

THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT
SCHEMES) ACT

REGULATIONS
(under section 58)

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

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

L.N. 58C/2006

PART I. Preliminary

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

2.—(1) In these Regulations, unless the context otherwise requires— Interpretation.

“commercial paper” means securities comprising or evidencing a debt obligation repayable within a year of the date of issue whether or not secured or guaranteed, but does not include payment obligations arising out of the sale of goods or services;

“deposit administration contracts” means investment arrangements where contributions are made to fund member benefits and are held in an unallocated account of an insurance company, or such other arrangement that the Commission may deem to be equivalent thereto;

“direct investment” includes the purchase of a controlling interest or a minority interest of such size and influence that active control can reasonably be deemed to be an objective;

“fair value” has the meaning assigned in the accounting standards issued by the Institute of Chartered Accountants of Jamaica;

“fixed charges” includes interest on funded and unfunded debt, amortization of debt discount and rentals for leased property;

“foreign securities” has the meaning assigned to it under the bank of Jamaica Act;

“fund” means an approved superannuation fund;

“Government of Jamaica securities” means investments issued, assumed or guaranteed by the Government of Jamaica or its agencies or loans upon the security of general obligations of the Government of Jamaica;

“group” in relation to a company, means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b);

“indirect investment” means investment in a third party company in order to feasibly gain control or significant influence over a target company by way of that third party company’s holding or interest in the target company ;

“institution” includes a body corporate, joint stock company and a unit trust;

“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 other; reconstruction of a fund or scheme;
- (e) merger of a fund or scheme with another fund or scheme or any other circumstance that the Commission may declare from time to time;

“obligation” includes bonds, debentures, promissory notes, commercial paper and other evidences of indebtedness;

“other investments” includes investments, loans and securities that have not been specifically identified in these Regulations;

“plan year” means a twelve month period from the effective date or from the anniversary date of a fund or scheme;

“Pooled Funds” means Type I Pooled Funds or Type II Pooled Funds;

“receivables” means moneys and other assets outstanding and due to a fund or scheme;

“recognized jurisdiction” means Canada, the United States of America, the United Kingdom or any other country so declared by the Commission;

“recognized stock exchange” means any stock exchange that is qualified to operate as a stock exchange in Canada, the United States of America, the United Kingdom or any other country so declared by the Commission;

“repurchase agreement” means an agreement between a seller and a buyer under which the seller agrees to sell securities for cash while simultaneously agreeing to repurchase the securities at a determined price and at a stated future date;

“scheme” means an approved retirement scheme;

“solvent” in relation to any institution means that the fair value of the institution’s assets exceeds the value of liabilities;

“stocks and shares” means ordinary shares, preferred or guaranteed stocks or shares of a company;

“the Act includes any regulations made under the Act;

“Type I Pooled Fund” means an investment fund with the sole purpose of investing the assets of more than one approved superannuation fund or approved retirement scheme established and operated by licensed investment managers which—

- (a) does not hold any investment or security that would be deemed ineligible or prohibited for an approved superannuation fund or approved retirement scheme under the Act;
- (b) is not a party to or engaged in a transaction prohibited for an approved superannuation fund or approved retirement scheme under the Act;

“Type II Pooled Fund” means an open-ended investment fund, mutual fund, collective investment scheme or unit trust and any investment fund, other than a Type I Pooled Fund.

(2) For the purposes of these Regulations, the following shall be treated as being an associate or affiliate of a given person (“A”) and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company of A;
- (b) a subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;

- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person as aforesaid; or
- (h) any company of which any person referred to in paragraph (g) is a director, manager or has control.

