



THE
JAMAICA GAZETTE
SUPPLEMENT

PROCLAMATIONS, RULES AND REGULATIONS

508A

Vol. CXLII

MONDAY, JULY 22, 2019

No. 84A

No. 136A

**THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT
SCHEMES) ACT**

THE PENSIONS (SUPERANNUATION FUNDS AND RETIREMENT SCHEMES)
(INVESTMENT) (AMENDMENT) REGULATIONS, 2019

In exercise of the powers conferred upon the Commission by section 58(1) of the Pensions (Superannuation Funds and Retirement Schemes) Act, and every other power enabling, the following Regulations are made, with the approval of the Minister:—

1. These Regulations may be cited as the Pensions (Superannuation Funds and Retirement Schemes) (Investment) (Amendment) Regulations, 2019, and shall be read and construed as one with the Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations, 2006 (hereinafter referred to as the principal Regulations).

2. Regulation 2(1) of the principal Regulations is amended—

- (a) by deleting the definitions of “foreign securities” and “repurchase agreement”;
- (b) by inserting in the appropriate alphabetical sequence the following definitions—

“beneficiary” in relation to a fund or scheme 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 a participant; or
- (c) the person who has a beneficial interest in the fund or scheme;

“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;

“deposit-taking institution” has the meaning assigned to it by section 2 of the Banking Services Act, 2014;

“electronic document” has the meaning assigned to it by section 2 of the Electronic Transactions Act;

“financial institution” has the meaning assigned to it by section 2 of the Banking Services Act, 2014;

“non-discretionary arrangement” in relation to the investment and management of the moneys of a fund or scheme by an investment manager, means that the investment manager requires the express instructions of the trustees on the sale or acquisition of security in relation thereto;

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

“private company” shall have the meaning assigned to it by section 25(1) of the Companies Act;

“public company” means a company that is not a private company and includes a foreign public company;

“record” includes records kept as electronic documents;

“repurchase agreement” has the meaning assigned to it by section 76(1A) of the Securities Act;

“securities” has the meaning assigned to it by section 2 of the Securities Act;”; and

- (c) by deleting the definition of “Type II Pooled Fund” and substituting therefor the following—

“ “Type II Pooled Fund” includes any investment fund in whatever form whether in Jamaica or elsewhere, whereby members of the public are invited or permitted to invest money or any other property—

- (a) in a portfolio of assets managed as a whole by or on behalf of the operator of the investment fund; and
- (b) on terms on which those investors, being two or more in number, hold a participating interest in, receive profits or income arising out of, or share in the risks and benefits of the investment fund.”.

3. Regulation 3 of the principal Regulations is amended—

- (a) by deleting paragraph (1) and substituting therefor the following—

“ (1) Trustees and investment managers shall invest prudently and manage the assets of every fund or scheme for which the trustees or investment managers are responsible—

- (a) in accordance with the requirements of the Act and regulations made under the Act;
- (b) in accordance with the constitutive documents of the fund or scheme;
- (c) in a manner consistent with the fund’s or scheme’s statement of investment policies and principles; and
- (d) in the best interest of the participants and beneficiaries of the fund or scheme.”;

- (b) in paragraph (2), by deleting the full stop in sub-paragraph (g) and substituting therefor a semi-colon and inserting next after sub-paragraph (g), the following—

- “ (h) ensure that any investment advice provided to participants is consistent with the risk profiles of the participants, in the circumstances where the participants are given a choice in relation to the investment fund in which they will participate;
- (i) ensure that the statement of investment policies and principles is in accordance with regulation 8;
- (j) in the event of any conflict of interest, take decisions solely on the basis of the best interest of the participants and beneficiaries of the fund or scheme.”; and

(c) by inserting next after paragraph (2) the following—

“ (3) In the performance of their duties, in addition to the matters specified in paragraph (2), investment managers shall—

