

THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT  
SCHEMES) ACT

REGULATIONS  
(under section 58)

THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT SCHEMES)  
(GOVERNANCE) REGULATIONS, 2006

(Made by the Financial Services Commission and approved  
by the Minister on the 13th day of March, 2006)

L.N. 58B/2006

PART I. Preliminary

1. These Regulations may be cited as the Pensions (Superannuation  
Funds and Retirement Schemes) (Governance) Regulations, 2006.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“advisor” means any person on whose skill and judgment a trustee, in  
the exercise of his duties, places reliance, including the  
actuary, auditor, banker and attorney-at-law of the fund or  
scheme;

“Agent of Trustees” means any person who performs any part of  
the functions or discharges any part of the duties or respon-  
sibilities of the trustees and includes the investment manager,  
administrator or nominees of the trustees;

“beneficiary” means—

- (a) the person designated by a participant to benefit from his  
entitlement in the fund or scheme;
- (b) the person who has a beneficial interest in the fund or  
scheme under the Last Will and Testament of the  
participant; or
- (c) the person who has a beneficial interest in the fund or  
scheme under any enactment;

“benefit statement” means a statement or estimate as at a given date  
of the benefits in respect of a participant’s membership;

“Board” means the board of trustees of a fund or scheme;

“complaints register” means the register described in regulation 16;

“conflict of interest” refers to any situation or circumstance which could be expected to impair a person’s ability to make unbiased and objective recommendations or decisions;

“constitutive documents” means the documents that establish and support the operation of a fund or scheme; that is the trust deed or master trust deed, plan rules, schedules and amendments thereto;

“deferred pensioner” means a member who has ceased being an active member of a fund or scheme but is entitled to receive a pension at a future date from the fund or scheme;

“fund” means an approved superannuation fund;

“material change” includes —

- (a) change of status of a fund or scheme including termination or winding up of the fund or scheme, partially or in its entirety;
- (b) bankruptcy of a sponsor;
- (c) liquidation, amalgamation, or reconstruction of a sponsor;
- (d) consolidation, separation or otherwise reconstruction of a fund or scheme;
- (e) merger of a fund or scheme with another fund or scheme; or
- (f) any other circumstance that the Commission may declare from time to time;

“member nominated trustee” means a trustee who has been—

- (a) nominated by any active member of the fund or scheme; and
- (b) elected by the active members of the fund or scheme;

“participant” in relation to a fund or scheme means a person who is an active member, deferred pensioner or pensioner;

“participants’ meeting” means a meeting at which the right of participants to make decisions concerning a fund or scheme is exercised;

“pensioner” means a member who is in receipt of a pension secured by or from a fund or scheme.

“pensioner trustee” means a trustee who has been—

- (a) nominated by a pensioner or deferred pensioner of the fund or scheme; and
- (b) elected by the deferred pensioners and pensioners;

“scheme” means an approved retirement scheme;

“sponsor trustee” means a trustee that has been nominated or elected by the sponsors of a fund or scheme;

“the Act” includes any regulations made thereunder.

### *Trustees*

3.—(1) Sponsor trustees shall constitute no more than fifty per cent plus one of the appointed trustees of a Board, and the limit shall be determined by rounding down (for example, if there are nine appointed trustees, no more than five of those trustees shall be sponsor trustees).

Constitution  
of Board.

(2) The Board and each committee of a fund or scheme shall include at least one member nominated trustee.

(3) A fund or scheme comprising thirty or more deferred pensioners and pensioners shall include at least one pensioner trustee.

(4) The quorum for Board or committee meetings shall not be a greater percentage of sponsor trustees than the percentage of sponsor Trustees in the Board of trustees taken as a whole.

(5) A Board—

- (a) may set up committees from among its members, each of which shall be constituted of at least two members;
- (b) may delegate to the committees its functions;
- (c) shall document the terms of reference of each committee.

(6) The acts and omissions of a committee shall be deemed to be the acts and omissions of the Board as a whole.

(7) Nothing in paragraph (6) affects the liability of a trustee, agent or sponsor for things done or omitted to be done by such person.

(8) There shall be no distinction between trustees with respect to powers, duties, voting rights, tenure or other benefits or privileges.

(9) Decisions of the Board shall be carried by a majority vote.

Removal of member nominated or pensioner trustees.

4.—(1) A member nominated trustee may not be removed from a Board except on the expiration of his term or by a majority vote of the active members.

(2) A pensioner trustee may not be removed from a Board except by a majority vote of pensioners and deferred pensioners.

Meetings of participants.

5.—(1) Notice of a participants' meeting shall—

- (a) be in writing and specify the date, time, place of the meeting and the reasons for a meeting;
- (b) subject to paragraph (a) and regulation 18 (2), be circulated, posted or delivered to each person entitled to attend and vote at the meeting no later than ten working days before the meeting.

