



BULLETIN FOR:
Registration of an Amendment

**The Financial Services Commission
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April 2024



REGISTRATION OF AN AMENDMENT

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

The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations (“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 govern the operation of a fund or scheme. They include the Trust Deed or Master Trust Deed, Plan Rules, schedules and supplementary deeds with amendments.
- 1.02 Where a large number of amendments to the Constitutive Documents of a pension plan have been proposed, in excess of 16 alterations to the plan’s provisions the FSC will treat this to be a wholesale amendment. Additional policy requirements for these types of amendments are noted below.
- 1.03 For an amendment to be made, the Constitutive Documents of the fund or scheme must authorize the trustees to make amendments. If such powers are conferred on the trustees, the Act and Governance Regulations require the submission of certain documents and information for proper registration of the amendment.
- 1.04 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 written 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 Prescribed and Ordinary Amendments

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 circumstances 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.

2.03 Notice to Participants

A notice dealing with the amendment must be sent to the 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, seek clarification and request additional amendment); and
- (h) the date, time and place of the meeting, where applicable.

2.04 In presenting the proposed amendments as referenced in items 2.02(e) and (f) above to the members and to the FSC, the trustees must provide a red-lined consolidated Trust Deed and Plan Rules with the proposed changes tracked or a comparative table, listing the current wording, the proposed revision/addition and the reason and impact of each change being proposed.

2.05 Participants' Meeting

Governance Regulation 5 stipulates the 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 (whether physically or virtually) or by proxy. Please note that although a timeline for the notice of the meeting of at least 10 working days is prescribed in Governance Regulation 5(1)(b), the regulation states that it is also subject to Governance Regulation 18(2), which provides a timeline of 14-30 days.

2.06 Members' Voting Requirement

If the amendment is an ordinary amendment, the trustees must not submit the amendment to the FSC for approval unless at least 50% plus one of the voting members of the fund or scheme, has approved the amendment. A voting member is a member¹, or a member's proxy, who attends the meeting. Be advised that all participants (active members, deferred pensioners and pensioners) in the plan are eligible to vote; eligibility is not dependent on whether a participant is affected by the proposed amendment.

If the amendment is a prescribed amendment, 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. (See the Policy Paper on *Amending the Contribution Limits in the Constitutive Documents of Approved Superannuation Funds – PR –ADVI-15/06-001* for an example of such an instance) **However, in the members' best interest and in keeping with good governance practices, trustees must inform the members of the amendment, the reason(s) therefor and the resultant impact(s) on their benefits, as the case may be.**

The trustees may provide members with the opportunity to vote for wholesale amendments collectively so that the process is more efficient. For example, the members may be asked to vote for a resolution to pass all the amendments that require member approval, subsequent to the explanation of the impact of the amendments to the members.

3.0 **POLICY REQUIREMENTS**

3.01 Any amendment being proposed must adhere to the amendment provisions in the plan's Constitutive Document. Amendments that may breach any amendment fetter² stipulated in the Trust Deed (original and amended) should not be pursued.

3.02 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 proposed effective date** of the amendment. Each submission of a set of amendments, wholesale or otherwise, 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 Board of Trustees³**, are also to be submitted to the FSC:

Documents/Information	Comments
Two copies of the Supplemental Deed outlining each proposed amendment	<p>This facilitates the perusal of one copy by the FSC while the other is forwarded to the Tax Administration Jamaica ("TAJ") for its examination. Written authorization to release the pertinent documents to the TAJ is also required.</p> <p>The submission of draft versions will be accepted upon the initial submission but the duly stamped and executed versions will be</p>

¹ Section 2 of the Act defines a member as "a person who meets the eligibility requirements for and joins an approved superannuation fund or approved retirement scheme and has accrued benefits in that fund or scheme".

² This refers to provisions that may limit or restrict certain changes to the constitutive documents.

³ The Board's quorum is as stipulated in the respective plan's Constitutive Documents and Governance Regulation 3(4).

	required prior to the FSC issuing its final approval and notice of the amendment(s).
Copy of the notice given to members	This is 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 exercise, where applicable	This is required where members' approval of the amendment(s) is necessary. 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 proxies). • 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. The execution of the resolution must be consistent with the Trust Deed and Plan Rules of the pension plan.	This is done where members are required to give approval for the amendment(s).