(3) For the purposes of these Regulations, each of the following persons (exclusive of the Government of Jamaica) shall be treated as a related party to a fund or scheme—

- (a) the administrator, investment manager, trustee or sponsor;
- (b) a director, officer or employee of any person mentioned in paragraph (a);
- (c) an association or trade union representing members or an officer or employee of such association or trade union;
- (d) a member;
- (e) a person who, directly or indirectly, holds, or together with his spouse or child, holds more than ten per cent of the voting shares carrying more than ten per cent of the voting rights attached to all voting securities of the sponsor;
- (f) a person who is an affiliate of an administrator, investment manager or a sponsor of an employee, officer or a director of such person;
- (g) the spouse or child of a person referred to in paragraphs (a) to (f);
- (h) a company which is directly or indirectly controlled by a person referred to in paragraphs (a) to (g);
- (i) a body or organization in which a person referred to in paragraph (a), (b) or (e) or that person's spouse or child has a substantial investment;
- (j) a body or organization which holds a substantial investment in an administrator, investment manager, or a trustee or sponsor, and shall be deemed to be a related party for a period of up to twelve months after that person has ceased to fall within any of the descriptions under paragraphs (a) to (j).

(4) In paragraph (3)—

“employee” means a permanent, part-time or contract worker;

“substantial investment” has the meaning assigned under section 2(5) of the Act.

Part II. General Requirements

3.—(1) Trustees and investment managers shall prudently invest and manage the assets of any fund or scheme under their responsibility in a manner consistent with the fund's or scheme's statement of investment policies and principles.

Duties of trustees,
investment
managers.

(2) In the performance of their duties trustees and investment managers shall—

- (a) determine whether an investment will be able to provide an adequate return at an acceptable risk so that a fund or scheme can achieve its stated objectives;
- (b) give due consideration to the effects of expenses on investment return by only incurring such costs to a fund or scheme that are appropriate and reasonable in amount;
- (c) ensure that prior to making an investment, appropriate due diligence has been conducted on the issuer or borrower of a loan to ascertain whether their credit worthiness, financial condition and strength, their earnings potential and ability to meet their obligations are satisfactory;
- (d) ensure that any collateral or security is of satisfactory quality and value;
- (e) avoid leaving moneys of funds or schemes idle, except in rare and unavoidable circumstances when cash is required to meet payments, and in any event, not for a period exceeding one month;
- (f) regularly monitor, and seek to minimize outstanding receivables and take all reasonable steps to collect outstanding receivables;
- (g) abide by the investment code of practice approved by the Commission, and disclose in writing to the Commission any breach of the code of practice and the circumstances thereof within fourteen days of its occurrence.

4.—(1) All investments shall be in the sole name of the trustees of a fund or scheme or their nominee.

Investment to be in trustees' name.

(2) For any investments held by way of a nominee, the title of the investment must clearly indicate that the nominee is holding the asset for the trustees for and on behalf of a named fund or named scheme.

5. An investment shall not be made by a fund or scheme unless approved by its trustees or by its investment manager

Investment to be approved.

6. Investment transactions shall be undertaken at the arm's length and at rates or prices comparable to those available in the market for similar investment transactions.

Investments to be arm's length.

7. A fund or scheme shall not undertake borrowing without the prior written approval of a majority of its trustees, and the reasons for each borrowing and the approval therefore shall be appropriately recorded in the minutes of meetings and resolutions of the trustees.

Borrowing to be approved.

Part III. *Statement of Investment Policies and Principles*

Preparation of
statement of
investment policies
and principles.

8.—(1) The trustees of a fund or scheme shall prepare a written statement of investment policies and principles of the fund or scheme, and shall submit it to the Commission, within sixty days of the fund or scheme being approved by the Commission.

(2) A statement of investment policies and principles must be in accordance with a fund's or scheme's constitutive documents and be consistent with the provisions of the Act.

Review of
statement.

9.—(1) If the Commission believes on reasonable grounds that a statement of investment policies and principles is—

- (a) inconsistent with prudent standards;
- (b) inconsistent with the provisions of the Act or any regulations made thereunder, the Commission may, in writing, direct the trustees of the fund or scheme to immediately review the statement of investment policies and principles taking into account the matters specified in the Commission's directions.