(2) Where a meeting is required for the purpose of making an urgent decision, then paragraph (1)(b) shall apply as if the minimum notice period were no later than five working days or such shorter period as may be indicated by the Commission's prior written permission.

(3) The quorum for a participant's meeting shall not be less than thirty per cent of the participants entitled to attend and vote at meetings, who are present in person or by proxy.

(4) Each participant entitled to vote at a meeting shall have one vote, but in the case of an equality of votes, the chairman of the meeting at which the voting takes place shall have a second and casting vote.

(5) A person who is—

- (a) appointed by a court of competent jurisdiction to act on behalf of a participant of unsound mind;
- (b) a legal personal representative of a person entitled to attend and vote at the meeting,

may vote instead of the participant or person and may speak at the meeting and appoint a proxy.

6.—(1) A participant who is unable to be present at a meeting may authorize any other person (who need not be a participant) to vote for him at that meeting, and in that event, the person so authorized shall have a vote for each participant by whom he is so authorized and shall also have the same right as the participant to speak at the meeting. Proxies.

(2) The authority appointing the proxy shall be in writing and be produced at the meeting at which it is to be used.

(3) A participant may not appoint more than one proxy to attend on the same occasion.

(4) In every notice of a meeting there shall be a prominent statement that a participant entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of him, and that the proxy need not be a participant.

7.—(1) Trustees in the exercise of their duties, and taking all reasonable precautions and exercising due diligence, shall—

General  
duties of  
trustees.

- (a) meet at least once annually;
- (b) as members, pensioners or deferred pensioners of the fund or scheme, be entitled to such benefits as are ordinarily payable to them as members, pensioners or deferred pensioners;
- (c) make decisions on a fully informed basis, in good faith and are not precluded from relying in good faith on oral or written advice given in a professional capacity by an appointed agent or advisor;

Provided that any oral statement shall be subsequently confirmed in writing by the person who provided the advice;

- (d) regularly review the performance of any appointed agents and advisors, and satisfy themselves of their continued suitability to perform the assigned duties, and in so doing the trustees shall have regard to more than the fact that the agent or advisor is licensed or registered, as the case may require, with their regulatory bodies;
- (e) be financially prudent in the management of the fund or scheme;
- (f) give information to their agents in sufficient time to enable them to perform their duties effectively and comply with the terms of the fund or scheme and the Act;
- (g) in a manner determined by the Board, authorize all payments from the fund or scheme;
- (h) in the case of a fund, cause the contributions payable to the fund to be checked for accuracy;

- (i) give a copy of any statement or declaration prepared in accordance with regulation 11(2)(d) to the replacement auditor or actuary, prior to the signing of the engagement letter by the replacement auditor or actuary, and include the statement or declaration in the next trustees' annual report;
- (j) not take, threaten or conspire to take any retaliatory or discriminatory action with respect to a participant's benefits;
- (k) not take, threaten or conspire to take any retaliatory or discriminatory action against any person who exercises his rights under the fund or scheme;
- (l) except in circumstances of mental incapacity as described in paragraph (2), make an application to a competent court for the appointment of a legal representative where it has come to their attention that—
  - (i) any person entitled to benefit under the fund or scheme—
    - (A) is suffering from any disease or other incapacity rendering him unable to manage his affairs or give a valid receipt; or
    - (B) has failed to nominate someone to whom his benefits can be paid for his maintenance and general welfare; or
  - (ii) the person who had previously been so appointed is unfit, unable or unwilling to act;
- (m) make an application to a competent court for the appointment of a legal representative where a minor is entitled to benefit under the fund or scheme and no legal representative has been appointed or the person who appointed is unfit, unwilling or unable to act;
- (n) where a person has not claimed or has stopped collecting any moneys or benefits payable under the fund or scheme, then no later than eight weeks after—
  - (i) such moneys or benefits became payable; or
  - (ii) he ceased collecting such moneys or benefit,
 make such enquiries as are reasonable to locate such person including, where necessary, advertising for him and his next of kin's whereabouts in the local and overseas edition of a national daily newspaper;
- (o) where the moneys or benefits remain unclaimed after five years, then—

