



BERMUDA

NATIONAL PENSION SCHEME (GENERAL) REGULATIONS 1999

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The Minister of Finance, in exercise of the power conferred upon him by section 69 of the National Pension Scheme (Occupational Pensions) Act 1998 makes the following Regulations:—

PART 1 PRELIMINARY

Citation

1 These Regulations may be cited as the National Pension Scheme (General) Regulations 1999.

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Interpretation

2 In these Regulations unless the context otherwise requires—

“the Act” means the National Pension Scheme (Occupational Pensions) Act 1998;

“annual information report” means the report referred to in regulation 8 and section 7(3)(a) of the Act;

“auditor” means—

- (a) a person entitled to practise as a public accountant in Bermuda; or
- (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland or Scotland, the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants;

“average employment income” means such income as may, from time to time be specified as such by the Department of Statistics;

“collective agreement” has the meaning assigned to that expression by section 2 of the Trade Union and Labour Relations (Consolidation) Act 2021;

“interest or investment income” means—

- (a) the rate of return as can reasonably be attributed to the investment of the pension fund or that part of the pension fund to which the contributions relate; or
- (b) such rate as may otherwise be prescribed;

“local retirement product” means a retirement plan provided by—

- (a) a financial institution in Bermuda; or
- (b) some other body or person in Bermuda recognised by the Commission, which provides retirement benefits and which is approved by the Commission;

“overseas retirement product” means a retirement plan—

- (a) provided by a body or person outside Bermuda which provides retirement benefits; and
- (b) which is recognised by the Commission;

“pension committee” means a committee referred to in section 6 of the Act.

[Regulation 2 definition “prescribed retirement product” amended, and definition “overseas retirement product” inserted by 2019 : 48 s. 40 effective 30 December 2019; Regulation 2 definition “collective agreement” amended by 2021 : 7 s.100 & Sch. 8 effective 1 June 2021]

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PART II

REGISTRATION AND ADMINISTRATION OF PENSION PLAN AND APPROVAL OF TRUSTEE

REGISTRATION

Application for registration of pension plan, etc.

3 An application for—

- (a) registration of a pension plan;
- (b) registration of a financial institution pension plan;
- (c) approval of a local retirement product,

shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in that form and the prescribed fee.

[Regulation 3 revoked and replaced by 2019 : 48 s.40 effective 30 December 2019]

Application for registration of amendment of pension plan

4 (1) The administrator of a pension plan shall, by application made on the form provided by the Commission, apply to the Commission within ninety days after the date on which the pension plan is amended, for registration of the amendment.

(2) An application for registration of an amendment shall be made by paying the prescribed fee to the Commission and submitting—

- (a) a certified copy of each amending document that changes the documents that create and support the pension plan or pension fund; and
- (b) such other information as the Commission may require.

[Regulation 4 paragraph (1) amended by 2019 : 48 s. 40 effective 30 December 2019]

Application for approval as trustee

4A (1) An application for approval as a trustee shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in the form and the prescribed fee.

(2) The Commission shall, upon payment of the prescribed fee, issue a certificate of approval to the trustee.

[Regulation 4A inserted by 2019 : 48 s. 40 effective 30 December 2019]

Proof of participation in financial institution pension plan

5 Proof of participation in a financial institution pension plan shall be made on the form provided by the Commission and accompanied by the prescribed fee.

[Regulation 5 amended by 2019 : 48 s. 40 effective 30 December 2019]

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Issuance of notice of registration of a pension plan, etc.

6 The Commission shall, subject to payment of the prescribed fee, issue a notice of registration or a certificate of approval in respect of an application made under regulation 3.

[Regulation 6 amended by 2019 : 48 s.40 effective 30 December 2019]

Issuance of notice of registration of amendment

7 The Commission shall issue to the administrator a notice of registration for each amendment to a pension plan registered under this Act.

Annual information report

8 The administrator of a pension plan shall, within six months after the end of the fiscal year of a pension plan, submit to the Commission an annual information report on the form provided by the Commission, together with the prescribed fee.

[Regulation 8 amended by 2019 : 48 s. 40 effective 30 December 2019]

PENSION FUND REQUIREMENTS

Financial statements

9 (1) The administrator of a pension plan shall, within six months after the end of the fiscal year of a pension fund, submit to the Commission financial statements in respect of the pension fund.

(2) If, at the end of the fiscal year of a pension plan the plan has \$3,000,000 or more in assets calculated at market value, the administrator shall, within six months thereafter, submit to the Commission an auditor's report respecting the financial statements.

(3) The financial statements and the auditor's report, if any, shall be prepared in accordance with generally accepted accounting principles and generally accepted auditing standards, respectively.

(4) The financial statements shall be comprised of a statement of net assets and a statement of changes in net assets and shall be prepared on the accrual method of accounting or, if approved by the Commission, on the cash method of accounting.

(5) The financial statements shall identify—

- (a) the name of the pension plan for which the statements have been prepared;
- (b) the registration number of the pension plan; and
- (c) the fiscal period for which the financial statements have been prepared.

(6) The auditor shall report to the administrator when, in the course of reporting on the financial statements, he becomes aware that there are circumstances that indicate that there has or may have been a contravention of the Act or regulations.

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(7) The auditor shall report to the Commission any matter reported under paragraph (6) that has not been corrected or reported to the Commission by the administrator within thirty days after the auditor has reported such matter to the administrator.

(8) A financial statement submitted under this regulation shall be approved by the administrator and the approval shall be evidenced by the manual or facsimile signature of,

- (a) the administrator;
- (b) where the administrator is a pension committee or board of trustees, two members duly authorized to signify the approval; or
- (c) where the administrator is a financial institution, an officer of the institution duly authorized to sign on behalf of the institution.

[Regulation 9 amended by 2019 : 48 s. 40 effective 30 December 2019]

Administrator to provide information to eligible persons, etc.

10 For the purposes of the information required to be provided by an administrator under section 13 of the Act, that information shall be provided—

- (a) in the case of a person who is eligible to be a member of a pension plan upon commencement of employment, within thirty days after the date of such commencement, or, where prior notice of commencement is not provided to the administrator, within thirty days after the administrator receives notice of such commencement;
- (b) in the case of a person who is a member of a pension plan on the date that the plan is established within thirty days after the date of such establishment; and
- (c) in the case of a person who at some date in the future will become eligible to be a member of a pension plan, within sixty days prior to such date, or, where prior notice of such eligibility is not provided to the administrator, within thirty days after the administrator receives notice of such eligibility.

STATEMENTS TO MEMBERS

Annual statement to members of pension plan

11 (1) A statement required under section 14 of the Act shall contain, at least,—

- (a) the name of the pension plan and its registration number;
- (b) the member's name and date of birth;
- (c) the period covered by the statement;
- (d) the date on which the member joined the plan, and, except for multi-employer pension plans, the date on which the member was employed by the employer;

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- (e) the date or dates on which the member became fully vested or will become fully vested;
- (f) the member's normal retirement date and the earliest date at which the member may retire under the pension plan;
- (g) where applicable, the earliest date the member will be eligible to receive an unreduced pension;
- (h) where applicable any person designated by the member as a beneficiary for the purposes of the pre-retirement death benefit under section 31 of the Act;
- (i) a description of any benefits provided on the death of a member and the name of any person designated as a beneficiary;
- (j) the amount of required contributions, if any, made to the pension fund by a member during the period covered by the statement;
- (k) the accumulated amount of required contributions, if any, made to the pension fund by the member, including interest or investment income credited to such contributions, to the end of the period covered by the statement;
- (l) the amount of any additional voluntary contributions made by the member to the pension fund during the period covered by the statement;
- (m) the accumulated amount of any additional voluntary contributions made by the member to the pension fund, including interest or investment income credited to such contributions, to the end of the period covered by the statement;
- (n) in the case of a plan providing defined contributions benefits—
 - (i) the amount of employer contributions allocated to the member during the period covered by the statement;
 - (ii) the accumulated amount of employer contributions, including interest or investment income credited to such contributions, allocated to the member, to the end of the period covered by the statement;
 - (iii) the account balance at the end of the period covered by the statement; and
 - (iv) a summary of fees and expenses;
- (o) in the case of a defined benefit plan—
 - (i) the member's years of employment for the purpose of the calculation of pension benefits, determined as of the end of the period covered by the statement;
 - (ii) the annual amount of pension benefit payable at normal retirement date accrued at the end of the period covered by the statement;

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- (iii) where salary is a factor in determining a pension benefit, the salary level utilized for the purpose of determining the benefit; and
- (iv) a summary of fees and expenses;
- (p) where applicable, a statement that special payments are being made to liquidate any liability;
- (q) a statement setting out the treatment of any surplus in a continuing plan and on wind up;
- (r) an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement for which an explanation has not been previously provided;
- (s) a statement that if, on the wind up of the plan, the assets of the plan are not sufficient to meet the liabilities of the plan, pension benefits may be reduced; and
- (t) information relating to actual or perceived conflicts of interest.

