PLACNetwork

NETWORK FOR PENSIONS IN
LATIN AMERICA AND THE CARIBBEAN

Technical Assistance Document Series

TRUSTEES' HANDBOOK OF JAMAICA

8

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Foreword

The Labor Markets Division of the Inter-American Development Bank (IDB) supports countries in Latin America and the Caribbean in building stronger pension systems by seeking to increase their coverage (support for the vast majority of the population in old age), sufficiency (pension benefits that facilitate a dignified life in old age) and sustainability (pension benefits financed in the present and in the future). To advance these objectives, in 2015, the IDB created the Network for Pensions in Latin America and the Caribbean (PLAC Network), a regional public good that serves as a platform for dialogue and learning among pension institutions and experts. It is one of the mechanisms through which the IDB supports the efforts of countries in the region to improve the institutional and technical capacity of their pension entities.

The PLAC Network funds many activities aimed at helping the region's pension institutions learn best practices from other countries not only within Latin America and the Caribbean, but also worldwide. In this context, during the period 2016-2017, the PLAC Network held three calls for proposals on technical assistance for its members. As a result, the Network supported 13 countries through nine technical assistance projects in areas such as pension supervision and regulation, coverage, financial sustainability, and non-contributory pillars. As a result of this effort, we have created the **PLAC Network Technical Assistance Document Series**.

This eighth document, entitled **"Trustees' Handbook"** was specially designed for the Board of Trustees that is responsible for the management of private pension plans in Jamaica. The handbook aims to provide trustees with important learning, understanding and clarification on pension-related matters. It covers a range of topics to assist trustees in the effective management of pension plans and, by extension, contribute to strengthening the regulatory framework of the pension industry. This initiative seeks to help trustees understand their obligation to make informed decisions, manage risk and reduce ambiguity and misinterpretation by providing an official source of reference and to increase knowledge and understanding of the operations of pension plans and the requirements contained in the Pensions Act and associated regulations, applicable policies and procedures and best practices.

This document is the result of the technical assistance funds assigned to Jamaica in May 2017. It was prepared by Al Kiel (external consultant), whose work was supervised by Carolina Cabrita Felix, consultant of the Labor Markets Division of the IDB and coordinator of the PLAC Network, and Waldo Tapia, lead specialist of the Labor Markets Division of the IDB and team leader of the PLAC Network. We also invite you to review the other documents in this series.

PLAC Network Team

Please direct **any comments or inquiries about this publication** to the PLAC Network team

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Introduction

A Board of Trustees is responsible for the management of private pension plans in Jamaica. The role of a trustee is voluntary and does not require prior knowledge of pension management; however, each trustee on the Board of Trustees must be considered fit and proper to act as a trustee.

Given the foregoing, it is expected that new trustees will have various levels of experience and understanding related to pension management. Although the required/prescribed qualifications to become a trustee appear minimal, Jamaica's pension legislation requires trustees to act prudently in the management of a pension plan. The legislation clearly requires trustees to understand how to manage a plan's affairs and holds trustees accountable.

The Financial Services Commission (FSC), the regulator of Jamaica's private pension industry pursuant to the Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (hereinafter, Pensions Act), through its monitoring and supervision of the industry, has identified the need to develop a Trustee Handbook (hereinafter, Handbook). The Handbook is intended to provide a comprehensive learning guide to assist trustees in carrying out this important role.

Objectives of the Handbook

The Handbook aims to provide trustees with important learning, understanding and clarification of pension-related matters. It covers a range of topics to assist trustees in the effective management of pension plans and, by extension, contribute to strengthening the regulatory framework of the pension industry. This initiative will seek to accomplish the following broad objectives:

- Help trustees understand their obligation to make informed decisions and to manage risk,
- Reduce ambiguity and misinterpretation by providing an official source of reference, and
- Increase knowledge and understanding of the operations of pension plans and the requirements contained in the Pensions Act and associated regulations, applicable policies and procedures and best practices.

Specifically, with the assistance of this Handbook, trustees will be able to, among other things:

- Understand their role in meeting a pension plan's objectives,
- Distinguish between the different types of pension plans,
- Understand the concept of a trust and trust arrangements,
- Become familiar with the regulatory environment,
- Learn the key legislative requirements and their impact on a pension plan,
- Understand the duties of the trustees better, and
- Transfer the knowledge obtained from the Handbook to the management of their specific plans.

Structure of the Handbook

The Handbook is divided into the following modules:

- Overview of Pension Plans
- Legislative/Regulatory Environment
- Trusts and Trusteeship
- Pension Legislation
- Duties and Responsibilities of Trustees under the Pensions Act and Regulations

At the end of each module, approximately ten multiple-choice questions are presented along with an answer key. The questions aim to reinforce what you read in the module, give you an opportunity to assess your understanding of the module and clarify matters that may arise in the management of your pension plan. This exercise will form part of the FSC certification process.

How to use the Handbook

Initially, trustees are encouraged to go through each module sequentially to derive greater benefit from the Handbook. Thereafter, you may use the Handbook as a reference for learning, clarification or reinforcement. It is expected that trustees will transfer their newly acquired knowledge to the management of their specific plans.

The modules are summarized below to provide a preview of the content of each module and to promote the effective use of the Handbook.

1 Module 1: Overview of Pension Plans

1.1 Introduction

This Handbook will introduce the development and operation of pension plans and the pension industry to provide trustees with a comprehensive understanding of the fundamentals of retirement planning without including all of the requirements or terminologies of the Pensions Act and other regulations at this stage. This will include, amongst other things, the types of pension plans and the benefits provided.

1.1 Life Cycle of a Pension Plan

The main retirement vehicle used to provide a pension, a pension plan, will be illustrated by taking trustees through the life cycle of a pension plan from inception and the accumulation phase (growth/operations) to the decumulation (payout) phase. This approach will allow trustees to visualize their roles in each phase of the life cycle and thereby will promote a better appreciation of their roles. Trustees will also be introduced to the various stakeholders within the industry and their respective roles.

1.2 Pension Industry Stakeholders

Trustees will be introduced to other stakeholders within the pension industry and their various interests or concerns.

1.3 Overview of Jamaica's Pension Industry

To provide a holistic view, the different sources through which employees may obtain a source of income at retirement will be introduced. The three-pillar pension regime will be discussed with a view of providing trustees a comprehensive understanding of how Jamaicans may plan for retirement. This Handbook, however, will focus on Pillar 2, occupational pension plans.

1.4 ▶ The Need for Occupational Plans

It is important for trustees to have a frame of reference regarding the reason for the establishment of pension plans. This will be explained by highlighting the benefits of a pension plan to a number of stakeholders, namely, the government, employers and employees.

Superannuation funds and retirement schemes, which are the types of occupational plans used to supplement the mandatory social security scheme (National Insurance Scheme), will be highlighted.

1.5 ▶ Types of Pension Plans

The types of pension plans that may be provided by superannuation funds and retirement schemes (namely, defined benefit (DB), defined contribution (DC) or a combination of both) and their distinctions will be discussed. Trustees will be able to differentiate between the different types of pension plans and recognize some risks associated with the type of plan for which they are trustees.

1.6 ▶ Benefit Payments: Categories of Members and Beneficiaries

This section will outline the various categories of members and beneficiaries of pension plans and the events that will trigger when benefits may be payable to these members.

1.7 ▶ Establishing a Pension Plan

This section will expound upon the voluntary nature of pension arrangements in Jamaica and the considerations of employers when deciding to establish pension plans on behalf of their employees.

1.7 ▶ Types of Payment in Ongoing Plans

Funds and schemes are financed by contributions paid by the employer and the employee, as the case requires, and from investment earnings. A plan must make certain payments while the plan is ongoing, for example, expenses, such as for administrative and investment management services. Trustees may make certain payments from a plan to facilitate its general operations. Payments are also made to members as part of their accrued benefits in an ongoing plan. These amounts are attributable to but are not limited to a member's voluntary and required contributions, employer contributions and transfer values.

2 ▶ Module 2: Legislative/Regulatory Environment

2.1 ▶ Introduction

This module will provide the historical context of the pension reform in Jamaica and its role in shaping the current regulatory framework. The functions of regulators within the industry will be highlighted.

2.2-2.6 Pension Reform in Jamaica: (Pre-Pension Reform, Transitional Period, Post Pension Reform (Phase I) and Phase II of the Pension Reform)

The state of the pension industry prior to the pension reform and the ensuing issues that led to the pension reform being implemented in two phases in Jamaica will be highlighted. The increased accountability and transparency that resulted from the introduction of the Pension Legislation (Phase I of the pension reform) and the expanded role of trustees within the new pension environment will be elaborated upon. This section will also discuss Phase II of the pension reform, which seeks to include, among other things, provisions such as vesting, portability and locking-in that will encourage the preservation of pensions.

2.7 Current Regulatory Environment and Specifics of Phase I of the Pension Reform

Trustees will become familiar with applicable legislation and, in particular, the various pieces of the pension legislation which have been introduced to address the deficiencies noted in the pension industry. This section will provide a summary of the major provisions which are contained within the Pensions Act and the associated regulations, together referred to as the "Pension Legislation", as a source of reference. The details of these provisions will be discussed in Module 4, Pension Legislation.

2.7-2.8 The Role of Regulators

The main regulators of the pension industry are the pension regulator, which is the FSC, and the tax authority, the Tax Administration of Jamaica (TAJ). The role of each regulator within the industry will be discussed as well as any relationship between the two regulators.

The trustees will be able to differentiate between the requirements of the tax authorities and those of the FSC. This Handbook will cover, for the most part, the requirements of the FSC.

It should also be noted that the Pension Legislation, particularly as it relates to plan investments, has implications on the financial stability of the country, and as such, the central bank, the Bank of Jamaica, plays a part in the supervision of the industry on this basis.

2.9 The Income Tax Act

The government provides tax incentives to both the sponsoring employer and employees of pension plans. Pension plans are required to satisfy certain requirements under the Income Tax Act to qualify and are required to provide annual reports to tax authorities. Plans are required to continue to satisfy the requirements of the Income Tax Act to benefit from the tax incentives.

3 Module 3: Trusts and Trusteeship

This module will outline the basic principles of trust law and fiduciary duty and introduce the general duties of trustees. The composition of a Board of Trustees and the types of trustees that may be represented on the Board will be discussed. Any liabilities trustees may face in exercising these duties and the protection provided will also be considered.

3.1 Introduction – Trust Law

The Jamaican private pension industry is regulated pursuant to prescribed legislation. The Pensions Act and its related regulations provide a managed framework for the administration of approved superannuation funds (hereinafter, funds) and approved retirement schemes (hereinafter, schemes) and outline the responsibilities of trustees and other service providers. The Pensions Act and its regulations are administered by the FSC, which has the power to enforce those regulations and impose penalties for breaches. All funds and schemes under the remit of the FSC must be established under an irrevocable trust and be approved and registered by the FSC. The basic principles of trust law and its application to Jamaica's private pension industry will be further explored.

3.2 Types of Trustees

Trustee arrangements can vary between the differing funds and schemes in place but generally come under the category of either individual trusteeship, corporate trusteeship or a combination of individual and corporate trusteeships working together. Such an individual or company must be registered with the FSC. Additionally, all funds and schemes are required to have a Board of Trustees (hereinafter, Board). There are specific regulations that govern the composition and appointment of the members of the Board. The Pensions (Superannuation Funds and Retirement Schemes)(Governance) Regulations, 2006 (hereinafter, Governance Regulations), and the Constitutive Documents of a fund or scheme stipulate the duties and powers of the trustees on the Board.

3.3 Selection, Appointment and Removal of Trustees

The procedures for appointing trustees during the lifetime of a fund or scheme are usually set out in the trust deed and rules (also called Constitutive Documents), which normally provide for the employer to appoint trustees. There are also three ways to nominate a trustee, which are nomination by a member, nomination by pensioners and deferred pensioners or nomination by the plan sponsor. Pursuant to a petition from the FSC to wind up a fund or scheme, the courts may also appoint a provisional trustee. Provisions for the resignation, removal and replacement of trustees are normally included in the trust deed and rules. However, the Pensions Act and other regulations also establish statutory requirements in relation to the appointment and removal of trustees by specifying the types of trustees that a fund or scheme is required to have and the means by which certain trustees can be removed.

3.4 Qualifications, Fitness and Propriety

Whilst no formal qualifications may be required to become a trustee, a trustee must satisfy the "fit and proper" criteria in order to be registered with the FSC. Pursuant to the fit and proper criteria, certain persons are prohibited from acting as trustees, including but not limited to an undischarged bankrupt and persons convicted of an offence involving fraud or dishonesty. In addition, employees of a corporate trustee must have knowledge and experience in the business of funds and schemes.

3.5 Rights of Trustees

With the exception of professional trustees, all trustees are volunteers, irrespective of who appointed them. In this context, these trustees often have no prior experience in the areas of trusts or pensions. As such, it is critical that the Constitutive Documents of pension plans have broad trustee protection provisions to safeguard trustees in cases of innocent errors. There are five main sources of protections: pre-emptive court approval, exemption clauses, indemnity from the sponsor and/or plan, liability insurance and the Trustee Act.

3.6 Duties and Responsibilities of a Trustee – General Principles

Trustees are responsible for the administration of occupational pension funds and schemes and for compliance with the requirements that apply to these funds and schemes. Trustees also have the primary responsibility of managing the affairs of funds and schemes and safeguarding the assets and interests of plan members. A trustee of a fund or scheme holds a position of trust and as such, has special fiduciary duties to the beneficiaries of the fund or scheme. Trustees are also required to seek professional advice, as and when required, and to act with care when making decisions with respect to the selection of agents or advisors and the delegation of authority.

3.7 Liabilities and Protection of Trustees

If the trustees act in a way that is not authorized by the terms of the Constitutive Documents or trust law, or if they fail to do something that should have been done under the same provisions, this is called a breach of trust. All of the trustees are individually and collectively liable for any breach of trust. However, a mere error of judgement is not in itself a breach of trust, and trustees are presumed to have acted honestly and properly until the contrary is shown. If a breach of trust does, in fact, result in a loss to the trust fund, then the trustees may be held accountable, unless certain protections are in place. Ensuring that trustees have all relevant information can help de-risk potential liabilities associated with the failure to carry out their duties.

3.8 Powers and Discretion

Trustees are provided certain statutory powers in the exercise of their discretion. These powers include but are not limited to making decisions, making amendments to Constitutive Documents, setting agendas for meetings, amending policies and procedures, employing and removing agents and advisors, delegating functions to an agent, remunerating providers for services rendered to the fund and scheme and taking advice from advisors on relevant issues.

4 Module 4: Pension Legislation

This module will highlight the minimum legislative standards that a fund or scheme must satisfy in order to be registered with the FSC and what is expected to manage a plan on an ongoing basis.

4.1 Regulation of Approved Superannuation Funds and Retirement Schemes

Through the Pensions Act, the FSC is the regulator of private pension plans. The FSC is also charged with supervising registered trustees and licensed administrators and investment managers of private pension plans.

4.2 Minimum Standards

Generally, an employer is not required to provide a pension plan for its employees. However, when a pension plan does exist, the Pensions Act and its associated regulations require that certain minimum standards be obeyed. The legislated minimum standards provide guidelines that the fund or scheme and the Constitutive Documents must follow. These minimum standards are referred to as "conditions" in the Pensions Act. They provide a legislative "floor" or baseline with respect to what minimum provisions must be included as part of a pension plan's design. The requirements of the Pensions Act and specifically the Registration, Licensing and Reporting Regulations (RLR) will be discussed in detail.

4.3 Other Considerations

Part V of the Pensions Act establishes standards that are to be incorporated into the terms and conditions of a pension plan. These provisions go beyond the minimum standards and establish further pension plan rules and requirements. The additional requirements pertain to such areas as record keeping, amendments to the trust deed or rules, petitions to court, member recourse and disclosure of information in prescribed circumstances.

4.4 Reporting Requirements

The Registration, Licensing and Reporting Regulations outline the annual filing requirements for funds and schemes. Actuaries of funds and schemes are statutorily required to prepare reports in accordance with generally accepted actuarial principles and such directions as may be given by the FSC. All pension plans are required to abide by requirements for annual filing with the FSC.

4.5 Disclosure Requirements

The Governance Regulations provide standards for the general governance of the operations of funds and schemes and outline the general duties, accountabilities and disclosure requirements of their sponsors, trustees and their agents. The regulations also stipulate the type of periodic information that should be disclosed to participants, beneficiaries and their representatives.

4.7 Breaches, Violations and Penalties

The Pensions Act provides statutorily prescribed offences and penalties that administrators, investment managers, sponsors and trustees could be subject to upon breaching certain legislative requirements. The FSC is statutorily empowered to monitor and supervise its licensees and registrants by imposing sanctions or penalties, including fines or other corrective actions, when breaches or irregularities are identified.

4.8 Adapting to New Legislation

The pension reform process in Jamaica has evolved over the past two decades. It accelerated and became a priority after a meltdown of the financial sector in the nineties. The pension reform process is being conducted in two phases. Recent proposals have been introduced to amend the existing legal framework for private pension plans. These proposals include but are not limited to the locking-in of members' compulsory contributions after a specified period of membership and the unlocking of contributions in specified circumstances. Trustees will be made aware of the process involved in converting proposed legislation into law. The applicable amendment process will be highlighted.

5 Module 5: Duties and Responsiblities of Trustees under the Pensions Act and Regulations

This module will seek to clarify the requirements of the legislation as it relates to the duties of trustees and to provide a better understanding of what is required. The module will also highlight and explain provisions in the legislation that illustrate how the standard of care and due diligence should be practically applied. Section 7 of the Governance Regulations and other applicable legislative references will be used as the basis for these discussions.

5.1 Introduction

The principal role of trustees is to act in the best interest of the members of a pension plan. But what does this mean? The legislation outlines the general duties of trustees and makes reference to terms such as "competence," "due diligence" and "prudence" that trustees should possess in carrying out their duties.

It should be noted that most of the provisions related to the governance of a pension plan will be discussed in a subsequent module under the heading Governance and Administration.

5.2 Fiduciary Duty/Standard of Care/Due Diligence

Trustees will become familiar with certain common phrases associated with their role, such as the "standard of care" and "due diligence." The standard of care requires trustees to exercise the care, skill and due diligence that a person of ordinary prudence would exercise when dealing with his own property. Due diligence requires trustees to assess on an ongoing basis the processes, procedures and skills required to protect the interests of members.

5.3 Trustee as Administrator and/or Investment Manager

Reference will be made to the additional duties of trustees in the case where a plan is being self-administered. Trustees may choose to be licensed as the administrator and/or investment manager; therefore, their roles will be expanded to those of the entities for which they have been licensed.

5.4 Conflicts of Interest

Examples from the legislation on how to handle conflict of interest situations at the initial appointment and after being appointed as a trustee will be highlighted.

5.5 Fit and Proper

The need for individual trustees or the responsible officer of a corporate trustee to ensure that he satisfies the fit and proper requirement on an ongoing basis will be discussed. Any requirements for satisfying this duty will be highlighted.

5.6 Best Practices

In the absence of legislative requirements, this section will highlight some best practices that trustees may be guided by in exercising their roles.

5.7 Liability and Protection of Trustees

This section will address the implications trustees may face if they breach their duties. Similarly, depending upon the type of breach, protection may be available to trustees, such as in the form of fiduciary insurance and indemnity provisions.

1 Module 1: Overview of Pension Plans

At the end of this section, you will be able to:

- Describe the life cycle of a pension plan
- Identify the main stakeholders of a pension plan

1.1 Introduction

"Retirement" has become the buzzword among policymakers, pension professionals, employers, unions and, now more than ever, employees, self-employed persons and retirees. All of these stakeholders have begun to see the importance of planning for retirement.

What is retirement?

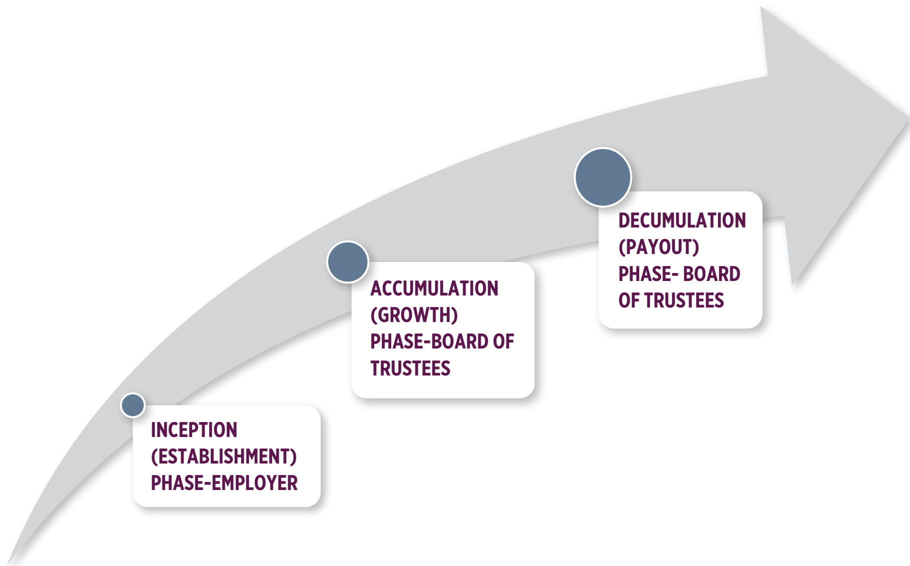
An employee retires when he ceases to work permanently for a salary due to ill health or the natural aging process. The term "retirement" continues to evolve as people create post-career lifestyles that suit their needs and preferences. For example, some persons cease all work at once, while others make that transition gradually over time and yet others choose to resume (paid or unpaid) work in a new capacity. This module will focus on an employee who fully retires from all employment.

When an employee fully retires, he will continue to require an ongoing income to sustain him throughout the rest of his lifetime. The income required at retirement is generally estimated to be less than that of a person who is working. For example, childcare expenses, transportation, clothing and other work-related expenses are typically reduced or eliminated. However, rent or mortgage costs associated with one's primary residence and food, medical and household expenses will continue, and consequently, a monthly pension or some other form of income will be required. Ultimately, the post-employment income required by a retiree will be heavily dependent on how that individual plans to spend his retirement.