- (i) in respect of an on-going fund or scheme, after advertising annually in accordance with paragraph (n) for a period of not less than five years, retain the moneys or benefits payable, in the fund or scheme, and the moneys or benefits shall not revert to such a fund or scheme, except after a period of 150 years;
  - (ii) in respect of a fund or scheme which is being or is to be wound up, after advertising annually in accordance with paragraph (n) for a period of not less than five years, shall pay the moneys or benefits payable to the Supreme Court not later than six months thereafter;
- (p) review policies and procedures relating to the governance of the fund or scheme at least once annually and approve them with or without any amendments;
- (q) conduct at arm's length all transactions of the fund or scheme;
- (r) on the making of a transfer payment, give a statement of transfer values to the member involved as well as the trustees of the receiving fund or scheme to which the payment is made at the time the payment is being made;
- (s) within sixty days of the termination of employment or resignation of an actuary or auditor, appoint a replacement actuary or replacement auditor for the fund or scheme;
- (t) keep all assets in respect of the fund or scheme separate and distinct from their own funds;
- (u) ensure that accurate and complete records and other documents on all matters related to the fund or scheme are kept, maintained and safe-guarded in Jamaica for a period of not less than seven years after—
  - (i) in the case of a member, the fund's or scheme's liability to that member or their spouse, dependant, beneficiary or estate, as the case may be, has been fully extinguished; or
  - (ii) in any other case, the date of the last transaction to which the records relate;
- (v) ensure that written policies and procedures for the governance of the fund or scheme are in place to facilitate its effective operation and management, which should relate to but not be limited to—
  - (i) a statement of investment policies and principles;
  - (ii) conflicts of interest;

(iii) complaints resolution; and

(iv) anti-money laundering.

(2) Where—

(a) the incapacity of a person referred to in paragraph (1) (I) is a mental disorder; and

(b) legal arrangements for the management of the person's affairs have not been made,

the trustees shall request that the nearest relative of the person or the Attorney-General, as the case may require, apply to a competent court for arrangements to be made for the management of the person's affairs.

(3) In paragraph (2) "mental disorder" and "nearest relative" have the meanings respectively assigned to those expressions under the Mental Health Act.

Conflicts of  
interest.

8.—(1) No person shall accept an appointment as a trustee of a fund or scheme or as an agent if there is or is likely to be a conflict of interest between his role as a trustee or agent and his role in any other capacity.

(2) Policies in relation to conflict of interest shall in every instance, provide for documentation of the following in a register—

(a) the date of the trustees' receipt of notification thereof;

(b) the name of every trustee involved;

(c) the nature and details of the conflict;

(d) the method of resolution;

(e) the date of resolution.

(3) Trustees shall not use information obtained in their capacity as trustees or use their position as trustees to further or seek to further their own or another person's private interest if this would result in a breach of their fiduciary duty to the persons entitled to benefit under a fund or scheme.

(4) An Agent of Trustees shall not use information obtained in the capacity as such or use the position as Agent of Trustee to further or seek to further his own or another person's private interest, if this is likely to result in a breach of their fiduciary duty to the trustees.

(5) The trustees shall make a determination as to whether a conflict of interest exists, in the absence of the party whose interest it is reported will or is likely to conflict with the interest of the persons entitled to benefit under a fund or scheme.

(6) A trustee or an Agent of Trustees—

- (a) shall not make a decision or participate in making a decision or seek to influence a decision where an actual or perceived conflict of interest arises regarding himself; and
- (b) shall, when he is present at a trustees' meeting where a matter in which he has an interest arises—
  - (i) disclose in full the nature of his interest that could reasonably be expected to conflict with that of the fund or scheme or trustees respectively; and
  - (ii) withdraw from the meeting without voting or deliberating upon the matter.

(7) Advisors, Agents of Trustees and their agents shall not continue to act in a matter where an actual or potential conflict of interest arises unless they made full disclosure and the Board consents in writing for them to do so.

(8) Where advisors, Agents of Trustees and their agents have clients with conflicting interests in relation to a transaction, they shall not continue to act unless they take reasonable steps to ensure that each fund or scheme is treated fairly.

(9) Where a trustee fails to disclose, in accordance with this regulation, his interest in a contract made in relation to a fund or scheme, a competent court may, upon the application of the other trustees or the Commission, set aside the contract on such terms as the court thinks fit.

(10) A person breaches the prohibitions against conflict of interest if he knew or ought reasonably to have known that a conflict of interest has occurred but failed to take the required remedial steps in accordance with this regulation.

9. Administrators and investment managers in the exercise of their respective duties, shall—

- (a) perform their functions exercising the care, skill and diligence which it is usual, necessary and proper for administrators and investment managers to employ;

- (b) not make statements or forecasts or both, that are misrepresentative, false, deceptive or conceal facts;
- (c) not commit acts or engage in a course of conduct that would misrepresent, mislead or create a false impression;
- (d) provide regular, timely, clear, fair, complete and accurate information and reports to the trustees and their agents;
- (e) keep, maintain and safeguard in Jamaica (whether by the preparation of reserve or backup copies or otherwise) accurate and complete records and other documents on all matters related to a fund or scheme for a period of not less than seven years after—
  - (i) in the case of a member, the fund's or scheme's liability to that member or their spouse, dependant, beneficiary or estate, as the case may be, has been fully extinguished; or
  - (ii) in any other case, the date of the last transaction to which the records relate;
- (f) within fourteen days of receipt of notice from the trustees of a fund or scheme that it will cease to be the investment manager or administrator of the fund or scheme, in writing, notify the Commission thereof giving full details of the change including the date and reasons for change.