(2) The administrator shall provide the statement required under section 14 of the Act to members within six months after the fiscal year end of the plan.

[Regulation 11(1) subparagraph (o) amended by 2019 : 48 s. 40 effective 30 December 2019]

Termination statement - deferred pensions

12 (1) A written statement required to be given under section 15 of the Act to a member of a pension plan who terminates employment or ceases to be a member for reasons other than retirement or death and who is entitled to a deferred pension shall contain, as recorded on the records of the administrator, at least—

- (a) the name of the pension plan and its registration number;
- (b) the member's name and date of birth;
- (c) the date on which the member joined the pension plan and the years of employment credited under the plan for the purpose of calculating the pension benefit;
- (d) the member's normal retirement date under the plan;
- (e) the pension benefits and ancillary benefits to which the member is entitled on termination and any options respecting such benefits, including early, normal and postponed dates for commencement of the payment of benefits;
- (f) where applicable, the name of the person recorded as the member's beneficiary;
- (g) benefits provided on the death of a member and the name of any person appointed as beneficiary;
- (h) any supplemental benefits payable for a temporary period of time and the date on which the benefits cease to be so payable;

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- (i) any indexation provisions applicable to a deferred pension;
- (j) any benefit payable in the event of the member's death, should the death occur prior to the commencement of payment of pension benefits;
- (k) any benefit payable in the event of the member's death, should the death occur after the commencement of payment of pension benefits;
- (l) the commuted value of any deferred pension determined in accordance with the regulations;
- (m) any options with respect to transfers available under section 23 of the Act;
- (n) the time periods in which any option must be exercised; and
- (o) the amount of any refunds to which the member is entitled and information on the effect, if any, the member's election to receive a refund would have on the member's pension or deferred pension.

(2) The administrator shall provide the written statement referred to in paragraph (1) within thirty days following the member's termination of employment or cessation of membership in the plan or, where notice of termination or cessation is not provided to the administrator prior to the event, within thirty days after the administrator's receipt of such notice.

Termination statement - refunds

13 (1) A written statement required to be given under section 15 of the Act to a member of a pension plan who terminates employment or ceases to be a member of a pension plan for reasons other than retirement or death where the member is not entitled to a pension or deferred pension shall contain at least—

- (a) the name of the plan and its registration number;
- (b) the member's name and date of birth;
- (c) the dates on which the member joined the plan and ceased membership in the plan;
- (d) where applicable, the years of employment credited under the plan for the determination of pension benefits;
- (e) the amount of any refund;
- (f) any ancillary benefit to which the member may be entitled; and
- (g) any option which the member is entitled to elect and the time period in which the option must be exercised.

(2) The administrator shall provide the statement referred to in paragraph (1) within thirty days after the termination of employment or cessation of membership in the plan or, where notice of termination or cessation is not provided to the administrator prior to the event, within thirty days after the administrator's receipt of such notice.

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(3) Where no options are available to the member with respect to a refund, the administrator shall provide any refund to which the member is entitled within thirty days after the member's termination of employment or cessation of membership in the plan or, where notice of termination or cessation is not provided to the administrator prior to the event, within thirty days after the administrator's receipt of such notice.

(4) Where the member has an option with respect to a refund, the administrator shall comply with the election made by the member within sixty days after receipt of a direction from the member.

Statement to survivor

14 (1) The administrator shall, within thirty days after receipt of a notice of death of a member or a former member who is not receiving payments from the pension fund where the death results in the beneficiary or estate of the member or former member becoming entitled to a benefit, provide the beneficiary or legal representative with a statement required under section 15 of the Act that sets out at least—

- (a) the name of the pension plan and its registration number;
- (b) the amount and method of payment of the benefit;
- (c) the amount, if any, payable under section 31(1) of the Act;
- (d) where applicable, the basis for indexation of a pension; and
- (e) where applicable, the amount of the pension resulting from additional voluntary contributions; and
- (f) the options available under section 31 of the Act.

(2) For purposes of section 31(1) of the Act, a beneficiary shall make an election, in writing, within ninety days after receipt of the statement referred to in paragraph (1) and in default of such election the administrator shall forthwith pay the lump sum referred to in section 31(1) of the Act; and upon such payment the administrator shall be discharged from any further obligation.

(3) The administrator of the plan shall comply with an election under paragraph (2) within thirty days after receipt of the written election from the beneficiary.

(4) The administrator of the plan shall provide payment of the death benefit to the beneficiary, if any, or the estate, within thirty days of receipt of such information as in the opinion of the administrator, is sufficient to justify payment of the benefit.

Statement on retirement

15 (1) Within thirty days after the date on which an administrator receives notification that a member has retired, or, where the administrator has not received such notification, within thirty days after an administrator receives a completed application for the payment of pension benefits, the administrator shall give the member a written statement required under section 15 of the Act that sets out at least—

- (a) the name of the pension plan and its registration number;

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- (b) the member's name and date of birth;
- (c) where applicable, the date on which the member joined the plan and the years of employment credited under the plan for purposes of calculating the pension benefit;
- (d) where applicable, the name of the person recorded as the member's beneficiary;
- (e) the date pension benefit payments commence;
- (f) the amount of the pension to which the member is or will be entitled according to the records of the administrator and based on elections made by the member;
- (g) any increase or reduction in the pension resulting from early or postponed retirement;
- (h) the amount of the pension benefit purchased with additional voluntary contributions made by the member;
- (i) the amount of the pension benefit purchased with contributions resulting from a transfer made on behalf of the member from another pension fund;
- (j) any bridging benefits or special allowances and the date on which such ancillary benefits cease to be paid;
- (k) any indexation provisions applicable to the pension or deferred pension;
- (l) any benefit payable in the event of the member's death and the name of the person approved as the beneficiary of that benefit; and
- (m) any other refunds under the plan to which the member is entitled.

(2) In this regulation "bridging benefit" means a periodic payment provided under a pension plan to a former member of the pension plan for a temporary period of time after retirement for the purpose of supplementing the former member's pension benefit.

[Regulation 15 paragraph (1) amended by 2019 : 48 s. 40 effective 30 December 2019]

INFORMATION AVAILABLE ON REQUEST

Information available on request

16 (1) Subject to paragraph (2), for the purposes of section 16(2) of the Act, the documents which a person mentioned in subsection (1) of that section is entitled to inspect are—

- (a) the provisions of the current pension plan including any amendments to the plan;
- (b) any documents that relate to the pension plan that are required to be submitted to the Commission;

- (c) the provisions of any previous pension plan including amendments thereto where the current plan is a successor to a previous pension plan;
- (d) any documents that relate to a previous version of the pension plan and that are required to be submitted to the Commission;
- (e) the applicable provisions of any document that sets out the employer's responsibilities with respect to the pension plan;
- (f) a document that delegates the administration of the pension plan or pension fund;
- (g) copies of any financial statement or any report that is submitted to the Commission in respect of the pension plan or pension fund; and
- (h) 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.

(2) Nothing contained in paragraph (1) authorizes a person to inspect any part of a pension plan, or other document or information, unless such part or document or information, as the case may be, is specifically applicable to that person; and that paragraph shall be read and construed accordingly.

PART IIA

EMPLOYER REQUIREMENTS

Retention of records by employer

16A (1) An employer shall maintain the following records with respect to its pension plan and each of its employees—

- (a) records relating to the pension plan—
 - (i) the registration number of the pension plan;
 - (ii) the administrator's name and address;
- (b) records relating to an employee—
 - (i) name, date of birth, and address of the employee;
 - (ii) date employment commenced;
 - (iii) salaries, wages, bonuses and any other type of compensation paid to the employee, whether directly or indirectly;
 - (iv) date of eligibility for enrolment in the pension plan;
 - (v) actual date of enrolment in the pension plan;
 - (vi) employee contributions—
 - (A) dates and amounts withheld by the employer;
 - (B) dates and amounts paid into the pension fund;

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(vii) dates and amounts of employer contributions paid into the pension fund for the benefit of the employee;

(viii) date of termination of employment.

(2) The records referred to in paragraph (1) shall be kept by the employer for a minimum of seven years following the date of termination of the employee.

