



BULLETIN FOR:
INVESTMENT LIMITS – Approvals

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

August 2021



LEGISLATIVE REFERENCES: The Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations 16, 17, 23, 24, 26, 28, 29(1), 31, 33(1), 34(2), 35(3), 36(1)

The Pensions (Superannuation Funds and Retirement Schemes) (Amendment) Investment Regulations, 2019

1.0 BACKGROUND

1.01 The Investment Regulations sets aggregate limitations on certain investments that an approved superannuation fund and approved retirement scheme (collectively “pension plans”) can undertake, *inter alia*, relating to concentration, counter-party, foreign currency, and related party limits as follows:

Investment Regulations	Category	Prescribed Limit (Fair Value of the Assets)
16(1)	General concentration	10%
23(1A)	Unsecured obligations of solvent public companies not traded on a recognized stock exchange; and have a credit rating below investment grade from a recognized rating agency	5%
24A(1)	Equity and debt of private companies	5%
26	Voting shares or other interest in a company or other body corporate*	30%
28(2)(a)	Loans issued by a pension plan	Must not exceed 80% of the remaining value of the collateral.
29(1)	The holding of non-income generating real property	5%
31	Foreign Assets	20% or the limit prescribed under section 22B of the Bank of Jamaica Act, whichever limit is lower
33(1)	Secured or collateralized leases	10%
33A	Other investments not specifically provided for	5%
34(2)	Related parties	10%

* Private companies established for the sole purpose of holding real estate assets of pension plans are exempt.

- 1.02 The Financial Services Commission (the “FSC”) is empowered by Investment Regulation 35(3) to approve an increase in the holdings of securities or assets above the prescribed limits upon application by the trustees. In addition, the FSC may also direct trustees or investment managers of pension plans, pursuant to Investment Regulation 36(1), to dispose of assets or make such investments as the FSC determines necessary to bring the portfolio of assets within the prescribed limits.

2.0 OBJECTIVE

- 2.01 The FSC, under the legislative framework for occupational pension plans, has an obligation to oversee the prudent investment of the assets of pension plans within its remit.
- 2.02 The authority to approve an application by the trustees of a pension plan for a higher limit to be applied than the prescribed investment limits affords trustees flexibility to respond to situations in which generally imposed investment limits may not be the best fit for a given situation. Unforeseen circumstances may also render compliance with the statutory requirements impracticable.
- 2.03 The purpose of granting prior approvals for exceeding any quantitative investment limit is to relieve regulated entities from any unintended consequences of the regulation, while at the same time ensuring that the integrity of the law is maintained. The need to strike this balance will guide the FSC in its consideration of applications made pursuant to Investment Regulation 35(3).

3.0 GUIDING PRINCIPLES

- 3.01 Applications to exceed any statutory limit(s) will be assessed on a case-by-case basis. However, in all cases, adherence to certain guiding principles, which aim to ensure that the FSC achieves an equitable and effective regulatory environment, must be maintained. At a minimum there must be adherence to the following principles:
- A Board of Trustees (“BOT”) is to be guided by the risk tolerance of a pension plan. Due diligence, prudence, and care in the operations of the pension plan must be the hallmark of the BOT’s oversight. This must be clearly demonstrated to the FSC.
 - Transparency and proper conduct of the investment activities of a pension plan must be practiced and supported by clear evidence, and members’ and/or pensioners’ interests must not be prejudiced by any proposed activity of the BOT.
 - Any approval granted by the FSC in varying the applicable limits is not perpetual and can be reviewed by the FSC subject to notice in writing to the BOT and Investment Managers. In addition, such approval by the FSC does not represent an endorsement by the FSC and must not be represented as such.
 - The FSC will not consider for approval any application under Investment Regulation 35(3) where the applicant has exceeded the respective investment limit without the FSC’s prior written consent and reserves the right to take action under Investment Regulation 36(1).
- 3.02 This Bulletin does not contemplate the increase of investment limit related to foreign assets pursuant to Investment Regulation 31. Trustees and their agents are required to make applications to the relevant authority on foreign currency denominated assets, the Bank of Jamaica (“BOJ”), for any such approval. Notwithstanding, the FSC must be informed within 14 days of any such approval so granted by the BOJ.

