



**FINANCIAL SERVICES COMMISSION**  
**INFORMATION CIRCULAR**  
**ROLE OF THE PENSION ADMINISTRATOR**

**JUNE 12<sup>th</sup>, 2012**

**Introduction**

1. This Circular is intended to provide information on the duties and responsibilities of the pension plan administrator as set out in the provisions of the *Occupational Pensions Benefits Act Cap 350B* (“OPBA”) and its regulations. The Financial Services Commission (“the Commission”), through the *Financial Services Commission Act 2010-21* (“the FSC Act”) is responsible for the administration of the OPBA.
2. The Commission intends through this Circular to (a) provide guidance to pension administrators (b) assist them in discharging their respective roles under the OPBA while promoting best practices throughout the pensions industry. This Circular is not intended to be a substitute for or replace any additional obligations under the OPBA, its regulations or the FSC Act. Due to the dynamic nature of the various financial institutions that the Commission regulates, there may be the need for revision of this Circular from time to time.

**The Administrator**

3. Each pension plan must have an administrator who is ultimately responsible to the Commission for the administration of the pension plan. In order to provide the services of a pension administrator, you must fall into one of the following categories of persons<sup>1</sup>.
  - 3.1 The employer of persons benefitting or intended to benefit from the pension plan;
  - 3.2 A body composed of one or more representatives of the employer participating in the pension plan and one or more representatives of the members, deferred or retired members of the pension plan;
  - 3.3 A body wholly composed of members and deferred or retired members of the pension plan;
  - 3.4 A person, body of persons, or entity which by virtue of this Act or any other law is vested with responsibility for the administration of a pension plan or pension fund;
  - 3.5 An insurance company that provides the benefits under the pension plan where all the benefits under the pension plan are guaranteed by the insurance company;
  - 3.6 A pension committee, which may include representatives of persons who are receiving pensions under the pension plan.
  - 3.7 A board of trustees appointed pursuant to the pension plan or trust agreement establishing the pension plan and in the case of a multi-unit or multi-employer pension plan if (i) at least one-half of the members of the board are representatives of members of the pension plan; and (ii) two-thirds of the representatives referred to in subparagraph (i) are citizens of Barbados or of any member state in the Caribbean Community;

## **General Duties and Obligations**

4. A pension plan administrator must ensure that the pension plan and fund is administered in accordance with the OPBA, its regulations<sup>ii</sup> and the pension plan rules. At a minimum the Administrator is required to ensure the following activities are completed:
  - 4.1 Registration of the pension plan with the Commission;
  - 4.2 Administration of the pension plan in accordance with the relevant laws;
  - 4.3 Notification to the Commissioner of Inland Revenue of the payment of any benefit under a pension plan<sup>iii</sup>;
  - 4.4 Investment of assets of the pension fund in a prudent manner;
  - 4.5 Provision and disclosure to members of full information with respect to their benefits or any prescribed minimum benefit increase<sup>iv</sup>;
  - 4.6 Prompt payment to members of their contributions<sup>v</sup>;
  - 4.7 Disclosure to the Commission of late contributions<sup>vi</sup>;
  - 4.8 Make provision for the recipient of pension fund contributions to be bonded, where the plan is a multi-employer pension plan<sup>vii</sup>.

## **Filing Requirements**

5. The pension plan administrator is also required by law to comply with certain filing requirements. This involves the obligation to file the following documents with the Commission<sup>viii</sup>:
  - 5.1 The pension plan for review and registration;
  - 5.2 An initial valuation of the pension plan as prepared and certified by an actuary;
  - 5.3 An annual return (within 4 months of the end of the fiscal year of the pension plan), Commission containing the financial statements of the pension fund;
  - 5.4 A valuation within 4 months of the end of the first fiscal year;
  - 5.5 A second valuation within 4 months after the third fiscal year;
  - 5.6 After the submission of the second valuation, a valuation for every successive triennium must be submitted within 4 months of the end of the triennium;
  - 5.7 Where applicable a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan or any amendment thereto;
  - 5.8 Any additional reports in respect of the pension plan as are required by the Commission and the OPBA regulations;
  - 5.9 Amendment to the pension plan together with relevant forms;
  - 5.10 Furnish the Commission with such information relating to the pension plan and relevant pension fund, as necessary and when requested by the Commission, for the purposes of statistics<sup>ix</sup>; and
  - 5.11 Secure an appraisal (if required by the FSC) of any or all of the assets of the pension fund by one or more independent valuers<sup>x</sup>.

