

THE PENSIONS (SUPERANNUATION FUNDS AND
RETIREMENT SCHEMES) ACT

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SCHEDULE.

THE PENSIONS (SUPERANNUATION FUNDS AND
RETIREMENT SCHEMES) ACT

Acts
22 of 2004,
14 of 2005,
4 of 2006,
33 of 2013
Sch.

[1st March, 2005.]

PART I—*Preliminary*

1. This Act may be cited as the Pensions (Superannuation Funds and Retirement Schemes) Act. Short title.

2.—(1) In this Act—

Interpreta-
tion.

“active member” means a member who makes contributions to an approved superannuation fund or approved retirement scheme or on whose behalf contributions are made;

“actuary” means a person who—

(a) is a fellow of such professional organization of actuaries as may be prescribed; and

(b) satisfies such other requirements as may be prescribed,

and includes a firm of such persons;

“administrator” means a company that is licensed pursuant to section 7; 33/2013
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“ancillary benefit” means a benefit other than a pension or a pension benefit that may be provided by an approved superannuation fund or an approved retirement scheme, being a disability or death benefit or such other benefit as may be approved by the Commission;

“Appeal Tribunal” means the Appeal Tribunal established under the Financial Services Commission Act;

“appointed day” means the 1st of March, 2005;

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“approved retirement scheme” means a scheme, not being a specified pension scheme—

(a) to which persons who are self employed or who are not active members of an approved superannuation fund—

(i) make contributions toward a pension;

(ii) transfer their pension benefits from another approved retirement scheme on being employed in another job; or

(iii) on termination of their employment, transfer their pension benefits from an approved superannuation fund; and

(b) which is—

(i) a defined contribution plan or such other plan as may from time to time be prescribed;

(ii) open to persons who are residents of Jamaica; and

(iii) approved and registered by the Commission;

“approved superannuation fund” means a fund, not being a specified pension fund—

(a) whereby contributions toward pensions are made by employers on behalf of employees; and

(b) which is approved and registered by the Commission;

“assets under management” means the total assets being managed for superannuation funds and retirement schemes, whether or not those funds or schemes are approved or unapproved;

“auditor” means a person who—

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- (a) is a registered public accountant as defined in section 2 of the Public Accountancy Act; and
- (b) satisfies such other requirements as may be prescribed,

and includes a firm of such persons;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;

“commuted value” means, for the purpose of determining the lump sum amount that is equivalent to a pension, an ancillary benefit or a pension benefit, the value calculated by an actuary in the prescribed manner and as of a fixed date;

“compulsory contributions” means contributions which are made by or on behalf of an active member as a requirement for participation by that member in an approved superannuation fund or approved retirement scheme;

“contribution” means a periodic payment to an approved superannuation fund or approved retirement scheme by a member or a sponsor;

“defined benefit plan” means an arrangement which is not a defined contribution plan;

“defined contribution plan” means an arrangement whereby benefits for a member are determined solely as a function of the amount that can be provided by—

- (a) contributions made by the employer on behalf of the member; and
- (b) interest earned and other gains and losses allocated to the member’s account in the fund;

“investment manager” means a company which, pursuant to section 8, is licensed to invest and manage pension fund assets of a superannuation fund or retirement scheme;

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“member” means a person who meets the eligibility requirements for and joins an approved superannuation fund or approved retirement scheme and has accrued benefits in that fund or scheme;

“non-vested member” means a person designated as such—

(a) in the case of an approved superannuation fund, in the Trust Deed and Plan Rules;

(b) in the case of an approved retirement scheme, in the Master Trust Deed,

and who is not entitled to receive a pension at retirement;

“normal retirement age” means the age specified as such in the Trust Deed and Plan Rules of an approved superannuation fund or the Master Trust Deed of an approved retirement scheme;

“pension” means a periodic payment payable to a member on retirement, at least annually for the lifetime of that member;

“pension benefit” means in relation to a member of a pension plan, the entitlement of a member or of another person upon the death of the member to the periodic amounts provided under the pension plan;

“pension plan” means an arrangement by which pensions or pension benefits are provided to persons who are members or to the beneficiaries of such members;

“specified pension fund or specified pension scheme” means—

(a) a superannuation fund or retirement scheme that is established by law;

(b) such other superannuation fund or retirement scheme as may be prescribed;

“sponsor” means—

- (a) in relation to a superannuation fund, an employer who—
 - (i) establishes the superannuation fund or causes it to be established;
 - (ii) participates in the superannuation fund; or
 - (iii) accepts the obligations of the former sponsor of the superannuation fund;
- (b) in relation to a retirement scheme, a person who satisfies the prescribed requirements for being a sponsor of a retirement scheme and—
 - (i) establishes the retirement scheme or causes it to be established; or
 - (ii) accepts the obligations of the former sponsor of the retirement scheme;

“spouse” includes—

- (a) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and
- (b) a single man who has lived and cohabited with a single woman as if he were in law her husband for a period of not less than five years immediately preceding the date of her death;

“surplus” means an excess of the value of the assets of a pension fund over the value of its liabilities as determined—

- (a) by an actuary in accordance with generally accepted actuarial principles; or
- (b) in the prescribed manner;

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“total assets” means the total of an investment manager’s assets under management, (except specified funds and specified pension schemes) as at 31st December of the year immediately prior to the initial grant of the licence to the investment manager, and thereafter as at 31st December prior to the anniversary of the grant of the licence;

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“trustee” means a person who is registered as a trustee of a superannuation fund or retirement scheme;

“vested member” means a member who is entitled to receive a pension at retirement;

“voluntary contributions” means contributions which an active member elects to make in order to supplement the benefits payable under an approved superannuation fund or approved retirement scheme.

(2) For the purposes of this Act, the following persons (exclusive of the Government) shall be treated as a related party to an approved superannuation fund or approved retirement scheme—

- (a) the administrator, investment manager, trustee or sponsor;
- (b) a director, officer or employee of any person mentioned in paragraph (a);
- (c) an association or trade union representing members or an officer or employee of such association or trade union;
- (d) a member;
- (e) a person who, directly or indirectly, holds, or together with his spouse or child, holds more than ten per cent of the voting shares carrying more than ten per cent of the voting rights attached to all voting securities of the sponsor;
- (f) a person who is an affiliate of an administrator, investment manager or a sponsor or an employee, officer or a director of such person;

- (g) the spouse or child of a person referred to in paragraphs (a) to (f);
- (h) a company which is directly or indirectly controlled by a person referred to in paragraphs (a) to (g);
- (i) a body or organization in which a person referred to in paragraphs (a), (b) or (e) or that person's spouse or child has a substantial investment;
- (j) a body or organization which holds a substantial investment in an administrator, investment manager, or a trustee or sponsor.