(2) The trustees of a fund or scheme shall, notwithstanding paragraph (1), review the statement of investment policies and principles, periodically, and in any case at least annually.

(3) If a material change in a fund or scheme occurs, the trustees shall review the statement of investment policies and principles within ninety days of the change.

(4) If a review, pursuant to paragraph (1), (2) or (3) leads to a change in the statement of investment policies and principles, the revised statement shall be submitted to the Commission for inspection, within thirty days of it being ratified by the trustees of the fund or scheme.

(5) The Trustees shall make a record of every review of a statement of investment policies and principles, subject to regulation 11, and of every decision consequent thereon whether or not to revise the statement.

Contents of
statements

10. A statement of investment policies and principles shall—

- (a) include a fund's or scheme's rate of return objectives, stated gross and net of investment expenses, each of which must be consistent with and appropriate for the economic environment and circumstances of the fund or scheme;
- (b) outline of fund's or scheme's risks and risks tolerances;
- (c) state the outlook of a fund's or scheme's continuity and the maturity profile of its assets and liabilities;
- (d) address the liquidity needs of a fund or scheme and other legal, regulatory or special constraining circumstances affecting the investments of a fund or scheme; and

- (e) declare a fund's or scheme's target asset mix in a manner consistent with its risks return expectations;

11. In preparing, reviewing and revising a statement of investment policies and principles the trustees shall give due consideration to—

Considerations underlying statement.

- (a) the type, benefits and features of the fund or scheme;
- (b) the management of interest, liquidity, credit, currency and other financial risks to which the fund or scheme is exposed;
- (c) the characteristics of the liabilities of the fund or scheme;
- (d) the demographic circumstances of the fund or scheme;
- (e) the funding and solvency levels and requirements relevant to the fund or scheme;
- (f) the prevailing economic conditions and circumstances;
- (g) expenses;
- (h) the diversification of the investment portfolio by asset classes and within asset classes;
- (i) the sponsor's financial condition and circumstances;
- (j) the lending of cash or securities;
- (k) the retention or delegation of the voting rights acquired through investments;
- (l) related party transactions within the limits established in these Regulations;
- (m) any other matter affecting the investment of the fund or scheme that would be appropriate to be considered in the development and preparation of a statement of investment policies and principles.

12. For the purpose of these Regulations, the eligibility of an investment is to be determined at the date of its acquisition.

Date for determination of eligibility of investment. Criteria for eligibility.

13. Subject to regulation 14, an investment shall not be regarded as eligible for acquisition by a fund or scheme unless the investment—

- (a) meets the requirements of these Regulations;
- (b) is not then in any respect in default;
- (c) is interest bearing or interest accruing or dividend or income paying, and the or scheme is entitled to receive for its sole and exclusive account and benefit the interest or income accruing thereon.

14. Regulation 13 (c) shall not apply to—

Exempted investments.

- (a) the acquisition of real property and investment in Pooled Funds;
- (b) any class of security or investment which the Commission so specifies.

Asset invest-ment ratio.

15. The percentage of assets that a fund or scheme has invested in an investment or security shall be determined by —

- (a) adding the value of the fund's or scheme's proportionate holding of the investment or security by each Type I Pooled Fund in which the fund or scheme is invested, to the value of the assets held in the fund's or scheme's remaining investment holdings, then;
- (b) dividing the sum calculated under paragraph (a) by the total value of the fund's or scheme's assets.

General con-
centration limits

16.—(1) A fund or scheme shall not hold, acquire or purchase, any combination of investments in or loans upon the security of the obligations, property, and securities of any one person or associate of that person exceeding five per cent of the fair value of the assets of the fund or scheme.

(2) Limitations based upon the fair value of the assets of a fund or scheme shall relate to assets as declared in the financial statement filed with the commission as at the end of a plan year.