- (a) deal fairly, honestly and in good faith with their clients, observing high standards of ethics and business conduct;
- (b) not engage in any business conduct or practice which is inappropriate or detrimental to the public interest;
- (c) ensure that any recommendations made for a pension plan are suitable taking into account the risk profile of the pension plan;
- (d) establish, implement and maintain policies and procedures, approved by the investment manager’s senior management officers to ensure that the handling of its pension investment management business is in accordance with the Act and any regulations made thereunder;
- (e) provide reports not less than quarterly to clients on all charges and fees imposed and for which payment is collected, including any ancillary fees or charges imposed and payment for which is collected in respect of the provision of services by affiliates, associates, sub-contractors or corporate service providers of the investment manager;
- (f) in respect of the assets of the fund or scheme invested and managed by the investment manager, provide the trustees with a statement of portfolio not less than quarterly or otherwise at the request of the trustees; and
- (g) in relation to the investment and management of assets of a fund or scheme, or any portion thereof, under a non-discretionary arrangement, ensure that the results of any due diligence conducted on the instruction of the trustees is properly documented and disclosed, in writing, to the trustees by the investment manager.”.

4. Regulation 5 of the principal Regulations is amended by deleting the words, “made by” and substituting therefor the words “made with the assets of”.

5. Regulation 8 of the principal Regulations is amended by deleting paragraph (2) and substituting therefor the following—

“ (2) A statement of investment policies and principles shall be prepared under paragraph (1)—

- (a) in accordance with the constitutive documents of the fund or scheme;

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- (b) in compliance with the provisions of the Act and any regulations made under the Act; and
 - (c) which states the scope of the discretion, if any, to invest the assets of the fund or scheme without the express instruction of the trustees, that is, whether the discretion of an investment manager to invest the assets of the fund or scheme is subject to full, partial or non-discretionary arrangements.”.
6. Regulation 10 of the principal Regulations is amended—
- (a) in paragraph (d), by deleting the word “; and” and substituting therefor a semi-colon;
 - (b) in paragraph (e), by deleting the full stop and substituting therefor a semi-colon; and
 - (c) by inserting next after paragraph (e) the following paragraphs—
 - “(f) include statements on the management and control of risks at the portfolio level and at the level of individual investments;
 - (g) specify the extent, if any, to which social, environmental or governance considerations are taken into account in the selection, retention and realization of investments;
 - (h) contain a cost management strategy;
 - (i) set out guidelines for investment managers;
 - (j) contain an asset liability management strategy;
 - (k) include a rebalancing policy; and
 - (l) specify a policy for securing compliance with these Regulations.”.
7. Regulation 16 of the principal Regulations is amended—
- (a) in paragraph (1), by deleting—
 - (i) the words “A fund or scheme shall not” and substituting therefor the words “The assets of a fund, scheme or Type I Pooled Fund shall not be invested to”; and
 - (ii) the words “five per cent” and substituting therefor the words “ten per cent”; and
 - (b) in paragraph (2), by deleting the words “fund or scheme” and substituting therefor the words “fund, scheme or Type I Pooled Fund”.
8. Regulation 17 of the principal Regulations is amended by—
- (a) deleting paragraph (c);

(b) inserting next after paragraph (b), the following—

- “(c) to investments in Government of Jamaica securities;
- (d) to investments in deposit administration contracts;
- (e) to the investment of the assets of approved superannuation funds and approved retirement schemes in a Type I Pooled Fund;
- (f) to investments in real property the purpose of which is to generate income;
- (g) to investments in a company referred to in regulation 26(2) the purpose of which is to generate income;
- (h) to investments in annuities.”.

9. Regulation 19 of the principal Regulations is amended by deleting the words “from fire”, wherever they appear.

10. Regulation 20 of the principal Regulations is amended by deleting the words “A fund or scheme may invest or make deposits” and substituting therefor the words “The assets of a fund or scheme may be invested or deposited”.

11. Regulation 21 of the principal Regulations is amended by deleting the words “A fund or scheme may invest its assets” and substituting therefor the words “The assets of a fund or scheme may be invested”.

12. Regulation 22 of the principal Regulations is amended by deleting the words “A fund or scheme may only invest in repurchase agreements whose” and substituting therefor the words “The assets of a fund or scheme may only be invested in repurchase agreements if the”.

13. Regulation 23 of the principal Regulations is amended by—

- (a) deleting paragraph (1) and inserting therefor the following as paragraphs (1) and (1A)—

“ (1) Subject to paragraph (1A), the assets of a fund or scheme may be invested in—

- (a) obligations, other than commercial paper or other promissory notes, issued by a solvent public company created or existing under the laws of Jamaica or a recognized jurisdiction (other than foreign obligations specified in paragraph (2));
- (b) commercial paper or promissory notes which have been guaranteed by—
 - (i) a financial institution licensed under the Banking Services Act, 2014;

- (ii) a life insurer registered under the Insurance Act; or
- (iii) a dealer in securities licensed under the Securities Act.