(3) A person is deemed to be a related party for a period of up to twelve months after that person has ceased to satisfy the requirements of subsection (2).

(4) In subsection (2) "employee" means a permanent, part-time or contract worker.

(5) For the purposes of subsection (2)(i) and (j) "substantial investment" means—

- (a) one per cent of the fair value of assets of the approved superannuation fund or approved retirement scheme;
or
- (b) one million dollars or such greater amount as may be prescribed,

whichever is the greater, but does not include such categories of investments as may be prescribed.

3.—(1) The Commission shall be responsible for the general administration of this Act.

Commission
responsible
for general
administra-
tion of Act.

(2) The Commission shall—

- (a) supervise the operation of approved superannuation funds and approved retirement schemes;
- (b) license administrators and investment managers;
- (c) register trustees;
- (d) register responsible officers;

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- (e) approve and register superannuation funds and retirement schemes; and
- (f) carry out such other duties as may be necessary for the proper carrying into effect of the provisions of this Act.

(3) For the purposes of this Act, the Commission shall carry out such investigations and examinations in relation to approved superannuation funds and approved retirement schemes—

- (a) as it considers necessary for the purpose of ascertaining whether there is compliance with the provisions of this Act or regulations made hereunder; or
- (b) as may be referred to it by the Minister.

Commission
may issue
directions.
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4. The Commission may issue to administrators, investment managers, sponsors and trustees, of superannuation funds or retirement schemes, directions to be followed by them in the performance of their respective functions in relation to matters concerning such superannuation funds and retirement schemes.

*PART II. Licensing of Administrators and Investment
Managers and Registration of Trustees, Approved
Superannuation Funds and Approved Retirement
Schemes, etc.*

Prohibition
against
operating
without being
licensed or
registered.

- 5.—(1) Subject to subsection (4), no person shall—
- (a) operate a superannuation fund or retirement scheme unless that fund or scheme is registered under this Act; or
 - (b) be appointed a trustee of such superannuation fund or retirement scheme unless that person is registered under this Act.

(2) Subject to section 10, no person shall administer a superannuation fund or retirement scheme unless that person is licensed as an administrator or registered as a trustee under this Act.

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14/2005
S. 2.

(3) Subject to section 10, no person shall invest or manage the pension fund assets of a superannuation fund or retirement scheme unless that person is licensed as an investment manager or registered as a trustee under this Act.

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14/2005
S. 2.

(4) Subsection (1) shall not apply to a specified pension fund or specified pension scheme.

6.—(1) An application for a licence or registration under this Act shall be made to the Commission in the prescribed form and shall be accompanied by the prescribed application fee and such documents as may be required under this Act or by regulations made hereunder.

Application
to be
registered
or licensed.

(2) An application for registration—

- (a) of a superannuation fund, shall be accompanied by a copy of the Trust Deed and Plan Rules and, in the case of a superannuation fund that was established prior to the appointed day, a statement in writing by the Commissioner of Taxpayer Audit and Assessment as to the tax-exempt status of that fund;
- (b) of a retirement scheme, shall be accompanied by a copy of the Master Trust Deed and Plan Rules and, in the case of a retirement scheme that was established prior to the appointed day, a statement in writing by the Commissioner of Taxpayer Audit and Assessment as to the tax-exempt status of that scheme.

(3) The Commission may in writing, on receipt of an application under subsection (1), require the applicant to furnish such additional information as may be relevant to the application and the applicant shall furnish the information within the period specified or such longer period as the Commission may allow.

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Licensing of
administrator.

7.—(1) The Commission shall license an applicant as an administrator if—

- (a) the following persons satisfy the fit and proper criteria specified in subsection (3), namely—
 - (i) the members of the applicant's Board;
 - (ii) the applicant's manager, assistant manager, accountant and company secretary or, as the case may be, the person who (by whatever name called) performs for the applicant, the duties normally carried out by a manager, assistant manager, accountant or company secretary;
 - (iii) the person designated by the applicant as the responsible officer; and
- (b) the applicant satisfies such other criteria as the Commission may prescribe from time to time by notice.

(2) The Commission shall refuse to license an applicant as an administrator if the persons specified in subsection (1) do not satisfy the criteria, and shall inform the applicant in writing, stating the reasons for such refusal.

(3) For the purposes of subsection (1)(a) a person is a fit and proper person if he is a person—

- (a) who, whether in Jamaica or elsewhere—
 - (i) has not been convicted of an offence involving dishonesty; or
 - (ii) is not an undischarged bankrupt;
- (b) whose employment record does not give the Commission reasonable cause to believe that he carried out any act involving impropriety in the handling of moneys;

(c) who, in the opinion of the Commission, is a person of sound probity, is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to a superannuation fund or retirement scheme and whose relationship with such fund or scheme will not threaten the interest of members, and for the purposes of this paragraph, the Commission shall have regard to any evidence that he has—

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(i) engaged in any business practice appearing to the Commission to be deceitful or oppressive or otherwise improper, which reflects discredit to his method of doing business;

(ii) contravened any provision of any enactment designed for the protection of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of financial services or in the management of companies or due to bankruptcy;

(d) who has knowledge of and experience in the business of superannuation funds or retirement schemes;

(e) who is not incapacitated by reason of mental disability.

(4) A person to whom a licence is granted shall, while that licence remains in force, pay the prescribed licence fee to the Commission in the prescribed manner.

8.—(1) The Commission shall—

Licensing of
investment
manager.

(a) license an applicant as an investment manager if the applicant satisfies—

(i) the criteria specified in subsection (2); or

(ii) such other criteria as the Commission may prescribe from time to time by notice; or

(b) refuse to license an applicant as an investment manager if the applicant does not satisfy the criteria, and shall inform the applicant in writing of such

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refusal, stating the reasons therefor.

that—
(2) The criteria referred to in subsection (1) (a) are

- (a) the members of the applicant's board and the applicant's manager, assistant manager, accountant and company secretary, or, as the case may be, the person who (by whatever name called) performs the duties normally carried out by a manager, assistant manager, accountant and company secretary, respectively, satisfy the criteria specified in section 7(3);
- (b) the applicant adheres to standards of sound business and financial practices in its operations;
- (c) the applicant's affairs are managed by qualified and capable persons;
- (d) the persons employed by the applicant to deal with superannuation funds or retirement schemes are qualified and experienced in the management or investment of assets of those funds or schemes, as the case may be;
- (e) the applicant has the prescribed capital base;
- (f) the applicant (except where subsection (3) applies) is licensed as a dealer under the Securities Act.

