



***FINANCIAL  
SERVICES  
COMMISSION***

**BULLETIN FOR:  
APPOINTMENT OF AUDITOR**

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## APPOINTMENT OF AUDITOR

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<b>LEGISLATIVE REFERENCE:</b>	The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the "Pensions Act")
	Sections 2, 12
	The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulation, 2006 ("Governance Regulations")
	Regulation 11

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### 1.0 BACKGROUND

- 1.01 The trustees of an approved superannuation fund ("fund") or approved retirement scheme ("scheme") have responsibility for the prudent management of that fund or scheme. As the trustees are not required to have auditing qualifications or experience, in carrying out their duties under the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (the "Pensions Act") they are expected to rely upon the advice of an experienced auditor that is appointed to the fund or scheme.
- 1.02 The Financial Services Commission (the "Commission") is required, pursuant to Section 12 of the Pensions Act, to review the qualifications and other information for the appointed auditor of a fund or scheme. This review is undertaken in order to determine whether the individual is suitable to perform the duties of an auditor.
- 1.03 While the Pensions Act and the concomitant Regulations address the responsibilities and duties of an appointed auditor, the legislation does not specify the criteria applicable to make a determination of the suitability of the auditor. The Commission has responsibility to establish and assess compliance with the criteria which an appointed auditor is required to satisfy in order to provide services to a fund or scheme.
- 1.04 The appointed auditor therefore occupies a special position of influence over a fund or scheme in that they are required to report on matters that may adversely affect the pension plan; they also provide reports and opinions on the financial statements among other things. It is important that the auditor who provides this advice do so in a professional, objective and impartial manner, so as to effectively support the trustees in the exercise of their duties and to encourage members' confidence in the governance of a fund or scheme.

**2.0 OBJECTIVE**

- 2.01 The purpose of this bulletin is to outline the Commission's expectations and criteria for the appointed auditor of a fund or scheme, to determine whether the auditor is suitable to perform the duties as prescribed. This is to ensure that the skills and resources of the auditor are appropriate for the size, nature and complexity of the fund or scheme.

**3.0 LEGISLATIVE REQUIREMENTS**

- 3.01 Section 2 of the Pensions Act defines an auditor as a person who is a registered public accountant as defined by Section 2 of the Public Accountancy Act; and satisfies such other requirements as may be prescribed, and includes a firm of such persons.

- 3.02 Section 12 of the Pensions Act specifies that:

- (1) *"A person (whether or not a body corporate or a sole practitioner) who is a related party to an approved superannuation fund or approved retirement scheme shall not be appointed as an ... auditor of that fund or scheme without prior approval of the Commission."*
- (2) *"The trustees shall, within fourteen days of the appointment of an ... auditor of an approved superannuation fund or approved retirement scheme, notify the Commission in writing stating the qualifications and such other information relating to the work experience of the ... auditor."*
- (3) *"The Commission shall, on being notified under subsection (2), review the qualifications and other information to determine whether the ... auditor is a suitable person to perform the duties of ... auditor of an approved superannuation fund or approved retirement scheme."*
- (4) *"Where the Commission determines that the ... auditor is not a suitable person the Commission shall so inform the trustees in writing giving reasons therefor and informing the trustees of the right of appeal under section 39."*
- (5) *"The trustees shall, on receipt of the Commission's decision under subsection (4), take steps as are necessary to determine the employment of the ... auditor, so, however, that where an appeal has been lodged under section 39, the trustees shall not take any such steps until the appeal has been heard and determined."*

- 3.03 In addition, Regulation 11(1) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, 2006 ("Governance Regulations") stipulates that:

*"Auditors ... shall be persons who are in good standing with their recognized local and international governing bodies as well as satisfactory with the Commission."*

- 3.04 Auditors in fulfilling their duties must be mindful of the stipulations as set out in Regulations 11(2), (3), (5) and (6) of the Governance Regulations which articulate their authority, duties and responsibilities.

