

May 7, 2014



Trustees Acting as Investment Managers of Self-Administered Funds

LEGISLATIVE REFERENCE: The Pensions (Superannuation Funds and Retirement Schemes) (Act), 2004

Sections 2, 5(2), 8, 10 and 13;

Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations

Regulation 10

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

Regulations 7, 20

INTRODUCTION

Trustees of superannuation funds ("Funds") have an inherent power, under the trust pursuant to which the Funds are established, to invest the assets of the Funds for the benefit of the members of the Funds and their beneficiaries. This power, generally cannot be delegated unless permitted by the Trust Deeds or Plan Rules. An exception to this is however provided in the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 ("the Act") which stipulates that trustees are required to designate a licensed Investment Manager, as a condition for the registration of a Fund.

BACKGROUND

Historically in Jamaica, Trustees have, in the main, prior to the enactment of the Act, delegated to companies, which provide the relevant services, the power to invest the assets of the Funds. A few trustees however have not delegated this power and continued to make investment decisions and carry out other related functions themselves.

Given the requirements under the Act and the associated Regulations industry stakeholders and some trustees had sought clarification on the requirement to appoint a licensed Investment Manager, where the trustees desire to continue carrying out investment functions for the Fund themselves. This issue was raised in 2006 during consultation with industry stakeholders by the Financial Services Commission ("FSC") on proposed amendments, at that time, to the Act and Regulations. The decisions taken on the matter were subsequently reflected amendments to the Act.

LEGISLATIVE REQUIREMENTS

Section 5(3) of the Act provides that the only persons who may invest or manage the pension fund assets of an approved Fund are (a) a licensed Investment Manager; or (b) a registered Trustee.

Section 2 of the Act defines the term "Investment Manager" as:

"a company which, pursuant to section 8 (1) (a), is licensed to invest and manage pension fund assets of an approved superannuation fund or approved retirement scheme."

Section 10 of the Act requires the trustees of a Fund to designate an Investment Manager within 30 days after the appointed day of the Act or within 14 days of the termination of employment or resignation of an Investment Manager.

Section 8 of the Act prescribes the requirements for the licensing of an Investment Manager by the FSC. Subsection 2 (f) of section 8 of the Act was amended to remove the requirement for a securities' dealer's licence where:

- (i) the investment manager is a company owned and controlled by the sponsor or the trustees of an approved Fund; and
- any other fund established by the sponsor or by a company affiliated with the sponsor. See the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (Amendment) Act, 2005 and the Pensions (Superannuation Funds and Retirement Schemes) (Amendment) Act, 2006.

Regulation 7 of the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations ("RLR Regulations"), specifies the requirements for a company to be licensed as an investment manager. These include obtaining fidelity guarantee insurance and professional indemnity insurance.

Additionally, section 13 (2) (f) of the Act requires that members contributions must be paid over to the Investment Manager within one week of the end of the month in which contributions were deducted from the earnings of the members of the Fund. It should also be noted that Governance Regulations 10 (h) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, requires that the Sponsors of the Funds remit their contributions to an Investment Manager within a time-period to be specified in the constitutive documents of the Funds.

Also, one of the conditions for the FSC's approval of Fund for registration under the Act is the appointment of a licensed Investment Manager Pursuant to section 13 (1) (a) of the Act. This investment manager must be licensed under section 8 (1) (a) of the Act.

In addition Regulation 20 of the RLR Regulations requires as a condition of registration that Funds which have applied to be registered must comply with the reporting requirements of the RLR Regulations as if they had been registered.

THE RESPONSIBILITIES OF TRUSTEES WHEN INVESTING PENSION FUND ASSETS

As aforementioned, the Act imposes a requirement for a Fund to have a licensed Investment Manager to which the Sponsor and member contributions must be paid. All trustees must therefore designate an Investment Manager in keeping with Section 10 of the Act.

In the case of trustees who wish not to delegate their power to invest the assets of a Fund such trustees may therefore designate an Investment Manager which is either a Corporate Trustee or a company. The company may be owned and controlled by the Trustees or the Sponsor of the Fund to act as the Investment Manager of that Fund. This is in order to satisfy the requirement pursuant to section 13 of the Act regarding conditions for registration of the Fund.

A Corporate Trustee or a company established by trustees to act as the Investment Manager must satisfy the licensing requirements specified in section 8 of the Act and RLR Regulation 7. In addition this Investment Manager is required to comply with the reporting requirements as stipulated in the RLR Regulations.

The Trustees must therefore take reasonable steps to ensure that the Fund's Investment Manager submits the required statutory returns.

Comments 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