(3) This subsection applies where—

- (a) the applicant is owned and controlled by the sponsor or trustees of a superannuation fund; and
- (b) the applicant's investment management activities are carried out exclusively in relation to the assets of any or all of the following, namely—
 - (i) the fund;
 - (ii) any other superannuation fund established in relation to employees of the sponsor or of a company affiliated with the sponsor.

(4) In subsection (3) "affiliated" in relation to two or more companies has the same meaning as in the Companies Act.

(5) A person to whom a licence is granted under this section shall pay the prescribed fee to the Commission on the date of the initial grant of the licence and thereafter, annually on or before each anniversary of the grant of the licence.

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9.—(1) The Commission shall—

Registration
of trustee.

(a) register as a trustee—

(i) in the case of an individual, an applicant who satisfies the criteria specified in section 7 (3) (a), (b), (c) and (e);

(ii) in the case of a body corporate, an applicant who satisfies the criteria specified in section 7 (3)(a) to (e);

(b) refuse to register as a trustee, an applicant who does not satisfy the criteria, and shall inform the applicant in writing, of such refusal, stating the reasons therefor.

(2) A person to whom a certificate of registration is issued shall, while that certificate remains in force, pay a prescribed registration fee to the Commission in the prescribed manner.

10.—(1) Subject to subsection (2), the trustees of every superannuation fund and retirement scheme not being a specified pension fund or specified pension scheme shall, within thirty days after the appointed day or within fourteen days of the termination of employment or resignation of an administrator or investment manager, designate an administrator and an investment manager for such fund or scheme.

Designation
of adminis-
trator and
investment
manager.

(2) The same person may be designated as the administrator and investment manager.

(3) Trustees who intend to act as the administrator or investment manager of a superannuation fund or retirement scheme, shall designate as the administrator or investment manager of the fund or scheme—

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(a) a trustee who is registered as a corporate trustee under this Act; or

(b) a company owned and controlled by the sponsor or the trustees.

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(4) The corporate trustee or the company that has been designated under subsection (3) by the trustees shall be an entity licensed as an administrator or an investment manager pursuant to section 7 or 8, as the case may be.

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(5) The Trustee shall within fourteen days of making a designation under subsection (1) notify the Commission in writing of the designation.

Appointment
of responsible
officer.

11.—(1) For the purposes of this Act, every administrator, investment manager and trustee which is a body corporate shall appoint an officer of the company (hereinafter referred to as the “responsible officer”) who shall perform the duties specified in subsection (2).

(2) A responsible officer shall be answerable for doing all such acts, matters and things required—

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(a) in the case of an administrator, for the general administration of the superannuation fund or retirement scheme; or

(b) in the case of an investment manager, for the management of the assets of the fund or scheme,

including—

(c) ensuring compliance with the provisions of this Act and the regulations made hereunder;

(d) reporting to the Commission on matters relating to compliance, at such periods as the Commission may determine; and

(e) making payment of all fees payable by the administrator, investment manager and trustee under the Act or the regulations made hereunder.

(3) Every person appointed as a responsible officer shall, within thirty days after such appointment, apply to the Commission in the prescribed manner to be registered as a responsible officer.

(4) In the absence of any person being registered pursuant to subsection (3), the Commission shall register as the responsible officer—

(a) the person who is the managing director of the company or, as the case may be, the person who (by whatever name called) performs in Jamaica the duties normally carried out by a managing director; or

- (b) if there is no such person, the person in Jamaica appearing to the Commission to be primarily in charge of the company's affairs.

(5) The Commission shall issue a certificate of registration in the prescribed form to the person who is registered as a responsible officer pursuant to subsection (3) or (4), as the case may be.

(6) Within seven days of a person ceasing to hold the post of responsible officer—

- (a) the administrator, investment manager or trustee, as the case may be, shall inform the Commission in writing of such cessation; and
(b) the person shall return the certificate of registration to the Commission.

(7) The Commission may, where it is satisfied that the responsible officer has failed to carry out his duties under this section—

- (a) issue a warning to the responsible officer;
(b) suspend the registration of the responsible officer; or
(c) cancel the registration of the responsible officer,

and shall notify the administrator, investment manager or trustee, as the case may be, in writing of any action taken under paragraph (a), (b) or (c).

(8) Upon receipt of a notice under subsection (7) of the cancellation of a person's registration as responsible officer, the administrator, investment manager or trustee shall terminate the appointment of that person as responsible officer.

(9) Every administrator or investment manager which fails to appoint a responsible officer under subsection (1) commits an offence.

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12.—(1) A person (whether or not a body corporate or a sole practitioner) who is a related party to an approved superannuation fund or approved retirement scheme shall not be appointed as an actuary or auditor of that fund or scheme without the prior approval of the Commission.

Appoint-
ment of
actuary or
auditor.

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(2) The trustees shall, within fourteen days of the appointment of an actuary or auditor of an approved superannuation fund or approved retirement scheme, notify the Commission in writing stating the qualifications and such other information relating to the work experience of the actuary or auditor.

(3) The Commission shall, on being notified under subsection (2), review the qualifications and other information to determine whether the actuary or auditor is a suitable person to perform the duties of actuary or auditor of an approved superannuation fund or approved retirement scheme.

(4) Where the Commission determines that the actuary or auditor is not a suitable person the Commission shall so inform the trustees in writing giving reasons therefor and informing the trustees of the right of appeal under section 39.

(5) The trustees shall, on receipt of the Commission's decision under subsection (4), take such steps as are necessary to determine the employment of the actuary or auditor, so, however, that where an appeal has been lodged under section 39, the trustees shall not take any such steps until the appeal has been heard and determined.

(6) [*Deleted by Act 4 of 2006.*]

Requirements
for approval of
super-
annuation
fund.

13.—(1) The Commission shall—

(a) approve a superannuation fund if it is satisfied that—

- (i) the Trust Deed and Plan Rules satisfy the conditions specified in subsection (2); and
- (ii) the trustees are registered under section 9(1)(a), the administrator is licensed under section 7(1)(a) and the investment manager is licensed under section 8(1)(a);

(b) refuse to approve a superannuation fund—

- (i) which does not satisfy the conditions specified in subsection (2); or
- (ii) where a trustee is not registered or an administrator or investment manager is not licensed,

and shall inform the applicant in writing of the refusal, stating the reasons therefor and the right of appeal under section 39.