A pension plan is the main vehicle most people use to save for retirement. Besides income, it may also provide for other incidental benefits, such as disability, ancillary or death benefits.

1.2 Life Cycle of a Pension Plan

Similar to the human life cycle, a pension plan (hereinafter, Plan) goes through different stages. Over a Plan's existence, it will progress through inception, accumulation and decumulation phases.



Inception phase

The establishment of a pension plan in Jamaica is voluntary for employers. At the inception phase, the employer decides to establish a Plan on behalf of its employees who satisfy eligibility requirements (please refer to 1.7.6). An in-depth discussion on the numerous Plan types will be undertaken in Module 12, General Pension Plan Design. However, the following terms will form the basis of the discussion in this module and later in the Handbook:

- Defined benefit (DB),
- Defined contribution (DC) and
- Hybrid.

Trustees

Pension plans in Jamaica are established under a trust, which requires a Board to manage the pension plans in accordance with:

- The Plan's Constitutive Documents and
- Applicable legislation, that is, trust law, income tax legislation and the Pensions (Superannuation Funds and Retirement Schemes) Act and associated regulations (hereinafter, Pension Legislation).

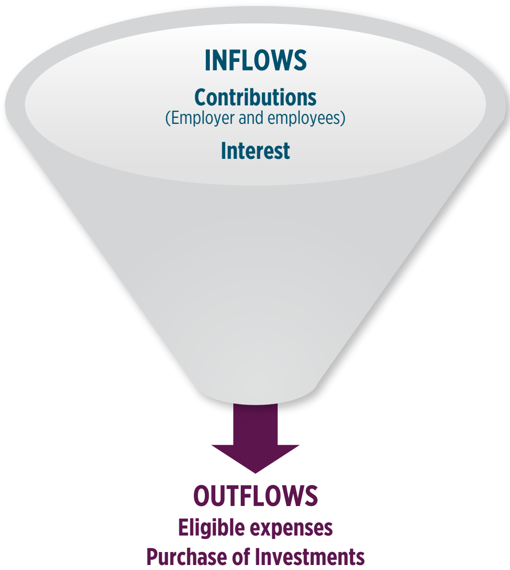
Accumulation (Growth) phase

The Plan's sponsor and members must satisfy its requirements. For example, each must make contributions to the Plan in accordance with its trust deed and rules and applicable legislation.

Money flows into the Plan from the sponsor's contributions, members' contributions and income earned by the Plan's investments. Money flows out of the Plan to pay eligible expenses and to purchase assets that are expected to provide future investment income.

During the Accumulation/Growth phase, it is expected that contributions and gains or losses on those contributions will accumulate and that the inflows into the Plan will be greater than the outflows, which effectively promotes the (monetary) growth of the Plan.

Payment of eligible benefits is an outflow from the Plan and is a feature of the Decumulation phase.



Employer means an organization or person that employs employees.

Sponsor is an employer who establishes a Plan on behalf of its employees or a prescribed financial institution that sets up a pension plan.

Employee refers to a person employed by an employer for wages and salaries.

Member refers to an employee who joins the Plan of the employer or a person who joins a Plan set up by a financial institution.

Trustees

During this phase, trustees are responsible for the general management, operation and administration of the Plan, which includes investing Plan assets, managing risks, providing members with periodic information, ensuring member records are accurately kept, making certain that contributions are remitted in a timely manner and complying with regulatory filing requirements.

Decumulation stage (Payout phase)

As a member of a Plan nears retirement, depending on the options given, he will decide how to receive pension benefits (payout) at retirement. Plan benefits may also be paid on the death or withdrawal of a member from the Plan.

A Plan may terminate subject to regulatory approval. This will signal the end of the pension plan. The process involved in the winding up of a Plan will be discussed in Module 14, Special Situations.

Trustees

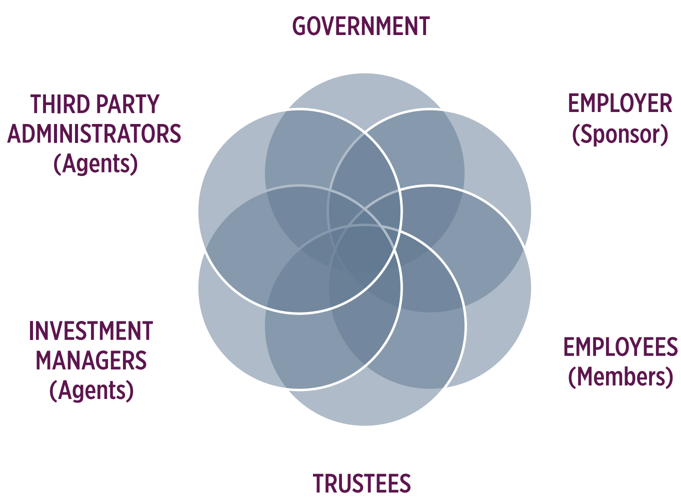
The Trustees are responsible for ensuring that members receive the necessary information to make informed decisions regarding their benefits. These requirements are outlined in Module 4 (4.5 Disclosure Requirements) and explained in Module 5 (B. Governance Regulation 12: Fiduciary duty – member disclosure).

Who are the major stakeholders within the pension industry?

1.3 Pension Industry Stakeholders

The pension industry is comprised of a number of players with varied interests.

- The government has a social policy objective to ensure that mechanisms are in place to encourage savings towards retirement. The government is represented by the pension regulator, the central bank, the tax authorities and any other applicable government agencies. These entities will be discussed in Module 2.



- The employer (or sponsor) establishes a trust-based pension plan on behalf of its employees. A prescribed institution (a registered life insurer or licensed investment manager) may also set up a trust-based pension plan. The prescribed institution is referred to as the sponsor.
- Employees and former employees who satisfy eligibility requirements are the beneficiaries of a Plan and include active members, deferred pensioners, pensioners and their dependants, where applicable. Active members, deferred pensioners and pensioners are collectively called a Plan's "participants". Please refer to Section 1.6 for further details on the different categories of members.
- The trustees are ultimately responsible for the management and operation of a Plan under the trust arrangement. The trustees ensure that the Plan is managed in accordance with applicable legislation and the Plan's trust deed and rules.
- Agents are professional persons or companies that provide services to another party. Trustees may obtain advice from or outsource certain duties to agents such as investment managers, administrators and nominees of the trustees to assist in the efficient management of the Plan.
- Other advisors: Trustees may also employ the services of auditors, actuaries and attorneys-at-law in the management of a Plan.

Trust and Trustees

These Plans are required by law to be established under a trust, and trustees are appointed to manage the operations of the pension plans. The trustees may outsource certain functions but are ultimately responsible for the management of the Plans. Trustees, therefore, play a vital role in ensuring that pension plans meet their obligations to participants and other stakeholders.

What is the structure of Jamaica's pension industry?

At the end of this section, you will be able to:

- Describe the three pillars of the Jamaican pension industry
- Recognize and differentiate between DB, DC and hybrid plans
- Understand the considerations that employers or sponsors make when establishing a pension plan

1.4 Overview of Jamaica's Pension Industry

1.4.1 Three Pillars

Similar to other countries, Jamaica has in place a three-pillar pension regime, which is aimed at encouraging citizens to plan for their retirement. It is envisaged that a combination of all three pillars will provide an employee or a self-employed person with a standard of living similar to what he had while working and that this income will be adequate to sustain him throughout retirement.

Ideally, Jamaicans should strive to obtain retirement income from three sources: the National Insurance Scheme (NIS), occupational pension plans and personal savings.

1.4.2 National Insurance Scheme (First Pillar)

Most Jamaicans are aware of the social security plan, the NIS, which is a mandatory scheme administered by the government through the Ministry of Labour and Social Security. Employed and self-employed persons are required to contribute to the NIS, which provides a basic level of retirement income and protects against loss of income from job injuries, incapacity and death.

The NIS is intended to provide only a portion of the income needed after retirement, not enough to maintain an individual's pre-retirement standard of living. The NIS may therefore be viewed as the foundation for building one's retirement income.

1.4.3 Occupational Pension Plans (Second Pillar)

Occupational plans include superannuation funds and retirement schemes. Superannuation funds are voluntary pension arrangements set up by employers on behalf of employees, while retirement schemes are set up by licensed institutions and are open to the public, subject to certain requirements.

This pillar also includes certain pension plans that are established by law and currently do not fall within the remit of the FSC, namely specified pension funds and specified pension schemes.

The pension arrangement out in place by the government for public sector workers such as teachers, nurses and police officers also falls within the category of a specified pension fund or specified pension scheme.

1.4.3 Personal Savings (Third Pillar)

Jamaicans may supplement their pension savings in the formal arrangements (NIS and occupational plans) through other means. A variety of approaches may be used, for example, tax-free investments and equity in a home or business.

This Handbook will focus on the second pillar and, specifically, the legislative framework in place for superannuation funds and retirement schemes in the private pension industry.

1.5 The need for Occupational Pension Plans

As discussed earlier, the NIS is meant to provide only one component of a person's retirement income and, preferably, to be supplemented by additional retirement income from other sources.

Employers may try to meet this need by establishing a pension plan on behalf of their employees. This may be a strategy to attract and retain staff and to ensure that an avenue is provided for their employees to provide adequately for their retirement. Unlike the NIS, occupational pension plans are voluntary pension arrangements.

Superannuation funds account for the majority of active pension plans and total invested pension assets. Retirement schemes also are a viable retirement option for employers and persons in non-pensionable posts.

This section will focus on the benefits to the employer who establishes a pension plan or contributes to a retirement scheme on behalf of its employees. The distinction between the superannuation funds and retirement schemes is discussed in detail in Section 1.5.

1.5.1 Benefits to the Government, Employer/Sponsor and Employee

Government

The government encourages the establishment of Plans by providing tax incentives to their sponsors and participants, specifically on contributions paid into Plans and the investment gains or earnings on those contributions. The tax-exempt status of a Plan will be explained in detail in Module 2. Essentially, the loss of tax revenues by the government is intended to boost the accumulation of pension benefits by Jamaicans.

Occupational plans contribute to the government's social and fiscal policy objectives. Participating in pension arrangements will provide Jamaicans an income at retirement and thus is beneficial to their future financial and emotional well-being. In turn, their financial self-sufficiency will reduce costs to the government and retirees' families. In addition, the long-term nature of Plan investments contributes to the financial stability of the country.

Employer/Sponsor of a Superannuation Fund

- Employers are allowed to deduct, as an expense, contributions made to a Plan on behalf of employees. This, in effect, reduces the taxation on profits that the company pays to the government.
- The company benefits from the effects of compounding interest earned on contributions on a tax-free basis as this lowers the overall cost required to fund its Plan.
- Strategically, employers with good benefits, including retirement benefits, are able to attract and retain the highly skilled employees required to enhance the employers' competitive advantage.

Despite these benefits, employers/sponsors face a number of challenges in maintaining pension plans, including the costs of administration and the provision of benefits.

Consequently, an employer/sponsor may opt to contribute to a retirement scheme on behalf of its employees. This approach will reduce administrative costs and other ongoing regulatory costs/ obligations of the employer. The trustees of a retirement scheme will assume roles and responsibilities similar to those of the trustees of a superannuation fund.

Sponsor of Retirement Schemes

Retirement schemes are set up by prescribed entities as a strategic goal of the company for profit or other business reasons.

Employees/Members

- Employee contributions to pension plans are tax deferred, which means that taxes are not applied to contributions to or gains or earnings from those contributions until a pension is being paid. Effectively, this reduces the employee's monthly taxes, and depending on the design of the Plan, the employee benefits from the effects of compounding.
- Employees are provided with a reliable retirement vehicle to save for retirement.
- In an employer-sponsored pension plan, employees benefit from a convenient arrangement where their contributions are deducted from their salaries and paid to the Plan on their behalf.
- Employees also benefit once they become entitled to employer contributions upon vesting.

1.6 Pension Plans

The occupational pension plans in Jamaica are superannuation funds, retirement schemes, specified funds and specified schemes. The operations of superannuation funds and retirement schemes will be discussed throughout this Handbook. Specified funds and specified schemes will be discussed briefly in Module 2, Legislative/Regulatory Environment.

Superannuation Funds

An employer may voluntarily establish a Plan on behalf of its employees. Employees then become eligible to join the fund, typically after a probationary period, which is often three months after formal commencement of employment. The specific rules around eligibility are outlined in the trust deed and rules of the fund and vary from fund to fund.

Participation in the fund may be a condition of employment for the employee if the fund is established prior to the employee's employment date (i.e., participation in the Plan is mandatory). Additionally, when a Plan is set up for particular categories of employees, all employees within those categories are required to join the Plan. Employees not in the relevant categories cannot participate. The employee who joins the Plan is a member of the Fund. The specifics around a member's eligibility to join a fund will be discussed in greater depth under Module 12, General Pension Plan Design.

Retirement Schemes

Retirement schemes are established by licensed life insurers or investment managers[1]. Self-employed persons or employees in non-pensionable posts may join this arrangement. Persons who join a retirement scheme become a member of the scheme.

Funds are set up by employers on behalf of their employees.

Schemes are set up by licensed life insurers or investment managers and open to the public.

Sponsor (Fund) is an employer who establishes a Plan on behalf of its employees.

Sponsor (Scheme) is a licensed life insurer or investment manager who establishes a scheme.

1. Regulation 5 of the Registration, Licensing and Reporting (RLR) Regulations.

1.6.1 Types of Pension Plans

DB plans in Jamaica are generally classified as one of following main types.

- In a traditional DB plan, benefits are linked through a formula to the members' wages or salaries, length of employment, or other factors.
- In a hybrid DB plan, benefits depend on a rate of return credited to contributions. This rate of return is either specified in the Plan rules, independent of the actual return on any supporting assets (e.g., fixed, indexed to a market benchmark, tied to salary or profit growth) or calculated with reference to the actual return on any supporting assets and minimum return guarantee specified in the Plan rules.
- A mixed DB plan has separate DB and DC components that are treated as part of the same Plan.

For ease of understanding, the following types of plans and categories will be discussed below in a generic form. The abovementioned categorization may be further expounded upon in Module 12, General Pension Plan Design, where applicable.

Funds may be established as a DB plan, a DC plan or a combination of both (hybrid plan), whereas schemes can be established only as DC plans.

TYPES OF PLANS

FUNDS	SCHEMES
• DB plan • DC plan • Hybrid plan (combination of aspects of DB and DC plans)	• DC plan

The type of pension plan is usually determined by the benefits provided and which party bears the investment risk. The employer may also decide whether the Plan is contributory (*both employer and employees contribute*) or non-contributory (*only the employer contributes*).

The distinction between a DB plan, DC plan and hybrid plans will be discussed.

How to determine the type of pension plan for which you are a trustee

The fundamental difference between a DB plan and a DC plan relates to who bears the investment risk. In turn, the determination of benefits depends on which party bears the investment risk.

FEATURES OF DB AND DC PLANS

	DB PLAN	DC PLAN
Who bears the investment risk?	The **sponsor**	The **members**
Are the benefits specified or not?	The benefits are **specified** (*determined by a formula, reflect earnings and service/ membership in the Plan*).	The benefits are **not specified** (*will depend on the performance of the Plan's assets over time and the amount accumulated in each member's account at retirement*).
Are members' contributions, where applicable, specified or not? *Plans may be contributory or non-contributory*	The members' contributions, where applicable, **are specified** in the trust deed and rules.	The members' contributions, where applicable, **are specified** in the trust deed and rules.
Are the sponsor's contributions specified or not?	The sponsor's contributions **are not specified** (*They cover the balance of costs and are determined by an actuary*).	The sponsor's contributions **are specified** in the trust deed and rules.

Contributory plans incorporate contributions made by both the employer and the employees.

Non-contributory plans require only the employer to make contributions.

What specific benefit will be provided?

DB Plan

In a DB plan, the employer promises to provide employees with a pension benefit (also called the defined amount) upon retirement. A formula is used to determine the benefit.

Features of a DB plan

Benefit: The benefit at retirement **is known**. The employer promises to pay the employee a pension benefit at retirement which is determined by a formula, usually in reference to the **member's pensionable salary** and **membership in the pension plan.**

Contributions: If the Plan is contributory, the member pays a fixed percentage of his pensionable salary as outlined in the trust deed and rules, while the contributions of the employer will vary and are based on actuarial calculations. The contribution to be made by the employer is typically referred to as the balance of costs, which is the difference in costs (the amount above any employee contributions) that the employer is required to pay to ensure the fund can meet its obligations. This amount may increase or decrease depending on the financial health of the Plan as assessed by an actuary.

The maximum contributions to be made by both the employer and employee are outlined in the pension and tax legislation, respectively. However, in a DB plan, the employer may make additional contributions, referred to as special contributions, to fund the promised benefits. This additional contribution will require the approval of tax authorities.

Investment risk: The employer bears the investment risk. That means that fluctuations in how the assets of the Plan perform will not affect members' benefits, provided the Plan is fully funded (i.e., the assets of the Plan are sufficient to cover its liabilities). Consequently, the better the Plan performs, the less contributions the employer will be required to make. On the other hand, if the Plan investments perform poorly, the employer's contributions will increase.

DC Plan

Features of a DC plan

Benefit: The benefit at retirement **is unknown**. The amount of accumulated contributions plus accumulated investment returns or losses, as the case may be, at the actual date of retirement will be used to finance the benefit. The benefit will depend on how much was contributed, how well the Plan/account performed (net of expenses) and the cost of purchasing annuities at the time of retirement, where applicable. The uncertainties of the performance of investments over time and future interest rates at retirement cause the benefit to be unknown.

Contributions:

Superannuation fund

The level of contributions to be made by the sponsor and members is outlined in the trust deed and rules. The sponsor usually matches the mandatory contribution to be made by the members. An employer may decide to contribute above the basic requirements to encourage members to contribute additional funds, referred to as voluntary contributions.

Retirement scheme

The level of contributions to be made by persons eligible to join a scheme is outlined in the Master Trust Deed. Generally, the contributions of individuals will be outlined; however, employers of employees who have enrolled in a retirement scheme may make contributions on behalf of these members but **are not required to do so**.

The maximum contributions to be made by both the employer, if applicable, and members to the fund and scheme are outlined in the pension and tax legislations, respectively. Please refer to Module 4 (4.2.1 (a) and (b) for details).

Investment risk: The employees/members bear the investment risk (*as the rate of return earned by the Plan will affect the accumulation of contributions*). For example, if the Plan performs poorly, members' benefits will be adjusted accordingly. Unlike in a DB plan, there are no guarantees from the employer/sponsor to fund the shortfall.

In Jamaica, trustees invest Plan assets on behalf of members of superannuation funds and some retirement schemes. (Members are given the option to select investments in retirement schemes where there are multiple investment funds). Therefore, the members often do not make their own investment choices in superannuation funds but will assume the investment risk nonetheless. The trustees are required to exercise due diligence, that is, to act in the best interest of the members, when investing these funds. This trustee responsibility will be explained in detail in subsequent chapters.

In a retirement scheme, if members are given the option to direct their investments, the investment risk will arise from the performance of the investments selected by the members (rate of return on those investments). Otherwise, as mentioned above, the risk lies with the performance of the assets of the Plan on a whole, as allocated by the trustees.

Hybrid Plan

This Plan combines elements of a DB plan and a DC plan. Examples of Plans that are hybrid pension plans and not pure DC plans include:

- Plans with DC features that also provide assurance to guarantee an interest rate on contributions and
- Plans with DC features that pay pensioners directly from the Plan.

Multi-employer Plans may also fall under the category of a hybrid pension plan.

FEATURES OF A MULTI-EMPLOYER PENSION PLAN IN JAMAICA
• It is established with two or more related or unrelated employers in the same industry. • It involves frequent movement of employees between employers within the same industry or unrelated industries but who remain part of the same Plan. • An employee's service/membership does not break, and he earns credit as if employed with one employer. • The contributions to be made and the benefits are typically specified in the trust deed and rules.

1.6.2 Benefit Structure of Pension Plans

DB Plans

The employer, also referred to as the sponsor of the Plan, will decide on the type of Plan and the subsequent benefit formula subject to the maximum limit prescribed in the Income Tax Act. The formula used to determine the benefit in a DB plan is derived in various ways, as described below.

DB PLANS	
Final Average Earnings/ Final Salary Pension Plan	• The benefit is based on pensionable service and average earnings for a period before retirement. For example, 2% of the average of five years of pensionable salary immediately prior to retirement times pensionable service. • Some employers may be more generous and use the last salary prior to retirement, while others may use the best average earnings within a period in the benefit calculation. • It recognizes the changes in the value of the dollar over time up to the retirement date.
Career Average Earnings Pension Plan	• The benefit is calculated using a percentage for each year of Plan membership. • Equal weighting is given to each year of a member's working life. • It may provide a lower pension compared to benefits calculated using earnings immediately prior to retirement. To address this problem, the sponsor may implement a modified career average formula. In this formula, the benefits are based on the member's career average; however, salary increases will be assessed to determine whether the pay base for past service benefits is out of date. The sponsor may then decide to update those past service benefits.
Flat Benefit Pension Plan	• The benefit is a specified dollar amount times years of service. • It does not recognize differences in earnings. • It is popular in unionized environments.

The accrual rate used in the formula is determined by the employer based on informed analysis and is outlined in the trust deed and rules. A typical benefit formula is outlined below:

2% x years of Plan membership x the average of the last five years of pensionable salary

Ideally, if the pension benefit derived from the formula is less than the member's accumulated contributions plus accumulated gains and earnings, the member would be given the greater pension benefit.

DC Plans

In DC plans, contributions and interest are accumulated and tracked in the members' accounts. In a superannuation fund, the value of a member's account will fluctuate based on the investment performance and expenses of the Plan, that is, the net yield of the Plan.

In a retirement scheme where a member selects his own investments, the net yield in the account after investment gains and losses and expenses will be reflected in the member's account. Where investment options are not given, a member's account will accumulate based on the net yield of the Plan.

The accumulated contributions, gains and earnings at retirement will be used to purchase a pension benefit from an insurance company.

