



BERMUDA

PENSION TRUST FUNDS ACT 1966

1966 : 204

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	SCHEDULE
	REQUIREMENTS AS TO RULES OF REGISTERED FUNDS

[preamble and words of enactment omitted]

[NB References to "Registrar-General" substituted by "Commission" by 2016 : 42 s. 8 effective 27 July 2016. These amendments are not individually noted.]

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Interpretation

1 In this Act,—

“registered fund” means a pension trust fund registered under this Act;

“commingled pension trust funds company” means an association recognized as a company by the Companies Act 1981 incorporated in Bermuda for the sole purpose of offering and managing pooled investment facilities for registered funds;

“Commission” means the Pension Commission established under section 54 of the National Pension Scheme (Occupational Pensions) Act 1998;

“Minister” means the Minister of Finance;

“rules”, in relation to any fund, means the instrument creating and regulating the trusts of the fund, and includes every such instrument.

[Section 1 definition "Commission" inserted by 2016 : 42 s. 8 effective 27 July 2016]

Application where 1998 Act applies to pension plan

1A This Act shall not require the registration of any pension fund which relates to a pension plan which must be registered under the National Pension Scheme (Occupational Pensions) Act 1998.

[Section 1A inserted by 1999:49 s.11 effective 1 January 2000]

Qualification of fund for registration

2 (1) Subject to this Act, any pension trust fund established under trusts subject to the laws of Bermuda, being a fund of which the main purpose is either—

- (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established; or
- (b) the provision of pensions during widowhood to the widows of persons who are or have been so employed and of periodical allowances to or in respect of children of such persons; or
- (c) the assurance of capital sums on the death of persons who have been so employed,

shall be registered under this Act.

(2) The rules of a pension trust fund shall comply with the requirements set out in the Schedule.

(3) A person shall not be appointed a trustee of a registered fund unless such person is approved by the Pension Commission, either for a particular trust fund or generally, such person being a person whom the Pension Commission is satisfied has the necessary experience and expertise to act as a trustee.

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(4) It shall be an offence for any person to establish, maintain, or operate a pension trust fund unless it is registered under this Act.

(5) Subsection (4) shall not apply to—

- (a) an exempted undertaking as defined in the Companies Act 1981;
- (b) an overseas company which is not a permit company within the meaning of section 134 of the Companies Act 1981, partnerships or other unincorporated business entities established outside Bermuda, if in each case the trustees of the fund are resident in Bermuda;
- (c) non-resident insurance undertakings as defined in the Non-Resident Insurance Undertakings Act 1967,

and if a pension trust fund is established, maintained or operated in Bermuda by any one of the persons mentioned at paragraphs (a) to (c) of this subsection the actual administration or management on behalf of such person by a person or persons resident in Bermuda shall not constitute a breach of subsection (4).

[Section 2 subsection (3) amended by 2016 : 42 s. 3 effective 27 July 2016]

Voluntary registration

2A A pension trust fund may be registered notwithstanding that it may fall within the exceptions specified in section 2, and where such a fund is registered it shall be subject to this Act in all other respects:

Provided that where a fund is registered under this section it shall be cancelled within 14 days of an application being received by the Commission for that purpose and in any such case the other requirements of section 6 shall not apply.

[Section 2A inserted by 1985:27 effective 3 April 1989]

Application for registration

3 (1) Application for the registration under this Act of any fund shall be made in writing addressed to the Commission signed by the trustees of the fund, and every such application shall specify the address at which communications concerning the fund will be received and shall be accompanied by two copies of the rules of the fund and a list of the names and addresses of the trustees of the fund.

(2) Upon application being made in accordance with this Act for the registration of any fund, the Commission shall, if satisfied that the fund is qualified for registration and on the payment of a fee of \$400 register the fund and the rules thereof in a register to be kept for the purpose, and shall enter in the register the address of the fund and the names and addresses of the trustees.