(3) Records that are stored electronically must be capable of being reproduced in legible form.

(4) This section applies to a person who stores or maintains records on behalf of an employee.

[Regulation 16A inserted by 2019 : 48 s.40 effective 2 March 2020]

PART III WINDING UP

Notice of proposal to wind up

17 (1) A notice of proposal to wind up a pension plan required under section 38(2) of the Act shall include—

- (a) the name of the pension plan and its registration number;
- (b) the proposed date of winding up; and
- (c) a statement that each member, former member or any other person entitled to a pension, deferred pension, any other benefit or a refund will be provided with an individual statement setting out entitlements and options under the plan.

(2) In addition to entitlements under the plan and any options available, a statement provided to each member, former member or any other person under section 42 of the Act shall include—

- (a) the name of the pension plan and its registration number;
- (b) the member's name and date of birth;
- (c) the date of winding up of the plan;
- (d) the date on which the member joined the plan, and, except in the case of multi-employer pension plans, the date the member was employed by the employer;
- (e) the member's beneficiary as indicated on the records of the administrator;
- (f) the amount of required contributions made to the pension fund by a member since the date of the last annual statement provided under section 14 of the Act;

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- (g) the accumulated amount of required contributions made to the pension fund by the member, including interest or investment income credited to such contributions, to the date of the winding up of the plan;
- (h) the amount of additional voluntary contributions made by the member to the pension fund since the date of the last annual statement provided under section 14 of the Act;
- (i) the accumulated amount of additional voluntary contributions made by the member to the pension fund, including interest or investment income credited to such contributions, to the date of winding up;
- (j) any amount transferred into the pension plan since the date of the last annual statement provided under section 14 of the Act from another pension plan on behalf of the member and the pension benefit under the plan attributable to that amount;
- (k) in the case of a plan providing defined contribution benefits—
 - (i) the amount of employer contributions required to be made in respect of the member since the date of the last annual statement provided under section 14 of the Act;
 - (ii) the amount of employer contributions allocated to the member since the date of the last annual statement provided under section 14 of the Act;
 - (iii) the accumulated amount of employer contributions, including interest or investment income credited to such contributions, allocated to the member on the records of the plan, to the date of winding up; and
 - (iv) the account balance to the date of winding up;
- (l) in the case of a defined benefit plan—
 - (i) the member's years of employment for the purpose of the calculation of pension benefits; and
 - (ii) where salary is a factor in determining a pension benefit, the salary level utilized for the purpose of determining the benefit;
- (m) the interest or investment income credited to contributions required to be made by the member since the date of the last annual statement required under section 14 of the Act;
- (n) an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement for which an explanation has not previously been provided;
- (o) the time period in which any option must be exercised;
- (p) if there are insufficient assets to pay all pension benefits, a description of any reductions made to the person's benefits and the amount of contributions the employer is liable to pay into the fund;

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- (q) if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries;
- (r) notice of where copies of the winding up report are available and information on how copies of the report may be obtained;
- (s) notice of the person the recipient of the statement may contact with respect to any questions arising out of the statement; and
- (t) notice that the entitlements and options are subject to the approval of the Commission and may be adjusted accordingly.

(3) A recipient of a statement referred to in paragraph (2) who is entitled to elect an option shall forward the election to the administrator within ninety days after receipt of the statement.

(4) The administrator shall comply with an election made by a person on the winding up of a pension plan within thirty days after—

- (a) the receipt of the election; or
- (b) the receipt of notice that the winding up report has been approved by the Commission,

whichever is the later.

Insufficiency after winding up

18 Where a pension plan has been wound up in whole or in part and the assets of the pension plan are not sufficient to pay pension or other benefits—

- (a) pension benefits to which a person may be entitled but which have not vested under the terms of the pension plan shall be reduced to an amount proportionate to the extent that the benefits had been funded; and
- (b) except as provided in paragraph (a), pension or other benefits to which a person would otherwise be entitled, shall be reduced to an amount proportionate to the extent that the benefits had been funded.

Fees

19 (1) The fees specified in the second column of the Second Schedule shall be payable in respect of the matters specified in the first column of that Schedule.

(1A) The annual administrative fees referred to in paragraph (7) of the Second Schedule are based on membership at the financial year-end of the pension plan or local retirement product, and are payable by 30 June of each calendar year.

(1B) The annual administrative fees referred to in—

- (a) paragraph (7)(a), (b) and (e) of the Second Schedule shall be paid by the administrator, and such fees are not recoverable from—
 - (i) the members or former members of the pension plan;

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- (ii) the local retirement product, or the policy holders or members of the local retirement product; or
- (iii) out of the pension fund of the pension plan, unless the pension plan rules provide for payment of such fees by the employer;
- (b) paragraph (7)(c) of the Second Schedule shall be paid by the employer of the self-administered pension plan, and such fees are not recoverable from—
 - (i) the members or former members of the pension plan; or
 - (ii) the pension fund of the pension plan;
- (c) paragraph (7)(d) of the Second Schedule shall be paid out of the fund of the multi-employer pension plan.

(2) The Minister may from time to time by order subject to affirmative resolution procedure amend the Second Schedule.

[Regulation 19 paragraphs (1A) and (1B) inserted by 2019 : 48 s. 40 effective 30 December 2019; Regulation 19 paragraph (1A) amended and paragraph (1B) revoked and replaced by 2020 : 33 s. 6 effective 10 August 2020]

PART IV

SELF-EMPLOYMENT PENSION PLANS

Interpretation

20 In this Part—

“net earnings” means a self-employed person’s revenues less expenses (excluding any wages, salary, leave pay, fee, commission, bonus or payments from a profit sharing scheme paid to a self-employed person), from operating a business in a calendar year;

“pensionable earnings from self-employment” in a calendar year means net earnings from a business, provided that such net earnings are calculated on a consistent basis from year to year using either a cash method or accrual method of accounting;

“self-employment pension plan” means a pension plan organized and administered to provide pension benefits in respect of the self-employment of a self-employed person.

[Regulation 20 inserted by BR 69/2000 effective 20 September 2000]

Self-employed person to register self-employment pension plan

21 A self-employed person who has attained twenty-three, but has not attained the normal retirement age and who in a calendar year has pensionable earnings from self-

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employment exceeding \$20,000 shall apply for registration of a self-employment pension plan in accordance with Part II of the Act.

[Regulation 21 inserted by BR 69/2000 effective 20 September 2000; Regulation 21 amended by 2019 : 48 s. 40 effective 30 December 2019]

Amount of contribution to self-employment pension plan

22 (1) A self-employed person referred to in regulation 21 shall within sixty days after the end of, and in respect of that calendar year, contribute to a registered self-employment pension plan an amount which, subject to paragraphs (2) and (3), is the equivalent of two times the amount of the contribution rate at the dates specified in the First Schedule to the Act and thereafter, such amount as may be prescribed by regulations.

(2) A self-employed person referred to in paragraph (1) shall not, in any one calendar year, be required to contribute an amount which exceeds \$10,000.

(3) A self-employed person referred to in paragraph (1) may elect to contribute monthly to a registered self-employment pension plan and, where he so elects, the amount of such monthly contribution shall be calculated on the basis of a reasonable estimate of the self-employed person's monthly earnings.

(4) Where in a calendar year the amount contributed by a self-employed person under paragraph (3) exceeds the amount which that person, but for that paragraph, would have contributed under paragraph (1) the excess may, at the election of the self-employed person be carried forward and applied in respect of contributions for a subsequent year, or be treated as additional voluntary contribution.

[Regulation 22 inserted by BR 69/2000 effective 20 September 2000; Regulation 22 paragraph (2) amended by 2019 : 48 s. 40 effective 30 December 2019]

Non-application of regulation 21 to certain self-employed persons

23 (1) The requirement for registration of a self-employment pension plan under regulation 21 does not apply to a self-employed person who participates in—

- (a) a financial institution pension plan; or
- (b) a registered pension plan established or maintained—
 - (i) for employees of the self-employed person; or
 - (ii) for employees of a business carried on by the self-employed person.

(2) A self-employed person who participates in a financial institution pension plan or a registered pension plan established or maintained for employees of the self-employed person or for employees of the business carried on by the self-employed person shall contribute thereto for the benefit of the self-employed person at a rate of not less than the rate set out in regulation 22.

[Regulation 23 inserted by BR 69/2000 effective 20 September 2000]

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Application of Act and Regulations to self-employed persons

24 Except as provided in this Part, the provisions of the Act, other than section 17, and regulations applicable to pension plans, employers and members shall apply with any necessary changes to self-employment pension plans and to self-employed persons as though they were employers and members.