Hybrid Plans

Variations to hybrid plans are described below:

- Mostly DB component: protects the members' benefit. For example, if a member contributes a fixed amount, when the DC account is converted at retirement, if the benefits are less than the DB benefit, then the DB benefit is paid. If the converse applies and the DC benefit is greater, the DC benefit will be paid.
- Separate DB and DC sections within one Plan. A member may have benefits in one or both sections depending on the rules of the Plan. Benefits will be determined by the respective rules in each section.

1.7 Benefit Payments: Categories of Members and Beneficiaries

Members of a pension plan become entitled to benefits based on their category of membership and the occurrence of an event that triggers payment, for example, termination, retirement (early, normal, late or for ill health) or death.

Active Members

Active members of a fund are currently working for the employer, make applicable contributions to and are accruing benefits under the Plan. In a scheme, these members are actively making contributions to the scheme.

Deferred Pensioners

Deferred pensioners in a fund are those members who have terminated employment with the employer and have stopped accruing benefits under the Plan but are entitled to a pension at retirement, whether early, normal or late, as applicable. In the case of a scheme, a member is considered a deferred pensioner when contributions have not been made for one year or more.

Pensioners

Pensioners are members of a Plan who have retired from employment and are in receipt of a pension. The benefits of some pensioners are paid directly from the Plan, while others' benefits may be purchased from an insurance company.

Designated Beneficiaries

The person designated as the beneficiary of an active member, deferred pensioner or pensioner may be entitled to a death benefit as outlined in the Plan's trust deed and rules. When a beneficiary has not been designated, the death benefit, if any, will be payable to the person's estate. In some cases, a Plan may provide for other benefits, such as a spouse's pension.

1.7.1 Types of Benefit Payments

PENSION	ANNUITY	OTHER APROVED BENEFIT PAYMENTS

Once a member retires, the benefits are paid out based on the provisions in the trust deed and rules and the pension and tax legislations. Since the intention of a pension plan is to provide an ongoing benefit for a pensioner over his retirement, most Plans will either purchase an annuity for the member from an insurance company or pay the pension directly from the Plan. The retiring member may also opt to take a lump sum payment up to a maximum amount as prescribed in the Pension Legislation or Income Tax Act. The respective legislation, however, does not mandate the purchase of an annuity.

Benefits that are considered a "small pension" may be paid out in full. Other types of pension payments, such as a drawdown account, which allows a pensioner to withdraw monies periodically subject to certain limits and up to a certain age, after which an annuity must be purchased, may also be provided for in a Plan's trust deed and rules. These types of pension payments will be discussed in detail in a subsequent module.

1.8 Establishing Pension Plans: Design Considerations

- **OFFER TAX INCENTIVES**
- **ATTRACT AND RETAIN KEY EMPLOYEES**
- **REWARD LONG-SERVING EMPLOYEES**
- **ASCERTAIN COST AND RISK SHARING**
- **APPLY RELEVANT LEGISLATION**
- **ESTABLISH COLLECTIVE AGREEMENT**
- **OUTLINE DEMOGRAPHICS OF THE PLAN**
- **DETERMINE ELIGIBILITY**
- **DEFINE ADEQUACY** (Later consideration for some employers)

Earlier, we discussed that employers receive tax incentives to establish a pension plan and may use the pension plan as a tool to attract and retain key employees. What other decisions might an employer consider when establishing a pension plan as described above?

1.8.1 Rewarding Long-Serving Employees

In addition to the foregoing reasons, an employer may also want to reward long-serving employees by establishing a pension plan that will provide them a pension entitlement when they retire. The pension plan may be established years after their employment commenced, and the employer may, for example, seek to give these employees credit for years of employment prior to their membership in the Plan.

1.8.2 Cost and Risk Sharing

Despite the tax incentives, employers will have to consider the cost of funding the Plan on an ongoing basis.

The cost and the level of risk the employer is willing to undertake will determine the type of Plan that will be established on behalf of employees, whether a DB, DC or hybrid plan. These factors will also influence whether the employer will make all contributions to the Plan on behalf of its members (non-contributory) or both the employer and the employee will be required to contribute to the Plan (contributory).

The employer will also consider the cost and risks of providing various benefits. For example, will the pension benefit be paid from the Plan, and if so, will that pension be increased to keep abreast of inflation, or what type of death benefit will be offered?

1.8.3 Applicable Legislation

Pension Legislation

The Pension Legislation outlines, in detail, certain requirements that employers must meet when establishing a pension plan. Some of the following requirements will be discussed in detail under the Trusts and Trusteeship and Pension Legislation modules:

- The fund or scheme must be established under a trust, and
- The fund or scheme must be established in relation to a trade or undertaking carried on wholly or partly in Jamaica.

Income Tax Act

The fund or scheme must satisfy requirements of the Income Tax Act to obtain tax exemption.

1.8.4 Collective Agreement

As a bargaining tool, a union may request that the employer provide a pension plan on behalf of its employees.

1.8.5 Demographics of the Plan

Employers with an aging workforce in a DB plan can generally expect an increase in annual costs, all else being equal. Different strategies may be employed to control costs.

Various categories of employees

The design may vary based on the different categories of workers, for example, whether the compensation structure is hourly, salaried or executive. The design may also consider whether the employees are permanent versus part-time.

Provided all the employees within the same category are treated the same, this would not be considered discriminatory.

1.8.6 Who will be eligible to join the Plan?

Usually, all permanent employees are entitled to join a Plan as a condition of employment provided certain conditions have been met, for example, completion of a probationary period.

If an employer decides to establish a Plan after an employee joins the company, the employee will be given the option to join the Plan.

1.8.7 Adequacy

As employers and employees alike become more knowledgeable about the importance of pension plans and their impact on pensioners, employers may consider additional factors such as benefit adequacy.

An adequate pension represents the extent to which a pensioner will be able to satisfy his basic needs relative to his standard of living while working. An adequate pension level will be affected by a number of factors, such as the contribution level (DC plans), the age at entry to the Plan, the investment return on Plan assets (DC plans), the benefit formula (DB plans), the age at which a person retires, the vesting provision (the period of time a member must satisfy before being entitled to the benefits that can be obtained from the employer's contributions) and locking-in provisions. In a DC plan, the locking-in provision will promote accumulation of pension assets.

As a benchmark, the estimated target replacement income, that is, the income a pensioner will need to cover expenses, is approximately 60-70% of his pre-retirement income. It is expected that persons in the lower income range will need a higher percentage to maintain the same standard of living prior to retirement.

1.9 Types of Payments in ongoing Plans

Funds and schemes are financed by the contributions paid by the employer and the participants and by investment earnings. A Plan must make certain payments while it is ongoing, for example:

- Expenses, such as for administrative and investment management services.
- The purchase of investments, which may require special authorizations if the amount is above a certain threshold. This procedure can vary for each Plan.
- Surplus distribution if allowed by the Plan's Constitutive Documents; and

- Lump-sum payments to members who terminate employment prior to retirement or to pensioners who have elected to take the maximum lump sum payment at retirement [see Section 4.2.1 (a) and (b)]. If pensions are paid from the Plan, a monthly pension to retirees will be paid.

The trustees may make payments from the Plan as discussed above to facilitate its general operations. However, certain payments are prohibited, including:

- Payment to active members and
- Unauthorized payments (may require trustees' approval).

Types of payments under a Plan wind-up will be discussed in detail in Module 14, Special Situations. These payments require FSC approval.

Module 1: Content Review Questions

1. What is the main purpose of a pension plan?

a) To provide tax breaks to the employer
b) To provide tax breaks to the employee
c) To provide members with an income when they retire
d) To provide money for the government

2. Andre is approaching retirement and was told by the trustees that his entire benefit is being calculated based on his years of service in the Plan and his last three years of salary. What type of Plan is Andre a member of?

a) Hybrid defined benefit plan
b) Defined contribution plan
c) Flat benefit plan
d) Defined benefit plan

3. How can an individual effectively prepare for retirement?

a) Depend on the government
b) Contribute towards a pension through formal and informal means
c) Depend on children
d) Contribute to a bank with after-tax dollars

4. Who establishes a private pension plan?

a) Sponsor
b) Government
c) Administrator
d) Board of Trustees

5. Who is ultimately responsible for the management of a pension plan?

a) Employer
b) Government
c) Administrator
d) Board of Trustees

6. What is the purpose of the three-pillar retirement structure?

a) Provide money to the government

b) Place money with financial institutions

c) Encourage individuals to save for an adequate retirement income

d) All of the above

7. In which pension plan is the benefit unknown and the employee bears the investment risk?

a) Career average earnings pension plan

b) Defined contribution plan

c) Defined benefit plan

d) Final salary pension plan

8. How does an employee become eligible to join a pension plan?

a) As a condition of employment

b) Satisfy probationary requirement, if applicable

c) Satisfy a category of membership

d) All of the above

9. When does a member become eligible to receive a benefit from the Plan?

a) Death

b) Termination

c) Retirement

d) All of the above

10. Where are contributions of the pension plan defined?

a) Trust deed and rules

b) Contract agreement

c) Insurance contract

d) Employer policy

Glossary

Accrual rate: the rate used in the formula to derive benefits in a defined benefit plan

DB plan: Defined benefit plan

DC plan: Defined contribution plan

Fund: superannuation fund

Gender reference: reference to male gender: "his" or "he" applies to both genders

Pensionable post: a position where the employee becomes eligible to join a pension plan and thereby qualify for a pension at retirement

Pensionable salaries: the salaries used to determine the benefits of members as defined in the Plan's trust deed and rules

Plan: pension plan (references pension plans in general and in specific instances, both funds and schemes)

Scheme: retirement scheme

Trust deed and rules: the legal document by which the Plan is governed. It outlines among other things the benefit entitlements and eligibility requirements

Trustees: references to trustees refer to the Board of Trustees

Answers

1. C
2. D
3. B
4. A
5. D
6. C
7. B
8. D
9. D
10. A

2 Module 2: Legislative/ Regulatory Environment

2.1 Introduction

At the end of this module, trustees should be able to:

- Describe the circumstances that led to pension reform,
- Describe the impact of pension reform on the current pension landscape,
- Recognize the applicable types of legislation and
- Recognize the regulators of the pension industry and understand their respective roles.

Pension plans operate within the pension industry (environment) but are affected by other markets, such as the securities sector (by virtue of Plan investments). Consequently, these Plans are vulnerable to the risks in those markets (the risks of not meeting the Plan objective of providing a pension to members upon retirement due to adverse fluctuations in Plan investments). Other risk factors include the industry within which the sponsor operates. In the event the employer is unable to continue operations or is unable to fund the pension plan due to, for example, financial difficulties, members are at risk of not receiving the pension they expect at retirement. This module will focus on the historic development of the pension industry and the measures implemented to address any deficiencies.

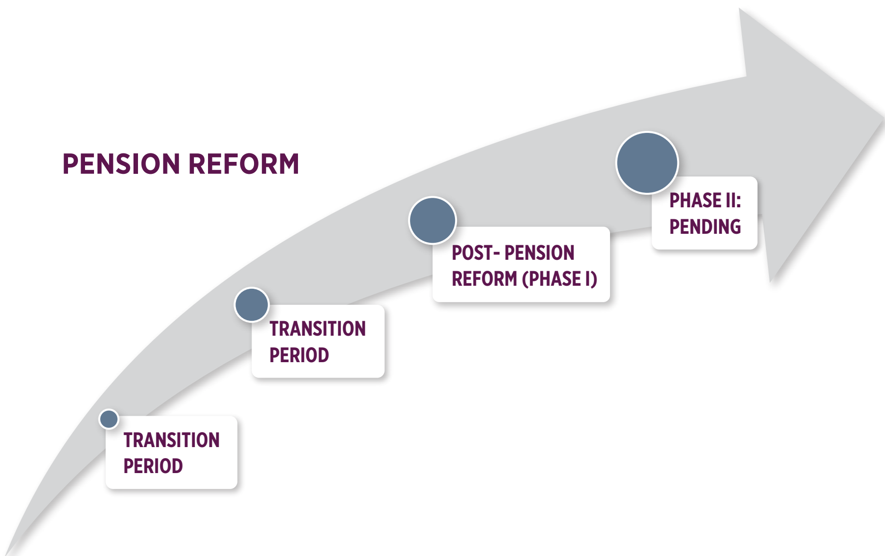
Government intervention is essential to encourage the establishment of pension plans (tax incentives) and to protect members' benefits. This module will also introduce the regulators of the pension industry, namely, the pension regulator, tax authorities and the central bank and their respective roles. To carry out their roles, the regulators are given certain powers through the enactment of applicable laws.

The statutes of the regulators (the pension regulator and the tax authority) will be highlighted; specifically, legislation applicable to the pension industry will be summarized. Details of Pension Legislation will be provided in Module 4, Pension Legislation.

2.2 Pension Reform in Jamaica

Pension reform in Jamaica is being conducted in two phases. The background of pension reform will be discussed by highlighting:

1. The nature of the pension industry before reform (pre-pension reform),
2. The condition of the pension industry after Phase I of pension reform (Phase I: post-pension reform), and
3. The intended impact of the provisions to be implemented in Phase II of pension reform (Phase II: post-pension reform).



2.3 Pre-pension Reform

Prior to pension reform, it was commonplace for members of a pension plan to be unaware of how their pension plan operated, the security of their pension benefits or whom to contact to resolve issues.

Prior to 2006, pension plans were regulated with limited oversight from the authorities that focused primarily on tax matters. Issues such as incorrect benefit payments, late or outstanding contributions and non-disclosure to members were not considered.

The largely unregulated state of the pension industry and the need to implement mechanisms to promote retirement savings necessitated reform.

Some Pre-reform Characteristics of the Pension Industry

The following are some of the undesirable practices observed in the industry prior to reform.

- **Contributions:** Contributions withdrawn from members' salaries were not being paid on time (late) or at all (outstanding). Since benefits in a DC plan depend on the accumulation of contributions and interest, late or outstanding contributions adversely impact members' benefits at retirement.
- **Investments:** A Plan's investment strategy jeopardized the Plan's financial health, resulting in reduced benefits accruing for its members.
- **Pension calculation:** Pension benefit calculations were inaccurate, and in some cases, members did not know whom to contact for assistance with resolving the matter.
- **Vesting:** Members in some Plans were not entitled to the employers' contributions until the completion of ten years or more of membership in the Plan. Currently, the vesting period is not mandatory and varies amongst Plans; generally, the observed vesting period is five years.
- **Vesting (forfeiture):** Members who were vested and received a refund of their own contributions (whether by an election or automatic refund) lost (forfeited) entitlement to a benefit based on the employers' contributions made on their behalf.
- **Pension refunds:** Upon termination of their employment, many Plan members opted for pension refunds. By and large, these refunds were used mainly for consumption purposes.
- **Disclosure:** Members were not being provided with complete and accurate information on their Plan or their benefits.

The delayed vesting practices under most Plans coupled with how pension refunds were being used by members effectively contributed to former members retiring with little or no pensions.

PRE-PENSION REFORM ROLES

Tax authority, the Tax Administration of Jamaica (TAJ): limited supervision, mainly for tax purposes

Pension regulator: none appointed

2.4 Transition Period

The transition period describes the period between pre-pension reform and post-pension reform when provisions were proposed to address the deficiencies in the then pension industry. The following is intended to dispel a major misconception that surrounded the introduction of pension reform during the transitional period.

Major Misconception of the Pension Reform

The government will use the money to fund programmes.

Fact

Private pension plans are managed by trustees under a trust arrangement. The law requires that the assets are held separate and apart from the assets of the sponsor, the trustees and other parties. Trustees may decide to invest in government securities as part of a Plan's overall investment strategy, but this is a choice. Plan assets do not belong to the government, the sponsor or anyone else. The assets of pension plans are owned by the pension plans and are to be used exclusively to provide benefits to their members and as allowed by the Pension Legislation and the trust deed and rules.

2.5 Post-pension Reform (Phase I)

Impact of the Pension Legislation

Changes are usually accompanied by fear and anxiety, and it was no different across the pension landscape at the advent of Phase I reform. However, over time, the impact of the Phase I reform became apparent through such beneficial outcomes as:

- Appointment of an oversight body: the FSC.
- More accountability:
  - Individual trustees, corporate trustees, superannuation funds and retirement schemes are required to be registered, and administrators and investment managers are required to be licensed. These registrants and licensees are entrusted with certain responsibilities and face repercussions if they fail to carry them out.
  - Trustees, administrators and investment managers are required to submit prescribed reports2 to the FSC to facilitate the monitoring of pension plans.
  - Broad investment guidelines are provided to encourage prudent investing of Plan assets.
- Increased transparency:

2 Prescribed reports will be addressed in Module 4.

- Members must be given timely and accurate information on how their pension plans operate and about their benefits.
- Prescribed reports are submitted to the FSC, which utilizes these reports to monitor the pension plan.

- Protection of benefits:
  - Contributions must be paid out within prescribed timelines.
  - Trustees and investment managers are required to exercise skill, care and due diligence in carrying out their functions.
  - Changes to be made to the Plan require the approval of the FSC and members in some instances.
- Promotion of the government's social objective:
  - The reform encourages pension savings which will result in reduced burdens on families when the members of a Plan retire.
- Provision of recourse to the FSC:
  - If a member has a complaint that is not being addressed by the trustees or their agents, he can file a complaint with the FSC. The FSC will investigate the matter and advise the member of the outcome.

POST-PENSION REFORM ROLES:

Tax authority, TAJ: approves a Plan's trust, deed and rules at registration for tax purposes and monitors for tax compliance on an ongoing basis

Pension regulator, FSC: carries out the requirements of the Pensions (Superannuation Funds and Retirement Schemes) Act and the associated regulations

2.6 Phase II of the Pension Reform

Despite the benefits gained from the introduction of Phase I of pension reform, more is yet to be done. Phase II reform measures will focus on provisions that will promote the accumulation of pension benefits to foster an adequate pension at retirement and to address gaps revealed during the enactment of Phase I of the pension reform, such as the need for adequate data to facilitate stress testing of the industry. Some of the provisions intended to support pension adequacy that are included in discussions on improving the legislation include:

Vesting

Currently, Jamaica's Pension Legislation does not stipulate a maximum vesting period; consequently, some Plans exist with a ten-year vesting period. Members who exit their Plans before satisfying the vesting periods will not benefit from the contributions of employers, if any, made on their behalf.

The proposed new vesting rules will seek to provide a maximum mandatory vesting period of five years, which will reduce the foregoing risks to members.

Vesting (Forfeiture)

In some older Plans, a member who has satisfied the vesting period requirement will still forfeit any benefits applicable to the employer's contributions made on his behalf if the member takes a refund of his own contributions (whether by electing a refund or being given an automatic refund). In some cases, the members are not aware of the implications of taking a refund.

In either case, the intention is that once vested, the member's rights should not be forfeited.

Locking-in

Locking-in seeks to preserve a member's benefits until retirement. It is commonplace for terminated members to elect to take a refund of their accumulated pension contributions. For the most part, this refund is used for purposes other than to provide a pension at retirement. This means that money that was earmarked for future pension income has been spent and will not be available when the member retires. Phase II reform will ensure that compulsory pension contributions after a specified period of membership are preserved for retirement.

Exemptions to the locking-in provision have been proposed to provide some flexibility to members.

Other

Other provisions which have been proposed to address certain fundamental issues include:

- **Concurrent membership:** allows a member of a superannuation fund to also become a member of a retirement scheme,
- **Portability:** allows for the transfer of accrued benefits from one pension plan to another on the termination of membership and on the winding-up of a pension plan and
- **Pension Payout Product:** provides an alternative form of structured pension payments in the decumulation phase.

2.7 ▸ Current Regulatory Environment

Jamaica's pension industry is governed by the following pieces of legislation:

I. *The Financial Services Commission Act, 2001 (as amended)*

II. Pension Legislation

- The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (amended in 2005, 2006 and 2013) (Pensions Act)
- The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006 (RLR Regulations)
- The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, 2006 (Governance Regulations)
- The Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations, 2006 (Investment Regulations)
- The Pensions (Superannuation Funds and Retirement Schemes) (Specified Pension Fund and Specified Pension Scheme) Regulations, 2006
- The Pensions (Superannuation Funds and Retirement Schemes) (Validation and Amendment) Act, 2013

III. Income Tax Act

- The Income Tax Act, 1956 (as amended)

o The Income Tax (Superannuation Fund) Rules, 1955

o The Income Tax (Termination of Employment Payments) Order, 1971

IV. Trust Law

- The Trustee Act, 1897
- The Trustees, Attorneys and Executors (Accounts and General) Act, 1904 (as amended)

Please refer to Appendix for additional details on the above statutes.

Statutes: the various acts and regulations passed or issued by the government of Jamaica concerning pension plans and related arrangements.

Act: the primary legislation enacted by the government of Jamaica according to the country's lawmaking procedure. The authority for a minister to pass regulations in respect of the Act is contained in the Act.

Regulations: the secondary pieces of legislation that are derived from an applicable Act and serve to fine tune the operation of the Act.

2.8 Specifics of Phase I of the Pension Reform

Phase I of the Pension Reform

In Phase I of the pension reform, the FSC was given the mandate to monitor and supervise the pension industry and to carry out activities essential to effect this requirement. A number of legislative documents were introduced to cement these provisions.

2.8.1 The Financial Services Commission Act

This statute established the FSC for the purpose of supervising and regulating entities providing financial services that do not involving deposit-taking.

2.8.2 Pension Legislation

A. THE PENSIONS ACT

The Pensions Act was enacted in 2004 and was subsequently amended. The associated regulations outlined at the top of this section became effective in 2006. Together, the Pensions Act and associated regulations are referred to as the Pension Legislation.

Minimum Standards

The Pension Legislation provides minimum standards that employers of private pension plans must meet when establishing a pension plan. This means that an employer may provide its members with better benefits than required under the Pension Legislation but is not allowed to provide less. The legislation also outlines certain powers of pension regulator and guides trustees and their agents on certain requirements and reports to be filed with the FSC.

The Pensions Act gives the FSC the authority to monitor and supervise the pension industry. The Financial Services Commission Act provides the FSC with other overarching powers to regulate the pension industry.