Duties of  
sponsors.

10.—(1) Sponsors in the exercise of their duties, shall—

- (a) give the trustees and their agents and advisors access to all such information with respect to the fund or scheme and its members as they require to carry out their duties effectively;
- (b) within seven days of a decision that will cause a material change or be of material significance to the fund or scheme inform the trustees thereof;
- (c) facilitate the election of member nominated trustees and pensioner trustees, and in the case of a fund, allow the trustees reasonable time off during working hours, with pay, for the performance of their trusteeship duties or for training relevant to the performance of such duties, having regard to—
  - (i) the circumstances of the sponsor's business;
  - (ii) the effect of the absence of those trustees on the effective running of the business;

- (d) under no circumstances interfere or seek to interfere in the nomination and election of member nominated trustees and pensioner trustees;
- (e) ensure that a trustee in their employment does not suffer detriment or is not unfairly dismissed by virtue of being a trustee or executing his duties as such;
- (f) not take, threaten or conspire to take any retaliatory or discriminatory action against any person, whether with respect to benefits, employment terms or otherwise, who exercises his rights under the fund or scheme;
- (g) in the case of a fund, remit to the investment managers the contributions of the members within one week of the end of the month in which deductions were made together with supporting statements justifying and reconciling the amount of the contributions;
- (h) remit their contributions to the investment manager within the time frame stipulated in the constitutive documents of the fund or scheme together with the supporting statements justifying and reconciling the amount of the contributions;
- (i) give the trustees a copy of any supporting statement specified in subparagraph (f) or (g) no later than the date on which it is being first supplied to the investment managers;
- (j) under no circumstances constrain or restrict the powers of the trustees.

Qualifications  
and duties of  
auditors and  
actuaries.

11.—(1) Auditors and actuaries shall be persons who are in good standing with their recognized local and international governing bodies as well as satisfactory to the Commission.

(2) Auditors and actuaries in the performance of their functions shall—

- (a) in addition to fulfilling the requirements of the Act and any regulations made thereunder, prepare their reports in accordance with—
  - (i) generally accepted accounting, audit and actuarial principles, as are applicable; and
  - (ii) such directions as may be given by the Commission;
- (b) refer to the trustees any material errors, omissions or inconsistencies found in information on the fund or scheme;

- (c) be entitled to requisition the convening of any meeting of the Board and any committee to discuss the report of the auditor or actuary, as the case may require;
- (d) within one month of receiving their letters of dismissal or of tendering their resignation, notify the trustees in writing whether or not there are any circumstances related to their removal or resignation which appear to them to be likely to significantly affect the interests of participants, prospective members or others entitled to benefits under the fund or scheme;
- (e) subject to sub-paragraph (f), notify in writing the Commission if they have reasonable grounds to believe that—
  - (i) a trustee, agent or sponsor has acted contrary to the terms of the constitutive documents of the fund or scheme or has contravened the provisions of the Act; or
  - (ii) the terms of the constitutive documents are inconsistent with the provisions of the Act;
- (f) act under sub-paragraph (e) if the trustee, agent or sponsor fails to rectify the non-compliance within a reasonable period, and in any case not later than six months after the date of the notification.

(3) The auditor shall—

- (a) notify the trustees and the actuary, in writing, of any material errors, omissions or inconsistencies appearing in the information on the fund or scheme;
- (b) subject to paragraph (5), immediately upon becoming aware of—
  - (i) any material flaws in the operation of a fund or scheme or in aspects of its internal control, collection of contributions, security for payment of loans granted, handling of financial resources;
  - (ii) other matters which could materially weaken the financial position of the fund or scheme,

notify the trustees, sponsors and the Commission in writing thereof.

(4) The actuary shall—

- (a) during the course of his engagement or when it comes to his knowledge, notify the trustees in writing of any changes in financial or demographic circumstances which are likely to materially affect the investment policy of the fund or scheme;
- (b) subject to paragraph (5), upon—

- (i) determining that there are reasonable grounds to believe that the circumstances of the fund have changed, are changing or are likely to change in such a manner as to materially and adversely affect the solvency of the fund;
- (ii) becoming aware of any circumstance that affects or might reasonably be expected to materially and adversely affect the solvency of the fund,

submit a written report thereon to the trustees, sponsor and Commission respectively.

(5) Paragraphs (3)(b) and (4)(b) shall be regarded as having been complied with if—

- (a) the notification or submission, as the case may be, is postponed for no more than thirty days to facilitate discussion of it by the actuary or auditor, as the case may be, with the trustees and sponsors;
- (b) the discussion and its result are disclosed in the report.

