



BULLETIN FOR:
EFFECTIVE DATES (Amendment of Pension Plans)

**The Financial Services Commission
39-43 Barbados Avenue
Kingston 5, Jamaica, W.I.
Telephone: (876) 903-3010**

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Bulletin – Effective Dates (Amendment of Pension Plans)

Legislative Reference:

Section 35 (4) of the Pensions (Superannuation Funds and Retirement Schemes) Act (the “Act”)
Regulations 21 and 22 of the Pensions (Superannuation Funds and Retirement Schemes)
(Governance) Regulations (the “Governance Regulations”)

1.0 Objective:

1.01 The objective of this bulletin is to clarify the effective date for amendments to the Trust Deed and Plan Rules of an Approved Superannuation Fund (“Fund”) or Approved Retirement Scheme (“Scheme”)

2.0 Effective Dates (Amendment of Pension Plans)

2.01 When taking steps to amend the Trust Deed and Plan Rules of a Fund or Scheme it is important to comply with the regulatory requirements outlined in the Pensions (Superannuation Funds and Retirement Schemes) Act (“the Act”) and attendant Regulations. Reference can be made to the Bulletin issued by the Financial Services Commission (the “FSC”) in March 2014 which speaks generally to the requirements for an amendment to a Fund or Scheme. However, the purpose of this bulletin is to specifically address the issue of effective dates of amendments.

2.02 In most circumstances, amendments will not be approved with a retrospective effective date. The FSC only approves amendments with a retrospective effective date in circumstances where an acceptable justification has been provided.

- 2.03 When undertaking the process to amend a Trust Deed and/or Plan Rules it is important to note that the law raises a general presumption against retrospectivity regarding plan rule changes. The power of the FSC to approve amendments under the Act is not intended to allow for amendments to be backdated as a device to rewrite history or validate an amendment that would otherwise be beyond the scope of any amendment power.
- 2.04 Before exploring an amendment with a retrospective effective date, it is important for the Trustees of the Pension Plan to assess whether such amendments are within the scope of the power of amendment given under the Trust Deed and Rules of the Pension Plan.
- 2.05 Trustees have a duty to exercise the power of amendment in good faith, and not breach the duty of trust and confidence owed to the participants of the Pension Plan.
- 2.06 The FSC acknowledges that circumstances may arise where the proposed effective date of an amendment to a Pension Plan is affected by administrative delays. Notwithstanding this, the FSC will not necessarily approve an amendment that is backdated because of any administrative delay; as the FSC must still consider the amendment in the context of the presumption against retrospective approval of amendments.
- 2.07 The Act and attendant Regulations stipulate the statutory process to be followed for effecting amendments. Regulation 22 of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations (“Governance Regulations”) provides that proposed amendments submitted become effective on the date given by the FSC in its notice approving those amendments, and the trustees shall cause the Constitutive Documents to be amended accordingly.
- 2.08 Regulations 21 and 22 of the Governance Regulations state respectively:
- “21. Where the Commission determines that the proposed amendment is satisfactory it shall approve the amendment in accordance with section 35(5) of the Act and issue a notice of amendment.*
- “22. A proposed amendment becomes effective on the date shown in the notice issued by the Commission and the trustees shall cause the constitutive documents to be amended accordingly.”*
- 2.09 Consequently, the date of actual change in relation to an amendment under our legislative regime, would be the date at which the Board of Commissioners (BOC) of the FSC indicates.
- 2.10 There may be circumstances on a case-by-case basis, where the FSC will approve amendments with a retrospective effective date. However, the FSC will be mindful of the common law presumption against retrospective effective dates and will adhere to principles of fairness and legality. Therefore, the amendments should not be outside of

the scope of the power of amendment given by the Constitutive Documents or seek to “rewrite history”. Additionally, a decision of the FSC to backdate its approval will not be arbitrary and whimsical but grounded on reasoned considerations. As a result, an acceptable justification must be provided in support of a proposed retrospective effective date for an amendment to the Trust Deed and Plan Rules of a Pension Plan.

Questions 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**