(2) The conditions for approval of a superannuation fund are as follows—

(a) the fund is—

(i) established in Jamaica in connection with a trade or undertaking carried on wholly or partly in Jamaica; and

(ii) a bona fide superannuation fund established under an irrevocable trust;

(b) the principal purpose of the fund is the provision of a pension or annuity on retirement of members at a specified age or upon earlier retirement as provided in special circumstances;

(c) the sponsor is an annual contributor to that fund who shall make such contributions as may be prescribed by the Income Tax Act; 33/2013
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(d) a pension benefit derived from a sponsor's contribution shall be paid—

(i) to a member only on retirement; or

(ii) to the spouse, beneficiary or legal personal representative of a member, on the death of that member;

(e) the ordinary annual contribution made by a sponsor in respect of a member shall not exceed such amount as may be prescribed by the Income Tax Act, so, however, that where the contribution of a sponsor does not meet the minimum funding and solvency requirements, the sponsor may make special contributions in order to meet those requirements; 33/2013
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- (f) provision is made for contributions which are deducted from earnings of employees to be paid over to the investment manager within one week of the end of the month in which the deductions were made;
- (g) yearly contributions to the fund by an active member shall not exceed such amount as may be prescribed by the Income Tax Act;
- (h) the terms and conditions of employment include a requirement that an employee in a pensionable post becomes a member of the fund and that the contributions of the sponsor and members shall be made to the same superannuation fund;
- (i) the payment of a pension to a member who voluntarily retires shall commence not earlier than ten years prior to the specified normal retirement age of the fund;
- (j) the fund satisfies such minimum funding and solvency requirements as are prescribed;
- (k) subject to paragraphs (p) and (q) the pension rights shall not be commuted or surrendered and shall be non-assignable but a member may allocate a portion of his pension to his spouse or a dependant;
- (l) the fund makes provision for meeting such accounting requirements as may be prescribed;
- (m) the fund satisfies the prescribed investment criteria;
- (n) the fund makes provision for providing reports and information to such persons or bodies and in such form and manner as may be prescribed;

- (o) the maximum annual pension payable shall not exceed the prescribed limit;
- (p) a lump-sum payment may be payable as follows—
 - (i) 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 the greater;
 - (ii) 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;
 - (iii) on retirement, an amount not exceeding the commuted value of one-quarter of the accrued pension up to a maximum of twelve and one-half times one-quarter of the pension before commutation;
- (q) pensions less than the prescribed amount may be commuted in full;
- (r) provision is made for information to be given to a member;
- (s) provision is made for a member to have recourse to the Commission where he is of the opinion that his benefits under the approved superannuation fund are being jeopardized;
- (t) appropriate winding-up provisions are made for the fund in the Trust Deed or Plan Rules or both;
- (u) the fund provides for member nominated trustees on such terms and conditions as may be prescribed.

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(3) The Commission may prescribe regulations varying the conditions specified in subsection (2) and such regulations shall be subject to affirmative resolution.

Requirements
for approval
of retirement
scheme.

14.—(1) The Commission shall approve a retirement scheme if it is satisfied that the trustees are registered under section 9 (1) (a), the administrator is licensed under section 7 (1) (a), the investment manager is licensed under section 8 (1) (a) and the Master Trust Deed contains—

- (a) the conditions specified in subsection (3) of this section; and
- (b) other conditions similar to those specified in the following provisions of section 13 (2) in relation to a superannuation fund, namely—
 - (i) paragraph (b) (principal purpose);
 - (ii) paragraph (i) (payment of pension on voluntary retirement);
 - (iii) paragraph (j) (minimum funding and solvency requirements);
 - (iv) paragraph (k) (pension rights non-assignable);
 - (v) paragraph (l) (accounting requirements);
 - (vi) paragraph (m) (investment criteria);
 - (vii) paragraph (n) (reports and information);
 - (viii) paragraph (p) (payments of lump sum in respect of death and retirement);
 - (ix) paragraph (q) (commutation of small pensions); and
 - (x) paragraph (r) (information to members).

(2) The Commission shall—

- (a) refuse to approve a retirement scheme which does not satisfy the conditions specified in subsection (1) and such other conditions as the Commission may prescribe by notice; and
- (b) inform the applicant in writing of such refusal, stating the reasons therefor and the right of appeal under section 39.

(3) The conditions referred to in subsection (1)(a) are as follows—

- (a) the scheme is a *bona fide* retirement scheme established in Jamaica under an irrevocable trust;
- (b) the members of the approved retirement scheme are persons who—
 - (i) are self-employed or are employed in non-pensionable posts and do not otherwise contribute to an approved superannuation fund or another approved retirement scheme; or
 - (ii) on termination of employment have transferred their pension benefits from an approved superannuation fund to the approved retirement scheme;
- (c) the annual rate of contribution does not exceed such contribution limits as may be prescribed by the Income Tax Act;
- (d) each member is required to contribute on a regular basis, at least once per year;
- (e) if an employer contributes to the approved retirement 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;

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- (f) the contribution of an employer shall not exceed the maximum prescribed contributions payable under an approved superannuation fund;
- (g) a pension benefit derived from an employer's contribution shall be paid—
 - (i) to a member only on retirement; or
 - (ii) to the spouse, beneficiary or legal personal representative of a member, on the death of that member; and
- (h) the maximum annual pension payable shall not exceed the prescribed limit.

Registration of approved super-annuation fund or retirement scheme.

15.—(1) The Commission shall issue a certificate of registration in relation to a superannuation fund approved under section 13 or a retirement scheme approved under section 14.

(2) The trustees of an approved superannuation fund or approved retirement scheme in respect of which a certificate of registration is issued under subsection (1) shall, while that certificate remains in force, pay the prescribed registration fee to the Commission in the prescribed manner.

Display of certificate of registration and licence.

16.—(1) Every company to which a licence is granted under section 7(1)(a) or 8(1)(a) shall prominently display the licence in a conspicuous place in its principal place of business to which the public have access.

(2) The certificate of registration issued under section 15 shall be displayed—

- (a) in the case of an approved superannuation fund by the sponsor, at the sponsor's place of business;
- (b) in the case of an approved retirement scheme by the administrator, at the administrator's principal place of business.

(3) A company which without lawful excuse fails to display the licence or the certificate of registration commits an offence.

17.—(1) Subject to subsection (2), the Commission may suspend the licence of an administrator or investment manager or the registration of a trustee, if it is satisfied that—

Suspension
of registra-
tion or
licence.

- (a) the administrator, investment manager or trustee is in breach of any provision of this Act or regulations made hereunder; or
- (b) the circumstances which gave rise to the breach would constitute a ground for cancellation specified in section 18.

(2) Before taking action under subsection (1), the Commission shall notify the administrator, investment manager or trustee, as the case may be, of its intention to suspend the licence or certificate and shall, in such notice—

- (a) state the reasons for the proposed suspension and the right of appeal under section 39;
- (b) require the person notified to take the action specified in the notice to remedy the breach within the time so specified; and
- (c) specify a period within which that person may make written and oral representations with regard to the proposed suspension.