Powers of the FSC under the Pensions Act

In addition to the broad powers given to the FSC to supervise the pension industry, the Pensions Act includes the specific power to:

a) Approve and register superannuation funds (funds) and retirement schemes (schemes)

b) Supervise approved funds and schemes and their agents;

c) License agents: administrators and investment managers;

d) Register individual and corporate trustees;

e) Effect investigations; and

f) Register responsible officers of administrators, investment managers and corporate trustees.

Specific, detailed regulations were prescribed to assist the FSC in carrying out the above mandate.

The Pensions Act also provides for, among other things:

a) Winding-up a fund or scheme,

b) Surplus allocation,

c) Amendment to trust deeds and rules,

d) A range of normal retirement ages, and

e) Enforcement action that can be taken when there is a breach.

Below, we will look briefly at the regulations; these will be discussed in detail in Module 4, Pension Legislation.

B. THE REGULATIONS

The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006 (RLR Regulations)

As the name suggests, the RLR Regulations detail the requirements for the registration of funds, schemes, trustees and responsible officers and the licensing of administrators and investment managers as well as for reports that should be submitted within specific guidelines.

General contents of the RLR Regulations include:

- Qualification for registration or licensing, including applicable checklists,
- Prescribed application forms,
- Reporting requirements, including deadlines for funds, schemes, administrators, investment managers and corporate trustees,
- Prescribed reporting forms and timelines for submissions, and
- Applicable fees to be paid for registration and ongoing monitoring and supervision of licensees and registrants.

The trustees of funds or schemes that have been registered will focus on the reporting requirements of the RLR Regulations.

The Pensions (Superannuation Funds and Retirement Schemes) (Specified Pension Fund and Specified Pension Scheme) Regulations, 2006

This regulation governs pension plans that are not subject to the requirements of the Pension Legislation, as these Plans are established by way of an Act. These Plans are not supervised by the FSC.

The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, 2006

This regulation seeks to guide a Plan's Board of Trustees on how to execute its role in the management of pension plans. Specifically, the Governance Regulations outline, among other things:

- The makeup of a Board of Trustees,
- The general duties of trustees,
- How trustees should deal with any conflicts of interest,
- Accountabilities and disclosure requirements of sponsors, trustees and their agents,
- Policies and procedures that should be in place to promote compliance with legislation, and
- The Board of Trustees' role in ensuring that members are given certain prescribed information.

The requirements outlined in trust law are also codified within the Governance Regulations.

The Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations, 2006

This regulation provides trustees with broad guidelines (quantitative and qualitative) on how to invest the assets of a Plan and the duty that should be employed in investing Plan assets. Trustees and investment managers are required to invest and manage the assets of a fund or scheme prudently.

Each fund or scheme is required to develop a statement of investment policies and principles (SIPP), which sets out the Plan's investment direction, taking into account a number of factors. This regulation outlines the minimum standards for the SIPP.

2.8.3 The Role of the FSC

The pension regulator, the FSC, is mandated to carry out the requirements of the Pension Legislation. The FSC utilizes different methods to monitor and supervise the pension industry.

Risk-Based Approach

The FSC has adopted a risk-based approach to the regulation and supervision of the industry, where Plans or licensees at risk are identified and greater resources are used to mitigate those risks proactively before they materialize.

Supervisory Methods

The FSC uses the reports submitted by Plans and licensees to conduct offsite examinations; any risks to or deficiencies in a Plan are identified and recommendations to mitigate them are made to trustees and their agents. Onsite examinations are conducted to assess pension plans' and licensees' operational environments through sampling, observations, interviews and questionnaires. Any risks to or deficiencies that are identified are analysed and the relevant control mechanism(s) are recommended for compliance with the legislation or best practices, as the case may be.

The TAJ and the FSC coordinate the review of the trust deed and rules for registration.

The FSC awaits the approval of the TAJ and provides a Plan with full approval once the requirements of both regulators have been met.

2.9 ▸ Income Tax Act

The Income Tax Act (ITA) prescribes the requirements for a fund or scheme to obtain tax exemption.

Maximum Tax Benefits

As mentioned in Module 1, governments in certain jurisdictions provide tax incentives to employers to encourage the establishment of pension plans on behalf of their employees. The ITA outlines the maximum tax benefits that a Plan can obtain/provide.

The specific allowances of the ITA include:

- Contributions and interest: Income from investments and contributions to a Plan are exempt from taxes up to a maximum amount.
- Maximum total contributions: The amount of contributions exempted from taxes should not exceed 20% of a member's annual remuneration, that is, the total employee contributions and employer contributions made on the member's behalf.
- Maximum employer contributions: 10% of a member's annual remuneration

- If the employer contributes less than 10%, the member may utilize the difference (that is, the difference between the employer's actual contribution and the maximum contribution payable by the employer) to make additional contributions.

- Employee contributions: 10% and any difference not utilized by the employer.

Benefit to the Employer

Employer contributions are tax deductible: Employer contributions made on behalf of members are reported as allowable deductions for tax purposes. This means that the contributions will be treated as an expense on the company's income statement which, in turn, reduces the taxes to be paid by the company.

Companies pay taxes on profits made each year.

Benefit to the Employee

Tax free before retirement

Pension contributions made by employees are considered tax-deferred income as the contributions are withdrawn from income before taxes are applied. This allows the member to accumulate contributions tax free until retirement.

Taxed at Retirement

At retirement, a member may take a lump sum up to the maximum tax-free amount, and the remaining monthly pension is taxed.

2.9.1 Application of Tax Exemption on Terminated Plan Members

The ITA provides for the following treatment of members of pension plans who have terminated employment with their employers (sponsors of the Plans):

- Termination of employment: no taxes are taken from pension refunds.
- Retirement.
  - Lump sum: A member may elect to take a tax-free lump sum amount of 25% of his accrued benefits up to a maximum of 12 ½ * ¼ of the annual pension before commutation.
  - Pension or other benefits: The regular income tax rate will apply. Pensioners, however, receive a higher tax threshold, that is, the amount that is tax free before taxes are applied.
- Death benefits: no taxes are applied

Conditions for Applying the Tax Advantages

- The Plan must be approved by the TAJ.

- The Plan must continue to satisfy the requirements of the TAJ; triennial (every three years) actuarial valuation reports are required.

2.9.2 nstances where a Plan's Tax Exemption May Be Revoked

- **Instance 1:** The membership in the fund or scheme falls below ten.
  - **Possible Action:** A fund or scheme must apply to the TAJ to retain its continued tax exempt status.
- **Instance 2:** The projections for a fund or scheme indicate that its present and future obligations will be reasonably met. The TAJ, in consultation with the FSC, may levy a tax on the income of the fund or scheme and/or restrict the exemption since the objectives of the fund or scheme appear likely to be met.
  - **Possible Action:** continue to prudently manage the fund or scheme to achieve its objectives.

2.9.3 The Role of the TAJ

The tax authority, the TAJ, is interested in ensuring that Plans meet specific requirements to satisfy the tax exemption. Some activities of the TAJ include:

- Reviewing annual reports to ensure that the appropriate tax exemptions/deductions have been taken and
- Reviewing a Plan's trust deed and rules and other information for registration to ensure certain requirements are met. For example, the number of members should be at least ten for the Plan to qualify for the tax incentives.

The TAJ and the FSC coordinate the review of the trust deed and rules for registration.

The TAJ's approval of a Plan qualifies the Plan for tax exemption.

2.9.4 Role of the Regulators (SUMMARY)

Under the current regulatory environment, the roles of the regulators include but are not limited to:

Tax authority, the TAJ:

- Registering Plans in keeping with tax provisions (review is done concurrently with the FSC).
- Monitoring Plans for ongoing compliance with the tax requirements.
- Discussing tax-related matters that may impact Plans.

Pension Regulator, the FSC:

- Proactively monitoring and supervising the private pension industry to mitigate risks to the industry and the financial system as a whole.
- Registering Plans, trustees and responsible officers and licensing investment managers and administrators.
- Discussing matters related to the pension industry in general and implementing measures, where applicable.

The general responsibilities of the FSC are outlined under the Pensions Act in this module.

Relationship between the FSC and TAJ

- Both regulators fall under the Ministry of Finance and Planning.
- Both regulators coordinate the registration of Plans.
- Both regulators discuss matters related to taxation that will affect the industry.

The central bank, the Bank of Jamaica

The central bank, the Bank of Jamaica (BOJ), manages the economy through, amongst other things, policies such as monetary and fiscal policies. The pension industry, through Plan investments, may impact the financial stability of the country. Plans are required to be guided by the directives of the BOJ, particularly as the directives relate to investments in foreign currency assets.

Module 2: Content Review Questions

1. What was the main reason for pension reform?

a) All countries are reforming the pension industry.
b) There were deficiencies in the existing system.
c) The tax authority had limited resources.
d) All of the above.

2. What has been the impact of pension reform?

a) The industry players are more accountable and transparent.
b) The industry players are less accountable and transparent.
c) Members are less protected.
d) The industry has not improved.

3. What are some provisions that Phase II of the reform will address?

a) Vesting.
b) Locking-in.
c) Portability.
d) All of the above.

4. What does vesting mean?

a) The ability to transfer benefits to another pension plan.
b) Not having access to pension benefits until retirement.
c) Entitlement to any employer's contributions paid on the employee's behalf.
d) Entitlement to the surplus.

5. What are the benefits of the Income Tax Act to pension plan members and employers?

a) Income on investments is tax exempt.
b) Employers' contributions are tax deductible.
c) Contributions accumulate tax free.
d) All of the above.

6. **What is the maximum tax exemption allowed for each member (including employer contributions)?**
   a) 10% of monthly pensionable salaries.
   b) 15% of weekly pensionable salaries.
   c) 20% of monthly pensionable salaries.
   d) 20% of weekly salaries.

7. **Which regulations outline information that trustees should provide to members?**
   a) Investment Regulations.
   b) Registration, Licensing and Reporting Regulations.
   c) Governance Regulations.
   d) Specified pension funds and specified pension schemes.

8. **Which document should be submitted to TAJ to satisfy the ongoing tax exemption?**
   a) Trust deed and rules.
   b) Trust agreement.
   c) Triennial actuarial valuation.
   d) All of the above.

9. **How does the FSC supervise the industry?**
   a) Receives reports and files them.
   b) Reacts when there are problems.
   c) Conducts onsite and offsite examinations, identifies risks and makes recommendations.
   d) Checks that reports are submitted and files the reports.

10. **The Pensions Act**
   a) Gives the FSC the power to register trustees, funds and schemes and license investment managers and administrators.
   b) Gives the FSC the power to open investigations.
   c) Outlines procedures for amending the trust deed and rules.
   d) All of the above.

Glossary

Commutation: to give up part or the entire pension payable at retirement in exchange for a one-time lump-sum payment

Fund: superannuation funds

Gender reference: reference to male gender; "he" or "his" applies to both genders.

Locking-in: preserves a member's benefits until retirement

Pension plan/Plan: references plans in general and in specific instances (both funds and schemes)

Plan/pension plan: references pension plans in general and in specific instances (both funds and schemes)

Scheme: retirement schemes

Trust deed and rules: the legal document by which a Plan is governed. It outlines among other things the benefit entitlements and eligibility requirements.

Trustees: the Board of Trustees, unless the context states otherwise

Vesting Fund: the number of years of membership in a Plan or the number of years of service with the employer a member has to satisfy before becoming entitled to the benefits resulting from the employer's contributions on their behalf.

Scheme: Members of a scheme are immediately vested in any employer's contributions made on their behalf.

Answers

1. B
2. A
3. D
4. C
5. D
6. C
7. C
8. C
9. C
10. D

Appendix

Regulatory Framework

The Jamaican private pension industry is regulated pursuant to the following legislation:

- The Trustee Act, 1897 (as amended), which provides for the duties and powers of trustees and for authorized investments.
- The Trustees, Attorneys and Executors (Accounts and General) Act, 1904 (as amended), which deals with commissions chargeable by executors, administrators and trustees in specified cases.
- The Financial Services Commission Act, 2001 (amended in 2004, 2005, 2014 and 2016), which established the FSC for the purpose of supervising and regulating prescribed financial institutions.
- The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (Pensions Act) (amended in 2005, 2006 and 2013), which gives the FSC responsibility for the regulation and supervision of funds and schemes, excepting specified pension funds and specified pension schemes.
- By virtue of the Financial Services Commission (Pensions) Order of March 1, 2005, any services necessary for, incidental to or in connection with the trusteeship, administration, investment management, sale, purchase or transfer of a pension and any services specified in a trust agreement, insurance or other contract, concluded or effected to provide, invest, administer, purchase, sell or transfer the pension benefits of members of approved funds or schemes have been declared financial services.
- The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, 2006 (Governance Regulations), which provide standards for the general governance of the operations of funds and schemes and outline the general duties, accountabilities and disclosure requirements of sponsors, trustees and their agents.
- The Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations, 2006 (Investment Regulations), which set standards for the investment of the assets of funds and schemes, including a combination of qualitative and quantitative restrictions on the types of assets that a fund or scheme can hold in its portfolio. The duties of investment managers as agents of trustees are also included within these regulations. It is a requirement that the trustees and investment managers prudently invest and manage the assets of a fund or scheme. The Investment Regulations also set minimum standards for the written SIPP for funds and schemes.
- The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006 (RLR Regulations), which set rules for the registration of funds, schemes, trustees, corporate trustees and responsible officers and for the licensing of investment managers and administrators. The RLR Regulations also include the reporting requirements for the aforementioned individuals and corporate bodies.
- The Pensions (Superannuation Funds and Retirement Schemes) (Specified Pension Fund and Specified Pension Scheme) Regulations, 2006, which delineate the pension funds and schemes that are not within the ambit of the FSC.

- The Pensions (Superannuation Funds and Retirement Schemes) (Validation and Amendment) Act, 2013, which amends the Pensions Act to make clear, inter alia, provisions for the payment of licence fees and to validate the collection thereof by the FSC and its officers.
- The Income Tax Act (ITA), 1956, which makes prescriptions for the tax treatment of funds and schemes as well as for their members.
- The Income Tax (Superannuation Fund) Rules, 1955, which stipulate the requirements for a fund or scheme to obtain tax exemption.
- The Income Tax (Termination of Employment Payments) Order, 1971, which provides that terminated members' refunds are tax free.

3 Module 3: Trusts and Trusteeship

At the end of this module, trustees should be able to:

- Understand the basic principles of trust law,
- Identify the fiduciary and general duties of a trustee,
- Recognize the applicable types of trustees and the composition of a Board of Trustees and
- Identify the power, discretion and potential liabilities of a trustee.

3.1 Introduction – Trust Law

The government of Jamaica has established a framework to enable individuals in the workforce to receive pensions that can provide income security in their retirement years. Jamaica's approved funds and schemes have been set up for this purpose and utilize common law trust principles as part of their framework. The main benefit derived from using a trust model for administering funds and schemes is that a trust model provides members with the confidence that there is independent oversight and governance in the administration and management of the fund and/or scheme. It is a legislative requirement that a fund or scheme must be set up as an irrevocable trust.

3.1.1 Basic Principles of Trust Law

a) Trustees

A trust is a legal concept where assets are held by one or more persons (the trustees) for the benefit of others (the beneficiaries) for a specified purpose. The term "trusteeship" refers to the position or function of a trustee.

Plan trustees are individuals or companies (as represented by a responsible officer of the corporate trustee), collectively referred to as the Board of Trustees, who act separately from the sponsor and who hold the assets of a pension plan for the beneficiaries of the Plan. Trustees are responsible for ensuring that a pension plan is well run and that members' benefits are secured. Trustees have certain obligations under trust law and specific laws and regulations related to pensions that will be described later in this module.

b) Trust Deed and Rules, Master Trust Deed and Plan Rules – Constitutive Documents

The appointment and removal of trustees are governed by the provisions within a trust deed or master trust deed and Plan rules, which are the Constitutive Documents of the fund and scheme, respectively. The Constitutive Documents also set out the trustees' powers and responsibilities for the general management of a fund and/or scheme. The Constitutive Documents are a requirement for the registration of a fund or scheme with the FSC pursuant to the Pensions Act (Superannuation Funds and Retirement Schemes).

Constitutive Documents of a fund or scheme

- **Fund:** trust deed and rules
- **Scheme:** master trust deed and rules

c) Pension Legislation and Trust Law

The Jamaican private pension industry is regulated pursuant to prescribed legislation. The Pensions Act and its related regulations (see Module 4, Pension Legislation) provide a framework for the administration of funds and schemes. In particular, the Governance Regulations and the Constitutive Documents of a fund or scheme stipulate the duties and powers of the trustees and other service providers. Pension Legislation is based on the established principles of trust law.

d) Beneficiaries

A beneficiary is anyone who is entitled to or who might receive a benefit from a fund or scheme, now or in the future. Under the ITA and Governance Regulations, a beneficiary of a fund or scheme refers to:

- the person designated by a participant in a fund or scheme to benefit from his or her entitlement in the fund or scheme,
- the person who has a beneficial interest in a fund or scheme under the last will and testament of a participant in a fund or scheme or
- a person who has a beneficial interest in a fund or scheme under any enactment.

Beneficiaries include but are not limited to:

- **Active members:** members who are currently employed and not yet retired.
- **Deferred pensioners:** members who are no longer active members of a fund or scheme but are entitled to a pension at retirement.
- **Pensioners:** members who are retired and are receiving a pension.
- **Designated recipients:** Any person may be designated by a participant in a fund or scheme to benefit from the participant's entitlement in that fund or scheme. This can include but is not limited to the following person(s):

  - **Eligible spouses:** Under the ITA, "spouse" includes individuals who have cohabitated with their partner for a period not less than five years immediately preceding the death of the member.
  - **Child/children:** Under the ITA, "child" also includes a stepchild, adopted child or illegitimate child.
  - **Dependents of members:** other relatives who are financially dependent upon the member.
- **Estates of members:** Upon the death of members and where there are no recipients designated as beneficiaries, the pension benefit will be paid to the estates of members through their legal personal representatives.
- **Former spouses:** Under the Pension Civil Service Family Benefits Act, when the marriage of any contributor to a fund or scheme has been annulled or dissolved by the decree of a court, the contributor must notify the minister within six months from the date of the decree. Upon such decree, the former spouse of the contributor ceases to be a person who is eligible for award or payment of pension under this Act. Despite this provision, if a member fails to remove the former spouse as a designated beneficiary and no formal court decree has been obtained with respect to the dissolution of the marriage, there may be circumstances where the surviving former spouse may be eligible to receive payment of the contributor's pension.

e) The Law of Fiduciary Duty:

A key principle of trust law is that the trustee owes a fiduciary duty to the beneficiaries of the trust, which creates a "fiduciary relationship". The law of fiduciary duty finds its origins in common law and forms a foundation for trust law.

A fiduciary relationship can exist in a wide variety of contexts. In the pension context, the person who has a fiduciary duty is called the "fiduciary", and the person to whom the fiduciary owes a duty is typically referred to as the "beneficiary".

A more detailed list of the special fiduciary duties and responsibilities of a trustee can be found in Section 3.6 and in Module 5, Duties and Responsibilities of Trustees under the Pensions Act and Regulations.

The following statutory and common law principles govern the fiduciary relationship and related duties.

3.1.2 Common Law Principles

Fiduciary relationships entail trust and confidence and require that fiduciaries act honestly, in good faith and strictly in the best interests of the beneficiaries of such relationships. The common law sets out three elements required to establish the existence of a fiduciary duty:

1. The fiduciary has the scope for the exercise of some discretion or power.
2. The fiduciary can unilaterally exercise that power or discretion to affect the beneficiary's legal or practical interests.
3. The beneficiary is particularly vulnerable to or at the mercy of the party holding the discretion or power.

In exercising all of their fiduciary duties, trustees are held to a common law standard of care, which requires that they take all reasonable precautions and exercise a degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Additionally, there is no distinction between the standard of care required by professional (corporate trustees) and non-professional (individual) trustees.

3.1.3 Statutory Duties

As a fiduciary is in a position of power to make decisions that directly affect the beneficiaries, certain statutory duties are imposed on a trustee:

- **Duty of confidentiality:** Trustees having possession of or control over any documents, information or records concerning a fund or scheme are prohibited from communicating or attempting to communicate such information to any person, other than to prescribed individuals/entities named under Sections 40 and 41 of the Act.
- **Duty of prudence:** Under Section 7 of the Governance Regulations, trustees have a duty to make decisions on a fully informed basis, in good faith and not precluded from relying on good faith in advice given in a professional capacity by an appointed agent or advisor. Trustees must also be financially prudent in the management of a fund or scheme.
- **Duty of disclosure:** Trustees have a duty to disclose clear, accurate, complete and timely information to participants, beneficiaries and their representatives, pursuant to Section 12 of the Governance Regulations. Trustees are also statutorily required under Section 35 of the Pensions Act to disclose proposed amendments and seek approval of members with respect to any intended amendments to the Constitutive Documents.
- **Duty to avoid conflicts of interest:** Under Section 8 the Governance Regulations, trustees are prohibited from using information obtained in their capacity as trustees 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 a benefit under a fund or scheme or a breach of their fiduciary duty to the trustees.

The foregoing duties are explained in more detail in Section 3.6 of this module.