## **Duty of Care**

6. A legal obligation is imposed on all administrators of pension plans to exercise care, diligence and skill in the administration of the pension plan and investment of the pension fund<sup>xi</sup>.

## **Conflict of Interest**

7. An administrator cannot permit his interest to conflict with his duties and responsibilities under the pension plan or the OPBA<sup>xii</sup>.

## **Specific Obligation to Members and Third Parties**

8. In addition to the obligations outlined above, the pension plan administrator is also required to provide information to members and third parties<sup>xiii</sup>. Such information includes:
  - 8.1 An explanation of provisions of the plan, which would include:-
    - a) The provisions of the current pension plan including any amendments to the pension plan;
    - b) Any documents that relate to the pension plan, that are required by section 16 of the OPBA, to be filed with the Commission;
    - c) The provisions of any previous pension plan, including amendments thereto, where the current pension plan is a replacement of the previous pension plan;
    - d) The provisions of any document that sets out the employer's responsibilities with respect to the pension plan;
    - e) Any document by which the administration of the pension plan or pension fund is delegated by the administrator to any person;
    - f) Copies of information returns that are filed in respect of the pension plan;
    - g) Copies of any financial statement or report required to be filed in respect of the pension plan;
    - h) Copies of correspondence in respect of the pension plan sent to or from the Supervisor and the administrator during the 5 years preceding the date of the request;
    - i) Copies of those parts of an agreement that concern the purchase or sale of a business or the assets of a business and that relate to the pension plan;
    - j) Copies of any statement or investment policies and goals that are established for the pension fund;
    - k) Copies of any financial statement or audited financial statement filed in respect of a pension fund.
  - 8.2 An explanation of the member's rights and obligations in respect of the pension plan;
  - 8.3 A written statement, within 4 months of the commencement of each fiscal year, containing the information in respect of the pension plan and the member's entitlement at the end of the previous fiscal year<sup>xiv</sup>;
  - 8.4 A written statement in an approved form, where member ceases to be a member<sup>xv</sup>.
  - 8.5 For the purposes of inspection<sup>xvi</sup>, information in respect of the pension plan and fund, upon written request. However, the administrator has the added responsibility of verifying the entitlement of the requesting party to have sight of the documents<sup>xvii</sup>;
  - 8.6 Any other information prescribed by the OPBA or its regulations;

## **Delegation of Responsibilities**

9. (1) A pension plan administrator may delegate some or all of its responsibilities for administering the pension plan.
  - (2) The administrator may delegate these responsibilities by appointing an agent to act on its behalf in relation to any of its duties<sup>xviii</sup>.
  - (3) Actuaries who provide actuarial services with respect to the establishment or administration of a pension plan are considered agents of the administrator.
  - (4) A custodian of a pension plan is also considered an agent of the administrator.

(5) However, even if the tasks are delegated the administrator is ultimately responsible for ensuring that the plan is being administered in accordance with the OPBA, its regulations and the plan rules.

(6) The administrator is required to supervise the agent. Section 17(4) of the OPBA states

*“An administrator of a pension plan who employs an agent shall be satisfied of the agent’s suitability to perform the functions for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.”*

(7) The duty of care and responsibility to avoid conflict of interest apply in the same manner to all agents engaged by administrators.

(8) The remuneration or reward of an administrator or agent is restricted to the payment of reasonable fees and expenses related to the administration of the pension plan.

(9) Where the administrator is also a member of the pension plan he is also entitled to the benefits ascribed to a plan member.

### **Right of Appeal**

10. An administrator has the right to appeal any decision of the Commission with respect to registering or refusing to register a pension plan pursuant to section 12(4) of the OPBA.

### **Right to Commence Proceedings**

11. An administrator also has the right to commence proceedings to obtain payment of contributions due under the pension plan, the OPBA and the regulations<sup>xix</sup>.