(3) Where a person notified under subsection (2) fails to comply with that notice within the time specified therein, the Commission may—

- (a) by notice in writing, extend the time so specified upon a request in writing by the administrator, investment manager or trustee, as the case may be, and if the breach is not remedied within the extended time, suspend the licence or registration; or

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(b) immediately suspend the licence or registration.

Grounds for
cancellation
or registration
or licence.

18.—(1) Subject to subsection (2), the Commission shall notify in writing—

(a) an administrator or investment manager that it proposes to cancel its licence; or

(b) a trustee that it proposes to cancel his registration,

stating the reasons therefor and the right of appeal under section 39.

(2) The Commission may take action under subsection (1) where it is satisfied that—

(a) the licence or registration was procured as a result of misleading or false representation in a material particular or in consequence of any incorrect information (whether the representation or information was made or supplied wilfully or otherwise);

(b) any of the persons referred to in section 7 (1) (a) or 8 (2) (a) or the person referred to in section 9(1) (a), no longer satisfies the criteria specified in section 7(3) and that person has not been removed from office;

(c) the administrator, investment manager or trustee, is carrying on the business otherwise than in accordance with sound pension principles and practice;

(d) there is unreasonable delay in the payment of a pension or pension benefit;

(e) thirty days have elapsed since the date before which the administrator, investment manager or trustee was required to furnish information to the Commission, and has, without reasonable excuse, failed to furnish that information duly and satisfactorily;

(f) the administrator, investment manager or trustee has been found guilty of fraudulent or dishonest practice;

- (g) the administrator, investment manager or trustee has contravened any of the provisions of this Act or regulations made hereunder or any condition, direction or requirement imposed under this Act by the Commission or, as the case may be, has been an accessory to any such contravention by any other person;
- (h) the breach that gave rise to suspension has not been remedied within the period specified in section 17 (2) (b) or (3) (a).

19. The Commission shall—

- (a) suspend or cancel a licence or registration if—
 - (i) a person, having been duly notified under the relevant provisions of this Act of the Commission's intention to do so and of the right of appeal, fails to lodge an appeal or withdraws any appeal; or
 - (ii) the result of the appeal is the confirmation of the Commission's action; and
- (b) notify the person concerned of the suspension or cancellation, as the case may be.

Implemen-
tation of
proposal to
suspend or
cancel
registration
or licence.

20. The Commission may, at any time, cancel a licence or registration, as the case may be—

- (a) if it is satisfied that the administrator, investment manager or trustee has not carried on business in Jamaica in the capacity for which he is licensed or registered—
 - (i) within one year of such registration; or
 - (ii) for a period of more than one year; or
- (b) if the administrator, investment manager or trustee so requests;

Summary
cancellation
of registra-
tion or
licence.

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- (c) upon the resignation of the trustee or responsible officer.

Surrender of cancelled licence or certificate.

21. A licence or certificate of registration which is cancelled under section 11 (7) (c), 18 or 20 shall be returned forthwith to the Commission.

PART III. Investigations by Commission

Commission may require information.

22. The Commission may in writing require an administrator, investment manager, sponsor or trustees to furnish to the Commission, information relating to any matter in connection with an approved superannuation fund or approved retirement scheme.

Power to make investigations.

23.—(1) The Commission may investigate the activities of an approved superannuation fund or approved retirement scheme where it appears to the Commission that—

- (a) the fund or scheme does not meet the prescribed funding or solvency requirements;
- (b) the trustees of the fund or scheme have not, within a period of one month from a date on which the Commission made a written request for information, furnished that information to the satisfaction of the Commission; or
- (c) based on information in the possession of the Commission, an investigation should be carried out into the whole or any part of the operations of the fund or scheme.

(2) The Commission may, in relation to an approved superannuation fund or approved retirement scheme, investigate the activities of the administrator, investment manager, sponsor or trustee.

(3) The Commission may authorize such person as it thinks fit (hereinafter referred to as an Investigator) to carry out an investigation on its behalf.

(4) Where upon an investigation, it is found that a breach of this Act or regulations made hereunder has been committed, the cost of the investigation shall be recoverable against the administrator, investment manager, sponsor or trustee, as the case may be, who committed the breach, in a Resident Magistrate's Court as a civil debt due to the Crown, notwithstanding any limitation as to the amount recoverable under the Judicature (Resident Magistrates) Act.

24.—(1) In carrying out an investigation the Commission or the Investigator may—

Power
to obtain
informa-
tion.

- (a) require an administrator, investment manager, a sponsor or the trustees to produce the assets, books, accounts, documents or statistics of an approved superannuation fund or approved retirement scheme, as the case may require, for inspection and to permit the making of copies thereof and the taking of such extracts therefrom, as are considered necessary;
- (b) examine on oath or affirmation in relation to the business of the fund or scheme, any person who is, or has been at any time, an actuary or auditor, a responsible officer or a trustee of the fund or scheme, or a member or a legal personal representative of that member; and
- (c) administer oaths for the purpose of paragraph (b).

(2) A person specified in subsection (1) (b) shall on request—

- (a) produce to the Commission or the Investigator, any securities, books, accounts, documents or statistics of the fund or scheme, including, in the case of an auditor

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or an actuary, his working papers (hereinafter referred to as specified information) that are available to him; and

(b) furnish any other information in his possession relating to the fund or scheme.

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(3) A person (other than a trustee), who refuses to give information in reply to a request made under subsection (2) or knowingly gives any false information in reply to such a request, commits an offence.

Entry on
premises.

25.—(1) If a Resident Magistrate is satisfied on information on oath by the Commission or any person authorized in that behalf by the Commission that there are reasonable grounds for suspecting that there are on any premises any specified information which has not been produced in compliance with requirements under section 24 or 34, the Resident Magistrate may act in accordance with subsection (2).

(2) The Resident Magistrate may issue a warrant authorizing any member of the Constabulary Force, not below the rank of Inspector, together with any other person named in the warrant to—

- (a) enter and search the premises specified in the information; and
- (b) seize and remove any securities, books, accounts, documents or statistics appearing to be such specified information as aforesaid, or to take, in relation thereto, any other steps that may appear necessary for preserving them and preventing interference with them.

(3) Every warrant issued under subsection (2) shall continue in force until the expiration of the period of one month after the date on which it is issued.

(4) Any specified information seized under this section shall be returned to the person from whose possession it was seized, as soon as practicable and, in any case shall not be

retained for longer than a period of two months from the date of seizure or, if within that period criminal proceedings have been brought in respect of the seizure, the conclusion of those proceedings.

(5) A constable who executes a warrant issued under this section shall, upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of seizure.

(6) A person who obstructs any other person in the exercise of a right of entry, search or seizure conferred by virtue of a warrant issued under this section commits an offence.

26.—(1) Upon completion of an investigation under this Part in respect of an approved superannuation fund or approved retirement scheme the Commission—

Action on completion of investigations.