(6) Notwithstanding anything to the contrary, the disclosure by an auditor or actuary of any information or opinion in his report under paragraph (3) or (4) shall not be regarded as a breach of any legal or professional obligation of the auditor or actuary.

12.—(1) Information disclosed to participants, beneficiaries and their representatives shall be clear, accurate, complete and timely and where the use of technical jargon is unavoidable it shall be accompanied by an explanation in simple language.

(2) Trustees shall prepare and distribute free of charge to—

- (a) each active member of a fund or scheme, within four months of the end of each plan year and to a deferred pensioner on request, a benefit statement which meets the minimum standard specified in Part I of the First Schedule;
- (b) each participant or the participant's personal representative, as the case may require, whether the change is by termination of employment, transfer to another fund or scheme, retirement or death, a benefit statement which meets the minimum standard of Part II of the First Schedule, within sixty days of their being notified of the event.

Disclosure to  
participants  
and bene-  
ficiaries.

First  
Schedule.  
Part I.

Part II.

(3) Trustees shall—

- (a) supply free of charge to each new member, upon his joining a scheme, a copy of the scheme's information folder along with a copy of the members' handbook and shall likewise supply subsequent amendments thereof;
- (b) give prospective members the opportunity to read and obtain clarification about the contents of the information folder and the members' handbook, where applicable, prior to joining a scheme;
- (c) supply free of charge to each new member, upon his joining a fund, a copy of the members' handbook and shall likewise supply subsequent amendments thereof.

(4) The members' handbook shall include a written explanation of a fund's or scheme's—

- (a) participants' or beneficiaries' benefits, rights and obligations, including a statement of their rights to access certain information and their right to information which must be disclosed;
- (b) complaints resolution procedures;
- (c) procedures for claiming benefits,

and shall state the names and contact information of the trustees, administrator, investment manager, auditor and actuary (if any).

(5) An information folder shall include the following information—

- (a) a description of a scheme's operation;
- (b) the fees and deductions for taxes, management and other expenses and shall highlight changes made during the plan year;
- (c) the scope and limitation of investments of the scheme, indicating the intended composition of the portfolio of the scheme according to the class of investments;
- (d) a description of the application of earnings of the scheme and an explanation of risks; and
- (e) a statement setting out—
  - (i) the list and respective values of, the assets and securities in the scheme for the current year; and
  - (ii) the rates of return earned and the basis of calculation used for each of the previous five plan years and for the cumulative five year period, which basis of calculation shall be consistent over the entire period of presentation.

(6) Subject to paragraph (7), a participant or a beneficiary of a deceased participant or his agent may, within fifteen working days of the trustees receiving his request, examine and make or purchase copies of —

- (a) the constitutive documents;
- (b) certificates of registration of the fund or scheme;
- (c) certificates of registration of the trustees of the fund or scheme;
- (d) names and contact information of trustees, administrators, investment managers;
- (e) the members' handbook and any amendments thereto;
- (f) the benefit statement described in paragraph (2);
- (g) the information folder and any amendments thereto;
- (h) the text of, description and reason for, each amendment of the constitutive documents;
- (i) the policies and procedure manuals;
- (j) the annual report,

and the fee for obtaining copies shall not exceed the reasonable cost, as determined by the trustees, of making the documents available.

(7) Trustees may, before providing the documents or information under paragraph (6), require the person to provide a certificate of birth, marriage, death, declaration of paternity or other Court Order, or where applicable, evidence of authority to act on a participant's behalf which establishes his right to see such documents or obtain such information.

13. Where there is a decision which will cause a material change in a fund or scheme, which would not require an amendment to the constitutive documents notice shall be given to the Commission and active members in writing of —

- (a) the decision;
- (b) the explanation of the material change and how the rights of the participant or beneficiary have been affected as a result of the change;
- (c) in the case of a scheme, the unconditional right of the participant or beneficiary to transfer the accrued benefits to another fund or scheme of his choice.

14.—(1) Trustees shall, within nine months of the end of each plan year, prepare and submit to the Commission, and on request to each participant, an annual report of the fund or scheme which shall be made available electronically if so required.

(2) The annual report shall include the following information—

- (a) the operations and performance of the fund or scheme relative to targets;
- (b) the fund's or scheme's governance activities with, synopses of the auditor's and actuary's reports, where applicable, including the fees and expenses charged against the fund or scheme and members' accounts;
- (c) the updated names and contact information for trustees, administrators, invest managers, auditor and actuary (if any);
- (d) for a defined benefit plan, the value as at the last actuarial valuation, the funding and solvency ratios, the date of the actuarial valuation, the definition and interpretation of the ratios;
- (e) the amount and type of contributions overdue by more than one month broken down monthly;
- (f) the interest rate used to accumulate contributions over the period expressed as an annual effective rate, yield earned on investments of a fund or scheme during the statement period expressed as an annual effective rate;
- (g) benefit adjustments disclosing the amount and basis of the adjustments, source of funds to make adjustment; and
- (h) a reminder of the requirement for participants, to notify the trustees and the administrators of any change of information;
- (i) the number of occasions on which any sponsor or member contributions have not been paid over within seven days of the end of the month in which they were due or deducted, as the case may be.