## **4.0 GENERAL PRINCIPLES**

### **4.01 EXPERIENCE AND COMPETENCE**

Auditing work carried out for a fund or scheme must be completed by the appointed auditor. An auditor is considered qualified and in good standing where he or she:

- is a member in good standing with the Institute of Chartered Accountants of Jamaica ("ICAJ") which is the recognized local governing body.
- is registered and licensed as a Public Accountant under the Public Accountancy Act, and has never had his or her auditing licence revoked or suspended by the Public Accountancy Board ("PAB").
- has at least five (5) years pension auditing experience.

An appointed auditor; whether a partner or any other member of a firm signing off on audit engagements, may possess an internationally recognized accounting qualification. For the purpose of this bulletin, the following would be considered internationally recognized governing bodies:

- Association of Chartered Certified Accountants.
- Institute of Chartered Accountants in England and Wales.
- Institute of Chartered Accountants of Scotland.
- Institute of Chartered Accountants of Ireland.
- Canadian Institute of Chartered Accountants.
- American Institute of Certified Public Accountants.
- Any other professional body or institute approved by the Commission.

### **4.02 INDEPENDENCE**

An auditor must not only be independent of but also ensure he or she is not a related party to the fund or scheme being audited, except where prior approval has been granted by the Commission. An auditor's independence is important in order to maintain an objective frame of mind in accomplishing the audit for a fund or scheme. When carrying out an audit, the auditor must not in any way be involved in any management decisions of the fund or scheme.

The auditor must not only be independent of the audited entity and other interest groups, but is also to be objective and impartial in dealing with the issues and topics under review for the fund or scheme. He or she must be objective and impartial both in fact and appearance. The principle of objectivity imposes the additional obligation on all professional accountants to be fair, intellectually honest and free of conflicts of interest.

The appointed auditor is required to also play a "whistle-blowing" function. The independence of the auditor from the fund or scheme, the Board of Trustees, and the plan sponsor is important to ensure the impartiality of the audit. The auditor should be appointed by the Board of Trustees in a manner consistent with their fiduciary responsibility, the Pensions Act and its attendant Regulations and the Constitutive Documents of the fund or scheme.

**4.03 CONFLICT OF INTEREST**

An auditor should not perform duties where there exists a potential or actual conflict of interest between the auditor and the fund/scheme or a third party; or both unless:

- the auditor's ability to act fairly and objectively is unimpaired;
- there has been full disclosure (in writing) of the potential or actual conflict to all parties involved, including the Commission; and
- all parties agree that the auditor may perform the duties of auditor to the fund or scheme

**4.04 DETERMINING SUITABILITY**

A person is regarded as satisfactory and suitable to be appointed as an auditor pursuant to Section 12(3) of the Pensions Act and Governance Regulation (11)(1), where he or she has demonstrated the qualities of honesty, integrity, diligence and fairness over a period of time and subscribe to a disciplined on-going commitment to high ethical standards.

In determining an auditor's competence and capability, the Commission will consider whether the relevant staff and other personnel connected with the applicant has demonstrated by experience, training and qualification, he or she will be able to perform the applicable regulated functions.

In making a determination regarding the competence and capability and in conducting an assessment of the appointed person's reputation, the Commission will give consideration to all appropriate factors, including but not limited to, whether the person has:

- demonstrated through qualifications and education the capacity to successfully undertake the associated responsibilities of the position.
- ever been diagnosed as being mentally ill or unstable.
- ever been disciplined by a professional, trade or regulatory body, or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement.
- been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or any investigation which might lead to such proceedings. Each case must be considered on its own merit, taking into account all relevant factors.
- been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by the Commission, any other regulatory authority, any professional body or government agency whether in Jamaica or elsewhere.
- been censured, disciplined, suspended or refused membership by any regulatory or professional body, a court or Tribunal or government agency whether in Jamaica or elsewhere.
- been refused the right to carry on a trade, business or profession requiring a licence, registration or other authorization as a result of the removal of the licence, registration or authorization.
- been the subject of any justified complaint relating to regulated activities.
- been charged or convicted of any criminal offence, particularly an offence relating to dishonesty, fraud, financial crime or other criminal acts or been involved in any acts of misfeasance or serious misconduct.