[Regulation 24 inserted by BR 69/2000 effective 20 September 2000]

PART V

PENSION FUND INVESTMENTS

Interpretation

25 In this Part—

“market value” means the most probable price that would be obtained for property in an arm’s length sale in an open market under conditions requisite to a fair sale, the buyer and seller acting prudently, knowledgeably and willingly;

“mutual fund” means a company limited by shares, or other company having a share capital and incorporated for the purpose of investing the moneys of its members for their mutual benefit and having the power to redeem or purchase for cancellation its shares without reducing its authorized share capital and stating in its memorandum that it is a mutual fund;

“pension plan” includes a local retirement product;

“traded publicly” means listed or quoted on the Bermuda Stock Exchange or any other market on which securities are listed or quoted if the prices at which they have been traded or quoted on that market are regularly published in a newspaper, or business or financial publication, which is of general circulation and for which regular payment is required;

“unit trust scheme” means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“security” means any document, instrument or writing commonly known as a security and includes—

- (a) a share of any class, a series of shares or a debt obligation of a company;
- (b) a certificate evidencing such share or debt obligation; and
- (c) a warrant;

“voting share” means—

- (a) a share of any class of shares of a company that carries voting rights under all circumstances; and

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- (b) a share of any class of shares of a company that carries voting rights by reason of the occurrence of any contingency where that contingency has occurred and is continuing; and

“warrant” means any warrant or other instrument entitling an investor to subscribe for any of the following investments—

- (a) shares;
- (b) debentures.

[Regulation 25 inserted by BR 70 / 2000 effective 20 September 2000; Regulation 25 amended and definition “pension plan” inserted by 2019 : 48 s. 40 effective 30 December 2019]

Duties of administrator

26 (1) The administrator shall, subject to paragraph (2), giving consideration to the overall context of the investment portfolio, ensure that the selection of investments is such as to—

- (a) avoid undue risk of loss or impairment; and
- (b) create a reasonable expectation of fair return or appreciation.

(2) Paragraph (1) shall not apply to that part of a pension fund in which a member of a pension plan makes his own decisions regarding the selection of investments.

(3) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

(4) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied as to the agent’s suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

(5) An employee or agent of an administrator is also subject to the standards that apply to the administrator under section 7(2) of the Act.

(6) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan or otherwise permitted under a law in force in Bermuda or provided for in the pension plan.

(7) Paragraph (6) applies with necessary modifications to a member of a committee or board of trustees that is the administrator of a pension plan and to a person or group of persons or an 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.

(8) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan.

[Regulation 26 inserted by BR70/2000 effective 20 September 2000]

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Investment policies and goals

27 (1) The administrator of a pension plan shall, subject to paragraph (4), establish and maintain a written statement of investment policies and goals.

(2) The statement of investment policies and goals shall be reviewed by the administrator annually and shall be confirmed or amended by him.

(3) The statement of investment policies and goals referred to in paragraph (1) shall identify the type of pension plan, the nature of the liabilities of the pension plan and shall contain guidelines that at least set out—

- (a) the investment portfolio diversification including the aggregate and individual investment limits;
- (b) the asset mix policy and rate of return expectations;
- (c) the categories and sub-categories of investments that may be made;
- (d) the policy to be followed where there is an actual or perceived conflict of interest on the part of the administrator, a member of a committee or board of trustees or any employee or agent of the administrator;
- (e) minimum disclosure requirements with respect to an actual or perceived conflict of interest including the timing of the disclosure;
- (f) the lending of cash or securities;
- (g) the retention or delegation of voting rights acquired through pension plan investments; and
- (h) the basis for the valuation of investments that are not regularly traded.

(4) Regulation 27 shall not apply where a member of a pension plan makes his own decisions regarding the selection of investments.

[Regulation 27 inserted by BR70/2000 effective 20 September 2000]

Defined contribution pension plan

28 The administrator of a defined contribution pension plan shall ensure that the range of investments, as may from time to time be approved by the Commission, is offered and that a member is given enough relevant information to allow the member to make an informed decision regarding his investment in the plan.

[Regulation 28 inserted by BR 70 / 2000 effective 20 September 2000; Regulation 28 amended by 2019 : 48 s. 40 effective 30 December 2019]

Requirements for pension fund investment

29 (1) Subject to paragraph (3), the administrator of a pension plan shall ensure—

- (a) that all bank certificates or deposits in which the pension fund has invested do not exceed—
 - (i) one percent of the issuing bank's or deposit company's total shareholder equity; or

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- (ii) five percent of the issuing bank's shareholder equity if the bank is a licensed bank or licensed deposit company in Bermuda and if the approval in writing of the Commission has previously been obtained;
 - (b) that guaranteed investment certificates in which the pension fund may invest are issued by an insurance company or companies rated by an internationally recognized credit rating agency at grade A or higher.
- (2) The percentage of the total market value of a pension fund that may be invested in the securities of any single company, person, association or other entity shall not exceed ten percent of the total market value of the pension fund at the time the investment is made.
- (3) Paragraph (2) does not apply to—
- (a) deposits held with a licensed bank or licensed deposit company in Bermuda;
 - (b) government issues, bonds, or debentures, that are rated A or higher by Moody's or Standard & Poor's rating agencies;
 - (c) any security or insurance contract approved by the Commission; or
 - (d) investments in open-ended mutual funds or units in a unit trust.
- (4) In determining the percentage of shareholder equity under paragraph (1) (a), the most recently published balance sheet shall be used.

[Regulation 29 inserted by BR 70 / 2000 effective 20 September 2000; Regulation 29 paragraph (3)(c) amended by 2019 : 48 s. 40 effective 30 December 2019]

Mortgages, etc.

30 The funds of a pension plan shall not be loaned on the security of a mortgage or other security agreement on real estate or leaseholds where the amount paid for the mortgage or agreement, together with any prior or equal ranking indebtedness, exceeds sixty percent of the market value of the real estate at the time the loans were approved.

[Regulation 30 inserted by BR70/2000 effective 20 September 2000]

Assets of pension fund

31 Unless otherwise permitted by these Regulations, a pension plan shall not pledge or mortgage the assets of the pension fund.

[Regulation 31 inserted by BR70/2000 effective 20 September 2000]

Borrowing

32 An administrator of a pension plan or any person dealing with a pension plan, local retirement product, or pension fund shall not borrow on behalf of the pension fund without the prior approval of the Commission.

[Regulation 32 inserted by BR 70 / 2000 effective 20 September 2000; Regulation 32 amended by 2019 : 48 s. 40 effective 30 December 2019]

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Investment in real estate

33 Investment by a pension fund in real estate shall at the time the investment is made be limited to a maximum of five percent of the total market value of the pension fund's assets directly in any single parcel of real estate.

[Regulation 33 inserted by BR70/2000 effective 20 September 2000]

Conflict of interest

34 An administrator or, if the administrator is a committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan, shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

[Regulation 34 inserted by BR70/2000 effective 20 September 2000]

Prohibited loans and investments

35 (1) The assets of a pension fund shall not be loaned to, either directly or indirectly, or invested in securities of the following where such securities are not traded publicly—

- (a) the administrator, or an officer, director, agent or employee of the administrator;
- (b) a person responsible for holding or investing the assets of the pension fund or any officer or employee of that person;
- (c) a trade union representing members of the pension plan or an officer or employee of that trade union;
- (d) an employer and, where the employer is a company, officers, or directors of the company;
- (e) where the employer is a company—
 - (i) any shareholder who owns directly or indirectly more than ten percent of the voting shares of the company; or
 - (ii) an affiliated company;
- (ea) a member or former member of the pension plan;
- (f) the husband, wife or child of any person referred to in paragraphs (a) to (ea); and
- (g) operations wholly-owned or controlled either directly or indirectly by a person referred to in paragraphs (a) to (f).

(2) The assets of a pension fund shall not be loaned, either directly or indirectly, or otherwise used, in any securities lending schemes or arrangements except where the loans, or other use, are secured by cash or readily marketable investments having a market value of at least 100 percent of the loan, or other use, and maintained on a daily mark-to-market basis to ensure a market value of the collateral of at least 100 percent of the outstanding market value of the assets.

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(3) For the purpose of this regulation, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person

(4) For the purposes of this regulation, a company is a subsidiary of another company only if—

- (a) it is controlled by—
 - (i) that other company; or
 - (ii) that other company and one or more companies each of which is controlled by that other company; or
 - (iii) two or more companies each of which is controlled by that other company; or
- (b) it is a subsidiary of a subsidiary of that other company.