4.0 SUPPORTING APPLICATION DOCUMENTS

- 4.01 An application must be accompanied by supporting evidence that demonstrates to the FSC's satisfaction that the request is reasonably determined to advance the best interests of the pension plan's participants in a manner consonant with the policy objectives of the legislation and the plan's Statement of Investment Policies and Principles ("SIPP"). When requesting permission to exceed any specified quantitative limits under the Investment Regulations the trustees are required to complete and submit the information contained within the document checklist in the Appendix
- 4.02 The FSC reserves the right to request further information and documents as necessary to complete its review.
- 4.03 An application that is not accompanied by all the required information and documents will be rejected. Other deficiencies identified by the FSC will be communicated to the trustees and processing terminated until the matters requiring attention have been addressed.

5.0 THE FSC'S APPROVAL

- 5.01 The FSC expects that it will be able to communicate its decision on an application within 30 days after receipt of all pertinent documents and information. Where more time is required to complete the review the trustees will be informed.
- 5.02 The FSC reserves the right to:
 - provide an effective date for the approval and recommend the timeframe for which approval will hold/stand and/or an alternate limit for consideration and approval.
 - impose conditions in connection with its approval of the proposed increase in an investment limit.
 - indicate to the BOT, by written notice, a date when the approval will be revoked.
 - not approve the application, providing a written explanation of the FSC's decision.

Questions regarding this bulletin may be directed to:

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Appendix

Application Form for Approval of Investment Limits			
Does the application include the following documents & Information:	Yes	No	Ref ¹ :
A detailed explanation of the need to increase the pertinent limit applicable to a specific issuer or asset, including how it will benefit the participants of the pension plan.			
A succinct description of the proposed investment(s), and the proposed increase in exposure of the pension plan with respect to the applicable investment limit(s) (stated in terms of % of the pension plan's assets).			
The current exposure of the pension plan with respect to the applicable investment limit(s) (stated in terms of % of the pension plan's assets).			
The analysis provided includes:			
<ul style="list-style-type: none"> • A comparison of the current asset allocation with the proposed asset allocation and expected returns. 			
<ul style="list-style-type: none"> • The current risk exposures (in broader, qualitative terms). 			
<ul style="list-style-type: none"> • The financial condition (solvency/funding levels/liquidity needs etc.) of the pension plan. 			
The extent to which consideration of the applicable investment risk exposure(s) and the management thereof is embedded in existing risk management arrangements.			
Where the risk management framework is not yet in place, the arrangements that will be implemented to manage the applicable investment risk(s).			
The latest financial statements of the pension plan (not more than 45 days old).			
A re-balancing plan.			
Evidence and the results of the stress testing of the financial/macro-economic variables associated with the proposed increase in the investment limit.			
An explanation of whether the proposed change is consistent with the pension plan's investment strategy.			
The revised SIPP, where applicable, inclusive of the pension plan's demographic information, current portfolio allocation, and risk assessment.			
Confirmation from the quorum of trustees that proper due diligence and an assessment of the proposed increase in the investment limit, inclusive of its appropriateness based on their risk appetite in regards to the pension plan, was conducted by the investment manager, provided to the BOT, and has been duly approved by the BOT.			
In the case of a defined benefit pension plan:			
<ul style="list-style-type: none"> • An assessment of the sponsor's ability and willingness to fund a deficit in the pension plan, should one arise. 			
<ul style="list-style-type: none"> • Confirmation of whether the sponsor was notified and has provided approval or input in the proposal. 			
In the case of a scheme or a fund that offers individual investment choices:			
<ul style="list-style-type: none"> • A copy of the proposed disclosure material to be provided to the participants of the pension plan. 			
<ul style="list-style-type: none"> • Information regarding any changes to the default option resulting from the proposed increase in the investment limit. 			
An explanation of the impact on the pension plan if the FSC does not grant approval.			

¹ This is the reference of the document where the information can be accessed by the FSC.