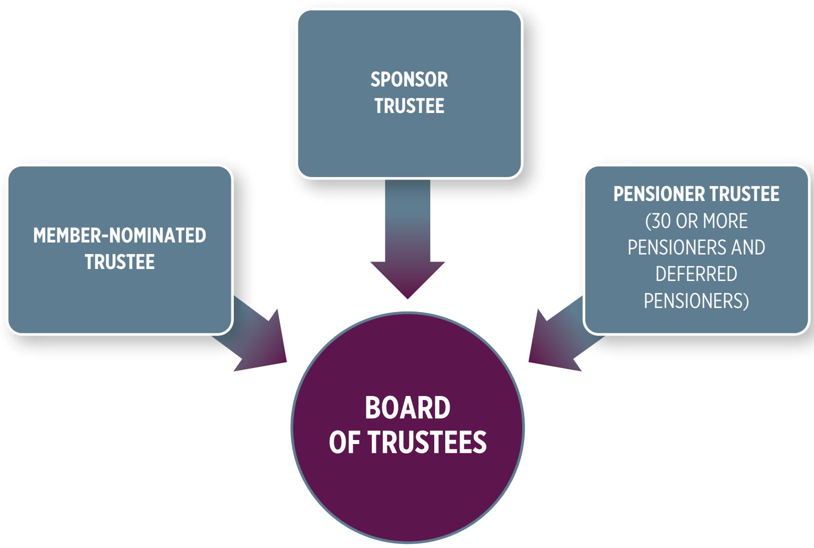
f) Trustee Liability

A trustee can be held personally liable for a breach of his fiduciary duty. As such, in a pension context, trustees must exercise care and sound thinking in investment practices, administration and management of a fund or scheme, as if the beneficiaries are persons whom he is personally and morally charged to protect.

g) The Financial Services Commission

The Pension Legislation is administered and enforced by the FSC, which also has the power to impose penalties for breaches. All funds and schemes under the remit of the FSC must be established under an irrevocable trust and be approved by and registered with the FSC.

3.2 Types of Trustees



3.2.1 Board of Trustees

All funds and schemes are required to have a Board of Trustees (hereinafter, Board). Different types of trustees together compose the Board. There are specific regulations which govern the composition and appointment of the members of the Board. The Governance Regulations and the Constitutive Documents of a fund or scheme stipulate the duties and powers of the trustees on the Board. The Board is responsible for the governance of a fund or scheme, and all of the trustees are responsible for the Board's decisions. It is the Board's legal duty to make sure that the correct processes, systems, people and procedures are in place and are being followed by the administrators and investment managers of a fund or scheme. The Board is also responsible for the management of a fund's or scheme's investments and for risk immunization.

Pursuant to Section 3 of the Governance Regulations, a Board must be composed as follows:

- The Board must consist of at least one member-nominated trustee;
- If there are thirty or more pensioners and deferred pensioners, then the Board must consist of at least one pensioner trustee; and

- Sponsor trustees shall constitute no more than 50% (of the total) plus one of the appointed trustees of the Board, and the limit shall be determined by rounding down.

EXAMPLE

If the Board of Trustees is made up of seven trustees, the sponsor trustees should not be more than four.

Trustee arrangements can vary between differing funds and schemes but generally come under the category of either an individual trusteeship, a corporate trusteeship or a combination of individual and corporate trustees working together. Such an individual or company must be registered with the FSC.

3.2.2 Individual Trustees

There are several different categories of trustees, but the most common is an individual trustee. Individual trustees can be either sponsor trustees or member-nominated trustees. In either case, they usually work (or have worked) for the sponsoring or participating employer of the fund or scheme and can be members of the fund or scheme. Occasionally, individual trustees may not have any connection to the employer (or to the employer's group). A pensioner trustee must be appointed to the Board in cases where the fund or scheme is comprised of thirty or more pensioners and deferred pensioners.

3.2.2 Corporate Trustees

Corporate trustee are companies that provide professional trustee services. Some funds and schemes engage these trustees because of their expertise and independence. Corporate trustees may be elected and nominated by the sponsor or members. A representative of the corporate trustee may serve on a Board with individual trustees.

3.3 Selection, Appointment and Removal of Trustees

The procedures for appointing trustees during the lifetime of a fund or scheme are usually set out in the trust deed and rules, which normally provide for the employer to appoint trustees. There are also three way to nominate a trustee, which are nomination by member, nomination by pensioners and deferred pensioners, and nomination by the Plan sponsor.

3.3.1 Selection of Trustees

Member-Nominated Trustee

A member-nominated trustee has been nominated and elected by the active members of a fund or scheme. Section 5 of the Governance Regulations provides a guideline for the method by which members of a Plan can organize a meeting to conduct a vote to make decisions regarding the fund or scheme. This section may be used to facilitate the nomination and election of a trustee. The nomination or election of such a trustee should not be subject to the approval of the sponsor or its agents.

Pensioner Trustee

A trustee who has been nominated by pensioners and deferred pensioners of a fund or scheme and is elected by the deferred pensioners and pensioners is called a pensioner trustee. If there are thirty or more pensioners and deferred pensioners, then the Board must consist of at least one pensioner trustee.

Sponsor Trustee

A sponsor trustee is a trustee who has been nominated and elected by the employer or person who establishes a fund or scheme.

3.3.2 Appointment of Trustees

The appointment is typically governed by the provisions within a fund or scheme's Constitutive Documents or the general provisions set out in trust law. The courts, pursuant to a petition from the FSC to wind up a fund or scheme, may also appoint a provisional trustee. Pension Legislation also establishes statutory requirements in relation to the appointment of trustees by specifying the types of trustees a fund or scheme is required to have.

3.3.3 Removal of Trustees

Pension Legislation also establishes statutory requirements in relation to the removal of trustees by specifying the means by which certain trustees can be removed. Provisions for the resignation, removal and replacement of trustees normally are also included in the trust deed and rules.

Grounds for Removal

A trustee ceases to be a trustee upon the occurrence of any of the following:

- Personal decision to retire,
- Expiration of tenure,
- Resignation,

- Death,
- Removal of member-nominated trustees and pensioner trustees, where applicable, by a majority vote, and
- Removal by the FSC.

There may be additional reasons for removal that are provided for in the Constitutive Documents of a fund or scheme.

Suspension of the Registration of a Trustee

The FSC has the power to suspend the registration of a trustee if it is satisfied that the trustee is in breach of any of the provisions set out in Pension Legislation, or it may cancel the trustee's registration where any of the following is established:

- Registration was a result of misleading or false representation,
- The trustee no longer satisfies the fit and proper criteria,
- Sound pension principles are not employed in the carrying out of the business of a fund or scheme,
- There is unreasonable delay in the payment of a pension or pension benefit,
- Information requested by the FSC has not been provided within the time prescribed,
- There is guilt of fraudulent or dishonest practices,
- The Pensions Act, regulations or directions of the FSC have not been followed or the trustee is an accessory to such contravention by others,
- There is a failure to rectify a breach,
- There is a failure to carry on business in Jamaica in the capacity for which the trustee is registered within one year of the registration or for a period of more than one year,
- The trustee's requests it, and
- The trustee resigns.

Notice of Suspension of Registration

When the FSC intends to suspend or cancel the registration of a trustee, it will provide the following:

- Notice of its intention to suspend or cancel the registration,
- The reason for the proposed action,
- Notice that the trustee will be required to take action specified in the notice to rectify the breach within a given time period,
- Notice of the trustee's right to appeal and
- Notice of the period within which such a trustee may produce written or oral representation.

3.4 Qualifications, Fitness and Propriety

3.4.1 Fit and Proper Criteria

Despite there being no formal qualifications required to become a trustee, a trustee must satisfy the fit and proper criteria in order to be registered with the FSC. Pursuant to the fit and proper criteria, certain persons are prohibited from acting as trustees. The fit and proper criteria require that:

- A trustee must not be convicted of an offence involving dishonesty;
- A trustee must not be an undischarged bankrupt;

An **undischarged bankrupt** is a person who is legally bankrupt, is liable to pay back the debt and has restrictions regarding engaging in certain activities, including holding the office of a trustee.

A **discharged bankrupt** is someone who is released from bankruptcy and no longer has the legal disabilities of a bankrupt. As such, only a discharged bankrupt can, among other things, hold the office of a trustee.

- A trustee's employment history must not give cause to believe that acts involving impropriety in the handling of money have been carried out;
- A trustee is not mentally disabled;
- A trustee has integrity and can exercise competence, diligence and sound judgement in fulfilling his responsibilities. In making this determination, the FSC will assess that the trustee has not:
  - engaged in deceitful, oppressive or improper business practices and/or
  - breached the law designed for the protection of the public against financial loss.

Exercising competence, diligence and sound judgement relates to the common law standard of a "prudent person". While it is difficult to precisely define the concept of prudent person, it is a behaviourally oriented standard which generally demands that the fiduciary acts fairly and honestly without conflicts of interest and with consideration for the best interests of Plan members and beneficiaries and of the fund or scheme.

The legal concept of a prudent person is an objective standard of conduct that is intended to lead to balanced decision-making. As fiduciaries, trustees are expected to discharge their duties with the level of care, skill, prudence and diligence that an individual acting in a similar capacity would employ. Rather than focusing only on the outcomes, this standard of conduct focuses on behaviours and processes. Rather than focusing on a retrospective assessment of the outcome, this standard focuses on whether a reasonable process was followed in reaching a decision(s). More specifically, satisfying this behaviourally oriented standard may include but is not limited to demonstrating the following attributes:

- **Competence:** This is the action or ability to do something successfully or efficiently. Trustees may display competence by successfully fulfilling their responsibilities and duties to Plan members and beneficiaries and to the fund or scheme as required under the constitutive documents, legislation, regulatory requirements and jurisprudence.
- **Care, skill and delegation:** The duty to act prudently imposes a standard of behaviour on trustees under which they must exercise such care and skill as persons of ordinary prudence would exercise in dealing with their own property. This requires that the trustees have the necessary level of understanding of the fund or scheme to appropriately carry out their responsibilities. In order to possess the requisite level of skill, trustees may obtain advice from experts and delegate various tasks to those with the requisite skills. However, trustees are obligated to ensure that the experts retained actually have the requisite skills and qualifications. Trustees must also ensure that the experts have sufficient information and understanding of the nature and needs of the fund or scheme by providing them with complete and accurate information. Lastly, the trustees should ensure that the experts' interests are aligned with those of the fund or scheme by assessing whether the hired third parties have any conflicts of interest with the fund or scheme.
- **Diligence:** This is careful and persistent work or effort. Trustees must have the ability to maintain their responsibilities and duties to Plan members and beneficiaries and to the fund or scheme with consistent effort and quality of work. Even when delegating their responsibilities, trustees continue to be responsible for reviewing and monitoring the delegated activities to ensure that they have been carried out prudently.
- **Sound judgement:** This is the capacity to assess situations or circumstances reasonably, ask reasonably probative questions and draw sensible and rational conclusions. Trustees must assess all facts and circumstances and should approach decision-making with objectivity. Sound judgement in decision-making should not be based on individual personal impressions, personal opinions and/or personal feelings but should be based on facts, good sense and reasoning.

Please also refer to Module 5, Duties and Responsibilities of Trustees under the Pensions Act and Regulations, which provides practical application of some of these concepts.

The responsible officer of a corporate trustee must also have knowledge and experience in the business of funds and schemes.

FIT AND PROPER CRITERIA

TRUSTEES MUST

- Have integrity and
- Exercise competence, diligence and sound judgement in fulfilling responsibilities.

TRUSTEES MUST NOT

- Be convicted of an offence involving dishonesty,
- Be an undischarged bankrupt,
- Have an improper employment history in the handling of money or
- Be mentally disabled.

3.4.2 Prospective Trustees

A prospective trustee should make known anything that could prevent him or her from being considered a fit and proper trustee. In order to understand the responsibilities being undertaken, a prospective trustee should be provided with the following:

- Information on the procedures governing trustee appointments and the frequency of meetings,
- Identification of the current trustees of the fund or scheme,
- The Constitutive Documents of the fund or scheme and
- Relevant policies and procedural documents.

3.5 Rights of Trustees

With the exception of corporate trustees, all trustees are volunteers, irrespective of who appointed them. In this context, these trustees typically have no prior experience in trusts or pensions. As such, it is encouraged that the Constitutive Documents of pension plans have broad trustee protection provisions to offer trustees certain protections from innocent errors. There are five main sources of protections, namely, pre-emptive court approval, indemnity from the sponsor and/or Plan, liability insurance, exemption clauses and trust law.

Court Approval

A mere error of judgement is not in itself a breach of trust, and trustees are presumed to have acted honestly and properly until the contrary is shown. Under common law trust principles, courts can exercise the discretion to relieve trustees from liability when they have acted honestly and reasonably and ought to be excused fairly.

Indemnity

A fund or scheme's trust deed and rules often contain an indemnity under which a third party (i.e., the sponsor or employer) will ensure that a trustee is not out-of-pocket if he is found liable for a breach of trust.

Liability Insurance

In some cases, trustee liability insurance may be secured in relation to the acts and omissions of trustees. When the indemnifier or insurer is unwilling or unable to pay out and based on the circumstances of an alleged breach, trustees may take legal action to recover the funds payable to rectify the breach and any monetary penalties that may have been imposed.

Exemption Clauses

Trust deeds and rules often include clauses that limit the liability of trustees for acts and omissions in carrying out their duties. These are known as exoneration or exemption clauses. These provisions protect the trustees against claims by members of the fund or scheme. Even if the trust deed includes such a clause, the chances of successfully relying on such a clause in court are low when it is established that a trustee has acted dishonestly, in bad faith or recklessly.

Trust Law

If a breach of trust does, in fact, result in a loss to a fund or scheme, then the trustees may rely on the protections afforded by any relevant statutory trust provisions.

3.6 ▸ Duties and Responsibilities of a Trustee – General Principles

The trustee's role carries significant responsibilities. Trustees are responsible for the administration of a fund or scheme and for compliance with the requirements that apply to the fund or scheme. Trustees have the primary responsibility for managing the affairs of a fund or scheme and for safeguarding the assets and interests of Plan members. A trustee of a fund or scheme has a position of trust, and as such, a high standard of dedication and care is demanded from trustees, many of whom are not professional pension experts.

3.6.1 General Duties and Responsibilities of a Trustee Include but Are Not Limited to:

- Monitoring of the financial, administrative and actuarial position of a fund or scheme,
- Monitoring, reviewing and supervising agents and advisors,
- Ensuring that accurate accounts and records are kept, maintained and safeguarded,
- Providing information to members, agents and the FSC,
- Ensuring regulatory compliance,
- Treating members and beneficiaries equally with respect to their rights and benefits under a fund or scheme, and
- Seeking professional advice, as and when required.

A more detailed list of the general duties of trustees can be found in Section 7 of the Governance Regulations and in Module 5 of this Handbook.

3.6.2 Special Fiduciary Duties and Responsibilities of a Trustee Include but Are Not Limited to:

a) Duty of confidentiality

In the course of fulfilling their duties, trustees will become party to confidential information which relates to the employer, to sensitive business information or to information related to individual members of the fund or scheme who may also be the trustee's colleague or associates. Such information should not be disclosed outside the Board except as is appropriate (see Section 4.4, Disclosure Requirements). This restriction on the disclosure of confidential information extends to internal delegates and external third-party agents and advisors who are similarly bound by confidentiality obligations. Pursuant to Sections 40 and 41 of the Act, trustees hold a statutory obligation of secrecy. A trustee having possession of or control over any documents, information or records concerning a fund or scheme is prohibited from communicating or attempting to communicate such information or anything contained in such documents or records to any person, except:

- to the trustees,
- when the circumstances of the case so require, to a member to whom the information relates,
- to the FSC or another person authorized by the FSC to communicate it pursuant to any law,
- for the purposes of the Pensions Act,
- to a competent authority (i.e., the minister or the financial secretary),
- when the disclosure is required for the institution of or the purposes of criminal proceedings under or arising from the Companies Act or the Pension Legislation,

- for the purposes of Section 24 of the Pensions Act (power of the commissioner or an investigator to obtain information), and
- when ordered by the court for the purpose of any civil proceeding.

b) Duty to avoid conflicts of interest

A conflict of interest occurs when the trustee's duties conflict with his or her other responsibilities or interests, which may include:

- A duty to the trustee's employer (for example, an employee may have financial or managerial responsibilities to the employer),
- A responsibility to particular beneficiaries of the fund or scheme (i.e., family and friends) and
- A duty to disclose information to other parties. In particular, trustees should not disclose confidential information to other parties (except those parties listed in Sections 40 and 41 of the Pensions Act), irrespective of the other responsibilities the trustee may have towards them.

There are also possible conflicts of interest for trustees in their relationships with a fund's or scheme's advisors and agents such as the administrator and investment manager. This can relate to circumstances such as:

- If the trustee has previously worked for an organization that now provides services to the fund or scheme,
- If the trustee has accepted hospitality from an organization that provides services to the fund or scheme or
- If the trustee has personal financial interest in an organization that provides services to the fund or scheme.

Trustees have a fiduciary duty to act in the best interests of the beneficiaries. If a trustee has a conflict of interest, it is possible that the trustee's other responsibilities could influence the decisions he or she makes. As a result, the conflicted trustee may breach his or her legal obligation to act in the best interests of the fund's or scheme's beneficiaries or to carry out decisions impartially.

The Governance Regulations also stipulate that trustees are prohibited from using information obtained in their capacity as trustees to further their own or another person's private interests if this would result in a breach of their fiduciary duty to the persons entitled to a benefit under a fund or scheme or in a breach of their fiduciary duty to the trustees.

Failing to manage conflicts of interest properly can result in serious consequences, particularly when members challenge decisions made by the trustees.

c) Duty to act prudently

The common law requires trustees to take care of the trust property as someone of ordinary prudence would, not as if they had themselves alone to consider, but as if they were required to make an investment for the benefit of other people for whom they felt a moral obligation to provide.

In addition, fund or scheme assets must be invested in a manner that a reasonable and prudent person would apply in respect to investments made on behalf of another person to whom there is owed a fiduciary duty to make investments without undue risk of loss and with a reasonable expectation for a return on the investments proportionate to the risk.

d) Duty to act in the best interests of beneficiaries

A trustee must always act in the best interests of a fund's or scheme's beneficiaries. This duty requires trustees to act honestly and in good faith in the best interests of the persons entitled to a benefit under the fund or scheme.

3.7 Liabilities and Protection of Trustees

3.7.1 Breach of Trust

If the trustees act in a way that is not authorized by the terms of the trust deed, rules, Pension Legislation or trust law or if they fail to do something which should have been done under the same provisions, this constitutes a breach of trust. A trustee could be held personally liable to a fund or scheme as a result of a breach of trust. This means that as a result of the fund or scheme losing money, the trustee may have to meet the cost should the value of the fund or scheme decline, and the trustee may be obligated to compensate the fund or scheme out of their personal assets, unless suitable protections are in place. A trustee shares liability jointly and severally with the other trustees. The trustees are individually and collectively liable for any breach of trust. The breach of one trustee, by implication, means the other trustees could also be held responsible for the breach. Even after a trustee's tenure has ended, his liability for the decisions made during that tenure continues.

3.7.2 Measures to De-risk Potential Liabilities

Upon appointment, a trustee should ensure that he is provided with or is made aware of the below-listed documents and arrangements in order to ensure that he or she has the relevant information and can avoid potential liabilities associated with the failure to carry out his or her duties. These documents and arrangements include:

- A copy of the Pension Legislation,
- A copy of the trust deed or master trust deed and the Plan rules,
- An approval letter from the TAJ,
- The most recent actuarial valuation report,
- The business plan (retirement scheme only),
- The SIPP,
- Banking arrangements and signing authorities,

- Details of delegated authority and the terms of appointed agents and advisors,
- Complaints resolution,
- Confirmation that his appointment has been given effect and that the rules have been followed,
- Terms of reference of the trustees,
- A copy of the minutes of the last trustee meeting and
- The most recent annual report and accounts of the fund and scheme.

New trustees should immediately start to acquire the appropriate knowledge and understanding and should consider pre-appointment training to obtain the skills to undertake their role effectively.

3.8 Powers and Discretion

3.8.1 Powers

Pursuant to the Second Schedule of the Governance Regulations, trustees are provided certain statutory powers in the exercise of their duties. The statutory powers of a trustee include but are not limited to:

- Decision-making,
- Delegating functions to the agent(s)
- Investing assets,
- Collecting and investing contributions,
- Paying the benefits and expenses of a fund or scheme,
- Making amendments to the Constitutive Documents subject to the requirements of the Pensions Act and regulations,
- Establishing and amending policies and procedures,
- Appointing, employing and removing agents and professional advisors,
- Distributing assets for a full or partial winding up of a fund or scheme, and
- Increasing pension benefits by class of pensioner/beneficiary with the advice of an actuary.

3.8.2 Discretion

Certain provisions of the Constitutive Documents may give trustees discretion to carry out a function, for example, whether or not to increase pensions. The discretion is given to allow trustees to assess whether the fund or scheme is financially healthy enough to fund such an increase.

Although individual trustees should have a basic understanding and working knowledge of matters pertaining to their responsibilities, they are not expected to have a detailed knowledge of all the relevant legislation. However, it is expected that when a trustee lacks competence in any of his or her duties or responsibilities, he or she will employ the services of professionals from whom he or she can take advice and on whom may reasonably rely. Trustees are required to act with care when making decisions and when exercising their discretion, with respect to the selection of agents and advisors and the delegation of authority.

Module 3: Content Review Questions

1. What type of trust is required by statute for a pension fund or scheme?

a) Constructive trust
b) Irrevocable trust
c) Asset protection trust
d) Revocable trust

2. Which of the following best describes the role of a trustee?

a) Ensuring that the pension plan is well run and that members' benefits are secured
b) Enforcing regulations and imposing penalties for breaches
c) Acting separately from the sponsor and holding the assets of a pension plan for the beneficiaries of the Plan
d) Both a) and c)

3. What is a trust?

a) A trust is a concept where assets are held by the sponsor for the benefit of others (the beneficiaries) for a specified purpose.
b) A trust is a legal concept where assets are held by one or more persons (the beneficiaries) for the benefit of others (the trustees) for a specified purpose.
c) A trust is a legal concept where assets are held by one or more persons (the trustees) for the benefit of others (the beneficiaries) for a specified purpose.
d) A trust is a concept where assets are held by the beneficiaries for the benefit of other beneficiaries for a specified purpose.

4. Which of the following is not grounds for the removal of a trustee?

a) Death
b) Illness
c) Expiration of tenure
d) Resignation

5. Which of the following best describes the types of trustees?

a) Pensioner trustee, sponsor trustee or board-nominated trustee
b) Member-nominated trustee, pensioner trustee or sponsor trustee
c) Member-nominated trustee, sponsor trustee or self- nominated trustee
d) Sponsor trustee, pensioner trustee or board-nominated trustee

6. Which of the following is not a "fit and proper" criterion which prohibits individuals from acting as trustees?

a) A trustee has not engaged in deceitful, oppressive or improper business practices.

b) A trustee must not be convicted of an offence involving dishonesty.

c) A trustee is also an employee of the employer or sponsor of the pension fund or scheme.

d) A trustee is not mentally disabled.

