

# PENBOX

FSC's Quarterly Pensions Newsletter

## MAIN FEATURE

### RIGHTS, DUTIES AND RESPONSIBILITIES OF TRUSTEES

by Kristen Gyles

Trustees do have rights! ... and it is important for you to be aware of these rights in order to execute your role effectively. As Trustees you have the right to use the plan's assets to secure the services of professional advisors and agents who can provide guidance in executing your fiduciary duty. The plan's investment manager, administrator, auditor and actuary among other consultants, provide guidance regarding how operational, investment and other risks may be appropriately managed. Notwithstanding, Trustees remain ultimately responsible for all aspects of the plan management, administration and operation and therefore should be vigilant in ensuring adequate risk management is being carried out bearing in mind the terms of the constitutive documents and applicable legislations.

Of course, with rights come responsibilities. Trustees have the responsibility of ensuring that accurate records are kept and safeguarded, and they must ensure their respective plans are compliant with applicable legislations. Generally, trustees are bound by four primary statutory duties, namely:

1. Duty of confidentiality: Trustees hold a statutory obligation of secrecy and are required to hold sensitive business information in strict confidence.
2. Duty to disclose conflicts of interest: Trustees should disclose any personal or private interest they have that could affect or be perceived to affect a decision made regarding the fund or scheme.
3. Duty of disclosure to participants: Trustees must ensure that plan participants have access to clear, adequate and timely information on the management of the plan's assets as well as their benefits and rights.
4. Duty of prudence: Trustees must apply diligence in their oversight of the plan by making decisions on a fully informed basis and in good faith. They must also be financially prudent in the management of a fund or scheme.

Notwithstanding the scope of responsibilities that rests upon Trustees, you are not alone. Trustees can rely on assistance from their agents and advisors for expert guidance in investment and administrative functions of the pension plan. This may assist trustees with the development of governance policy documents and other managerial and organizational assistance may be sought as needed.

#### IN THIS ISSUE:

1. Rights, Duties and Responsibilities of Trustees
2. Senior Director's Message - Reflection on Trustees' Workshop
3. Pensions Technical Reviews & Policy Corner
4. FAQs



Cornelia Harper Peck  
Senior Director  
Pensions Division  
Financial Services Commission

## SENIOR DIRECTOR'S MESSAGE

Once again, I thank the Trustees and their agents who attended our first virtual "Risk Management Workshop for Pension Plans" in December 2021. We were happy to have been able to connect with you virtually and that the interaction was equally as fruitful and productive as when we met with you face to face.

I want to highlight the importance of the Trustees' participation in the risk management framework of their respective plans. Trustees should understand the specific risks associated with their pension plan and implement controls to manage such risks.

We were delighted to partner with the Certified Financial Analyst Society of Jamaica, whose members shared their knowledge and first-hand experience on some of the key investment risks associated with your pension plan. I trust that the discussion has prompted you to begin asking questions of your investment managers regarding the investment strategies for your plans' assets, especially amidst the ongoing conflict between Russia and Ukraine.





# PENSIONS TECHNICAL REVIEWS & POLICY CORNER

Candice Lewis

## SURPLUS DISTRIBUTION ON WINDING-UP

When a fund or scheme is being fully or partially wound up there may be an excess of assets over the liabilities (the estimated cost of benefits or obligations); thereby, creating a surplus. In that case, the surplus amount should be confirmed, and a scheme of surplus distribution certified by the plan's actuary. Any surplus allocation being proposed must adhere to the provisions in the plan's Constitutive Documents and the pension legislation. The application of surplus upon winding-up is provided for in Section 32 of the Pensions Act. Further, special attention should be given to the following when determining how surplus should be distributed upon a plan's winding-up:

Allocations that may breach an amendment fetter ("restriction") or existing non-reversion clause of assets to the sponsor (a provision that assets must not be returned to the sponsor), stipulated in the original Trust Deed and Plan Rules and any amendment thereto will not be approved.

Source of surplus – note the portion of surplus due to interest gains (crediting interest less than net yield); withdrawal gains (employer's portion of non-vested terminated members' contributions); misaligned actuarial assumptions; employer over-contributing (for DB plans); etc.

Method and rationale of apportionment, which will be outlined by the Actuary for approval by the Trustees.

Outstanding contributions owed to the fund and any contribution holidays that have been given to the sponsor or members.

The FSC has the authority to approve the distribution or amend the scheme after consultation with the Trustees and the surplus must be distributed in accordance with the manner approved by the FSC. A bulletin, further exploring this subject matter, will be issued by December 31, 2022.



# FREQUENTLY ASKED QUESTIONS

## WHAT INFORMATION SHOULD TRUSTEES SUBMIT TO THE FSC FOR A FIT AND PROPER ASSESSMENT EVERY 5 YEARS?

The FSC conducts on-going monitoring of the fit and proper status of Trustees who have already been registered under Regulation 3(2)(c) of the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations. As per the FSC's procedural requirements, the Trustees were required to submit the following documents every 5 years:

- i. Police record; and
- ii. Completed fit and proper questionnaire.

With the onset of the COVID-19 pandemic, the FSC has had cause to revisit the period of reliance on fit and proper documents given the challenges being experienced by some of our Trustees in obtaining police certificates and as such, has extended the period for which fit and proper documents are valid to seven years. The abovementioned policies will continue until further advised by the FSC. The Trustees are encouraged to peruse the Bulletin for – Fit and Proper Assessment by the Financial Services Commission – GEN-ADVI-21/05-0004 – May 2021 on our website, at [www.fscjamaica.org](http://www.fscjamaica.org).