### **Winding up – Obligations to Members**

12. The pension plan administrator may wind up a pension plan, subject to section 60(3) of the OPBA. The administrator shall perform certain statutory duties to facilitate the winding up of the plan, which are as follows:

12.1 Provide written notice of a proposal to wind-up the pension plan to (i) each member, deferred member and retired member of the pension plan (ii) each claimant receiving payments from the pension plan; and (iv) each union that represents members of the pension plan;

12.2 Perform any act for and on behalf of the pension plan and represent it in and out of court;

12.3 Compile an inventory of the assets and liabilities of the pension plan;

12.4 Determine the amount each member is entitled to receive in respect of benefits;

12.5 Determine the amount due to each deferred or retired member in respect of the deferred or retired member’s pension or deferred pension;

12.6 Determine the amount due to each claimant;

12.7 Set out the method of allocating and distributing the assets of the pension plan;

12.8 Set out the amount of the deficit in the plan, and the administrator’s proposed course of action, if any to obtain funding of all or any part of the deficit;

12.9 Set out the priorities for distribution of the assets in the plan;

12.10 Perform any other function as may be prescribed ;

12.11 Provide a statement to each person entitled to a refund, benefit, pension or deferred pension from the pension plan, which sets out (a) the person’s entitlement under the plan (b) the payment options available to the person (c) any other prescribed information<sup>xx</sup>;

- 12.12 Prepare and submit a report with respect to winding-up, (prior to distribution of the assets in the plan, except surplus) to the Commission for its approval setting out the matters in section 62 (above at Nos. 12.2 to 12.10 above)<sup>xxi</sup>;
- 12.13 Prepare and submit a supplementary report, where necessary, to the Commission for approval, prior to distribution of the surplus assets in the plan, setting out the amount of the surplus in the plan, the method and amount of the surplus allocated to each member, deferred and retired member and claimant entitled thereto<sup>xxii</sup>; and
- 12.14 Make payments out of the pension fund in accordance with the proposed scheme, subsequent to approval, set out in the report with respect to winding-up, referred to above<sup>xxiii</sup>.

### **Winding up – Obligations to the Commission**

- 13. An administrator should not commence the winding-up of a pension plan until he has given the written notice to the Commission of a proposal to wind-up the plan.

### **Investigations**

- 14. Where the Commission deems it necessary to investigate a whole or part of a pension plan pursuant to section 83 of the OPBA, the pension plan administrator may be required to produce and allow him to make such extracts from any books, accounts, documents or statistics relating to the pension plan or pension fund for his inspection<sup>xxiv</sup>.

### **Continuity of Duties and Responsibilities**

- 15. In addition to the duties and responsibilities of the pension administrator provided for in the OPBA, the administrator duties and obligations imposed upon an administrator of a pension plan that existed prior to the commencement of the OPBA on 1<sup>st</sup> February, 2011 continue to exist<sup>xxv</sup>.

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<sup>i</sup> OPBA section 8(1) and (2)

<sup>ii</sup> OPBA section 15(1)

<sup>iii</sup> Where a payment in a defined benefit plan exceeds the maximum benefit prescribed in the regulations, the administrator shall cause the benefit to be commuted and shall satisfy the Commissioner of Inland Revenue of the commutation.

<sup>iv</sup> OPBA sections 4 and 45(3)

<sup>v</sup> OPBA section 48

<sup>vi</sup> OPBA section 48(2)

<sup>vii</sup> OPBA section 52 and 53

<sup>viii</sup> OPBA section 16

<sup>ix</sup> OPBA section 80(b)

<sup>x</sup> OPBA section 81

<sup>xi</sup> OPBA section 17 and regulation 10

<sup>xii</sup> OPBA section 17(2)

<sup>xiii</sup> OPBA section 20

<sup>xiv</sup> OPBA section 21

<sup>xv</sup> OPBA section 31, (section 22)

<sup>xvi</sup> OPBA section 23

<sup>xvii</sup> OPBA section 23(3)

<sup>xviii</sup> OPBA section 17(3)

<sup>xix</sup> OPBA section 51(1) and (2)

<sup>xx</sup> OPBA section 64

<sup>xxi</sup> OPBA section 68

<sup>xxii</sup> OPBA section 68(4)

<sup>xxiii</sup> OPBA section 68(7)

<sup>xxiv</sup> OPBA section 84(a)

<sup>xxv</sup> OPBA section 89(6)