7. Which of the following is not a general duty or responsibility of a trustee?

a) Providing information to members, agents and the FSC

b) Seeking professional advice, as and when required

c) Monitoring, reviewing and supervising agents and advisors

d) Decreasing pension benefits by class of pensioner/beneficiary with the advice of an actuary

8. Which of the following statements best describes a conflict of interest?

a) A conflict of interest occurs when a trustee's duties conflict with his other responsibilities or interests.

b) A conflict of interest occurs when a trustee monitors, reviews and supervises agents and advisors.

c) A conflict of interest occurs when a trustee has previously worked for an organization that now provides services to the fund or scheme.

d) Both a) and c)

9. Which of the following best describes a breach of trust?

a) When a trustee has not engaged in deceitful, oppressive or improper business practices

b) When a trustee acts in a way that is not authorized by the terms of the trust deed, rules or trust law, or if he or she failed to do something which should have been done under the same provisions

c) When a trustee has made a mere error in judgement

d) Both a) and b)

10. Which of the following is not a statutory power of a trustee?

a) Imposing penalties for breaches of trust

b) Investing assets

c) Establishing and amending policies and procedures

d) Collecting and investing contributions

Glossary

Beneficiary (in the fiduciary relationship): in the pension context, the person to whom the fiduciary owes a duty.

Corporate trustee: a company that is nominated and elected as a trustee by a member, a pensioner or the sponsor. The responsible officer of the company will represent the company on the Board of Trustees.

Fiduciary: a person who holds a legal or ethical relationship of trust with one or more other parties. Pension plan trustees are fiduciaries relative to Plan beneficiaries; they must exercise their fiduciary duty in employing the powers and authority conferred upon them as trustees.

Fiduciary duty: the trustees' duty to act in a completely selfless manner for the sole benefit of the trust and its beneficiaries. This includes but is not limited to the duty of confidentiality, the duty to act prudently and the duty to avoid conflicts of interest.

Fiduciary relationship: a relationship based on the power of the trustees to act and to make decisions on behalf of the beneficiaries and the reliance of the beneficiaries on the trustees to act and to make those decisions. This is a power and dependency relationship which is governed by the law of fiduciary duty. The foundation of this relationship is the supposition that trustees, as fiduciaries, will act honestly, in good faith and in the best interests of the persons entitled to a benefit under a fund or scheme.

Gender reference: reference to male gender: "his" or "he" applies to both genders.

Participants: members of a fund or scheme.

Risk immunization: investment management strategies employed to reduce financial risk.

Trustees: the Board of Trustees, unless the context suggests otherwise.

Answers:

1. B
2. D
3. C
4. B
5. B
6. C
7. D
8. D
9. B
10. A

4 Module 4: Pension Legislation

At the end of this module, trustees will be able to:

- Identify the minimum legislative standards that a fund or scheme must follow and
- Understand the interplay between the trust deed or master trust deed and Plan rules and Jamaica's pension legislation.

4.1 Regulation of Approved Superannuation Funds and Retirement Schemes

After Jamaica's financial sector experienced a period of instability during the mid-1990s, the government of Jamaica intervened to assist several financial institutions recover from a severe liquidity and solvency crisis. This crisis resulted in changes to and recommendations for the improvement of the regulation and supervision of the financial sector.

The FSC was created pursuant to the Financial Services Commission Act to oversee the regulation of Jamaica's insurance, pension and securities industries. The FSC is the regulator of private pension plans consistent with the Pensions Act (Superannuation Funds and Retirements Schemes) and its associated regulations (together, the Pension Legislation). The FSC is also charged with supervising registered trustees and licensed administrators and investment managers of private pension plans.

By virtue of the Financial Services Commission (Pensions) Order, 2004, the following have been declared as financial services:

- any services necessary for, incidental to or in connection with the trusteeship, administration, investment management, sale, purchase or transfer of a pension, and
- any services specified in a trust agreement, insurance or other contract concluded or effected to provide, invest, administer, purchase, sell or transfer the pension benefits of members of approved funds or schemes.

The FSC administers the ordinance pursuant to the tax treatment of funds and schemes.

The BOJ has general oversight for financial stability of the financial sector. Funds and schemes are required to be guided by the stipulations of the Bank of Jamaica Act as it relates to investments in foreign currency assets and securities.

The Pensions Act assigns the FSC the responsibility of regulating and supervising funds and schemes, except for specified pension funds and specified pension schemes. The RLR Regulations set rules for the registration of funds, schemes, trustees, corporate trustees and responsible officers and for the licensing of investment managers and administrators. The RLR Regulations also include provisions which stipulate the reporting requirements of the aforementioned individuals and entities.

The Pension Legislation applies to all private funds and schemes operating in Jamaica before and after the appointed date of March 29, 2006, and collectively provide for the protection of consumers by controlling market conduct and business practices in the private pension industry. This includes promoting transparency, accountability and the making of sound investment decisions, reducing the likelihood of financial losses and providing an avenue for the investigation of complaints.

While Jamaica's private pension industry is regulated pursuant to the legal framework set out in Module 2, for the purposes of this module, the Pensions Act and specifically, the RLR Regulations will be analysed to provide the legislated minimum standards by which all funds and schemes within the remit of the FSC must abide.

The provisions contained in the Governance Regulations and the Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations (hereinafter, Investment Regulations) were summarized in Module 2. The minimum standards of the Governance Regulations are outlined in Modules 5 and 6. The requirements of the Investment Regulations are outlined in Modules 9-11.

4.2 ▸ Minimum Standards

The Pension Legislation outlines the minimum requirements that pension plans should satisfy. Generally, the minimum standards involve being registered and approved by the FSC and abiding by prescribed standards to remain registered. The legislation, therefore, requires that the documents that establish a Plan, namely the trust deed or master trust deed and Plan rules (Constitutive Documents), contain prescribed minimum provisions. These requirements do not preclude the sponsor from providing more beneficial provisions to the members of the Plan. The legislation also provides a guide for how pension plans are expected to be managed.

As mentioned in Module 1, the occupational plans in Jamaica's private pension industry are referred to as funds and schemes. The minimum standards outlined in the Pensions Act and the RLR Regulations for the registration of both funds and schemes are outlined below.

Funds

Under the Pensions Act, a fund is a voluntary pension arrangement set up by an employer. Contributions towards pensions are made by an employer on behalf of its employees. A fund must be approved and registered with the FSC.

Conditions for approval

The conditions for approval of a fund by the FSC are outlined in Section 13(2) of the Pensions Act and Regulation 4 of the RLR Regulations.

Regulation 4 of the RLR Regulations

Conditions for Registration and Licensing

4 (1) The FSC shall refuse to register a fund if:

(a) the name of the fund, as the case may be, is so similar to the name of another fund which may create confusion, and a request by the FSC for a change of the name of the fund has not been complied with within thirty days of the FSC's request,

(b) the fund's constitutive documents do not appear to the FSC to comply with the requirements specified in the Second Schedule and other requirements of the Act and regulations made thereunder,

(c) being a public fund, it does not satisfy the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) (c) are that the fund:

(a) prior to the commencement date of the Act, was a public fund which was approved as a superannuation fund under the Income Tax Act;

(b) in respect of persons who joined the fund prior to the commencement date and no other category of persons, was exempted by the Minister from the application of Section 13(2)(d) and (p) of the Act;

(c) furnished with its application for registration evidence of the matters specified in sub-paragraphs (a) and (b).

The requirements of the Second Schedule of Regulation 4 of the RLR Regulations will be discussed in Module 12, General Pension Plan Design.

Schemes

Under the Pensions Act, a scheme is a DC plan or other such Plan as may be prescribed. Similar to a fund, a scheme is a voluntary arrangement that can only be established by a registered life insurance company or licensed investment manager3. Members of a scheme are persons who are self-employed or who are not active members of a fund and who:

- Make contributions towards a pension,
- Transfer their pension benefits from another scheme upon being employed in a new job or
- Upon termination of their employment, transfer their pension benefits from a fund.

A scheme must also be approved and registered with the FSC.

3. RLR 5(1)

Conditions for approval

The conditions for approval of a scheme by the FSC are outlined in Section 14(3) of the Pensions Act and Regulation 4 of the RLR Regulations.

The conditions for registration outlined above under the sub-head "Regulation 4 of the RLR Regulations" are applicable to the scheme, specifically Regulation 4(1) (a) and (b).

The requirements of the Second Schedule of Regulation 4 of the RLR Regulations will be discussed in Module 12, General Pension Plan Design.

Sections 13 and 14 of the Pensions Act – Minimum Standards of a Fund or Scheme

Generally, an employer is not required to provide a pension plan for its employees. However, when a pension plan does exist, the Pensions Legislation requires that certain minimum standards be adhered to.

The charts below outline the legislated minimum standards that a fund or scheme and the constitutive documents that support the fund or scheme must follow. These minimum standards are referred to as "conditions" in the Pensions Act. They provide a legislative "floor" or baseline with respect to the minimum provisions that must be included as part of the pension plan's design.

4.2.1 Minimum Standards under the Pensions Act

a) Requirements for Approval of a Superannuation Fund (Section 13 of the Pensions Act):

KEY MINIMUM STANDARDS	SECTIONS UNDER THE ACT	THE STANDARDS
Registration	s. 13(1)(a)(ii)	• Trustees must be registered under s. 9(1)(a) of the Pensions Act. • The administrator must be licensed under s. 7(1)(a) of the Pensions Act. • The investment manager must be licensed under s. 8(1)(a) of the Pensions Act. • **Self-administered funds**: A trustee must be licensed as an administrator and investment manager. - **Pursuant to s. 2(1) of the Pension Act**: ***"Administrator"*** means a company that is licensed, pursuant to section 7(1)(a) to administer a fund or scheme, and - ***"Investment manager"*** means a company that is licensed to invest and manage the pension fund assets of a fund or scheme. • **Outsourced plans**: The trustees must appoint a licensed administrator and investment manager.
Requirements for Establishing a Fund	s. 13(2)(a)	• The fund is established in Jamaica in connection with a trade or undertaking carried on wholly or partly in Jamaica. • The fund is a bona fide fund established under an irrevocable trust. • **Irrevocable trust**: The terms of the trust cannot be modified or terminated (except as provided in the termination provisions) without the permission of the beneficiaries (members).
Principle Purpose of a Fund	s. 13(2)(b)	• The provision of a pension or annuity on retirement of members at a specified age or upon earlier retirement as provided in special circumstances.
Sponsor's Role	s. 13(2)(c)	• The sponsor is an annual contributor to that fund as prescribed by the ITA.
Recipient of a Pension Benefit Derived from a Sponsor's Contribution	s. 13(2)(d)	• **The pension benefit provided by the sponsor's contributions must be paid to**: • a member only on retirement or • the spouse, beneficiary or legal personal representative of a member, on the death of that member.
Maximum Annual Sponsor Contribution[4]	s. 13(**2)(e)**	• The amount is prescribed by the ITA. **ITA Requirements effective after March 1, 2005:** • **Ordinary**: The ordinary annual contribution made by a sponsor in respect of a member shall not exceed 10% of that member's annual remuneration. • **Special Payment**: When the contribution of a sponsor does not meet the minimum funding and solvency requirements, the sponsor may make special contributions to meet those requirements.
Payment of Employee Contributions (Deadline)	s. 13(2)(f)	• These are to be paid to the investment manager within one week of the end of the month in which the deductions are made.

4. The provisions under section 13(2)(e) are subject to any changes made in the Income Tax Act [see s.13 (1)(i) of the ITA].

KEY MINIMUM STANDARDS	SECTIONS UNDER THE ACT	THE STANDARDS
Maximum Annual Contributions – Active Members[5]	s. 13(2)(g)	The amount is prescribed by the ITA. **ITA Requirements effective after March 1, 2005:** • **Ordinary**: Annual contributions to a fund by an active member must not exceed 10% of the member's annual salary or wages. • **Additional**: The member may contribute an additional amount, when the sponsor has not contributed the maximum 10%. • **Additional:** refers to the difference between the sponsor's actual contributions and the maximum contribution payable by the sponsor.
Terms & Conditions of Employment (Requirements)	s. 13(2)(h)	• A person employed in a pensionable post after the establishment of a Plan must become a member of the Plan. A person employed in a position that is covered by the Plan prior to the establishment of a Plan must be given the option of joining. • Contributions of the sponsor and members shall be made to the same fund.
Payment of Pension on Voluntary Retirement	s. 13(2)(i)	• The payment of a pension to a member who voluntarily retires must not commence earlier than ten years prior to the specified normal retirement age (NRA) of the fund. - **For example:** If the NRA is age 65, payment can begin no earlier than age 55.
Minimum Funding & Solvency Requirements	s. 13(2)(j)	• The fund must satisfy such minimum funding and solvency requirements as prescribed. **FSC's Policy (Risk-Based Framework):** • **Required funding and solvency ratio:** greater than or equal to 100%. • **Underfunded (fund with a deficit):** a Funding and/or Solvency Recovery Plan should be provided to the FSC. • ***The Funding Recovery Plan*:** applies when the fund is in a deficit on an *ongoing basis*. • ***The Solvency Recovery Plan:*** applies when the fund is in a deficit on a *discontinuance or winding up basis*.
Pension Rights Non-Assignable	s. 13(2)(k)	• Pension rights must not be commuted or surrendered and are non-assignable. **Exceptions:** • Subsection (p) below (allowable lump-sum payments), • Subsection (q) below (small pension), and • A member may allocate a portion of his pension to his spouse or a dependant.
Accounting Requirements	s. 13(2)(l)	• Provision is to be made for meeting such accounting requirements as may be prescribed. • [See Governance Regulations at s. 11(2)]
Investment Criteria	s. 13(2)(m)	• A fund must satisfy the prescribed investment criteria. • [See Investment Regulations]
Reports & Information	s. 13(2)(n)	• Provision is to be made for providing reports and information to such persons or bodies in such form and manner as may be prescribed. • [See Section 4.4, Reporting Requirements]

5. The provisions under section 13(2)(g) are subject to any changes made in the Income Tax Act [see s.13 (1)(i) of the ITA].

KEY MINIMUM STANDARDS	SECTIONS UNDER THE ACT	THE STANDARDS
Maximum Annual Pension	s. 13(2)(o)	• The maximum annual pension payable shall not exceed the maximum prescribed limit. • [Pursuant to s. 26 of the Governance Regulations, this must be in accordance with the ITA] • [See ITA at s. 13(i)]
Lump-sum Payments in Respect to Death, Termination of Employment & Retirement	s. 13(2)(p)	• **On death**: an amount not exceeding two years' salary or wages or an amount representing the actuarial value of the member's interest in the fund, whichever is greater, The actuarial value of the member's interest in the fund is the amount that the fund's actuary estimates to be equivalent to the monetary benefit due to the member from the fund. • **On termination of employment (other than death or retirement)**: a refund of the member's voluntary and compulsory contributions accumulated with interest together with an amount equivalent to the appreciation in value of investment units (if any) allocated to the contributions; and • **On retirement**[6]: an amount not exceeding the commuted value of 25% of the accrued pension up to a maximum of 12.5 x ¼ of the pension before commutation (tax free).
Commutation of Small Pensions	s. 13(2)(q)	Pensions less than the prescribed amount may be commuted in full. [See Governance Regulations at s. 25] • **Small pension payable**: When the annualized rate of pension or pension benefit (to which a person is entitled) is not more than 50% of the national minimum wage, then at his option, he must be paid a lump sum representing the commuted value of the pension or pension benefit. • **Written Notice**: required when a person opts to be paid the commuted value of a pension or pension benefit to the trustees at any time before the payment has commenced.
Information to Members	s. 13(2)(r)	• Provision is to be made for information to be given to a member. [See Section 4.5, Disclosure Requirements]
Member Recourse to the Commission (the FSC)	s. 13(2)(s)	• Provision is to be made for a member to have recourse to the Commission when he is of the opinion that his benefits under the fund are being jeopardized. • The trustees and administrators should implement complaint-resolution policies and procedures as required by Governance Regulations 15, 16 & 17. If the member still has a concern, the complaint should be escalated to the FSC.
Winding-Ups	s. 13(2)(t)	• Provisions are to be made for the winding-up of the fund in the trust deed, Plan rules or both.
Member-Nominated Trustees	s. 13(2)(u)	• The fund is to provide for member-nominated trustees on such terms and conditions as may be prescribed. [See Governance Regulations, ss. 2, 3, 4 and 10 and Module 3 (ss. 3.2 and 3.3)

Pursuant to the Pensions Act, the FSC may prescribe regulations that vary the conditions specified in s. 13(2) above.

6. Section 13(2)(p)(iii): Retirement: In certain cases, the benefit accrued prior to the coming into force of the current legal regime may be paid as a lump sum (FSC Policy).

b) Requirements for Approval of Retirement Scheme (Section 14 of the Pensions Act):

KEY MINIMUM STANDARDS	SECTION UNDER THE ACT	THE STANDARDS
Registration/Licensing	s. 14(1)	• Trustees must be registered under s. 9(1)(a) of the Pensions Act. • Administrators must be licensed under s. 7(1)(a) of the Pensions Act. • Investment managers must be licensed under s. 8(1)(a) of the Pensions Act.
Requirements for Establishing a Scheme	s.14(3)(a)	• A bona fide scheme established in Jamaica under an irrevocable trust.
Principle Purpose of a Scheme	s. 14(1)(b)(i)	• The provision of a pension or annuity on retirement of members at a specified age or upon earlier retirement as provided in special circumstances.
Payment of Pension on Voluntary Retirement	s. 14(1)(b)(ii)	• The payment of a pension to a member who voluntarily retires must not commence earlier than ten years prior to the specified NRA of the scheme.
Minimum Funding & Solvency Requirements	s. 14(1)(b)(iii)	• The scheme must satisfy such minimum funding and solvency requirements as prescribed. **FSC's Policy (Risk-Based Framework):** • **Required funding and solvency ratio:** greater than or equal to 100%. • **Underfunded (fund with a deficit):** A Funding and Solvency Recovery Plan should be provided to the FSC. • **The Funding Recovery Plan:** applies when the scheme is in a deficit on an ongoing basis. • **The Solvency Recovery Plan:** applies when the scheme is in deficit on a discontinuance or winding up basis.
Pension Rights Non-Assignable	s. 14(1)(b)(iv)	Pension rights must not be commuted or surrendered and are not assignable. **Exceptions:** • Subsection (viii) below (allowable lump-sum payments), • Subsection (ix) below (small pension), and • A member may allocate a portion of his pension to his spouse or a dependent.
Accounting Requirements	s. 14(1)(b)(v)	• Provision is to be made for meeting such accounting requirements as may be prescribed. [See Governance Regulations at s. 11(2)]
Investment Criteria	s. 14(1)(b)(vi)	• The scheme must satisfy the prescribed investment criteria. [See Investment Regulations]
Reports & Information	s. 14(1)(b)(vii)	• Provision is to be made for providing reports and information to such persons or bodies in such form and manner as may be prescribed. [See Section 4.4, Reporting Requirements]
Lump-sum Payments in Respect to Death & Retirement	s. 14(1)(b)(viii)	• **On death**: an amount not exceeding two years' salary or wages or an amount representing the actuarial value of the member's interest in the scheme, whichever is greater. • **On retirement**: an amount not exceeding the commuted value of 25% of the accrued pension up to a maximum of 12.5 x ¼ of the pension before commutation (tax free).

KEY MINIMUM STANDARDS	SECTION UNDER THE ACT	THE STANDARDS
Commutation of Small Pensions	s. 14(1)(b)(ix)	Pensions less than the prescribed amount may be commuted in full. [See Governance Regulations at s. 25] • **Small pension payable**: when the annualized rate of a pension or pension benefit (to which a person is entitled) is not more than 50% of the national minimum wage, then at his option, he must be paid a lump sum representing the commuted value of the pension or pension benefit. • **Written notice**: required when a person opts to be paid the commuted value of a pension or pension benefit to the trustees at any time before the payment has commenced.
Information to Members	s. 14(1)(b)(x)	• Provision is to be made for information to be given to a member. [See Section 4.5, Disclosure Requirements]
Member Eligibility	s. 14(3)(b)	• **Members of a scheme are persons who**: • Are self-employed or are employed in non-pensionable posts and do not otherwise contribute to a fund or another scheme or • Upon termination of employment, have transferred their pension benefits from a fund to the scheme.
Rate of Contribution	s. 14(3)(c)	• The annual rate of contribution must not exceed such contribution limits as may be prescribed by the ITA.
Contribution Timing	s. 14(3)(d)	• Each member is required to contribute on a regular basis, at least once per year.
Voluntary Employer Contributions – Determining Limits	s. 14(3)(e)	• If an employer contributes to the scheme on behalf of a member, those contributions form a part of the member's contributions for the purpose of determining whether the prescribed limit of contributions has been reached.
Maximum Voluntary Employer Contribution	s. 14(3)(f)	• The contribution of an employer shall not exceed the maximum prescribed contributions payable under a fund (please refer to the ITA limits under the fund (4.2.1(a)). • [See ITA at s. 13(i)]
Recipient of a Pension Benefit Derived from an Employer's Voluntary Contribution	s. 14(3)(g)	• Must be paid to a member only on retirement or • Must be paid to the spouse, beneficiary or legal personal representative of a member on the death of that member.
Maximum Annual Pension Payable	s. 14(3)(h)	• The maximum annual pension payable shall not exceed the prescribed limit. [Pursuant to s. 26 of the Governance Regulations, this must be in accordance with the ITA; see ITA at s. 13(i)]

4.2.2 Minimum Standards under the RLR Regulations

Other required provisions to be included in a fund or scheme's Constitutive Documents are found in the Second Schedule of Regulation 4 of the RLR Regulations. The required provisions include but are not limited to such standards as:

- conditions of membership and eligibility rules,
- vesting criteria,
- methods for calculating contributions,
- retirement date(s) and age,
- portability of benefits and transfer values,
- terminations, and
- surplus treatment.

These provisions are discussed in detail in Module 12, General Pension Plan Design.