(5) For the purposes of this regulation, a company is controlled by another company or person or by two or more companies only if—

- (a) shares of the first-mentioned company carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or persons or by or for the benefit of those other companies; and
- (b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

(6) this regulation does not apply to deposits or guaranteed investment certificates.

[Regulation 35 inserted by BR 70 / 2000 effective 20 September 2000; Regulation 35 amended by 2019 : 48 s. 40 effective 30 December 2019]

Assets, etc. to be in name of pension fund

36 All assets of a pension fund shall be held in the name of, or for the account of, the fund.

[Regulation 36 inserted by BR70/2000 effective 20 September 2000]

Acceptance of bonds, etc. by pension fund

37 Where a pension fund owns investments in a company and, as a result of arrangements for the reorganisation or liquidation of the company, or for the amalgamation of the company with another company, the investments are to be exchanged for bonds, debentures or other evidences of indebtedness, or shares that result in the limitations set out in this Part being exceeded, the pension fund may accept and hold such bonds, debentures or other evidence of indebtedness or shares for a period not exceeding one year unless approved by the Commission.

[Regulation 37 inserted by BR70/2000 effective 20 September 2000]

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Transitional

38 A pension plan that was established, and was in effect before 1 July 2000 shall comply with this Part by 1 September 2001.

[Regulation 38 inserted by BR70/2000 effective 20 September 2000]

PART VI

ACTUARIAL AND FUND MANAGEMENT

A - INTERPRETATION

Interpretation

39 (1) In this Part—

“actuarial gain” means the sum, if positive, at the valuation date of a going concern valuation, of—

- (a) the gain or loss to a pension plan during the period since the immediately preceding report prepared in accordance with regulation 50(1) or 51(1) of the increase or decrease in the value of the assets of a pension plan, less the liabilities of the plan during the period determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;
- (b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan other than an amendment that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognised for purposes of the provision of pension benefits; and
- (c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;

“actuarial loss” means the sum, if negative, at the valuation date of a going concern valuation, of—

- (a) the gain or loss to a pension plan during the period since the immediately preceding report prepared in accordance with regulation 50(1) or 51(1) of the increase or decrease in the value of the assets of a pension plan less the liabilities of the plan during the period determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;
- (b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan other than an amendment that provides benefits for employment prior to the date of the amendment where

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the employment had not previously been recognised for purposes of the provision of pension benefits; and

- (c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;

“ancillary benefits” means the benefits referred to in section 29 of the Act;

“annuity contract” means an annuity contract, issued by an issuer registered under the Insurance Act 1978 or any other person approved by the Commission, which is purchased in discharge or in full settlement of a pension or benefit under a registered pension plan;

“asset transfer ratio” means the ratio of—

- (a) the market value of investments held by the employer’s pension plan plus any cash balances and accrued or receivable income items; to
- (b) the sum of the transfer liabilities and the residual liabilities;

“asset transfer value” means the transfer liabilities multiplied by the lesser of—

- (a) the asset transfer ratio; and
- (b) 1.00;

“book value”, in relation to an asset, means the cost of acquisition to the person acquiring the asset, including all direct ancillary costs associated with the acquisition;

“carrying value” means a reasonable estimate of market value;

“effective date of transfer” means the effective date of the amendment which gives rise to the transfer of assets and liabilities from an exporting plan to an importing plan;

“escalated adjustment” means an adjustment that is made to a pension or a deferred pension of a former member of a pension plan where—

- (a) the adjustment is not capable of being determined with certainty at the time the plan or a relevant amendment to the plan is submitted for registration because the adjustment is related to the investment earnings of the pension fund or to future changes in a general wage or price index; or
- (b) the adjustment is an increase in the pension or deferred pension at a fixed annual percentage rate specified in the plan;

“exporting plan” means each pension plan from which an asset and liability transfer to an importing plan is proposed;

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- “going concern assets” means the value of the assets of a pension plan including accrued and receivable income determined on the basis of a going concern valuation;
- “going concern liabilities” means the present value of the accrued benefits of a defined benefit provision of a pension plan determined on the basis of a going concern valuation;
- “going concern unfunded liability” means the amount, if any, by which the sum of the going concern liabilities exceeds the going concern assets;
- “going concern valuation” means a valuation of assets and liabilities of a defined benefit provision of a pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with the Standards of Practice of the Canadian Institute of Actuaries, or a corresponding equivalent that may be approved by the commission, for the valuation of a continuing pension plan;
- “importing plan” means the pension plan to which the assets and liabilities will be transferred;
- “initial valuation date” means the valuation date of the first report filed or submitted following the coming into operation of these regulations;
- “market value” means the most probable price that would be obtained for property in an arm’s length sale in an open market under conditions requisite to a fair sale, the buyer and seller acting prudently, knowledgeably and willingly;
- “normal cost” means the cost of pension benefits and ancillary benefits with respect to a fiscal year of a pension plan determined in accordance with the methods and actuarial assumptions used in a going concern valuation;
- “past service unfunded liability” means the amount of going concern unfunded liability that results from the provision of benefits with respect to employment prior to the effective date of the pension plan or from an amendment to a plan that provides benefits for employment prior to the date of the amendment where the employment had not previously been recognised for purposes of the provision of pension benefits;
- “prospective benefit increase” means an increase to a pension benefit or ancillary benefit set out in the pension plan or agreed to by the parties to a collective agreement, but not yet in effect;
- “report” unless otherwise specified means a report prepared by an actuary;
- “residual asset value” means the residual liabilities multiplied by the lesser of—
- (a) the asset transfer ratio; and
 - (b) 1.00;
- “residual liabilities” are the greater of—
- (a) the going concern liabilities; and

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(b) the solvency liabilities;

of the pensions, deferred pensions, ancillary benefits or pension benefits for which the employer has retained responsibility;

“solvency assets” means the market value of investments held by a pension plan plus any cash balances of the plan and accrued or receivable income items of the plan, excluding the value of any qualifying annuity contract of the plan;

“solvency deficiency”, means the amount by which the sum of the solvency liabilities exceeds the sum of the solvency assets, as of the valuation date of a report;

“solvency excess” means the amount by which the sum of the solvency assets exceed the sum of the solvency liabilities as of the valuation date of a report;

“solvency liabilities”, in relation to a report, means the liabilities of a pension plan determined as if the plan had been wound up on the valuation date of the report, but excluding liabilities for—

- (a) any escalated adjustment;
- (b) prospective benefit increases; and
- (c) future salary increases;

“solvency valuation” means a valuation performed in accordance with regulation 51(3);

“special payment” means a payment or one of a series of payments determined for the purpose of liquidating a going concern unfunded liability or solvency deficiency in accordance with regulations 40(1) and 40(2);

“surplus” in respect of a defined benefit provision of—

- (a) an ongoing pension plan means the amount by which the assets of the plan exceed the liabilities of the pension plan where—
 - (i) the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items;
 - (ii) the liabilities of the plan are calculated to be the greater of the going concern liabilities and the solvency liabilities; and
- (b) a pension plan that is or is being wound up means the amount by which the assets of the plan exceed the solvency liabilities where the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items;

“transfer liabilities” are the greater of—

- (a) the going concern liabilities; and

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(b) the solvency liabilities, but without the exclusions referred to in the definition of solvency liabilities,

of the pensions, deferred pensions, ancillary benefits or pension benefits for which the successor employer has assumed responsibility;

“transferred members” means those members, former members and persons entitled to a payment from a pension fund whose benefits are subject to a transfer of assets and liabilities in accordance with Part VI(C) of these regulations;

“transfer ratio” means the fraction obtained by dividing the solvency assets of a pension plan by the solvency liabilities of the plan calculated at the latest valuation date;

“valuation date” means the date as of which the assets and liabilities are valued for the purposes of the going concern and solvency valuations in a report;

“wind up value” means the commuted value of a member’s entitlement under a defined benefit provision of a pension plan determined as if the plan had been wound up on the date of determination.

(2) Where, in respect of an investment in a pension plan, there is no market value and the investment is issued or guaranteed by a government, then, for the purpose of calculating solvency assets or a transfer ratio, the book value of the investment shall be used.

(3) For the purposes of these Regulations, a going concern unfunded liability, a past service unfunded liability, a solvency deficiency or a transfer ratio, respectively, arises on the date specified in the report as the date on which such going concern, unfunded liability, past service unfunded liability, solvency deficiency or transfer ratio, as the case may be, is determined.