- (a) shall transmit to the trustees a summary of the conclusions arrived at as a result of the investigation; and
- (b) may, without prejudice to any other powers conferred by this Part, issue to the administrator, investment manager, sponsor or trustees, directions in writing in respect of the conduct of the business of the fund or scheme.

(2) No direction issued under subsection (1) shall remain in force for more than twelve months, but nothing in this subsection shall be construed as preventing the Commission from issuing further directions to the administrator, investment manager, sponsor or trustee.

PART IV. Termination and Winding-Up

27.—(1) The court may order the winding-up of an approved superannuation fund or approved retirement scheme in accordance with the provisions of this Act or regulations made hereunder or the Trust Deed or Master Trust Deed, as the case may require.

Winding-up.

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(2) An approved superannuation fund or approved retirement scheme may be wound up—

(a) subject to subsections (3) and (5), on the petition of—

(i) the Commission; or

(ii) the trustees who shall—

(A) give the Commission ninety days' notice of their intention to do so and obtain the Commission's prior approval for such action; and

(B) forthwith serve on the Commission a copy of the petition;

(b) subject to subsection (4), voluntarily by the trustees pursuant to the rules for winding-up in the Trust Deed or Master Trust Deed, as the case may require; or

(c) where the Commission satisfies the Court that the winding-up is necessary to protect the interest of the members.

(3) Where the Commission or the trustees propose to take action under subsection (2) (a), the Commission or the trustees, as the case may be, shall, before filing the petition, so inform the members in writing, stating the reasons therefor.

(4) Where trustees intend to voluntarily wind-up an approved superannuation fund or approved retirement scheme, they shall notify the Commission of their intention no later than ninety days before the winding-up and obtain the prior approval of the Commission for such winding-up.

(5) A petition referred to in subsection (2) (a) shall not be presented except by leave of the Court, which shall not grant such leave until a *prima facie* case has been established to the satisfaction of the court and security for costs has been given for such amount as the court may think reasonable.

(6) The Commission shall be a party to any proceedings for the winding-up of an approved superannuation fund or approved retirement scheme and the trustee or provisional trustee, as the case may be, in such winding-up shall give the Commission such information about the affairs of the fund or scheme as the Commission may require from time to time.

(7) Where the Commission is satisfied, after an investigation under section 23 in respect of an approved superannuation fund or approved retirement scheme or on examination of the fund or scheme that it is necessary or proper for the fund or scheme to be wound up, the Commission may, with the leave of the Court, present a petition for the winding-up of the fund or scheme, as the case may be, by the Court on any of the grounds specified in subsection (8) and the Court may order accordingly.

(8) The grounds referred to in subsection (7) are that—

(a) in the case of—

- (i) an approved superannuation fund, its Trust Deed and Plan Rules do not satisfy the criteria specified in section 13(2) or its registration has not been renewed;
- (ii) an approved retirement scheme, its Master Trust Deed does not satisfy the criteria specified in section 14(1) or its registration has not been renewed,

and it is in the interest of the members that the approved superannuation fund or approved retirement scheme be wound up;

- (b) the administrator, investment manager, sponsor or trustee or other officer of the fund or scheme refuses to comply with any requirements made or questions asked under section 24 (1) (a) and (b), respectively and it is

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in the interest of the members that the approved superannuation fund or approved retirement scheme be wound up;

- (c) the result of an investigation is such that it is in the interest of the members that the approved superannuation fund or approved retirement scheme be wound up;
- (d) the approved superannuation fund or approved retirement scheme is insolvent and it is in the interest of the members that the approved superannuation fund or approved retirement scheme be wound up.

(9) The trustees and the Commission shall be entitled to be heard on any petition presented to the Court under this section.

(10) Where a petition is presented under this section for an order in respect of an approved superannuation fund or approved retirement scheme, all actions and the execution of all writs, summonses and other processes against it shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the Court or unless the Court otherwise directs.

(11) Subject to the provisions of this section, the Commission may, at the time of presenting a petition for winding-up under subsection (1), petition the Court for the appointment of a provisional trustee.

(12) Where the Court appoints a provisional trustee, the Court may limit and restrict his powers by the order appointing him.

(13) The provisions of subsections (1) to (11) shall also apply to a superannuation fund or retirement scheme which is in existence on the appointed day and has not been approved.

(14) A superannuation fund or retirement scheme shall, during the period of winding-up and until all assets have been distributed, be subject to the provisions of this Act and the rules and regulations made hereunder.

28. Subject to the provisions of this Act, an approved superannuation fund or approved retirement scheme shall be deemed insolvent if at any time the fund or scheme fails to meet the prescribed minimum solvency requirements.

Margin of solvency.

29.—(1) In any proceedings upon a petition to wind up an approved superannuation fund or approved retirement scheme presented by the Commission under section 27, unless the contrary is proved, evidence that the fund or scheme was insolvent thirty days before the date of the presentation of the petition is evidence that the approved superannuation fund or approved retirement scheme continues to be insolvent.

Supplemental provisions as to winding-up.

(2) Before the winding-up of an approved superannuation fund, any outstanding contribution payable by a member or a sponsor and all contributions which were not paid over to the investment manager and any other amount which is due and payable to the fund or scheme, as the case may be, shall be paid to the trustees or provisional trustees on behalf of the fund or scheme.

(3) All outstanding contributions and amounts not paid over shall be deemed in the case of an approved superannuation fund, to be the debt of the sponsor and shall rank *pari passu* with employee emoluments.

(4) With effect from the date of winding-up of an approved superannuation fund or an approved retirement scheme, all active members of the fund or scheme shall be deemed to be vested members, with no regard to age, period of membership or period of employment.

Ascertainment
of value of
liabilities
under fund or
scheme.

30.—(1) Where an approved superannuation fund or approved retirement scheme is being wound up voluntarily or is subject to the supervision of the Court—

- (a) the amount of the liabilities of the fund or scheme shall be determined by an actuary;
- (b) the trustee or provisional trustee, in the case of all members appearing by the books of the fund or scheme to be entitled to or interested in the fund or scheme, as the case may be, shall give notice of the value of their interest in the fund or scheme in such manner as the Court directs.

(2) A member to whom notice is given under subsection (1) shall be bound by the value ascertained in accordance with that subsection unless, within thirty days of receipt of the notice, he gives notice of his intention to dispute the value.

Application of
assets of fund
or scheme.