Certain exclusions
of limits

17. The investment limit imposed by regulation 16 shall not apply—

- (a) if it can be shown to the satisfaction of the Commission that the sole cause for the limit being exceeded is as a result of the market appreciation of the investment;
- (b) to the acquisition of other or additional securities or property by way of dividend or as a lawful distribution of assets, or pursuant to a lawful and bona fide agreement of merger, or consolidation;
- (c) to investments in Government of Jamaica securities, deposit administration contracts or Type I Pooled Funds.

Valuation of
investment assets
and liabilities.

18.—(1) Assets and non-actuarial liabilities of a fund or scheme shall be valued at fair value.

(2) An independent external appraiser shall determine the valuation of real property—

- (a) upon the making of a mortgage loan;
- (b) for a defined contribution plan, upon the purchase or acquisition of real property and then no less frequently than triennially thereafter;
- (c) for a defined benefit plan, upon the purchase or acquisition of real property and as at the end of the plan year coinciding with the effective date of each actuarial valuation required by the Act.

(3) The Commission may, when it deems fit, require appraisals to be conducted at the expense of a fund or scheme by an independent external appraiser approved by the Commission.

19.—(1) Building and other fixtures of a fund or scheme which are located on mortgaged premises shall be kept insured against loss or damage from fire in an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is less

Insurance

(2) Real property of a fund or scheme with buildings and other fixtures shall be kept insured for its insurable value against loss or damage from fire.

20. A fund or scheme may invest or make deposits in licensed deposit-taking instructions.

Investment with deposit-taking institutions.

21. A fund or scheme may invest its assets in—

Government securities.

(a) securities or obligations of the governments of recognized jurisdictions with a credit rating of “A” or equivalent; and

(b) Government of Jamaica securities or obligations

22. A fund or scheme may only invest in repurchase agreements whose underlying instruments are securities or obligations of—

Repurchase agreements.

(a) governments of recognized jurisdictions with a credit rating of “A” or equivalent; or

(b) the Government of Jamaica.

23.—(1) A fund or scheme may invest in—

Corporate obligations.

(a) obligations other than commercial paper or promissory notes issued, assumed or guaranteed by any solvent institution created or existing under the laws of Jamaica or of a recognized jurisdiction (other than foreign obligations specified in paragraph (2));

(b) commercial paper or promissory notes, which have been guaranteed by a licensed deposit-taking institution or a registered life insurance company and the term of which paper or notes is not greater than the term of the guarantee.

(2) The foreign obligations referred to in paragraph (1) are those in respect of which the obligor has defaulted during the five years immediately preceding the date of acquisition.

24. A fund or scheme may invest in ordinary shares listed on a recognized stock exchange of Jamaica or a recognized stock exchange of a recognized jurisdiction.

Ordinary shares.

25. A fund or scheme may invest in the shares of a company offering shares in an initial public offer, where—

Initial public offer

- (a) the company intends to list on a recognized stock exchange of Jamaica or a recognized jurisdiction; and
- (b) the initial public offer meets the requirements for registration under the Securities Act.

Threshold for Commission's approval.

26. Fund or scheme shall not, either by itself or in conjunction with any other acquire, hold or control, without the prior written approval of the Commission, in excess of thirty per cent of the voting shares in a body corporate or the interest in any entity.

Preferred guaranteed shares.

27.—(1) A fund or scheme may invest in preferred or guaranteed shares (other than ordinary shares) of any solvent institution to which this regulation applies

(2) This regulation applies to an institution created or existing under the laws of Jamaica or of a recognized jurisdiction, the prior obligations and prior preferred stocks, if any, of which, at the end of the acquisition by a fund or scheme are eligible as investments and adjustment income or other contingent interest obligations.

Loans.

28.—(1) A fund or scheme may, subject to the provisions of these Regulations—

- (a) invest in loans, mortgages or deeds of trust collateralized by real property located in Jamaica, if the collateral so pledged is adequate;
- (b) make loans upon the pledge or securities or evidence of debt which are eligible for investment and are not of low quality.