[Regulation 39 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 39 paragraph (1) definition “going concern valuation” amended by 2019 : 48 s. 40 effective 30 December 2019]

Application for approval to issue annuity contracts

39A (1) An application for approval to issue annuity contracts shall be made on the form provided by the Commission, and shall be accompanied by certified copies of the documents specified in the form and the prescribed fee.

(2) The Commission shall, upon payment of the prescribed fee, issue a certificate of approval to the person approved to issue annuity contracts.

[Regulation 39A inserted by 2019 : 48 s.40 effective 30 December 2019]

B - Funding

Funding of defined benefit plan

40 (1) The total annual contributions to be made to a defined benefit provision of a pension plan each year by the combination of employer and member contributions shall be equal to the greater of—

- (a) the amount required to fund the plan on a going concern basis as specified in paragraph (2); and
- (b) the sum of—
 - (i) the normal cost determined in a going concern valuation; and
 - (ii) the annual amount of special payments required to amortise any solvency deficiency as at the valuation date over an amortisation period not exceeding five years.

(2) The amount required to fund a defined benefit provision of a pension plan on a going concern basis is equal to the sum of the following elements of the going concern valuation for the year—

- (a) the normal cost;
- (b) the special payments, if any, required to amortise the past service unfunded liability;
- (c) special payments required to amortise the actuarial losses, less any special payments required to amortise the actuarial gains;
- (d) the remaining special payments required to amortise the going concern unfunded liability in the immediately preceding reports prepared in accordance with regulation 50(1), 51(1) or 51(4).

(3) The employer's required annual contributions shall be equal to the total annual contribution determined in paragraph (1), less the expected member contributions based on the member contribution rate determined in paragraph (4), but shall not be less than zero.

(4) For the purposes of paragraph (1), members contributions shall be in accordance with the plan provisions and the Act.

(5) The payments referred to in paragraph (1) and paragraph (2) shall be made by the employer or the person who is required to make contributions on behalf of the employer in accordance with paragraphs (6) to (9).

(6) All sums received by the employer from the member, including money withheld by payroll deduction or otherwise from the member, as the member's contribution to the pension plan, shall be paid into the pension fund within thirty days following the month in which the sum was received or deducted.

(7) Employer contributions in respect of the normal cost for each period covered by a report beginning on or after 1 August, 2004, shall be paid into the pension fund, in

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monthly installments within thirty days after the month for which contributions are payable.

- (8) The amount of the installment referred to in paragraph (7) shall be—
- (a) a total fixed dollar amount;
 - (b) a fixed dollar amount in respect of each member of the pension plan; or
 - (c) a fixed percentage either of the portion of payroll related to members of the pension plan or of the members' contributions.

(9) Employer contributions for special payments with interest at the going concern valuation interest rate, shall be paid into the pension fund in equal monthly installments over a period of fifteen years beginning on the valuation date of the report in which the unfunded liability or actuarial loss was determined.

(10) Employer contributions for amounts required to amortise any solvency deficiency with interest at the rate used to determine the solvency deficiency, shall be paid into the pension fund in equal monthly installments over a period of five years beginning on the valuation date of the report in which the solvency deficiency was determined.

(11) A surplus established under a going concern valuation may be used to reduce or determine employer contributions to the plan until the earlier of the date at which—

- (a) the plan is no longer in surplus on a going concern basis; and
- (b) the plan has a solvency deficiency,

as determined in a report.

[Regulation 40 inserted by BR60/2004 effective 18 August 2004]

Funding of multi-employer pension plan

40A Regulation 40 does not apply to a multi-employer pension plan where an alternative method of funding the plan has been approved by the Commission.

[Regulation 40A inserted by 2019 : 48 s. 40 effective 30 December 2019]

C - Sales, Transfers and New Plans

Application for approval

41 (1) An application shall identify, by name and registration number, the exporting plan(s) and the importing plan affected by the transfer proposal, and the market value of assets and the value of the liabilities, determined in accordance with Part VI C, to be transferred from or to each applicable exporting or importing plan and must, if required by the Commission, include all the information, statements and reports required by Part VI C.

(2) Where a transfer of assets and liabilities results from a transaction described in section 47(1) of the Act, the application shall, if required by the Commission, include those portions of the purchase and sale agreement and any subsequent revisions to that agreement which relate to the transfer of assets and liabilities.

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(3) An application for approval of a transfer shall be accompanied by the prescribed fee.

[Regulation 41 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 41 amended by 2019 : 48 s. 40 effective 30 December 2019]

Notice of proposed transfer

42 (1) Where an employer proposes to transfer assets and liabilities from an exporting plan to an importing plan, the employer shall, if required by the Commission, give notice of his intention to do so to the following persons—

- (a) each member, former member and any other person entitled to payment from the exporting plan;
 - (b) each member, former member and any other person entitled to payment from the importing plan;
 - (c) each trade union that represents members of the exporting plan;
 - (d) each trade union that represents members of the importing plan; and
 - (e) such other persons as the Commission may direct.
- (2) The notice required under paragraph (1) shall contain—
- (a) the name and registration number of each exporting plan;
 - (b) the name and registration number of each importing plan;
 - (c) the proposed effective date of transfer;
 - (d) in the case of a defined benefit provision of a pension plan an explanation of the proposed transfer of assets and liabilities, including the transfer ratio or the asset transfer ratio, as applicable, of each of the exporting plan and the importing plan;
 - (e) notice that copies of the report submitted or to be submitted to the Commission in support of the transfer of assets request, excluding information as to the service, salary, pension benefits or other personal information related to any specific person (unless that person's prior consent is obtained), are or will be available for review at the offices of the administrator of the exporting plan and, where different, at the offices of the administrator of the importing plan;
 - (f) where the plan is in a surplus position, the intended treatment of surplus and the basis for the allocation, if any, of the surplus;
 - (g) a statement that no assets or liabilities may be transferred until the approval of the Commission is obtained; and
 - (h) a statement that comments concerning the proposed transfer may be submitted to the Commission within a thirty-day period following receipt of the notice.

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(3) The notice required pursuant to paragraph (1) shall be transmitted by personal delivery or by registered mail, however the Commission may, where it considers it appropriate to do so, accept another form of notice or another method of delivery, or both.

(4) The employer shall submit to the Commission a copy of the notice required under paragraph (1) before transmitting it to the persons required under this regulation.

(5) Copies of the notices given pursuant to paragraph (1) shall be submitted to the Commission with the application for the approval of the transfer, together with a certification by the employer in respect of each notice transmitted as to—

- (a) the date on which the last notice was transmitted;
- (b) the persons or bodies to whom the notice was transmitted; and
- (c) the method of delivery of the notice.

[Regulation 42 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 42 paragraph (1) amended by 2019 : 48 s. 40 effective 30 December 2019]

Reports and Statements

Defined contribution provisions

43 (1) Where an amount is transferred in accordance with Part VI C from—

- (a) the defined contribution provision of a pension plan to the defined contribution provision of another pension plan, the amount transferred shall not be less than the value of the account balances of the transferred members;
- (b) the defined contribution provision of a pension plan, to the defined benefit provision of another pension plan, the amount transferred shall not be less than the value of the account balances of the transferred members, and the commuted value of the defined benefit which is provided, determined at the date of transfer, shall not be less than the amount transferred;
- (c) the defined benefit provision of a pension plan to the defined contribution provision of another pension plan, the amount transferred shall not be less than the wind up value, determined at the date of the transfer, in respect of each transferred member.

(2) The Commission shall not approve a transfer under paragraph (1)(c) where the funded ratio of the exporting defined benefit provision is less than one, until the employer contributes such amount as is required to fully fund the value of the benefits to be transferred.

(3) An explanation of the proposed transfer of assets and liabilities and a statement that such transfer complies with paragraph (1) shall be prepared by an accountant, an actuary, a person who is authorised by a financial institution, or some other body or person recognised by the Commission.

[Regulation 43 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 43 paragraph (3) amended by 2019 : 48 s. 40 effective 30 December 2019]

Defined benefit provisions - full transfers

44 (1) Where all of the assets and liabilities are transferred from a defined benefit provision of a pension plan to another defined benefit provision, reports, prepared at the effective date of transfer and in accordance with this regulation, shall be submitted to the Commission in support of the application, however the Commission may, where it considers it appropriate so to do, permit a report to be prepared with a date other than the effective date of transfer.

(2) For the purpose of paragraph (1), the actuarial methods and assumptions used in preparing the solvency valuations in the reports for the exporting plan and the importing plan shall be consistent.