31. Notwithstanding anything to the contrary in this Act, upon the winding-up of an approved superannuation fund or approved retirement scheme, all assets for the time being of that fund or scheme shall be delivered to the trustee or provisional trustee who shall pay all debts in the following order of priority—

- (a) expenses of the fund or scheme;
- (b) voluntary contributions and transfer values;
- (c) pensions owing to pensioners or their beneficiaries;
- (d) pensions for members eligible for early retirement and their beneficiaries;
- (e) pensions owing to deferred pensioners and their beneficiaries;
- (f) prospective pensions for the remaining active members and their beneficiaries;

- (g) any other liabilities relating to the approved superannuation fund or approved retirement scheme.

32.—(1) If after discharging the liabilities specified in section 31 (a) to (f) any surplus exists, the trustees or provisional trustees shall employ an actuary approved by the Commission to verify the amount of the surplus. Application of surplus.

(2) The trustees or provisional trustees shall, on receipt of the verification of the surplus, forward a copy thereof to the Commission together with a scheme of distribution of the surplus for the Commission's approval.

(3) The Commission shall examine the scheme of distribution before giving its approval, so, however, that where the Commission thinks it necessary, it may, after consultation with the trustees or provisional trustees, amend such scheme.

(4) The Commission shall after approving the scheme of distribution, with or without amendment, return it to the trustees or provisional trustees who shall distribute the surplus in accordance with the scheme of distribution as approved.

(5) The Commission shall, in approving a scheme of distribution, have regard to the payment of assets in the following order of priority—

- (a) to the current pensioners and their beneficiaries;
- (b) providing additional benefits for the remaining members and their beneficiaries;
- (c) subject to subsection (6), to the sponsor.

(6) Subsection (5) (c) shall not apply to assets of an approved retirement scheme.

PART V. *Miscellaneous*

33.—(1) An approved superannuation fund or approved retirement scheme shall state a normal age for retirement between sixty and sixty-five years. Retirement age.

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(2) An approved superannuation fund or approved retirement scheme may specify that a member may become eligible for—

- (a) early retirement, not earlier than ten years before the normal age of retirement, except on the grounds of ill-health;
- (b) later retirement, not more than five years after the normal age of retirement.

(3) No condition shall be imposed as to age of retirement or number of years of service in respect of retirement on the grounds of ill-health.

(4) An approved superannuation fund or approved retirement scheme may specify different normal ages for retirement of members in accordance with the nature of the occupation of the members involved.

Keeping of records.

34. Every administrator, investment manager, sponsor and trustee shall keep in Jamaica, and shall make available to the Commission on request, all records relating to a superannuation fund or retirement scheme of which he is the administrator, investment manager, sponsor or trustee, including statements issued to members by administrators, investment managers, sponsors or trustees;

Amendment of Trust Deed or Plan Rules.

35.—(1) Where the trustees intend to amend a Trust Deed and Plan Rules or a Master Trust Deed, they shall—

- (a) notify the members in writing of that intention seeking the written approval of the members; and
- (b) submit the amendments to the members for approval at least forty-five days before the date on which they intend to submit the amendments to the Commission for its approval.

(2) The members may—

- (a) approve the amendments;
- (b) seek clarification from the trustees on any of the amendments before approving them;
- (c) refer the amendments to the trustees for further amendment; or
- (d) refuse to approve the amendments.

(3) The trustees shall not submit the proposed amendments to the Commission for approval unless—

- (a) in the case of prescribed amendments, at least fifty per cent of the members of the approved superannuation fund or approved retirement scheme, as the case may be, plus one member;
- (b) in any other case, at least fifty per cent of the voting members of the approved superannuation fund or approved retirement scheme, as the case may be, plus such one member,

signify their approval in the prescribed manner.

(4) The trustees shall, within fourteen days of obtaining approval from the members and at least ninety days before the date on which the proposed amendments are to take effect, submit them to the Commission with documentary evidence of the approval of the members.

(5) The Commission shall examine the amendments and may—

- (a) approve the amendments if, in the opinion of the Commission, they are in the best interest of the approved superannuation fund or approved retirement scheme;
- (b) seek clarification from the trustees on any of the amendments before approving them; or
- (c) refuse to approve the amendments, giving the reasons therefor in writing, if in the opinion of the Commission, they are not in the best interest of the approved superannuation fund or approved retirement scheme.

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(6) Where the Trust Deed and Plan Rules or the Master Trust Deed of a superannuation fund or retirement scheme do not contain a power to amend the trust, the trustees shall be deemed to have the power to amend these constitutive documents to comply with the requirements of this Act and the regulations made thereunder.

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(7) Subsections (1) to (4) and 5(c) shall not apply to amendments to a Trust Deed and Plan Rules or Master Trust Deed made pursuant to the provisions of this Act and regulations made hereunder.

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(8) In subsection (3)(b) “voting member” means—

- (a) a member who attends a meeting of an approved superannuation fund or approved retirement scheme and is entitled to vote at that meeting; and
- (b) a member voting by proxy at that meeting.

Commission
may petition
court.

36. The Commission may petition the Court for trustees to be appointed for an approved superannuation fund or approved retirement scheme in any case where there is a vacancy in the number of trustees and a reasonable time has elapsed and no appointment has been made to fill the vacancy.

Returns and
reports to be
submitted to
Commission.

37.—(1) The trustees shall submit to the Commission in respect of an approved superannuation fund or an approved retirement scheme—

- (a) a Certified Financial Return in the prescribed form within ninety days of the end of the financial year of the fund or scheme; and
- (b) such other report as may be prescribed.

(2) The administrators, investment managers and trustees shall submit to the Commission, such reports as may be prescribed in relation to an approved superannuation fund or approved retirement scheme.

Member
may have
recourse to
Commission.

38.—(1) A member who is of the opinion that his benefits under an approved superannuation fund or approved retirement scheme are being jeopardized, may inform the Commission in writing stating the manner in which the benefits are being so jeopardized.

(2) The Commission shall make an enquiry into the matter and take such steps as it considers appropriate and inform the member accordingly.

39.—(1) An administrator or investment manager, a sponsor, trustee or responsible officer who is aggrieved by any action, decision, ruling, direction, order or proposal of the Commission may, in writing, appeal to the Appeal Tribunal within thirty days of being notified of that action, decision, ruling, direction, order or proposal. Appeal.

(2) An appeal under subsection (1) shall state the grounds of appeal and the appellant shall forward a copy thereof to the Commission.

(3) The Appeal Tribunal shall give its decision in writing and may confirm, vary, cancel or reverse the Commission's action, decision, ruling, direction, order, proposal or any part thereof, as the case may be.

(4) The Appeal Tribunal shall forward a copy of its decision to the Commission and a copy to the appellant, together with a written statement of the reasons for its decision.

40.—(1) A person having possession of or control over any documents, information or records concerning an approved superannuation fund or approved retirement scheme shall not at any time communicate or attempt to communicate such information or anything contained in such documents or records to any person— Obligation
for secrecy.