(3) the report shall include the financial statements of a fund or scheme concerned, audited where applicable.

Complaints  
resolution.

15.—(1) The complaints resolution policy and procedures of a fund or scheme shall provide for dealing with complaints from—

- (a) sponsors;
- (b) beneficiaries;
- (c) participants;
- (d) trustees;
- (e) agents of persons falling within any category specified in subparagraph (a) to (d); and

- (f) any individual who falls within any category specified in the preceding sub-paragraphs at any time within the six months prior to the making of a complaint.

(2) Any person specified in paragraph (1) may nominate a representative to make or continue the complaint on his behalf, and if the complainant is deceased, unable to act for himself or is a minor then a family member or some other person suitable to represent the person may make or continue a complaint.

16.—(1) Trustees, investment managers and administrators shall each keep a complaints register, which records the following—

- (a) the name of the fund or scheme concerned;
- (b) the full name and address of each complainant;
- (c) each complainant's relationship to the fund or scheme;
- (d) the full name and address of any agent or representative acting on behalf of a complainant including his address for service of documents in connection with the complaint;
- (e) a statement as to the nature of the complaint with sufficient details to show why the complainant is aggrieved;
- (f) the date the complaint was filed;
- (g) the date the decision was communicated to the complainant;
- (h) the action taken to address the complaint.

(2) Trustees, investment managers and administrators shall ensure that complaints registered under paragraph (1) are resolved as soon as may be reasonably practicable.

17.—(1) Trustees, administrators and investment managers shall, subject to paragraph (2), within fourteen days after making a decision on a complaint, in writing, notify the complainant thereof and of—

- (a) the reason for the decision;
- (b) the provisions of the constitutive documents which have been relied upon;
- (c) the complainant's right, where he is a member of the fund or scheme, of recourse to the Commission if he is of the opinion that his benefits are in jeopardy.

(2) In any event, where three months have elapsed without a decision being made, the trustees, administrators and investment managers, as the case may require, shall immediately notify the complainant or his representative, if applicable, of the reasons for the delay, the efforts at resolution and an expected date for issuing the decision.

complaints  
register.

Notice of  
decision.

Amendments of  
constitutive  
documents.

18.—(1) Amendments pursuant to section 35(3)(a) of the Act are amendments which result 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.

(2) The notification by the trustees of any proposed amendment shall be issued to those entitled to vote no earlier than thirty days and no later than fourteen days prior to any participants' meeting for the consideration thereof and shall 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 falls under paragraph (1);
- (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 and reproduce the text thereof together with the text of the proposed amendment;
- (f) whether the proposed amendment is an addition to the original or amended constitutive documents and reproduce the full text of each proposed provision to be added;
- (g) the rights of the members under section 35 (2) of the Act; and
- (h) the date, time and place of the meeting, if applicable.

Members' approval of amendments.

19. Where members are required to approve a proposed amendment, the trustees shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a participants' meeting.

Application for approval of a proposed amendment.

20.—(1) Subject to any revocation provided for, and the approval by the members where necessary, the trustees shall deliver to the Commission the following documents and information, accompanied by the non-refundable application fee of five thousand dollars, namely—

- (a) the original and a copy of each proposed amendment;
- (b) a copy of the notice given to members;
- (c) the date on which notices were distributed;
- (d) an extract of the 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; and
- (e) a declaration of compliance with the Act,

each of which shall be signed by at least a quorum of the trustees.

(2) The Commission shall not consider an application unless all of the documents required under paragraph (1) have been submitted.

Commission's  
notice of  
approval.

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.

Effective  
date 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.

Existing  
claims not  
affected.

23. An amendment to the constitutive documents shall not affect any cause of action or claim or liability to prosecution in favour of or against the fund or scheme or its trustees or any civil, criminal, administrative, investigative or other action or proceeding to which a fund or scheme or its trustees are a party which subsisted immediately before the amendment came into effect.

Register of  
amendments to  
constitutive  
documents.  
Second  
Schedule.

24. The Commission shall maintain a register of applications for approval of amendments to constitutive documents of funds and schemes in the form set out in the Second Schedule.

Small pension  
or pension  
benefit.

25.—(1) For the purposes of sections 13(2)(g) and 14(b)(ix) of the Act where the annualized rate of the pension or pension benefit which a person is entitled to be paid is not more than fifty percent of the national minimum wage, then at his option, he shall be paid a lump-sum representing the commuted value of the pension or pension benefit.

