



BULLETIN FOR:

Registration of an Amendment

The Financial Services Commission
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REGISTRATION OF AN AMENDMENT

LEGISLATIVE REFERENCES: The Pensions (Superannuation Funds and Retirement Schemes) Act (the "Act")
Section 35

The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations (the "Governance Regulations")
Regulations 5, 18-24

1.0 BACKGROUND

- 1.01 It may become necessary to amend the Constitutive Documents of an approved superannuation fund ("fund") or approved retirement scheme ("scheme"). Constitutive Documents are those documents that establish and support the operation of a fund or scheme. They include the trust deed or master trust deed, plan rules, schedules and amendments.
- 1.02 For an amendment to be made, the Constitutive Documents of the fund or scheme must authorise the trustees to make amendments. If such powers are conferred on the trustees, the Act and Governance Regulations also require the completion of certain forms for proper registration of the amendment.
- 1.03 The purpose of this bulletin is to assist persons, particularly trustees and administrators, who wish to register an amendment to the Constitutive Documents.

2.0 LEGISLATIVE REQUIREMENTS

- 2.01 Pursuant to Section 35 of the Act, the trustees must provide written notification of their intent to amend the Constitutive Documents to the members of the fund or scheme. This written notification must include a statement that the trustees are seeking approval of the amendment by the members. The proposed amendment must be submitted to the members at least 45 days prior to submission to the Financial Services Commission (the "FSC") for its approval.
- 2.02 A notice dealing with the amendment must be sent to the affected members no earlier than 30 days and no later than 14 days prior to any participants' meeting. Governance Regulation 18(2) provides details on the disclosures in the notification to the members for the proposed amendment(s). The contents of the notice should clearly state:

- (a) the proposed effective date of the amendment and that the written approval of the members is being sought therefor;
- (b) whether the amendment is prescribed or ordinary;
- (c) an explanation of and reason for the proposed change;
- (d) an explanation of its effect on members' benefits;
- (e) whether the proposed amendment alters any provision of the original or amended constitutive documents, and refer to the relevant provision. The original text and the text of the proposed amendment must both be reproduced;
- (f) whether the proposed amendment is an addition to the original or amended constitutive documents. The text of the proposed provision to be added must be reproduced;
- (g) the rights of the members under Section 35(2) of the Act (i.e., approval, refusal, right to seek clarification and the right to request an additional amendment); and
- (h) the date, time and place of the meeting, where applicable.

2.03 Governance Regulation 5 stipulates requirements surrounding the meeting of participants, including the specified quorum of 30% of the participants entitled to attend and vote at meetings, who are present in person or by proxy. Please note that although a timeline for notice of the meeting of at least 10 working days is given at Regulation 5(1)(b), the regulation states that is also subject to Regulation 18(2), which provides a timeline of 14-30 days.

2.04 The trustees should not submit the amendment to the FSC for approval unless at least 50% of the voting members of the fund or scheme, plus one additional member, has approved the amendment. A voting member is a member, or a member's proxy, who attends a meeting and is eligible to vote.

If the amendment is a prescribed amendment, then the trustees must not submit the amendment to the FSC for approval unless at least 50% of the entire membership of the fund or scheme, plus one additional member, has approved the amendment.

If an amendment is being made in order to comply with the Act or any of the regulations, approval by the members is not required. However, in the members' best interest and in keeping with good practices, trustees shall inform the members of the amendment.

2.05 Pursuant to Regulation 18(1) of the Governance Regulations a prescribed amendment is one which results in:

- (a) a reduction of pension or pension benefits of the fund or scheme;
- (b) the fund or scheme being insolvent or the worsening of the insolvency;
- (c) the fund or scheme failing to meet the prescribed solvency requirements;
- (d) a change in the fundamental nature or design of the fund or scheme;
- (e) the consolidation, separation or merger of the fund or scheme; or
- (f) such other circumstance that the Commission may specify by order.

A prescribed amendment in reference to item (a) above cannot attempt to reduce benefits that have already accrued or a pension already being paid.

Any other amendments not categorized above would therefore be considered as ordinary.

3.0 POLICY REQUIREMENTS

3.01 Once the trustees have secured the approval of the membership, they must submit the amendment, along with documented proof of the members' approval, to the FSC. This submission should be done within 14 days of receiving the members' approval and at least 90 days prior to the effective date of the amendment.

Each submission of a set of amendments should be accompanied by a non-refundable application fee of J\$5,000.00. The following documents, each of which must be signed by at least a quorum of the trustees, are also to be submitted to the FSC:

Documents/Information	Comments
Original and a copy of each proposed amendment	This facilitates the perusal of the original by the FSC while the copy is forwarded to the Tax Administration Jamaica ("TAJ") for its examination. Written authorization to release the pertinent documents to the TAJ is also required.
Copy of the notice given to members	This is in order to determine whether members were fully informed on all aspects regarding the amendment(s).
Date on which notices were distributed	This is to ensure that members were given adequate notice as stipulated to examine the proposed amendment(s).
Extract of minutes detailing the total membership of the fund or scheme, the number of members present at the participants' meeting, the number of members who voted, and the results of voting, where applicable	This allows a determination to be made on whether an adequate portion of the membership agreed to the amendment(s): <ul style="list-style-type: none"> • Ordinary amendments: 50% + 1 of meeting attendees (including by proxy) in agreement to the amendment(s). Please note that the quorum for the participants' meeting is 30% of the participants entitled to attend and vote (including by proxy). • Prescribed amendments: 50% + 1 of all participants of the fund or scheme in agreement to the amendment(s).
Declaration of compliance with the Act	This statement should encompass compliance of the plan amendment(s) in respect to the entire Act (and Regulations thereunder), not just the provisions of plan amendments under Section 35 of the Act. The FSC requests that this document be separate from the trustees' resolution.
Resolution from the trustees setting forth the proposed amendment and directing that it be submitted to a vote at a participants' meeting	This is done where members are required to give approval for the amendment(s).