4.3 Other Considerations

Part V of the Pensions Act establishes standards that are to be incorporated into the terms and conditions of a pension plan. These provisions go beyond the minimum standards required for the registration of a fund or scheme as discussed above and establish further pension plan rules and requirements. The additional requirements pertain to such areas as record keeping, amending the Plan deed or rules, court petitions, member recourse, appeals and disclosure of information in prescribed circumstances. Amendments are discussed in Module 14, Special Situations.

4.3.1 Keeping of Records

Section 34 of the Pensions Act stipulates that upon the request of the FSC, every administrator, investment manager, sponsor and trustee shall keep in Jamaica and shall make available to the FSC all records relate to a fund or scheme, including statements issued to members.

The FSC may request that this information be submitted to its office, or representatives of the FSC may request to view this information during an on-site examination.

4.3.2 The FSC May Petition the Court

When there is a vacancy in the number of trustees and a reasonable time has lapsed and no appointment has been made to fill the vacancy, the FSC may petition to the court for trustees to be appointed for a fund or scheme.

The Board should ensure that the number of trustees stipulated in the Constitutive Documents and the actual composition of trustees are according to the legislated guidelines [see Section 3.2].

4.3.3 Member May Have Recourse to Commission

Pursuant to Section 38 of the Pensions Act, a member may inform the FSC in writing, when the member is of the opinion that his benefits under a fund or scheme are being jeopardized. The FSC must make an enquiry into the matter, take appropriate steps where necessary, and inform the member accordingly.

The Board should ensure that the appropriate policies and procedures are in place to address members' complaints and advise members of their right to contact the FSC when the matter remains unresolved. [See Module 5(C)].

4.3.4 Disclosure of Information in Certain Circumstances

Pursuant to Section 40 of the Pensions Act, a person having possession of or control over any documents, information or records concerning a fund or scheme shall maintain an obligation of secrecy and may not disclose the relevant information to any person, save certain prescribed individuals listed at subsection 40(1)(a) (trustees, the relevant member, the FSC or person authorized by the FSC). Despite this obligation, Section 41 of the Pensions Act permits disclosure of the information:

- To a competent authority (the Minister or the Financial Secretary),
- Where the disclosure is required for the institution of criminal proceedings under the Companies Act, this Act or its Regulations,
- For the purposes of providing information requested by the FSC in carrying out an investigation, and
- When ordered by the court for the purpose of any civil proceedings.

4.4 Reporting Requirements

4.4.1 Annual Filing

Under Part III (Reporting Requirements) of the RLR Regulations, the annual filing requirements for funds and schemes are specified.

I. The following filings apply to both funds and schemes:

- **Certified financial return:** This details information on investments, remittance of contributions, unclaimed benefits and governance matters,
- **Financial statements:** All pension plans are required to submit financial statements to the FSC annually. The financial statements of funds do not have to be audited where certain criteria are met. The financial statements of schemes, on the other hand, must be audited, and
- **Annual report:** This details, among other things, the fund's or scheme's financial performance and governance activities.

II. The following filings apply only to schemes:

- **Information folder:** describing the scheme's operations and investments; and
- **The list of persons authorized to sell or distribute the scheme's contracts.**

The FSC Bulletin: "Statutory Filing for Trustees" details the reports to be filed and timelines for submission. The FSC's website is http://www.fscjamaica.org/regulated-industries/content-104.html.

4.4.2 Valuation Reports

As a condition of continued tax exemption, the TAJ requires that triennial (recurring every three years) actuarial valuation reports are prepared. According to Section 11 of the Pensions Act, actuaries of funds and schemes should prepare reports in accordance with generally accepted actuarial principles and such directions as may be given by the FSC. Standards for actuarial valuation reports for pension plans, APS1, have since been developed by the Caribbean Actuarial Association (CAA).

The FSC has issued a Bulletin, "The Caribbean Actuarial Association's Standard of Practice for Actuarial Valuation of Pension Plans" (Bulletin: CAA Standard of Practice May 14) to the industry which specifies that the actuarial valuations for pension plans should satisfy the requirements of APS1. The FSC's website is http://www.fscjamaica.org/regulated-industries/content-104.html.

In addition, the FSC requests that funds and schemes submit actuarial valuation reports within sixteen months of the triennium for which the report is due.

4.5 Disclosure Requirements

4.5.1 Clear, Accurate, Complete and Timely Information

Section 12(1) of the Governance Regulations stipulates that information disclosed to participants, beneficiaries and their representatives must be clear, accurate, compete and timely, and where the use of technical jargon is unavoidable, it must be accompanied by an explanation in simple language.

4.5.2 Documentation to Be Provided to Members

Information must be provided as prescribed or upon request by a member. Sections 12(2) and (3) of the Governance Regulations provide details pertaining to the preparation and distribution of the following documentation:

DOCUMENTS	SECTIONS UNDER THE ACT	DISCLOSURE REQUIREMENTS
Benefit Statement to: Active members and deferred pensioners (upon request) of a fund or scheme	s.12(2)(a)	• Statement meets the minimum standards specified in Part I of the First Schedule of the Regulations. • Within four months of the end of each Plan year
Benefit Statement to: A participant or the participant's personal representative, whether the change is by termination of employment, transfer to another fund or scheme, retirement or death	s.12(2)(b)	• Statement meets the minimum standards of Part II of the First Schedule of the Regulations. • Within sixty days of the trustee being notified of the event.
Copy of Scheme's Information Folder and Members' Handbook (plus applicable amendments) – New Members/Prospective Members	s.12(3)	• Trustees must supply these documents upon the new member joining a scheme. • Trustees must give prospective members an opportunity to read and obtain clarification about the contents of these documents prior to joining a scheme.

Pursuant to Section 12(6) of the Governance Regulations, 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 the:

a) 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 and investment managers,

e) The members' handbook and any amendments thereto,

f) The benefit statement (minimum standards specified),

g) The information folder and amendments thereto,

h) The text of, description and reason for each amendment to the Constitutive Documents;

i) Policies and procedure manuals, and

j) The annual report (minimum content prescribed in the Governance Regulations).

The disclosure of such documents by the trustees is subject to section 12(7) of the Governance Regulations, which stipulates that trustees may require the requesting 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). The fee for obtaining copies must not exceed the reasonable cost as determined by the trustees for making documents available.

Refer to the FSC's Bulletin "Statutory Filing for Trustees" which can be found on the FSC's website: http://www.fscjamaica.org/regulated-industries/content-104.html. The Bulletin provides a comprehensive list of the information to be provided to members and the corresponding timelines under the heading "Schedule for Providing Information to Plan Members".

4.5.3 Disclosure of Amendments to the Constitutive Documents

Pursuant to Section 35 of the Pensions Act, certain prescribed criteria must be met where the trustees intend to amend the Constitutive Documents.

Subsections 35(2) and (5) of the Pensions Act provide guidance on what options the members and the Commission are provided when presented with proposed amendments by the trustees.

The notification process will be discussed in detail in Module 14, Special Situations.

4.6 Breaches, violations and Penalties

The FSC has been working with trustees to provide reports on a timely basis and at the prescribed minimum standards. Specific training, reminder notices or warning letters are implemented by the FSC to facilitate compliance. However, it should be noted that the FSC has the power to enforce the penalties outlined in the legislation if required.

Part VI of the Pensions Act provides statutorily prescribed offences and penalties that administrators, investment managers, sponsors and trustees could be subject to upon breaching certain legislative requirements. These offences include but are not limited to:

- Performing the duty as administrator or trustee without being licensed or registere,
- Operating an unregistered pension plan,
- Failing to make returns to the FSC in the time required under the Pensions Act or regulations,
- Failing to give information to the FSC within the time required or upon the request of the FSC,
- Failing to keep the records required to be kept by the Pensions Act,
- Obstructing search or seizure by virtue of a warrant issued under Section 25,
- Contravening the obligation for secrecy pursuant to Section 40(1), and
- Knowingly filing incorrect returns with the FSC.

While the Pensions Act does not speak directly to members taking civil or criminal actions against trustees, it does speak to members having recourse to the FSC where it is suspected that their benefits are being jeopardized, and it does not preclude the members from taking those actions. The Pensions Act empowers the FSC to make enquiries and to take the appropriate steps to enforce penalties related to the breach or violation.

4.7 Adapting to New Legislation

The pension reform process in Jamaica has evolved over the past two decades. It accelerated and became a priority after the financial sector faced difficulties in the nineties. Prior to the Pensions Act, the pension industry received minimal protection under the ITA.

Legislative pension reform is being carried out in two phases. Phase I is referred to as the Regulatory Phase and Phase II as the Adequacy Phase. Phase I of the pension reform process focused primarily on general operational issues, including general governance, registration and licensing. As part of Phase I of the reform, the Pensions Act and Regulations were enacted in 2006 [see Module 2 for an explanation of the Pensions Act and Regulations], and this legislative framework provided the FSC with the mandate to monitor and supervise the pensions industry.

The FSC created a risk-based supervision model by establishing registration processes for trustees and pension plans and establishing requirements for the licensing of administrators, investment managers and corporate trustees. The FSC was also given the responsibility of overseeing the pension reform.

In Phase II, issues related to the adequacy of pensions will be addressed, including the issues of the portability, vesting and locking-in of contributions. Phase II will provide an opportunity for the issues that were raised in the course of implementing Phase I to be addressed in amendments to the Pensions Act and its regulations. The objectives of this phase include:

- Adequacy and preservation of benefit,
- Increased pension coverage,
- Clarification of areas of ambiguities, and
- Strengthening of regulatory powers (examination and investigative powers).

More specifically, the proposals in Phase II of the reform include but are not limited to:

- Locking-in of members' compulsory contributions after a specified period of membership,
- Unlocking of contributions in specified circumstances,
- Vesting of members in relation to benefits derived from any employer's contributions after a specified period for superannuation funds and immediately in the case of retirement schemes,
- Portability of accrued benefits (transferability) from one pension plan to another on the termination of membership and winding-up,
- Pension payout product as an alternative form of structured pension payments in the decumulation phase,

- Winding-up of pension plans and the role of the FSC,
- Surplus distribution and the role of the FSC,
- Independent trustees replacing member nominated trustees for schemes,
- Concurrent membership in a fund and a scheme or multiple schemes,
- Funding and solvency regulations,
- Type I pooled funds registration, and
- Registration of sales representative of retirement schemes.

Jamaica has been attempting to develop its pension industry for a number of years. It is anticipated that the reform of the Jamaican pension system will continue to progress and develop.

4.7.1 Passing Proposed Legislation into Law

- **Consultations:** As part of Phase II of the pension reform process, the FSC, as the regulatory authority for the pension industry, has prepared the above-mentioned recommendations and sought extensive consultation and feedback from various stakeholders in the pension industry.
- **Drafting instructions:** Drafting instructions for the proposed amendments to the Pensions Act were submitted to the Chief Parliamentary Counsel (CPC), the body responsible for the creation of statutes. The CPC has received numerous drafting instructions from other agencies and ministries and as such, faces a lengthy legislative agenda. This has contributed to the delays in moving forward with Phase II of the proposed reform to the Pensions Act.

4.7.2 What Can Trustees Do to Ensure a Smooth Transition when New Legislation Has Been Passed?

If amendments to Jamaica's Pension Legislation are enacted, adapting to the new legislation would require pension administrators, investment managers, sponsors, trustees or responsible officers to:

- Ensure that the Constitutive Documents are compliant with any statutory changes that may be introduced,
- Establish adaptability measures (i.e., checklists) to ensure the proper implementation of the statutory changes,
- Ensure members and applicable beneficiaries and/or legal representatives are notified of any relevant changes to a fund or scheme, and
- Improve their reporting capabilities.

Module 4: Content Review Questions

1. Pursuant to the Governance Regulations, what is the deadline for disclosing benefit statements to a participant or the participant's personal representative upon a trustee being notified of a change in event (whether the change is by termination of employment, transfer to another fund or scheme, retirement or death)?

a) Within thirty days of the trustee being notified of the event

b) Within ten days of the trustee being notified of the event

c) Within sixty days of the trustee being notified of the event

d) Within fifteen days of the trustee being notified of the event

2. The Pensions Act and its associated regulations outline certain minimum requirements that employers must provide for when establishing a fund or scheme. Generally, the following minimum requirements must be met:

a) All funds and schemes under the remit of the FSC must be established under a constructive trust and be approved and registered by the FSC.

b) All funds and schemes under the remit of the FSC must be established under an irrevocable trust and be approved and registered by the FSC.

c) The fund must be established in relation to a trade or undertaking carried on wholly or partly in Jamaica.

d) Both b) and c).

3. What is the legislated maximum annual sponsor contribution percentage in respect to an active member of a fund?

a) The ordinary annual contribution made by a sponsor in respect of a member shall not exceed 10% of that member's annual salary or wages.

b) The ordinary annual contribution made by a sponsor in respect of a member shall not exceed 20% of that member's annual salary or wages.

c) The ordinary annual contribution made by a sponsor in respect of a member shall not exceed 5% of that member's annual salary or wages.

d) The ordinary annual contribution made by a sponsor in respect of a member shall not exceed 15% of that member's annual salary or wages.

4. What is the maximum amount a retiring member of a fund may elect to take as part of a lump sum of their accrued benefits?

a) An amount not exceeding the commuted value of ¼ of the accrued pension up to a maximum of 10 x ¼ of the pension before commutation

b) An amount not exceeding the commuted value of ¼ of the accrued pension up to a maximum of 12.5 x ¼ of the pension before commutation

c) An amount not exceeding the commuted value of ½ of the accrued pension up to a maximum of 13.5 x ½ of the pension before commutation

d) An amount not exceeding the commuted value of ½ of the accrued pension up to a maximum of 15 x ½ of the pension before commutation

5. What is the legislated maximum rate of contribution for a scheme?

a) The annual rate of contribution must not exceed 15% of annual income or emoluments.

b) The annual rate of contribution must not exceed 20% of annual income or emoluments.

c) The annual rate of contribution must not exceed 10% of annual income or emoluments.

d) The annual rate of contribution must not exceed 25% of annual income or emoluments.

6. Part V of the Pensions (Superannuation Funds and Retirement Schemes) Act establishes standards that are to be incorporated into the terms and conditions of a pension plan. These provisions go beyond the minimum standards and establish further pension plan rules and requirements. Which of the following is not a statutory provision found in Part V of the Act?

a) Appeal

b) Keeping of records

c) Valuation Reports

d) Members may have recourse to the commission

7. The RLR Regulations outline the annual filing requirements for funds and schemes. Which report(s) applies to both funds and schemes?

a) Certified financial return

b) Information folder

c) Annual report

d) Both a) and c)

8. Pursuant to the Governance Regulations, what is the deadline for disclosing benefit statements to active members and deferred members (upon request) of a fund or scheme?

a) Within four months of the end of each Plan year

b) Within five months of the end of each Plan year

c) Within two months of the end of each Plan year

d) Within six months of the end of each Plan year

9. The Governance Regulations stipulate that the trustees should provide certain information/documents to a participant, a beneficiary of a participant or his agent within a specified time frame of a request. What is the specified time frame within which the trustees should provide the requested information/documents?

a) Fifteen working days

b) Sixteen working days

c) Ten working days

d) Fifteen calendar days

10. Part VI of the Pensions (Superannuation Funds and Retirement Schemes) Act provides the statutorily prescribed offences and penalties that administrators, investment managers, sponsors and trustees could be subject to upon breaching certain legislative requirements. Which of the following is not an offence pursuant to the Act?

a) Operating a registered pension fund

b) Failing to make returns to the Commission in the time required under the Act or regulations

c) Knowingly filing incorrect returns with the Commission

d) Failing to keep records required to be kept by the Act

Glossary

Commutation: to give up part or the entire pension payable at retirement in exchange for a one-time lump-sum payment.

Fund: superannuation funds

Gender reference: reference to the male gender (i.e., "his" or "he") applies to both genders.

Plan: pension plan (references pension plans in general and in specific instances, both funds and schemes)

Scheme: retirement schemes

Trust deed and rules: the legal document by which a Plan is governed. It outlines, among other things, the benefit entitlements and eligibility requirements.

Trustees: the Board of Trustees, unless the context suggests otherwise.

Answers:

1. C
2. D
3. A
4. B
5. B
6. C
7. D
8. A
9. A
10. A

5 Module 5: Duties and Responsibilities of Trustees under the Pensions Act and Regulations

5.1 Introduction

At the end of the module, trustees will be able to:

- Recognize what is expected of them in their capacity as trustees,
- Interpret common phrases and concepts associated with their role, and
- Understand how to practically carry out their duties.

Similar to the Board of Directors of a company, a Board of Trustees is responsible for the management of a pension plan. The trustees may outsource certain functions; however, they remain ultimately responsible for all aspects of Plan management, administration and operation.

The Pension Legislation outlines the role of the trustees; Governance Regulation 7 clearly labels the "General Duties of Trustees". The RLR Regulations and the Investment Regulations also detail additional requirements. The main duties of trustees as they relate to the investing of Plan assets will be discussed in depth in Module 9, Investment Management of a Pension Plan.

5.2 Legislated Fiduciary Duty

A number of phrases are typically used to describe how trustees should carry out their role, such as to exercise skill, care and due diligence and fiduciary duty. What do these phrases mean?

5.2.1 Fiduciary Duty

Trustees have a fiduciary duty to participants of the Plan. **Fiduciary duty** is a relationship of trust between the trustees and the participants of a Plan, where the trustees have an obligation to act in the best interest of the participants. The person who has a fiduciary duty is referred to as a fiduciary (trustees), and the person to whom the duty is owed is the beneficiary (Plan participants). A trustee must exercise care, skill and due diligence that a person of ordinary prudence would exercise when dealing with their own property.

Fiduciary duty

Fiduciary duty is a relationship of trust between the trustees and the members of a Plan, where the trustees have an obligation to act in the best interest of the members.

The person who has a fiduciary duty is referred to as a fiduciary (trustees), and the person to whom the duty is owed is the beneficiary (Plan participants).

Please refer to Module 3 (3.1.2) for additional reading on the concept of fiduciary duty.

5.2.2 Due diligence

Due diligence requires trustees to assess on an ongoing basis the processes, procedures and skills (whether by the trustees or outsourced) required to protect the interests of members.

Fiduciary duty/Due diligence

In exercising their **fiduciary duties**, trustees are required to act in the best interest of members as a minimum requirement. **Due diligence** requires the trustees to assess on an ongoing basis the processes, procedures and skills required to protect the interests of members.

5.2.3 Examples of standard of care/fiduciary duty and due diligence

The duties outlined in Governance Regulation 7 will be explained by highlighting the minimum requirements in the legislation that **must be** satisfied by the trustees—**fiduciary duty** and **due diligence**—which will provide a guide to trustees on to how to carry out the requirement. A few of these duties under Governance Regulation 7 will be discussed in Module 6, Governance and Administration.

To a lesser extent, aspects of Section 27 of the Pensions Act and Sections 12, 13 and 14 of the RLR Regulations will be highlighted.

A) GOVERNANCE REGULATION 7

- **Fiduciary duty – trustee meetings:** arrange and attend **trustees' meetings** at least once annually. (7(1)(a))
  - **Due diligence:** Trustees should meet to get updates, discuss matters of the Plan and make relevant decisions. This may also be a learning process for some trustees as unclear matters may be explained and deliberated upon.

The legislation requires that trustees meet at least once annually as a minimum requirement. While the number of meetings is a function of a Plan's needs, more frequent meetings are encouraged.

- **Fiduciary duty – informed and good faith decision-making:** Make decisions on a fully informed basis and in good faith. (7(1)(c))
  - **Due diligence:** Trustees may deliberate on matters amongst themselves or where necessary, seek advice from professionals. In either case, trustees should obtain the relevant information and assess the matter in order to make decisions that are in the best interests of Plan participants. The process of making such decisions should be documented.
- **Fiduciary duty - agents:** Where agents are appointed, ensure they are **suitably qualified** to administer and manage the fund and review their performance regularly. (7(1)(d))
  - **Due diligence:** Although the agents may be licensed by the FSC, trustees should review their performance on an ongoing basis to ensure that the terms of the agreement are being met.

The agreement between the trustees and the agents should outline certain functions or objectives to be met and within established timelines. Trustees may assess the actual performance or operation of the Plan against the agreement. Any discrepancy should be addressed in a timely manner.

For further information on the minimum contents that should be contained in the agreement, please refer to the guideline **"Minimum Contents of the Administration and Investment Management Contracts"** on the FSC's website at the link: http://www.fscjamaica.org/regulated-industries/content-104.html

- **Fiduciary duty – financial prudence:** Trustees should be **financially prudent** in managing the assets of a fund or scheme, that is, to invest the Plan's assets with skill, judgement and care given the prevailing condition as would be done with his own money. (7(1)(e))
  - **Due diligence:** In being financially prudent, trustees should invest the Plan's asset in accordance with the SIPP. The SIPP should incorporate among other things, the objectives of the Plan, the demographics, the powers within the trust deed and rules, the investment ranges and the legislative requirements. This will be covered in greater detail in Module 8, Financial Management of a Pension Plan.
- **Fiduciary duty – relevant and timely information:** Trustees should **provide agents with relevant and timely information** to comply with the legislation. (7(1)(f))
  - **Due diligence:** Trustees may implement an internal timeline within which reports or information should be provided to agents. These should take into consideration legislative timelines. For example, trustees may provide the auditor with information one month after the year end to give the auditor sufficient time to prepare the report for submission to the FSC within the prescribed timeline.

Trustees should be mindful of these implications and provide information in a timely manner.

- **Fiduciary duty – authorized payments:** All payments from a fund or scheme should be **authorized** as determined by the Board. (7(1)(g)

- **Due diligence:** The Board of Trustees may decide on the payments to be authorized by the administrator, if outsourced, which may require the approval of the Board. For example, investments in a related party may require Board approval.

The level of authorization, that is, the positions that may authorize payments internally by the administrator and the amount should be documented. (This may be done internally by the administrator if outsourced).