(2) Where a person opts to be paid the commuted value of a pension or pension benefit he shall give written notice thereof to the trustees at anytime before the payment of the pension or pension benefit has commenced.

Maximum  
pension.

26. The maximum annual pension payable under a fund or a scheme for the purposes of sections 13(2)(o) and 14(3)(h) of the Act shall be in accordance with the Income Tax Act.

27.—(1) The trustees, Agents of Trustees, sponsors (including their employees) or persons representing any of the aforementioned commit an unfair practice, if they engage in any activity specified in paragraph (2)—

- (a) wilfully and recklessly; or
- (b) with such frequency as to indicate a general business practice of engaging in that type of conduct.

(2) The activities referred to in paragraph (1) are—

- (a) misrepresenting or making false or misleading statements regarding contributions, benefits, conditions or terms of the scheme;
- (b) misrepresenting or making false or misleading statements as to the interest rate or yield to be or previously earned on contributions;
- (c) pursuing a course of action which is misleading, deceptive or untrue as it relates to the conduct of business of another scheme;
- (d) using any name or title of any contract or class of contracts issued under the scheme which misrepresents the true nature thereof;
- (e) pursuing a course of action which is false, malicious, critical or derogatory of the financial condition of any scheme;
- (f) engaging in any act of boycott, coercion or intimidation which leads to unreasonable restraint or monopoly in retirement scheme business;
- (g) knowingly filing a false material statement of fact with any supervisory or public official and causing said statement to be known to the public;
- (h) making any statement, promise, projection or forecast which is known or ought to be known as false, misleading or deceptive in order to induce membership in the scheme;
- (i) dishonestly concealing any material facts, or recklessly make any statement, promise, projection or forecast which is false, misleading or deceptive in order to induce membership in the scheme;
- (j) making or permitting unfair discrimination between individuals in same class as it relates to fees charged, benefits payable;
- (k) refusing membership or continued membership because of sex, marital status, race, religion or national origin;
- (l) knowingly making a false entry or omitting to make an entry of material fact in books, reports or statements of the scheme;

- (m) making or permitting unfair discrimination between individuals by refusing membership in the scheme;
- (n) terminating, modifying or refusing membership because of mental or physical impairment;
- (o) refusing to grant membership on grounds that another scheme has refused membership;
- (p) paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to membership of the scheme any rebate of contributions payable under the scheme; or
- (q) holding oneself out, directly or indirectly, to the public as a financial planner, investment advisor, consultant, financial counsellor, or any other specialist engaged in the business of giving financial planning or advice relating to investments, when such person is in fact engaged only in the promotion of retirement schemes.

(3) Sponsors (or their agents, including their employees), trustees, Agents of Trustees or persons representing any of the aforementioned shall not—

- (a) make any representation, whether expressly or by implication, to the effect that the approval of a scheme is indicative of the soundness of a contract or is a ground for assuming that it will be prudent to enter into such contract; or
- (b) give any undertaking or make any promises as to the future value of the scheme, the interest rate or yield of the scheme or any benefit supported by the scheme.

(4) Where an illustration, projection or forecast of a scheme is given to members or prospective members of the scheme, such illustration, projection or forecast shall be based upon reasonable and clearly expressed assumptions that have been certified by the scheme's actuary or auditor (in the absence of an actuary.)

#### *General*

28.—(1) Where the Commission is of the opinion that because the persons who are to be given any notice or document under the Act are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Commission may act in accordance with paragraph (2).

(2) The Commission may authorize the giving of the notice or document or reasonable notice of the contents thereof by advertisement in a daily newspaper published and circulated throughout Jamaica, or otherwise as the Commission may direct.

(3) The date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is given.

Time deemed  
for service.

29. Any document or notice sent by the Commission under the Act shall be deemed served if posted, on the twentieth day following that on which it was posted, if delivered, the time of delivery or if faxed, the time received, as the case may be.

Notification  
of lack of  
trustees.

30. Administrators and investment managers involved in the administration and management of a fund or scheme shall give notice to the Commission as soon as reasonably practicable after it first appears to them that the fund or scheme is without trustees.

Commission's  
considerations  
for schemes  
and distribu-  
tions.

31. When amending a scheme of distribution pursuant to section 31 (3) of the Act, the Commission shall have regard to considerations of general equity and such other factors as are appropriate.

FIRST SCHEDULE

(Regulation 12)

PART I

*Minimum Standard for Benefit Statement for Active Member*

Each Statement shall contain the following sections.

