

PENSIONS ACT 2005

Investment Regulations

Jamaican Bar Association

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Fair Value

- the amount for which an asset could be exchanged or a liability settled between knowledgeable and willing parties who are under no compulsion to act in an arm's length transaction
- Measurement difficult in thin capital markets
- Measurement highly subjective for non-traded liabilities

Material Change

- Change of status of plan e.g. termination or wind up
- Bankruptcy, liquidation, amalgamation or reconstruction of sponsor
- Consolidation, separation or reconstruction of a plan
- Mergers of one or more plans
- As declared by the FSC

Pooled Funds

- Type I or Type II
- Type I funds are investment funds whose sole purpose is investing assets of more than one approved fund or scheme
- Type I funds satisfy the investment regulations
- Type II funds are open-ended investment funds, mutual funds, collective investment schemes, unit trusts and any investment fund that is not a Type I fund

Affiliate

- Holding company
- Subsidiary company
- Control
- Control via connected persons
- A group of companies
- A director, manager or a person, including immediate relatives, who have control of the affiliate

Related Party

- Administrator, investment manager, trustee or sponsor
- Director, officer, employee of above
- Trade union and its officers and employees
- Holder of more than 10% of voting shares of sponsor
- Affiliate of above including spouse and children

Related Party

- Holder of a substantial investment in the investment manager, administrator, trustee or sponsor
- Substantial investment is the greater of 1% of the fair value of the pension assets or one million dollars or such amount as prescribed by the FSC
- Person remains a related party up to 12 months after ceasing to be a “related party”

Duties

- Applies to Trustees and Investment managers
- Prudence : average man rule
- Assess that return is consistent with risk
- Ensure that expenses are reasonable
- Conduct due diligence
- Avoid leaving monies idle
- Minimise receivables

Duties

- Abide by investment code of practice
- Whistle blow any breaches within 14 days
- All investments in name of Trustees
- Use of nominees allowed once beneficial interest is clear
- Investments conducted on a fair value basis
- Majority of Trustees must approve borrowings

Statement of Investment Principles (SIP)

- Submit SIP within 60 days of approval
- Review SIP annually
- Review within 90 days of a material change
- Revised SIP sent to FSC within 30 days of ratification
- Cover expected gross and net yields, risk tolerance, liquidity needs, regulatory constraints and target asset mix

Valuation

- **Fair value for assets and non-actuarial liabilities**
- **No prescribed basis for actuarial liabilities**
- **Triennial, independent valuations of real property**

Eligible Investments

- **Government securities**
- **Repurchase agreements**
- **Corporate debt**
- **Secured loans**
- **Ordinary and preferred shares**
- **Real property**
- **Deposits**

Eligible Investments

- Investment in Pooled Funds
- Deposit administration contracts
- Mortgages to members
- Foreign securities
- Debt issued by a body with which GOJ has a lending arrangement
- Other securities
- Investments specified by the Commission

Limits

- No limit for Type 1 Pooled Funds, GOJ securities, Deposit Administration Contracts, Multilateral Debt, Member mortgages
- Foreign securities limited to Canada, USA, Europe : 5%
- GOJ, Non JD securities : 20% inclusive of foreign securities
- Related party limit : 10%
- Non income generating property : 5%

Limits

- Counterparty limit : 5%
- Controlling interest : 30%
- Loan to value : 80%
- Other assets : 5%
- Corporate debt : interest cover of 1.25-1.5 times
- Preferred shares : interest cover of 1.5 times

Insurance

- Compulsory coverage for mortgages and real property
- Coverage on mortgages of the insurable value or outstanding principal, if lower
- Coverage on real property of the insurable value

Prohibited Investments

- short selling
- ineligible investments
- securities issued by an insolvent institution
- unsecured loans or leases
- speculative investments
- loans and investments in entities which are the auditors, actuaries or accountants
- mortgages for foreign properties
- any investment that the FSC believes is designed to evade the Act

Transition

- 90 days from approval to file statement of compliance or transition plan
- Transition period of up to 3 years from approval
- FSC can grant a further extension of 2 years

Reporting

Plan Reports

Report	Deadline
Certified Financial Return Prescriptive	Within 120 days after the end of the plan year
Audited Financial Statement If not exempt	Within 120 days after the end of the plan year
Prescribed Annual Report Comprehensive Document	Within 9 months after the end of the plan year

What is in the Annual Plan Report?

- **Operation and performance review**
- **Review of Governance Activities**
 - Auditor &/or Actuary's synopses
 - Fees and expenses
- **Names & Contact Info for:**
 - Trustees
 - Providers
- **Key results from last Actuarial Valuation (DB only)**
- **Contribution review**
 - Summary of contributions made (by month)
 - Number of times contributions were late
- **Interest rates**
 - Credited
 - Earned
- **Benefit Adjustment Details**
- **Financial Statements**

Provider Reports

Report	Deadline
Annual Report Investment Manager, Administrator and Corporate Trustees	Within 120 days of the end of the financial year
Fund Status Reports	Within 60 days of the end of the financial quarter

What is in the Providers' Annual Report?

- For All
 - Published Annual Report with audited financial statements
 - TCC
- Administrator
 - Evidence of renewal of professional indemnity
 - Capital and solvency requirements certification
 - Administrator Annual Return
- Investment Manager
 - Evidence of renewal of professional indemnity and fidelity requirement
 - Capital and solvency requirements certification

Reporting Implications

- Additional reporting
- More complex
- Scarce resources where expert input required
- Implication is that cost will go up
 - Increase Administration between 20% to 100%, average 35%
 - Increase Investment Management on average by 30%
- Review of regs after 2 years