(2) A loan to be granted under this regulation shall—

- (a) not exceed eighty per cent of the remaining value of the collateral at the date of grant;
- (b) specify a repayment date and schedule for repayment.

(3) For the purpose of this regulation, the remaining value of the collateral is determined by subtracting the total outstanding balance of loans, charges, pledges or liens which rank *pari-passu* or higher than the loan being considered from the fair value of the collateral.

(4) The total value of loans to any related party shall not exceed one per cent of the fair value of a fund's or scheme's total assets.

Real property.

29.—(1) A fund or scheme may invest in real property to the extent that the aggregate amount of real property acquired by the fund or scheme, other than for the purpose of income generation does not exceed five per cent of the total fair value of the fund's or scheme's asset.

(2) Where—

- (a) real property is subdivided into two or more parcels and the beneficial ownership of the property remains the same; or
- (b) a person directly or indirectly acquires two or more parcels for consolidation,

the real property shall be treated as one parcel for the purpose of the prescribed investment limits.

30. A fund or scheme may invest in—

Investment arrangements.

- (a) deposit administration contracts;
- (b) Pooled Funds.

31. A fund or scheme may invest, in the aggregate, an amount not exceeding twenty per cent of the fair value of its assets in eligible foreign securities.

Foreign securities.

32. A fund or scheme may make investments in obligations issued or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development, the Caribbean Development Bank or others such multilateral financing bodies with which the Government of Jamaica has lending arrangements.

Obligations of multilateral financing bodies.

33.—(1) A fund or scheme may invest in leases and other investments up to a total value not exceeding five per cent of the fair value of the fund's or scheme's assets.

Other investments.

(2) The trustees of a fund or scheme shall keep a separate record of all investments that fall with paragraph (1).

34.—(1) Subject to regulation 39, the assets of a fund or scheme shall not be directly or indirectly invested in real property required for occupancy or expansion of the business of the investment manager or administrator or its associate companies

Related party investments.

(2) The total of related party investments, other than deposit administration contracts and Type I Pooled Funds, shall not exceed ten per cent of the fair value of the assets of a fund or scheme.

(3) Notwithstanding the provisions of regulation 6 and subject to paragraph (4), a fund or scheme may make a loan secured by a mortgage on real property which is—

- (a) situated in Jamaica;
- (b) owned by and the principal residence of an active member,

for a term ending on the termination of active membership or after such longer period as the trustees may decide, in any case, where the member—

- (c) retires (normal, early or on grounds of ill-health); or
- (d) whether active or retired, dies and the mortgage is being transferred to the member's spouse.

(4) Paragraph (3) applies where, in the opinion of the Commission, the terms of the mortgage bear a reasonable relationship to market terms at the time the loan was made or re-structured or re-negotiated, as the case may be.

(5) If a transaction is entered into by, or on behalf of, the trustees with a person who the trustees, or any person acting on the trustees' behalf, know or ought to have known will become a related party to a fund or scheme, within the next six months—

- (a) the person shall be considered to be a related party in respect of transaction; and
- (b) the fulfillment of an obligation under the terms of any transaction, including the payment of interests on a loan or deposit is part of the transaction and not a separate transaction.

(6) Transactions with related parties shall have the prior written approval of at least a majority of the trustees, notwithstanding that the investment manager may have been given discretionary investment powers.

(7) The trustees shall maintain a register of related party transactions.

(8) The register shall show in relation to each transaction—

- (a) the name of the related party;
- (b) a description of the connection with the fund or scheme;
- (c) the type and amount of the investment;
- (d) the date of the transaction and of the approval.

35.—(1) A fund or scheme shall not engage in short selling

(2) A fund or scheme shall not invest in, loan its funds upon the security of, or hold, as the case may be—

- (a) any investment or loan ineligible under the Act;
- (b) securities of an institution which was insolvent at the time the securities were issued;
- (c) unsecured loans or leases;
- (d) speculative investments;
- (e) loans and investments in entities which are the auditors, accountants or actuaries of the fund or scheme;

Prohibited
investments
and trans-
actions

- (f) mortgages for properties located outside of Jamaica;
- (g) any investment or security which the Commission believes is designed to evade any prohibitions under the Act.