(1A) No more than five per cent of the fair value of the assets of a fund or scheme shall be invested in unsecured obligations of solvent public companies that—

- (a) are not traded on a recognized stock exchange; and
 - (b) have a credit rating below investment grade from a recognized rating agency.”; and
- (b) inserting next after paragraph (2) the following paragraphs—

“ (3) The Commission shall, by notice, published in the *Gazette*, list the credit rating grades which constitute an investment grade and the credit rating agencies recognized to give such grades for the purposes of this regulation.

(4) In this regulation—

“investment grade” means an investment grade specified by a recognized rating agency listed in a notice and published under paragraph (3);

“recognized rating agency” means a credit rating agency listed in a notice and published under paragraph (3).”.

14. Regulation 24 of the principal Regulations is amended by deleting the words “A fund or scheme may invest” and substituting therefor the words “The assets of a fund or scheme may be invested”.

15. The principal Regulations are amended by inserting next after regulation 24 the following regulation—

“Fund or
scheme may
invest in
private
companies. 24A.—(1) Notwithstanding any other provision of these Regulations and subject to the provisions of this regulation, the assets of a fund or scheme may be invested in equities and debt securities of private companies—

- (a) incorporated under the Companies Act, and the articles of which prohibit invitation to the public to subscribe for any of the company’s shares or debentures; and
- (b) if the total amount so invested is no more than five per cent of the fair value of the assets of the fund or scheme.

(2) The limit prescribed in paragraph (1) applies whether the investment in a private company is made directly, or is made indirectly through another entity.

(3) This regulation does not apply to investment in any equity and debt securities of a private company that is established for the sole purpose of holding the real estate assets of funds or schemes.

(4) The assets of a fund or scheme shall not be invested in foreign private companies.”.

16. Regulation 25 of the principal Regulations is amended by deleting the words “A fund or scheme may invest” and substituting therefor the words “The assets of a fund or scheme may be invested”.

17. The principal Regulations are amended by deleting regulation 26 and substituting therefor the following regulation—

“Threshold
for
Commission’s
approval.

26.—(1) The trustees or investment manager shall not, without the prior written approval of the Commission, cause the assets of a fund or scheme to be invested, whether solely, or in concert with any other person, to acquire, hold or control in excess of thirty per cent of the voting shares or other interest in a company or other body corporate.

(2) Notwithstanding paragraph (1), a fund or scheme may, acquire, hold or control more than thirty per cent of voting shares in a private company which is established for the sole purpose of holding real estate assets of the fund or scheme without the prior approval of the Commission.

(3) For the purposes of these Regulations, persons shall be regarded as acting in concert if those persons, pursuant to an agreement, understanding or undertaking (whether formal or informal) actively co-operate, through the acquisition of shares or other interest in a company or other body corporate by any or all of them, in order to obtain or consolidate control of that company or other body corporate.

(4) The following persons shall be deemed to be acting in concert with other persons in the same category unless the contrary is proved—

- (a) a company, its parent, subsidiaries and fellow subsidiaries;
- (b) companies associated with a company referred to in paragraph (a) and for the purpose of this sub-paragraph, a company shall be regarded as an associated company if it owns or controls twenty per cent or more of the equity share capital of a company;

- (c) a company and any of its directors (together with their close relatives and related trusts);
- (d) the directors of a company which is subject to an offer or, where the directors have reason to believe a *bona fide* offer for their company may be imminent.

(5) Paragraph (4) shall apply with any necessary modification to bodies corporate other than companies.”.

18. Regulation 27 of the principal Regulations is amended by deleting the words “A fund or scheme may invest” and substituting therefor the words “The assets of a fund or scheme may be invested”.

19. Regulation 28(1) of the principal Regulations is amended—

- (a) by deleting the words “A fund or scheme may, subject to the provisions of these Regulations” and substituting therefor the words “Subject to the provisions of these Regulations, the assets of a fund or scheme may be invested”;
- (b) in sub-paragraph (a), by deleting the word “invest”; and
- (c) in sub-paragraph (b), by inserting immediately before the word “make” the word “to”.