(3) In respect of each exporting plan, the report must include—

- (a) a going concern valuation and a solvency valuation;
- (b) the transfer ratio; and
- (c) the amount of any going concern unfunded liability or solvency deficiency, or both, and the amount of any special payments, including the amortisation period required to liquidate the going concern unfunded liability or solvency deficiency, or both, must be identified.

(4) In lieu of preparing a report for each exporting plan, a single consolidated report, which includes information relating to each of the exporting plans, may be prepared.

(5) A report prepared for the importing plan must include a going concern valuation and a solvency valuation and meet the requirements of paragraphs (6) to (9) of this regulation.

(6) Where the report for the importing plan indicates that special payments are required, the scheduled amount of each monthly amortisation payment must be no less than the sum of the corresponding scheduled amounts of the monthly special payments required for the exporting plans immediately prior to any asset transfers.

(7) For the purposes of paragraph (6), the amortisation period should be shortened, if appropriate, and the final amortisation payment adjusted accordingly.

(8) Except as permitted by paragraph (9), payments which are not less than the scheduled amount of the monthly amortisation payments for the importing plan must be continued until the date on which the going concern unfunded liability or solvency deficiency, or both, identified for the importing plan at the effective date of transfer is fully amortised or otherwise liquidated.

(9) Where an actuarial gain or solvency excess emerges after the effective date of any of the reports, the amortisation payment schedule established in the applicable report may be adjusted in accordance with regulation 51(1)(g).

[Regulation 44 inserted by BR60/2004 effective 18 August 2004]

Defined benefit provisions - partial transfers

45 (1) Where less than all of the assets and liabilities are transferred from a defined benefit provision of a pension plan to another defined benefit provision, reports, prepared at the effective date of transfer and in accordance with this regulation, shall be submitted to the Commission in support of the application, however, the Commission may, where it considers it appropriate so to do, permit a report to be prepared with a date other than the effective date of transfer.

(2) In respect of each exporting plan, the report must include—

- (a) a going concern valuation and a solvency valuation;
- (b) the asset transfer ratio;
- (c) the going concern liabilities, solvency liabilities and asset transfer value of the benefits for which the importing plan has assumed responsibility;
- (d) the going concern liabilities, solvency liabilities and residual asset value of the benefits for which the exporting plan has retained responsibility; and
- (e) the amount of and the basis for determination of the assets to be transferred to the importing plan.

(3) For the purposes of paragraph (2)(e), assets having a market value as at the effective date of transfer of not less than the lower of the asset transfer value or the solvency liabilities reported under paragraph (2)(c) shall be transferred from the exporting pension plan to the importing pension plan.

(4) The Commission shall refuse to consent to a transfer under this regulation if after such a transfer the market value of the assets remaining in the exporting pension plan as at the effective date of transfer would be less than the lower of the residual asset value or the solvency liabilities reported under paragraph (2)(d).

(5) Notwithstanding paragraphs (3) and (4), the Commission may, under exceptional circumstances, require or permit a transfer of assets determined using some other equitable basis.

(6) A report prepared for the importing plan must include a going concern valuation and a solvency valuation and meet the requirements of paragraph (7).

(7) In the preparation of the report required under paragraph (6), there may be included as past service unfunded liabilities, the net increase in liabilities as a result of—

- (a) benefit improvements granted to the transferred members on the date they become members of the importing pension plan; and
- (b) the difference in going concern liabilities arising as a result of the differences in actuarial funding method or assumptions between the exporting pension plan and the importing pension plan as reported in the last report submitted under the Act and the regulations.

[Regulation 45 inserted by BR60/2004 effective 18 August 2004]

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Plan amendments

46 (1) Amendments to an exporting plan, which provide for a transfer of assets and liabilities to an importing plan, shall be submitted to the Commission in support of the application.

(2) Amendments to an importing plan which provide for a transfer of assets and liabilities from an exporting plan shall be submitted to the Commission in support of the application.

[Regulation 46 inserted by BR60/2004 effective 18 August 2004]

Administrator to retain member records

47 (1) The administrator of an importing plan shall maintain and retain a record of information about each exporting plan at the effective date of transfer.

(2) The information referred to in paragraph (1) shall be sufficient to identify all the members, former members and any other persons entitled to payment from each exporting plan on the effective date of transfer and their respective benefits as at the effective date of transfer.

(3) The record of information about each exporting plan shall include the names of the members, former members and any other persons, their respective benefits (including accrued pension benefits and ancillary benefits), their last known address at the effective date of transfer, and the market value of the assets, the going concern liabilities and the solvency liabilities of the plan.

(4) Paragraphs (1), (2) and (3) also apply to the administrator of the importing plan with respect to the members, former members and any other persons entitled to a payment from the importing plan prior to any transfer of assets to such plan.

[Regulation 47 inserted by BR60/2004 effective 18 August 2004]

Effective date

48 Part VI C of the regulations shall be effective with respect to transfers which have an effective date on or after 1 August, 2004.

[Regulation 48 inserted by BR60/2004 effective 18 August 2004]

D - Calculation of Assets and Liabilities and Reports

Method of calculating assets and liabilities

49 (1) The assets and liabilities in a defined benefit provision of a pension plan shall—

- (a) be determined in a manner that complies with the Standards of Practice of the Canadian Institute of Actuaries or a corresponding equivalent that may be approved for this purpose by the Commission; and
- (b) be determined as at the effective date of the valuation of the pension plan.

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(2) The assets and liabilities in a defined contribution provision of a pension plan shall be determined using the market value of the accumulated contributions, with investment income, made to the pension fund by or in respect of the members or former members, less any applicable fees.

(3) This regulation does not apply to a multi-employer pension plan where an alternative method of determining the assets and liabilities of the pension plan has been approved by the Commission.

[Regulation 49 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 49 amended by 2019 : 48 s. 40 effective 30 December 2019]

Initial valuation report

50 (1) The initial valuation report required to be submitted with an application for registration of a pension plan shall following the coming into operation of these regulations, set out, on the basis of an ongoing concern valuation—

- (a) the normal cost in the year of registration of the plan (“the initial year”) and the formula for computing normal cost in subsequent years up to the date of the next report (“subsequent years”);
- (b) an estimate of the normal cost in each of the subsequent years up to the date of the next report;
- (c) a calculation of the employer’s required contributions in each of the initial year and the subsequent years in accordance with the First Schedule to the Act and regulation 40(3);
- (d) estimated total employee contributions, if any, during each of the initial year and subsequent years up to the date of the next report;
- (e) the past service unfunded liability or surplus, if any, as at the initial valuation date;
- (f) where there is a past service unfunded liability, the special payments required to amortise it over a term not exceeding fifteen years;
- (g) information respecting escalated adjustments, if any; and
- (h) such other information that may be required by the Commission.

(2) If the actuary is of the opinion that there is a solvency deficiency, the report shall also set out, on the basis of a solvency valuation—

- (a) the amount of the solvency deficiency and the special payments needed to amortise it over a term not exceeding five years; and
- (b) whether the transfer ratio is less than 1.00 and if it is, the transfer ratio.

[Regulation 50 inserted by BR60/2004 effective 18 August 2004]

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Triennial report and solvency concerns

51 (1) The report referred to in section 7(3)(c)(i) of the Act (in these regulations referred to as “the triennial report”) shall contain the following information—

- (a) the normal cost in the year following the valuation date of the report (“the first year”) and the formula for computing normal cost in subsequent years up to the date the next report (“the following years”) is due to be submitted to the Commission;
- (b) an estimate of the normal cost in each of the following years up to the date of the next report;
- (c) a calculation of the employer’s required contributions in each of the first year and the following years in accordance with the First Schedule to the Act and regulation 40(3);
- (d) estimated total employee contributions, if any, during each of the first year and the following years up to the date of the next report;
- (e) the special payments to be made in accordance with regulation 40(2);
- (f) the present value of future special payments remaining to be paid after the valuation date;
- (g) information respecting escalated adjustments, if any;
- (h) the actuarial gain or actuarial loss in the pension plan and—
 - (i) where there is an actuarial gain, the special payments that will amortise any decrease in a going concern unfunded liability resulting from the gain over a term not to exceed fifteen years; or
 - (ii) where there is an actuarial loss, the special payments that will amortise any increase in a going concern unfunded liability resulting from the loss over a term not to exceed fifteen years;
- (i) the going concern liabilities as at the valuation date;
- (j) the book and market values of the pension plan assets as at the valuation date; and
- (k) such other information that may be required by the Commission.