- **Fiduciary duty – verification of contributions:** Contributions payable to a fund should be **checked for accuracy**. (7(1)(h))
  - **Due diligence:** Trustees may establish mechanisms to ensure that the contributions deducted from each member's salary and any amount paid on his behalf are correct. For example, the total deduction from members' salaries should reconcile with the payment made to the investment manager each month.
- **Fiduciary duty – appointment of actuary or auditor:** Trustees should **appoint an actuary or auditor** within sixty days of termination or resignation. (7(1)(s))
  - **Due diligence:** Trustees may put in place procedures regarding the appointment of an auditor or actuary that may be implemented once termination occurs. The procedures should reflect the timeline required by the legislation.
- **Fiduciary duty – inform actuary or auditor:** Keep **the replacement auditor or actuary** informed of any issue that may significantly affect members' benefits as required by Governance Regulations 11(2) (d)) and 7(1)(i).
  - **Due diligence:** Ensure that the auditor or actuary after dismissal or resignation indicates whether there is any matter relating to his termination that may significantly impact members' benefits.

The outgoing auditor's or actuary's declaration should be submitted to the replacement auditor within one month of the dismissal or resignation letter. (Governance Regulation 11(2) (d))

- **Fiduciary duty – discriminatory acts:** Trustees should **not threaten or take discriminatory actions** against participants' in general or if a participant exercises his rights under a fund or scheme. (7(1)(j)&(k))
  - **Due diligence:** Trustees should treat all participants fairly in accordance with established procedures regardless of the circumstances.
- **Fiduciary duty – appointment of legal representative:** Make an **application to appoint a legal representative** for a member who is considered to be unable to manage his affairs (excluding mentally incapacitated members). (7(1)(l))
  - **Due diligence:** Obtain the necessary information to support that decision if the member is unable to manage his affairs or that the previously appointed representative is unfit, unable or unwilling to act.
- **Fiduciary duty – mentally incapacitated member:** In the case of a **mentally incapacitated member**, where there is no legal representative, the trustees must request that a nearest relative or the Attorney General apply to the competent court to arrange for the management of the member's affairs. (7)(2)
  - **Due diligence:** Trustees should obtain documentation regarding the member's mental status to support the request.

Please refer to the definitions of "mental disorder" and "nearest relative" under the Mental Health Act.

- **Fiduciary duty – legal representative for a minor:** Make an application to a competent court for the appointment of a **legal representative for a minor** who is a beneficiary. (7(1)(m))
  - **Due diligence:** Monitor the ages of minors who are beneficiaries to ensure they have the necessary legal representative in place.

It should be determined whether the legal representatives are actively acting on behalf of the minors. If not, a new representative(s) should be appointed.

A **competent court** is a relevant court that has the authority to hear and carry out any acts regarding the type of matter described above.

- **Fiduciary duty – locating beneficiaries:** Trustees should actively seek to locate members who may have stopped collecting benefits or who have not claimed benefits. This may have resulted from a change of address or other circumstances and as such the member has an **unclaimed benefit**.
  - **Due diligence:** Trustees should follow the process detailed in Governance Regulations 7(1)(n) to (o) to locate those members.
- **Fiduciary duty – arm's length transactions:** Trustees are required to conduct all **transactions at arm's length**. (7(1)(q))
  - **Due diligence:** In making any transactions on behalf of a fund or scheme, procedures should be in place to guide each transaction without bias. For example, allowable related party transactions should be offered at market rates and not at substantially lower or unfavourable interest rates.
- **Fiduciary duty – statement of transfer:** Provide a **statement of transfer** to the member and the receiving fund when a member transfers to another Plan and a payment is being made. (7(1)(r))
  - **Due diligence:** The trustees should implement procedures to ensure that the statement of transfer contains relevant information as prescribed in *Part II of the First Schedule in the Governance Regulations.*
- **Fiduciary duty – separation of assets:** The assets of a fund or scheme should be **kept separate and distinct** from the trustees' own funds. (7(1)(t))
  - **Due diligence:** The trustees ensure that the assets of the Plan are kept separate and apart from the employer's or sponsor's funds as well as the personal funds of trustees. While the assets of the Plan may be invested in the names of the trustees, they are for the exclusive benefit of the beneficiaries.

Separating a Plan's assets ensures that members' benefits are protected in the event the employer or sponsor cannot continue to operate.

- **Fiduciary duty – accurate and complete records: Accurate and complete records** relating to a fund or scheme should be maintained for not less than seven years after the liability has been fully paid out. (7(1)(u))
  - **Due diligence:** In ensuring accuracy and completeness of records, trustees may implement internal controls that encourage checks and balances of information.

The information may also be stored electronically with appropriate authorizations to the backup facility.

This ensures that appropriate records are maintained which will reduce any future liabilities due to errors or omissions and will serve as a reliable means to verify payments.

Refer to Record Management in the Administrator/Investment Manager Section, 5.2

- **Fiduciary duty – written policies:** Have in place written policies as prescribed as well as other relevant policies. The following policies are required to be in place by the legislation:
  - A statement of investment policies and principles,
  - Conflict of interest,
  - Complaints resolution, and
  - Anti-money laundering.

Trustees are required to include other policies which will be relevant to the operation of their particular Plan.

- **Due diligence:**

  - Ensure that the procedures outlined in the policies are being implemented,
  - Review policies and procedures annually and make amendments where required, and
  - Ensure the policies are approved by the Board.

B) GOVERNANCE REGULATION 12

- **Fiduciary duty – member disclosure:** Trustees are required to **disclose certain information** to participants within prescribed timelines and standards.
  - **Due diligence:** Governance Regulation 12 outlines the content and timeline for disclosure to members. Module 4 also provides further reading on this area.

Please also refer to the FSC's Bulletin "Statutory Filing for Trustees" which can be found on the FSC's website at link below. The Bulletin details the information to be provided to members and the corresponding timelines under the heading **"Schedule for Providing Information to Plan Members"**

http://www.fscjamaica.org/regulated-industries/content-104.html

Format of communication

Members should be able to clearly understand the information provided. Trustees are encouraged to produce the information in a simple, clear, accurate, complete and unbiased manner. The timeline for submission allows members to obtain information that is relevant to them.

The information provided to members allows members to become more knowledgeable about how the Plan operates and the benefits they will obtain at retirement.

C) GOVERNANCE REGULATIONS 16 AND 17

- **Fiduciary duty – complaints:** Trustees are required to **maintain a complaints register**.
  - **Due diligence:** The complaints register should capture the relevant information as prescribed in Governance Regulation 16(1). Procedures should be developed which will ensure that the requirements outlined in Governance Regulation 17, including prescribed timelines and notices to the complainant, will be satisfied.

D) REPORTING REQUIREMENT; RLR REGULATIONS 12(1), 13(1) AND 14(1)

- **Fiduciary duty – prescribed reports:** Trustees are required to submit certain prescribed reports to the FSC within prescribed timeframes:

  For a fund, within 120 days of the Plan's year end:

  - Certified financial return, and
  - Audited financial statements, unless the fund satisfies criteria for exemption for small Plans (RLR Regulation 12(3)).

  For a scheme, within 120 days of the scheme's year end:

  - Certified financial return,
  - Audited financial statements,
  - Information folder, and
  - A list of registered sales agents.

  For a corporate trustee, within 120 days of the corporate trustee's year end:

  - Annual report which contains audited financial statements. and
  - Tax compliance certificate indicating all the relevant taxes for the year have been paid.

  - **Due Diligence:** While trustees may delegate these functions to agents, trustees should ensure that the reports are prepared as prescribed and submitted on time.

The agreement between the trustees and agents should outline timelines for submission of the reports for review internally, taking into account the external timeline of the regulation.

The internal timelines should ensure that reports are submitted to the FSC on time.

Please refer to the FSC's Bulletin "Statutory Filing for Trustees" which can be found on the FSC's website at link below. The Bulletin also details the reports to be submitted by trustees to the FSC and the corresponding timelines under the sub-heading **"Schedule for Filing Documents with the FSC in Relation to an On-going Pension Plan"**

http://www.fscjamaica.org/regulated-industries/content-104.html

E) THE PENSIONS ACT

Winding up of a pension plan

- **Fiduciary duty – winding up duty:** Trustees duties are also outlined in Sections 27, 32 and 35 of the Act.

Trustees are required to notify the FSC within ninety days of the intended winding up date. The trustees must obtain the approval of the FSC prior to winding up a Plan. (s. 27)

When a surplus exists after discharging liabilities, the trustees are required to obtain an actuarial valuation to verify the surplus. The scheme of distribution of surplus must be submitted to the FSC for approval. (s. 32)

Trustees are required to notify the FSC and members of a proposed amendment and obtain the members' approval as applicable. The trustees must obtain the approval of the FSC prior to effecting the proposed amendment(s). (s.35)

  - **Due diligence:** The trustees should ensure that mechanisms are in place to satisfy the above requirements.

- **Ongoing Notification (RLR 17)**

Trustees of funds or schemes are required to notify the FSC of any changes to their application particulars within fourteen days of the change.

Content of notice to the FSC

The notice to the FSC should include details of the change, the date and reason for the change.

- **Other**

The FSC's Bulletin "Statutory Filing for Trustees" outlines other notices under the sub-heading **"Schedule for Filing Notices with the FSC in Relation to an Ongoing Pension Plan"**

5.3 Trustee as Administrator and or Investment Manager (Self-administered)/ The Role of Administrators and Investment Managers (Outsourced)

Trustees may decide to outsource certain functions to a licensed administrator and/or investment manager or perform the functions themselves. When the trustees conduct the functions of an administrator and/or investment manager (through a corporate body), the Plan is considered to be *self-administered*. The trustees are therefore required to satisfy the duties of the administrator and or investment manager in addition to the duties of the trustees.

The following may also be used by trustees as a reminder of the duties that the outsourced administrator and/or investment manager should perform.

5.3.1 Governance Regulation 9

Due diligence: Administrators and investment managers are also required to exercise care, skill and diligence in exercising their duties. These professionals will be held to the standard that is expected of them in that capacity.

Conduct of business: These agents should conduct business that is transparent, fair and factual. Therefore, the following are discouraged:

- Statements, forecasts or both that misrepresent, are false, deceptive or conceal facts, and
- Actions that may misrepresent, mislead or create a false impression.

Quality and timeliness of reports: Reports to the trustees and their agents should be carried out in accordance with the established agreement and legislative requirements.

The reports should be provided on the frequency as agreed and should be timely, clear, fair, complete, and accurate.

Records Management: Records should be kept safe, accurate and complete for a period of seven years after the liability has been fully paid out.

Types of records to be kept after being fully paid

- Member records: the fund's or scheme's liability to the member, their spouse, dependant, beneficiary or estate, where applicable, or
- Other records: the date of the last transaction to which the records relate. For example, the records related to the date a member terminated should be available to support benefit calculations for the termination.

The records may be backed up and kept at an offsite location as a risk management strategy. These strategies may also be employed for ongoing records managements.

Notification to cease being an administrator and or investment managers: The FSC should be notified by the trustees of the cessation of an administrator or investment manager within fourteen days of obtaining that notice.

Content of notice to the FSC

The notice to the FSC should include details of the change (including any plans to transfer to another administrator or investment manager), the date and the reason for the change.

5.3.2 RLR Regulations

a) Investment Manager Reporting Requirement RLR 15

Annual Reporting

The following reports should be provided to the FSC within 120 days of the investment manager's year end:

- Annual report containing audited financial statements;
- Tax compliance certificate indicating all the relevant taxes for the year have been paid;
- Evidence of the renewal of professional indemnity and fidelity guarantee insurance that exceeds the prescribed requirement. Please see Guideline, Professional Indemnity and Fidelity Guarantee Insurance for further explanation at http://www.fscjamaica.org/regulated-industries/content-104.html; and
- Certification that the solvency requirement has been satisfied (this is not currently prescribed).

Quarterly Reporting

Within sixty days of each calendar quarter, a quarterly Fund Status Report in the prescribed form should be filed with the FSC. Please refer to the FSC's website for a copy of the report.

The foregoing requirement also applies to trustees if the Plan is self-administered.

Benefits of the reports

- Provide the FSC with the allocation of assets on an aggregate basis and allow for easier reporting and assessment of the pension industry
- Allow the FSC to monitor the operations of the investment managers

b) Administrator Reporting Requirement RLR 16

The following reports should be provided to the FSC within 120 days of the investment manager's year end:

- Annual report containing audited financial statements,
- Administrator's return in the prescribed format. Please refer to the FSC's website for a copy of the report,
- Tax compliance certificate indicating all the relevant taxes for the year have been paid,
- Evidence of the renewal of professional indemnity that exceeds the maximum requirement. Please see Guideline, Professional Indemnity and Fidelity Guarantee Insurance for further explanation at http://www.fscjamaica.org/regulated-industries/content-104.html, and
- Certification that the solvency requirement has been satisfied (this is not currently prescribed).

Benefits of the reports

- Provide the FSC with membership data on an aggregate basis (for example, although the administrator's year end will vary, certain information is requested in December), which allows for easier reporting and assessment of the pension industry
- Allow the FSC to monitor the operations of the administrators

Please refer to the FSC's Bulletin "Statutory Filing for Administrators and Investment Managers" which can be found on the FSC's website at link below. The Bulletin also details the reports and notices to be submitted by administrators and investment managers to the FSC and the corresponding timelines.

http://www.fscjamaica.org/regulated-industries/content-104.html

Ongoing Notification (RLR 17)

Investment managers and administrators are required to notify the FSC of any changes to their application particulars within fourteen days of the change.

Content of notice to the FSC

The notice to the FSC should include details of the change, the date and reason for the change.

Other notices are outlined in the **Bulletin "Statutory Filing for Administrators and Investment Managers."**

5.4 Conflict of Interest

A conflict of interest may arise where a person is in a position to benefit personally from the actions or decisions made in their official capacity.

> The details of how matters relating to actual or potential conflicts of interest should be handled by trustees and their agents are outlined in Governance Regulation 8 and will be discussed in depth in Module 6, Governance and Administration.

Trustees

In the case of a pension plan, a trustee may be faced with a transaction which may be beneficial to him, in his personal capacity or to another person's private interest. The legislation requires that the trustee disclose the conflict and not vote on the matter. The process is applicable to an actual or perceived conflict of interest.

Trustees should be mindful of situations which may result in a conflict between the interest of the Plan and his personal interests or any other capacity.

Advisors, Agents and Trustees

The legislation requires that agents, advisors or trustees that have a potential or actual conflict of interest should disclose the conflict and not act unless approval is given by the Board of Trustees in writing to do so.

Remedial Action

Where a trustee violates conflict of interest rules and enters into a contract without disclosure, the other trustees or the Commission may apply to a competent court to set aside the terms of the contract.

5.5 Fit and Criteria (Ongoing Assessment)

As mentioned in Section 3.4, trustees are required to satisfy the fit and proper criteria as a condition of registration. Trustees are required to be fit and proper on an ongoing basis; for example, a fit and proper assessment may be triggered if the FSC is in receipt of information evidencing that a person is no longer fit and proper. As a matter of course, documents submitted at registration which are at least five years old are considered stale and must be resubmitted to the FSC. The assessment at registration will therefore expire five years from the date of the trustee's initial registration and thereafter every subsequent five-year period.

The following documents should be submitted to the FSC to facilitate the fit and proper assessment (both at registration and renewal):

i. Police record,

ii. Confidentiality report from previous employer(s),

iii. Completed fit and proper questionnaire, and

iv. Current resume.

Please refer to the Bulletin: "New Requirement Related to Registration Processing and Fit and Proper Assessments" (GEN-ADVI-10/01-0001_ on the FSC's website for further information. The path is **Regulated Industries/ Pensions/Publications, Guidelines and Bulletins**.

http://www.fscjamaica.org/regulated-industries/content-104.html

The fit and proper questionnaires may also be found on the FSC's website at the path: **Registration/Fit and Proper forms**.

http://www.fscjamaica.org/registration/content-1181.html

Reason for the Ongoing Fit and Proper Assessment

Throughout the Handbook, it is noted that trustees are ultimately responsible for the management of a fund or scheme. The FSC, in conducting its due diligence, wants to ensure that trustees will continue to satisfy the fit and proper assessment as changes may occur in a trustee's life over the five-year period.

5.6 Best Practices: How should Trustees keep up to date on their Roles and Responsibilites?

As the pension industry is highly dynamic, trustees may keep abreast of how to treat certain matters through training and continuing education.

5.6.1 Training and Continuing Education

Before reading and researching other material, trustees should be knowledgeable about Jamaica's legislative requirements. This information may be obtained from, among other sources:

- Trustees' own reading of legislation,
- Attending seminars and workshops,
- Attending trustee meetings,
- Reading and referring to this Handbook,
- Reading the bulletins and guidelines posted on the FSC's website,
- Noting comments from the FSC in letters to the trustees, and
- Consulting the FSC for clarification where necessary.

5.6.2 Trustee Knowledge – What does the FSC dxpect that you should Know?

The legislation does not impose a formal knowledge requirement on trustees; however, trustees are required to carry out their functions with care, skill and due diligence. The foregoing sections outlined how trustees should practically carry out the duties prescribed by the legislation. In general, trustees are encouraged to:

- Become familiar with the provisions of the trust deed and rules of the Plan for which they are a trustee. This will allow trustees to interpret and apply the Plan rules fairly and as intended,
- Know the requirements under the Pension Legislation,
- Regularly attend trustee meetings to contribute to and obtain knowledge of the operations of the Plan, and
- Review correspondence from the FSC related to the Plan, which will clarify certain aspects of the operations of the particular pension plan for which they are a trustee.

5.6.3 Liability and Protection of Trustees

Liability

The legislation seeks to protect the interest of Plan members in the event the actions of the Board of Trustees will jeopardize members' benefits and the operation of a Plan. The FSC, however, will work with trustees to remedy non-compliance and may utilize the Offences and Penalties provision as a last resort. Trustees will note that the FSC may send out correspondence detailing issues on how to resolve these matters. It is expected that trustees will address these matters within the timeline given or will open further dialogue with the FSC. Similarly, as it relates to reporting, reminder notices may be sent to encourage trustees to submit information on time. However, continued non-compliances will result in the FSC escalating its enforcement action.

Protection of Trustees

In the event the FSC decides to take action against the trustees for breaches of the legislation under the Offences and Penalties provision or other matters and the trustees are not satisfied with the decision or ruling of the FSC, the trustees may appeal. The legislation provides an avenue for trustees to be heard through the Appeal Tribunal. For further reading on the Appeal Tribunal, please see Section 39 of the Pensions Act and Module 4, Pension Legislation.

In addition, depending on the type of breach, the employer may include a provision in the trust deed and rules to protect trustees, for example, fiduciary liability insurance and indemnity provisions. These types of insurance are usually funded by the employer and are not prevalent in Jamaica.

Module 5: Content Review Questions

1. Who is responsible for the management of a pension plan?

a) The administrator who has been delegated the responsibilities
b) The sponsor of the pension plan
c) The Board of Trustees
d) The investment manger

2. The trustees' fiduciary duties include to:

a) Act in the best interest of participants
b) Exercise skill, care and due diligence
c) Disclose certain information to members within prescribed timelines
d) All of the above

3. In exercising due diligence, the trustees will

a) Hold trustee meetings once every two years
b) Assume the administrator will implement proper record management procedures
c) Assess information obtained from agents before making a decision
d) Enter into transactions with related parties without a formal agreement

4. What does it mean that a pension plan's assets should be kept separate and distinct?

a) The assets of the Plan may not be comingled with other Plan assets.
b) The assets of the Plan may not be comingled with assets of the trustees or the employer.
c) The assets of the Plan may not be mixed with mutual funds.
d) All of the above.

5. Why are members provided with certain information about their Plan?

a) Members will become more knowledgeable about the Plan and their benefits.
b) The legislation requires this.
c) It allows the FSC to monitor the administrators.
a) It allows the FSC to monitor the trustees.

6. **What type of information should be disclosed or given to members?**

a) Benefit statements to active members

b) Benefit statements to participants upon a change of employment status

c) Annual report upon request, to participants

d) All of the above.

7. **Who is responsible for submitting the reports for a Plan to the FSC?**

a) The trustees

b) The administrators delegated by the trustees

c) The investment managers delegated by the trustees

d) All of the above

8. **What information should trustees submit for a fit and proper assessment every five years?**

a) Police record

b) Completed fit and proper questionnaire

c) Current resume and confidentiality report

d) All of the above

9. **What type of policies should be developed?**

a) Complaints resolution

b) Complaints register

c) Police record

d) All of the above

10. **Which of the following may present a potential conflict of interest to trustees?**

a) Investment in a subsidiary of the employer's company

b) Investment in a trustee's brother's company

c) Investment in a pooled fund

d) Investment in mutual funds

Glossary

Fiduciary liability insurance: provides financial protection to trustees against fiduciary-related legal liability arising out of their role as fiduciaries, including the cost of defending claims that seek to establish such liability

Indemnity insurance: a class of insurance that covers trustees in the event that they are found liable for damages

Trustees: the Board of Trustees, unless the context suggests otherwise

Pension Legislation: The Pensions (Superannuation Funds and Retirement Schemes) Act and its associated regulations.

Answers

1. **C**
2. **D**
3. **C**
4. **B**
5. **A**
6. **D**
7. **A**
8. **D**
9. **A**
10. **B**

List of Acroynyms

BOJ	Bank of Jamaica
DB	Defined benefit
DC	Defined contribution
FSC	Financial Services Commission
ITA	Income Tax Act
NIS	National Insurance Scheme
RLR	Registration, Licensing and Reporting
TAJ	Tax Authority of Jamaica

References

- The Pensions (Superannuation Funds and Retirement Schemes) Act, 2004 (Pensions Act) (Amended in 2005, 2006 & 2013)
- The Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006
- The Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, 2006
- The Pensions (Superannuation Funds and Retirement Schemes) (Investment) Regulations, 2006
- The Pensions (Superannuation Funds and Retirement Schemes) (Validation and Amendment) Act, 2013
- The Income Tax Act, 1956
- The Income Tax (Superannuation Fund) Rules, 1955
- Morneau Shepell Handbook of Canadian Pension and Benefits Plan; 16th edition
- The FSC's Pension website, http://www.fscjamaica.org
- International Organization of Pension Supervisors

IDB
Inter-American
Development Bank