20. Regulation 29(1) of the principal Regulations is amended by deleting the words “A fund or scheme may invest” and substituting therefor the words “The assets of a fund or scheme may be invested”.

21. Regulation 30 of the principal Regulations is amended by deleting the words “A fund or scheme may invest” and substituting therefor the words “The assets of a fund or scheme may be invested”.

22. The principal Regulations are amended by inserting next after regulation 30 the following regulation—

“Annuities. 30A. The assets of a fund or scheme may be invested in annuities.”.

23. The principal Regulations are amended by deleting regulation 31 and substituting therefor the following—

“Foreign 31.—(1) The assets of a fund or scheme may be invested, in the
assets. aggregate, in an amount not exceeding—

- (a) twenty per cent of the fair value of the assets of the fund or scheme in foreign assets; or
- (b) the limit prescribed under section 22B of the Bank of Jamaica Act,

whichever limit is lower.

(2) In this regulation, “foreign assets” has the meaning assigned to it in section 22B(8) of the Bank of Jamaica Act.”

24. Regulation 32 of the principal Regulations, is amended by deleting the words “A fund or scheme may make investments” and substituting therefor the words “The assets of a fund or scheme may be invested”.

25. The principal Regulations are amended by deleting regulation 33 and inserting therefor the following regulations—

“Investments
in leases.

33.—(1) The assets of a fund or scheme may be invested in secured or collateralized leases up to a total value not exceeding ten per cent of the fair value of the assets of the fund or scheme.

(2) The investment manager shall keep a separate record of all investments in leases under this regulation.

(3) In this regulation, “lease” means an agreement that conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

(4) Nothing in paragraph (1) applies to a lease of real property owned by a fund or scheme.

“Other
Investments.

33A.—(1) In relation to any other investments for which no other regulation specifically provides, the assets of a fund or scheme may be invested in any other investments up to a total value not exceeding five per cent of the fair value of the assets of the fund or scheme,

(2) The investment manager shall keep a separate record of all investments made under this regulation.”.

26. Regulation 35 of the principal Regulations is amended by—

(a) deleting paragraph (1) and substituting therefor the following—

“ (1) The trustees or an investment manager shall not cause the assets of a fund or scheme to be used in short selling.”;

(b) deleting paragraph (2) and substituting therefor the following—

“ (2) The trustees and the investment manager shall not permit the assets of a fund or scheme to be invested in, loaned upon the security of, or hold any interest in, as the case may be—

(a) securities of an institution which is insolvent or is no longer solvent at the time the securities were issued;

(b) unsecured loans, except where expressly permitted in these Regulations;

(c) unsecured leases;

- (d) loans to and investments in any corporation, association or other body which is the auditor, accountant or actuary of the fund or scheme;
 - (e) mortgages for properties located outside of Jamaica; or
 - (f) any investment or security which the Commission believes is designed to evade any prohibitions under the Act or these Regulations.”; and
- (c) inserting next after paragraph (3) the following paragraph—
- “ (4) The assets of a fund or scheme shall not be invested in any speculative investments unless the speculative investment is one which is permitted under these Regulations, and then only if the permitted speculative investment is within the risk profile of the fund or scheme and its asset liability management strategy.”.

27. Regulation 36 of the principal Regulations is amended by deleting paragraph (1) and substituting therefor the following—

- “ (1) The Commission may direct the trustees or investment manager for the fund or scheme concerned to dispose of such assets or make such investments as the Commission determines necessary—
- (a) to bring the portfolio of investments within any limits prescribed under these Regulations; and
 - (b) to ensure that the overall investment portfolio of the fund or scheme is within the risk profile of that fund or scheme and its asset liability management strategy.”.

28. The principal Regulations are amended by inserting next after regulation 36 the following—

- “ 36A. Upon a person ceasing to be the investment manager of a fund or scheme, that person shall provide the trustees of that fund or scheme with the investment records kept, on behalf of the trustees, in relation to that fund or scheme.”.

Dated this 15th day of July, 2019.

JACQUELINE STEWART-LECHLER,
Chairman
Financial Services Commission.

Approved:

NIGEL CLARKE
Minister of Finance and the Public Service.