- (a) other than to the trustees or, where the circumstances of the case so require, a member to whom the information relates, the Commission or other person to whom he is authorized by the Commission to communicate it pursuant to any law; or
- (b) otherwise than for the purposes of this Act.

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(2) A person to whom information is communicated pursuant to an authority of the Commission in that behalf shall regard and deal with such information as secret and confidential.

Disclosure of information in certain circumstances.

41.—(1) The obligation as to secrecy imposed by section 40 shall not prevent the disclosure of information—

- (a) to a competent authority;
- (b) where the disclosure is required for the institution of, or otherwise for the purposes of any criminal proceedings under or arising out of the Companies Act or this Act or regulations made hereunder;
- (c) for the purposes of section 24 (power of Commissioner or Investigator to obtain information);
- (d) which is ordered by the Court for the purpose of any civil proceedings.

(2) In subsection (1) (a) “competent authority” means the Minister or the Financial Secretary.

Registers.

42. Every administrator, investment manager, sponsor and trustee shall keep such registers as may be prescribed.

PART VI. Offences and Penalties

Performing duty as administrator or trustee without being licensed or registered.

43.—(1) Any company which performs duties as an administrator or investment manager without being licensed under this Act commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five million dollars.

(2) [*Deleted by Act 4 of 2006.*]

44. A company which sponsors a superannuation fund or retirement scheme not being a specified pension fund or scheme which is not registered under this Act commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five million dollars.

Operating
unregistered
pension
fund, etc.

45. Any administrator, investment manager or responsible officer who fails to make returns to the Commission in the time required under this Act or regulations made hereunder commits an offence and is liable on summary conviction before a Resident Magistrate—

Failure to
make
returns.
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(a) in the case of an individual who is a responsible officer, to a fine not exceeding one million dollars;

(b) in the case of a body corporate, to a fine not exceeding two million dollars.

46.—(1) Any administrator, investment manager or sponsor who fails to give the Commission information within the time required or upon request by the Commission commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Failure to
give infor-
mation.
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(2) Any administrator, investment manager or sponsor who fails to give to any member, any record or information required to be so given by this Act or regulations made hereunder, commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

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(3) A person (other than a trustee) specified in section 24 (1) (b) who refuses to give information pursuant to a request made by the Commission under this Act or who knowingly gives false information in reply to such a request, commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars.

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Failure to
keep records.
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47. Any administrator or investment manager who fails to keep records required to be kept by this Act commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars.

Obstructing
search, etc.

48. Any person who obstructs any other person in the exercise of a right of entry or seizure conferred by virtue of a warrant issued under section 25 commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Contravention
of section 40.

49.—(1) A person who contravenes subsection (1) of section 40 (obligation for secrecy) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years.

(2) A person referred to in subsection (2) of section 40 who at anytime communicates or attempts to communicate any information in contravention of that subsection commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years.

Filing
incorrect
returns.
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50. Any administrator, investment manager or responsible officer who knowingly files any incorrect returns with the Commission commits an offence and is liable on summary conviction before a Resident Magistrate—

- (a) in the case of an individual, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months;
- (b) in the case of a body corporate, to a fine not exceeding two million dollars.

51. Any administrator or investment manager who fails to notify the Commission under section 11 (9) of a person ceasing to hold the post of responsible officer within the period specified commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars.

Failure to notify Commission.

52. Any administrator or investment manager who fails to return its licence or responsible officer who fails to return his certificate of registration pursuant to section 21 commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three months.

Failure to return licence or certificate.

53. A sponsor who fails to pay over to an investment manager, contributions deducted from the salaries and wages of members within fourteen days of the end of the month in which the deduction was made commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars.

Failure to pay over contributions.

54. A person who commits an offence under this Act for which no penalty is provided is liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding two years.

General penalty. 4/2006 Sch.

PART VII. *General*

55.—(1) Subject to subsection (2), no official of the Commission and no person who, by reason of his capacity or office has, by any means, access to the records of the Commission, or any registers, correspondence or material with regard to any approved superannuation fund or approved retirement scheme shall, while his employment in or, as the case may be, his professional relationship with the Commission continues or after the termination thereof, give, divulge or reveal any information regarding any particulars of the fund or scheme.

Secrecy of Commission's officials.

*PENSIONS (SUPERANNUATION FUNDS AND
RETIREMENT SCHEMES)*

Schedule. (2) Subsection (1) shall not apply in any of the circumstances specified in the Schedule.

(3) Any person who contravenes subsection (1) commits an offence.

Rule of law
against per-
petuities not
to apply.

56. The rule of law against perpetuities shall not apply to and shall be deemed never to have applied to the trusts of any approved superannuation fund or approved retirement scheme.

Extension of
time limits.

57. Where any provision of this Act or regulations made hereunder requires anything to be done within a specified period of time and no provision is made for the extension thereof, that period may in any particular case be extended by the Commission.

Regulations.

58.—(1) The Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and without prejudice to the generality of the foregoing the regulations may contain provisions in relation to all or any of the following—

- (a) registers to be kept for the purposes of the Act;
- (b) provisions to be contained in a Trust Deed and Plan Rules or Master Trust Deed;
- (c) any other matter required by this Act to be prescribed.

(2) Regulations made under section (1) shall be subject to affirmative resolution.

4/2006
Sch.

(3) Any person (other than a trustee) who contravenes any provision of regulations made pursuant to subsection (1) commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

SCHEDULE

(Section 55(2))

*Circumstances in which information concerning approved
superannuation fund and approved retirement schemes may
be disclosed*

Section 55 (1) shall not apply in any case where—

- (a) the information is disclosed by an officer of the Commission to another officer of the Commission;
- (b) an administrator, investment manager or trustee gives written permission for disclosure of the information;
- (c) an approved superannuation fund or approved retirement scheme is being wound up;
- (d) the information is disclosed in connection with civil proceedings arising between the Commission and an approved superannuation fund or approved retirement scheme;
- (e) the information is disclosed to the Minister or the Financial Secretary;
- (f) the disclosure is made on the written direction of the Minister to the police or to a public officer who is duly authorized under the provisions of any law for the time being in force which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;
- (g) the Commission has been served with a court order attaching money in an approved superannuation fund or approved retirement scheme of a member;
- (h) the Minister in writing directs such disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign government, an agreement for the mutual exchange of information of such kind and the Minister considers it in the public interest that such disclosure is made;
- (i) on the recommendation of the Commission, the Minister in writing directs such disclosure;
- (j) the circumstances are such that it is in the interests of the approved superannuation fund or approved retirement scheme that the information be disclosed;
- (k) disclosure is required under another enactment;
- (l) disclosure is required by virtue of an order of the Court, other than an order under paragraph (g).