(3) The trustees of a fund or scheme shall not increase its holdings in securities or assets as prescribed in these Regulations to an amount more than the prescribed limits except with the prior written approval of the Commission granted upon application in writing therefor by the fund or scheme.

36.—(1) Where any of the investment limits prescribed under these Regulations have been exceeded, the Commission may direct the fund or scheme concerned to dispose of such assets or make such investments as are necessary to bring the portfolio of investments within the prescribed limits.

Disposal of ineligible and prohibited investment.

(2) Any investments acquired by a fund or scheme pursuant to defaults on loans, mortgages, liens, judgments, or other debts, shall be disposed of within one year after the date of acquisition if such acquisition causes the fund or scheme to exceed the prescribed investment limits

(3) The Commission may, upon application by the trustees concerned, extend the time for any such disposal for a definite additional period or periods, if the trustees reasonably show that forced sale of the investments would be inimical to the fund or scheme.

(4) Any such investment held by the fund or scheme without the Commission's written consent beyond the time permitted for its disposal shall not be carried or allowed as an asset for the purposes of the minimum funding or solvency requirements.

Transition Planning

37. Within ninety days of a fund or scheme being approved by the Commission the fund or scheme shall file with the Commission—

Statement of compliance and transition plan.

- (a) a statement certified by the trustees, noting that the fund or scheme is in compliance with the requirements of the Act and these Regulations; or
- (b) a plan approved by the trustees—
 - (i) specifying in detail how compliance is to be achieved within a reasonable period not exceeding three years from the date of approval; and
 - (ii) delineating specific goals to be achieved within a specified reporting period not exceeding one year from the date of approval.

Approval of
transition plan.

38.—(1) If the fund or scheme has not successfully completed the plan required under regulation 37 within the period specified in regulation 37 (b) (i), the Commission may, if satisfied that the trustees acted prudently and that immediate compliance with the plan would be injurious to the fund or scheme, grant an additional period not exceeding two years for the fund or scheme to achieve full compliance.

(2) Upon successful completion of the plan, the trustees shall submit to the Commission, a statement certified by the trustees that the fund or scheme is in compliance with the Act and these Regulations.

Transitional.

39.—(1) This regulation applies where, prior to the 30th March, 2006, (hereinafter called “the commencement date”)—

- (a) a fund or scheme had entered into a loan of its funds on the security of real property owned by an active member, which mortgage had continued after that date;
- (b) the assets of a fund or scheme have been directly or indirectly invested in the business of the investment manager or administrator of the fund or scheme.

(2) A mortgage to which this regulation applies shall not be subject under regulation 37, to certification as to compliance with the Act and these Regulations, provided that—

- (a) it has neither been renegotiated nor restructured after the commencement date;
- (b) notification of the information specified in paragraph (3) is included in the—
 - (i) statement or plan under regulation 37;
 - (ii) fund’s or scheme’s annual Certified Financial Return to the Commission in respect of directors and senior officers of the sponsor.

(3) Information pertaining to all member mortgages shall be maintained and available for inspection by the Commission and shall include—

- (a) the name of mortgagor;
- (b) the relationship with the fund or scheme;
- (c) the address of the property;
- (d) the issue date of the mortgage;
- (e) the term of the mortgage, from issue and outstanding (in months);
- (f) the interest rate or basis; and
- (g) the amount of the mortgage, at issue and the outstanding balance

(4) An investment of assets to which this regulation applies shall not be subject to the restrictions of regulation 34 where—

- (a) the terms of the investment bear a remarkable relationship to market terms;
- (b) the aggregate of such investments by an investment manager or administrator, as the case may be, has not at any time exceeded ten per cent of the fair value of the assets of the fund or scheme concerned.