- contravened any of the requirements and standards of a regulatory body, professional body, government or its agencies, which are of the nature and significance that may have affected his or her fitness and propriety.
- been dismissed, or asked to resign or resigned from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity.
- been disqualified under the Companies Legislation or any other legislation or regulation, from acting as a director or serving in a managerial capacity.
- demonstrated an unwillingness to comply with any regulatory requirements or to uphold any professional and ethical standards.

Pursuant to Section 12(4) of the Pensions Act the Commission may require trustees to replace an auditor, where the auditor fails to adequately perform the required function or duties; is subject to conflict of interest or no longer meets these specific requirements.

## 5.0 DUTIES OF AN AUDITOR

The duties referred to in sub-section 3.04 include:

### 5.01 REPORTING

Reports must be prepared in accordance with the generally accepted accounting and auditing principles applicable while also complying with any directions issued by the Commission. The auditor is expected to follow the guidance notes or standards of practice required by the accounting organizations with which he or she is affiliated.

- Audit reports must adhere to the standards set out by their professional bodies, such as the International Financial Reporting Standards ("IFRS").
- All work carried out by the auditor for a fund or scheme must be completed with appropriate quality checks and reviews and within the statutory timeframes.

### 5.02 NOTIFICATION

An auditor is under obligation to notify (in writing) a fund or schemes' Board of Trustees; its sponsor(s) and the Commission in certain circumstances. Some of the circumstances and the timeframe(s) in which these must be carried out are:

- the Commission is to be notified within fourteen (14) days, where an audit appointment has been made by the Board of Trustees for a fund or scheme.
- where material errors, omissions or inconsistencies are noted in submitted information for a fund or scheme the trustees and actuary must be notified in writing. The auditor is authorized to request a meeting of the Board of Trustees or any committee thereof, to discuss the audit report of the fund or scheme.
- the appointed auditor must be mindful that within one month of receiving a dismissal letter or having tendered their resignation, the trustees must be advised in writing if any circumstances related to their removal or resignation may appear to likely have a significant effect on the interests

of current members (active, deferred, pensioners), prospective members or any other person entitled to benefits under the fund or scheme.

- the Commission must be notified in case(s) where an auditor has reasonable grounds to believe that a trustee, agent or sponsor has acted contrary to the terms of the fund or scheme's Constitutive Documents; or has contravened the provisions of the Pensions Act; or where the terms of the fund or scheme's Constitutive Documents are inconsistent with the provisions laid down by the Pensions Act; where a trustee, agent or sponsor of the fund or scheme fails to rectify the instance(s) of non-compliance within a reasonable period (no longer than six months after being notified).
- trustees, sponsors and the Commission must be notified in writing once an auditor becomes aware of any material flaws in the operation of a fund or scheme or any aspect of its internal control or collection of contributions, security for payment of loans granted; the handling of the financial resources or any other matter that could materially weaken the financial position of the fund or scheme. The auditor may delay submitting the audit report or notifying the Commission for no more than thirty days to facilitate discussions of the report with the trustees and the sponsor(s). The auditor must ensure that the discussion and its result are disclosed in the audit report submitted to the Commission for that fund or scheme.

## **6.0 DECISION OF THE COMMISSION**

- 6.01 Upon completion of its review and analysis of the information provided by the auditor as per item (7) below, a letter will be issued to the trustees advising of the Commission's decision as to whether the auditor was deemed suitable.

## **7.0 DOCUMENTS REQUIRED**

- 7.01 Upon receipt of notification of appointment of an auditor the Commission will dispatch to the trustees the following forms which must then be submitted to the auditor for completion and returned to the Commission within the thirty-day period set out in the Commission's cover letter:
- Appointment of Auditor Form - Firm Details (ASP-AUD-F).
  - Appointment of Auditor Form - Individual - Confirmation of Qualifications and Experience (ASP-AUD-I).
  - Appointment of Actuary and Auditor Form - Related Party Relationship (ASP-RPF).
- 7.02 The following documents for each individual auditor must accompany the completed forms indicated above, to facilitate the Commission's review:
- A detailed Résumé.
  - Certified copies of Academic Qualifications.

Questions regarding this bulletin may be directed to:

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