3.02 Additional documents to be submitted may include where applicable:

Documents/Information	Comments
In respect of plan mergers, copies of the most recent valuations for each affected plan, as well as the valuation done specifically for the merger	This is required to determine whether any differences in the benefit structures of the plans involved have been treated with, as well as to assess any considerations impacting on the solvency of the newly-merged plan.

3.03 An incomplete submission will be refused and the trustees shall be required to resubmit it. This will require that the amending process be restarted, including all requirements to get member approval, due to a failure to meet the prescribed deadlines.

- 3.04 A fund or scheme may accumulate a substantial number of amendments over a period of time. This may make the Constitutive Documents difficult to read. The FSC reserves the right to require the trustees to submit a restatement of the Constitutive Documents to the FSC.

A restatement is not an amendment but instead is simply a composite Constitutive Document which incorporates all past amendments. Since it is not an amendment, it does not need to follow the amendment process. Where a restatement is requested, it should be submitted to the FSC in a timely manner.

If the trustees wish to amend the plan rules at the same time that the plan rules are being restated, then the amendment procedure must be followed.

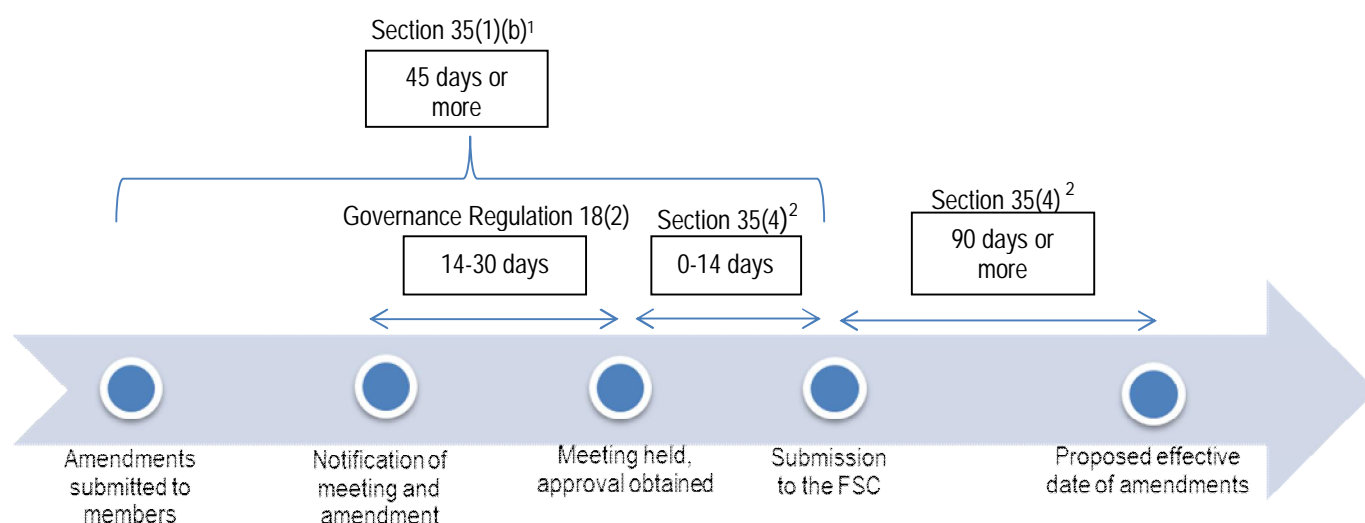
- 3.05 All amendments should be numbered in consecutive order to ensure that they can be properly tracked. When numbering a proposed amendment for submission to the FSC all previous amendments made should be taken into consideration where such amendments have not been consolidated into one document.

4.0 TIMELINE

- 4.01 There are several stages in the process for submission of an amendment:

- (i) Trustees should submit the amendments to members at least 45 days before they intend to submit the documents to the FSC. [Section 35(1)(b) of the Act]
- (ii) Written notification should be given to members between 14 and 30 days prior to the date of any participants' meeting. [Governance Regulation 18(2)]
- (iii) Once approval is acquired from the members, the trustees must submit the necessary documents to the FSC between 0 and 14 days from the meeting date. [Section 35(4) of the Act]
- (iv) The effective date of the amendment should be 90 days or more after the date of submission to the FSC. [Section 35(4) of the Act]

- 4.02 A composite timeline is shown below, showing the scenario where approval of the amendment occurs on the same day as the participants' meeting:



¹ Section 35(1)(b) of the Pensions (Superannuation Funds and Retirement Schemes) Act

² Section 35(4) of the Pensions (Superannuation Funds and Retirement Schemes) Act

- 4.03 The trustees should ensure that these timelines are met in the submission of amendments to the FSC, and that compliance with the statutory requirements is achieved.

Questions regarding this bulletin may be directed to:

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