- 3.03 Additional documents are required in the event of a merger of more than one pension plan or a conversion of the pension plan. Be guided by the FSC's *Guideline for: Merger or Consolidation of Pension Plans – PR-GUID-14/06-0039* and *Guideline – Conversion – PR-GUID-09/04-0017*, in that regard.
- 3.04 An incomplete submission will be refused, and the trustees shall be required to resubmit. This will require that the amendment process be restarted, including all requirements to get member approval, due to a failure to meet the prescribed deadlines, and repayment of applicable processing fee.
- 3.05 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.

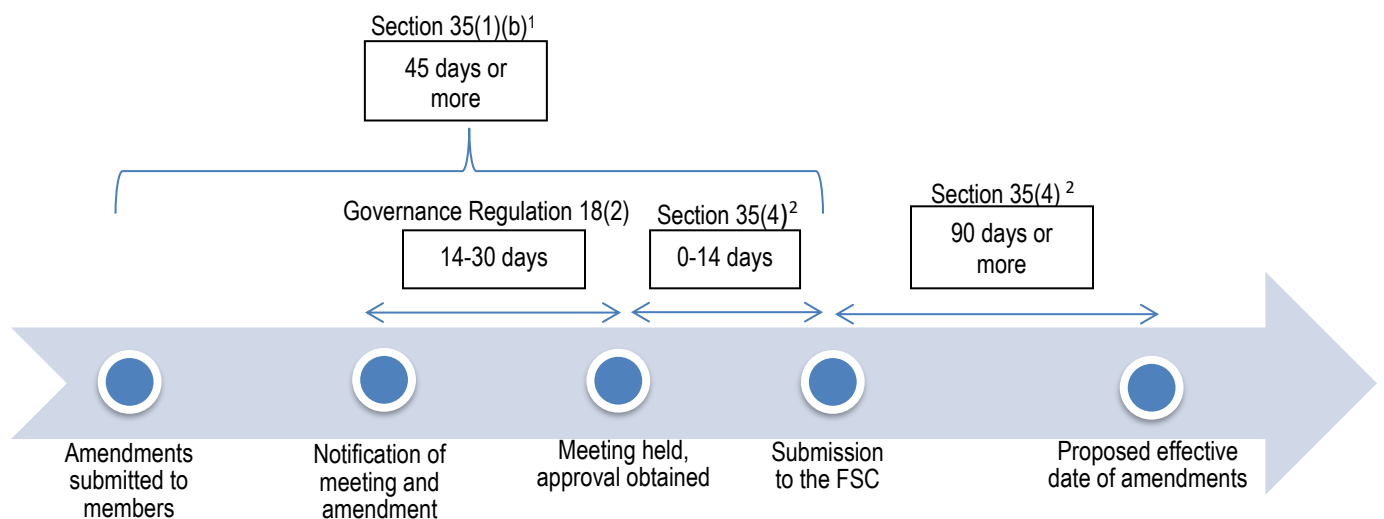
A restatement is not an amendment but instead is simply a composite Constitutive Document which incorporates all past amendments. Since it is not an amendment, it does not need to follow the amendment process. Where a restatement is requested, it should be submitted to the FSC within the timeline stipulated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

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.

- 3.06 All amendments should be numbered in a sequential 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.
- 3.07 Given that a wholesale amendment presents much more material for assessment than the usual amendment application, a longer turnaround time is to be expected regarding the processing of said application.
- 3.08 Notwithstanding the date proposed in the application, pursuant to Governance Regulation 22, the effective date of an amendment is the date shown on the Notice issued by the FSC. Also, the FSC reserves the right to approve an amendment with a retroactive date within reason (for instance, if it is determined that it is necessary to preserve the members’ rights or benefit). [Further guidance can be found in the FSC’s *Bulletin for Effective Dates (Amendment of Pension Plans) – PP-ADVI-2024/02-0003*].

4.0 TIMELINE

- 4.01 There are several stages in the process for the 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 within 14 days from the meeting date. [Section 35(4) of the Act]
 - (iv) The proposed 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:



⁴ Section 35(1)(b) of the Pensions (Superannuation Funds and Retirement Schemes) Act
⁵ Section 35(4) of the Pensions (Superannuation Funds and Retirement Schemes) Act

- 4.03 The trustees must 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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