(2) The reports referred to in regulations 50(1), 51(1) and (4) shall be prepared in a manner that complies with the Standards of Practice of the Canadian Institute of Actuaries, or a corresponding equivalent approved for this purpose by the Commission.

(3) If the actuary is of the opinion that there is a solvency deficiency, the triennial report shall also set out, on the basis of a solvency valuation—

- (a) the amount of the solvency deficiency and the special payments required to amortise it over a term not to exceed five years;
- (b) any liabilities excluded from the report including escalated adjustments and prospective benefits increases;

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- (c) an estimate of the wind up expenses; and
 - (d) whether the transfer ratio is less than 1.00, and if it is, the transfer ratio.
- (4) Where a report indicates a solvency concern, a subsequent actuarial valuation shall be prepared within one year from the valuation date of the report which identified the solvency concern, or by such earlier date as the Commission may specify.
- (5) For the purposes of this regulation a solvency concern exists when—
- (a) the ratio of the solvency assets to the solvency liabilities is less than 0.8; or
 - (b) the solvency liabilities exceed the solvency assets by more than \$500,000.00 and the ratio of the solvency assets to the solvency liabilities is less than 0.9.

[Regulation 51 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 51 amended by 2019 : 48 s. 40 effective 30 December 2019]

Report on amendment of defined benefit plan

- 52 (1) An administrator of a defined benefit pension plan shall submit a report of an actuary to the Commission if an amendment to the plan reduces or increases contributions or creates or changes a going concern unfunded liability or solvency deficiency.
- (2) A report referred to in paragraph (1) shall—
- (a) contain the information required to be included in a triennial report, under regulation 51, that may be affected by the amendment; and
 - (b) be submitted to the Commission within six months from the date that the amendment is required to be submitted to the Commission for registration.

[Regulation 52 inserted by BR60/2004 effective 18 August 2004]

Actuarial reports

- 53 An actuary who prepares a report under these regulations shall—
- (a) use assumptions which are appropriate for the pension plan and methods consistent with—
 - (i) sound principles established by precedent or by common usage within the actuarial profession;
 - (ii) the requirements of the Act and the regulations; and
 - (b) certify that the report meets the requirements of the Act and the regulations.

[Regulation 53 inserted by BR60/2004 effective 18 August 2004]

E - Supplementary Provisions

Protection of annuity contracts

54 (1) An annuity contract purchased under a pension plan registered under the Act shall be administered in accordance with the terms of the plan, as a pension or benefit under the Act and the regulations, and shall contain a provision which states that, except as permitted under the Act, no money transferred, including interest, for the purchase of such annuity, shall be assigned, charged, anticipated or given as security.

(2) Any purported assignment, charge, anticipation or giving as security, as the case may be, of an annuity contract shall be void.

(3) Subject to paragraph (4), prior to the expiry of a guaranteed period of an annuity, the annuitant may only commute the remaining value of the annuity for the purpose of transferring it to a retirement product.

(4) Notwithstanding paragraph (3), where an annuitant's surviving beneficiary inherits an annuity with an unexpired guaranteed period, the surviving beneficiary may commute the annuity in favour of a lump sum payment.

(5) A purported commutation otherwise than in accordance with paragraph (3) or (4) is void.

(6) In calculating the amount of the annuity purchased under a defined contribution pension plan, the sex of the annuitant may be taken into account.

(7) If the pension plan from which money was originally transferred to an annuity contract provided for variation in the terms of payment or other benefit in accordance with section 34 of the Act then the annuity contract shall have a similar provision.

[Regulation 54 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 54 amended by 2019 : 48 s. 40 effective 30 December 2019]

Calculation of commuted value

55 (1) The commuted value of a pension or benefit determined under a defined benefit provision of a pension plan shall—

(a) be determined in a manner that complies with the Canadian Institute of Actuaries Standards or Recommendations, or a corresponding equivalent that may be approved for this purpose by the Commission; and

(b) be determined as at the date of termination of membership, death, retirement, or termination of a pension plan.

(2) The commuted value of a pension or benefit determined under a defined contribution provision of a pension plan shall be the value of the accumulated contributions, with investment earnings, made to the pension fund by or in respect of the member or former member.

(3) If, at the date of determination of the commuted value of the pension or benefit, the former member has an unconditional entitlement to optional forms of a pension or

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benefit or to optional commencement dates, the option that has the greatest value shall be used to determine the commuted value.

[Regulation 55 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 55 paragraph (1)(a) amended by 2019 : 48 s. 40 effective 30 December 2019]

Surplus

55A An administrator of a pension plan or local retirement product shall not pay any surplus out of a pension fund without the prior approval of the Commission.

[Regulation 55A inserted by 2019 : 48 s. 40 effective 30 December 2019]

Employer holds money in trust for member

56 (1) Where an employer receives money from a member under an arrangement that the employer will pay the money into a pension fund as the member's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the member until the employer pays the money into the pension fund.

(2) For the purposes of paragraph (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to a member shall be deemed to be money received by the employer from the member.

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions, including money received by the employer from the member, accrued to the date of the wind up but not yet due under the plan or regulations.

(5) The administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under paragraphs (1), (3) and (4).

(6) The assets or property of an employer or the proceeds of sale of the assets or property shall not be distributed to any person entitled thereto until provision has been made for the payment into a pension fund of any amount payable by the employer.

(7) Paragraphs (1), (3) and (4) apply whether or not the money has been kept separate and apart from other money or property of the employer.

(8) Paragraphs (1) to (7) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan.

[Regulation 56 inserted by BR 60 / 2004 effective 18 August 2004; Regulation 56 paragraph (4) amended by 2019 : 48 s. 40 effective 30 December 2019]

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FIRST SCHEDULE

(r. 3)

FORM NO. 1
APPLICATION FOR REGISTRATION OF A PENSION PLAN

[First Schedule revoked by 2019 : 48 s. 40 effective 30 December 2019]

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SECOND SCHEDULE

(regulation 19)

FEES

<u>COLUMN 1</u>	<u>COLUMN 2</u>
(1) Registration of Pension Plans	
(a) applying to register—	
(i) a pension plan under regulation 3(a)	\$500
(ii) a financial institution pension plan under regulation 3(b)	\$1,000
(b) issuing a notice of registration in respect of—	
(i) a pension plan under regulation 6	\$500
(ii) a financial institution pension plan under regulation 6	\$500
(c) applying to register an amendment to a pension plan under regulation 4(1)	\$200
(2) Proof of Participation	
Submitting proof of participation in a financial institution pension plan under regulation 5	\$5 per member
(3) Approvals	
(a) Local Retirement Product	
(i) applying for approval of a local retirement product under regulation 3(c)	\$1,000
(ii) issuing a certificate of approval under regulation 6	\$500
(b) Trustees	
(i) applying for approval as a trustee under regulation 4A(1)	\$100 per trustee
(ii) issuing a certificate of approval under regulation 4A(2)	\$100 per trustee
(c) Transferring a Pension Plan	
applying for approval to transfer a pension plan under regulation 41(3)	\$100
(d) Winding-Up Report	
applying for approval of a winding-up Report under section 40(1) of the Act	\$100

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(e)	Annuity Contract	
	(i) applying under regulation 39A(1) for approval to issue annuity contracts	\$200
	(ii) issuing a certificate under regulation 39A(2) for approval to issue annuity contracts	\$200
(4)	Annual Information Report	
	Submitting an annual information report pursuant to regulation 8	\$5 per member and former member
(5)	Extension of Time	
	Applying for extension of time pursuant to section 66 of the Act	\$100 per application
(6)	Supplying Documents	
	Supplying copies of documents pursuant to section 16(2) of the Act—	
	(a) for each page	\$1
	(b) minimum fee	\$5
(7)	Annual Administrative Fees	
	Annual administrative fee in respect of—	
	(a) an employer pension plan that is not a multi-employer pension plan; or a self-employment pension plan; or a financial institution pension plan; or a plan that is not self-administered by an employer	\$30 per member and former member
	(b) a financial institution pension plan	\$30 per member and former member
	(c) a pension plan self-administered by an employer	\$3,000 or \$30 per member and former member, whichever is lower

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|-----------------------------------|--|
| (d) a multi-employer pension plan | \$50,000 per annum, or \$30 per member and former member, whichever is lower |
| (e) a local retirement product | \$30 per member |

[Second Schedule revoked and replaced by 2019 : 48 s. 40 effective 30 December 2019]

Dated this 23rd day of December, 1999
Minister of Finance

[Amended by:

BR 69 / 2000
BR 70 / 2000
BR 60 / 2004
2019 : 48
2020 : 33
2021 : 7]