- A. Basic Information
- B. Benefits
- C. General

A. Basic Information

The Basic Information section should contain general information about the statement, the fund or scheme, Sponsors of the fund or scheme and the member or Beneficiary to whom the Statement is to be given. This must include:

*Regarding the Statement*

- *Statement Period*

*Regarding the fund or scheme*

- (a) Name
- (b) Administrator fund or scheme registration number
- (c) FSC registration number

*Regarding the Sponsors of the fund or scheme*

- *Name*

*Regarding the member*

- (a) Full Name
- (b) Administrator member reference number
- (c) Taxpayer reference number (TRN)
- (d) Contact information (address, telephone no. etc) in respect of deferred vested members only
- (e) Date of Birth
- (f) Gender
- (g) Date of Entry into fund or scheme
- (h) Date and reason of Termination, if applicable
- (i) Normal retirement age and date
- (j) Date member first becomes vested.

FIRST SCHEDULE, *contd.*

**B. Benefits**

This section must disclose a member's accrued benefit as at the end of the statement period and projected benefit at his normal retirement date.

The accrued and projected benefit amounts should be broken down by the following sources, where applicable:

- (a) amounts attributable to formula;
- (b) amounts attributable to the member's compulsory contributions;
- (c) amounts attributable to the member's voluntary contributions;
- (d) amounts attributable to the contributions paid on the member's behalf;
- (e) amounts attributable to transfer values;
- (f) amounts attributable to surplus distribution;
- (g) amounts attributable to any other lump sum amounts

Additional information that must be included, where applicable:

- (a) Total pensionable service which is the total period credited to a member for the purpose of calculating pension benefit.
- (b) Pensionable service credited to the member in respect of transferred amounts.
- (c) Pensionable salary.
- (d) Member's compulsory contributions – accumulated contributions as at the start of the statement period, contribution payments during the period, and accumulated contributions as at the end of the statement period. Accumulated contributions and total contributions accumulated with interest together with amounts equivalent to the appreciation in value of investment units (if any) allocated to the contributions.
- (e) Member's voluntary contributions – accumulated contributions as at the start of the statement period, contribution payments during the period, and accumulated contributions as at the end of the statement period.
- (f) For defined contribution plans – contributions made by the employer on the member's behalf – accumulated contributions as at the start of the statement period, contribution payments during the period, and accumulated contributions as at the end of the statement period.
- (g) Transfer values – accumulated transfer values as at the start of the statement period, net transfer values paid during the period, and accumulated transfer values as at the end of the statement period.
- (h) Assumptions used, for example, the value of annuity rates, interest rates, increases in salary and a brief discussion of the effects of future variance of actual experience from those assumed.

FIRST SCHEDULE, *contd.*

The following information must also be included in the Benefits section:

- (a) The normal form of pension payable at retirement with a brief description.
- (b) Name, date of birth, relationship and contact information for the member's named beneficiary. Attention should be drawn to the need for the appointment of a person to receive benefits if the named beneficiary is a minor.
- (c) Benefit type and amount on death of the member.

C. General

The General section must include:

- (a) A prominent statement that "The annual report for the [fund/scheme] for the year ending on [insert date] will be available on request as at [insert date]."
- (b) A paragraph explaining the importance of the Statement, that it should be carefully reviewed for accuracy, that all errors should be reported to the trustee or Administrator as quickly as possible and that it should be retained to ensure they receive their correct benefits at retirement.
- (c) A certificate signed by the Administrator testifying that to his best knowledge and belief the information contained in the Statement is true, complete and correct and that it complies with the requirements of the Act, regulations thereunder and the constitutive documents of the fund or scheme.

PART II

*Minimum Standard for Benefit Statements  
on Change of Status of Membership*

*(For example, on termination of employment, transfer, death, retirement)*

Each Statement must contain the following sections:

- A. Basic Information
- B. Benefits
- C. General

A. Basic Information

Same requirement as under Part I of this Schedule.

B. Benefits

The benefits payable should be broken down by the following sources where applicable:

FIRST SCHEDULE, *contd.*

- (a) amounts attributable to a formula;
- (b) amounts attributable to the member's compulsory contributions;
- (c) amounts attributable to the member's voluntary contributions;
- (d) amounts attributable to contributions paid on the member's behalf;
- (e) amounts attributable to transfer values;
- (f) amounts attributable to surplus distribution;
- (g) amounts attributable to any other lump sum amounts.

Benefit payment options must be given. One of the options that must be disclosed is where all payments are fully annuitized, that is, no lump sum payments will be made. If the reason for termination is not retirement and portability is permitted under the constitutive documents of the fund or scheme, the portability rights of the member must be disclosed as well as the transfer value as at the date of termination.

All default options shall be clearly identified.

There should be clear evidence of the benefit option chosen by the member or Beneficiary.

C. General

Section should include a paragraph outlining the options that the person has with regard to the institutions from which they could receive their pension benefit, e.g., insurance companies.

Also the general information required under Part I of this Schedule.