(3) Where a question arises upon an application made pursuant to subsection (1) as to whether the requirements of the Schedule have been complied with and there is consequent delay in granting or refusing the registration, section 2(4) shall not, for a period of 60 days after the application has been lodged with the Commission (or such longer period

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as the Minister may allow), apply to the person by whom or on whose behalf the application is made.

[Section 3 subsection (2) amended by 2016 : 42 s. 4 and 8 effective 27 July 2016]

Registration of amendments

4 (1) In the event of any amendment of the rules of a registered fund or of any change in the address of such a fund or in the names or addresses of the trustees thereof, the trustees shall within twenty-one days after the making of the amendment or change, apply for the registration of the amendment or for the correction of the register in respect of the change, as the case may be, by sending an application in writing addressed to the Commission, signed by one of the trustees of the fund, together with a fee of \$115 and accompanied, in the case of an amendment, by two copies thereof signed by one of the trustees of the registered fund, and in the case of any such change as aforesaid, by the necessary particulars for the correction of the register.

(2) No amendment in the rules of a registered fund shall be valid until it has been registered, but, upon application for the registration of any such amendment being made as aforesaid, the Commission shall register the amendment if satisfied that the rules as thereby amended would not have disqualified the fund for registration under this Act.

[Section 4 subsections (1) and (2) amended by 2016 : 42 s. 5 and 8 effective 27 July 2016]

Issue of certificate

5 Upon the registration under this Act of any fund or of an amendment of the rules of any registered fund, the Commission shall, on the payment of a fee of \$60 issue a certificate of registration, or amendment, as the case may be, and any document purporting to be a certificate issued under this section and to be signed or sealed by the Commission, shall be received in evidence and be deemed to be so issued, signed or sealed without further proof unless the contrary is shown, and shall be conclusive evidence of the facts certified therein.

[Section 5 amended by 2016 : 42 s. 6 effective 27 July 2016]

Cancellation of registration

6 The registration of a registered fund shall not be cancelled unless and until the fund has been wound up, but within fourteen days after the completion of the winding-up of any such fund the trustees shall send notice thereof in writing to the Commission and upon receiving notice that any registered fund has been wound up, the Commission shall, if satisfied that the fund has been wound up and the assets thereof applied in accordance with the rules of the fund, cancel the registration of the fund.

[Section 6 amended by 2016 : 42 s. 8 effective 27 July 2016]

Rule against perpetuities not to apply

7 The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of any registered unregistered fund.

[Section 7 amended by 1989:60 effective 31 January 1990]

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Rules made before 4 November 1966

8 (1) If upon an application for the registration under this Act of any fund whereof the rules were made before 4 November 1966, the Commission is satisfied that the rules of the fund contain provisions which were inserted only for the purpose of avoiding the application to the trusts of the fund of the rule of law relating to perpetuities, it may, at the request of the trustees making the application, amend the rules by deleting those provisions therefrom and may, upon the like request, make any further amendments that are, in its opinion, proper in consequence of their deletion.

(2) Where the rules of any fund are amended by the Commission under this section, the rules shall, when registered, have effect subject to the amendments so made.

[Section 8 subsection (1) amended by 2016 : 42 s. 8 effective 27 July 2016]

Audit annually; actuarial report every 5 years

9 (1) The trustees of every registered fund shall, once in every year, cause to be prepared a statement of accounts and balance-sheet of the fund which shall be audited by an auditor, and shall, at least once in every five years, cause an investigation and report to be made by an actuary as to the financial condition of the fund.

(2) A copy of every statement of accounts, balance-sheet and report prepared under this section signed by the auditor or actuary, as the case may be, and by a trustee of the fund, shall be sent to the Commission within twelve months after the close of the period to which it relates.

(3) The documents specified in subsection (2) submitted to the Commission shall not be open to inspection by any member of the public and the Commission shall not make any copy thereof available to any member of the public.

Commission may require information

10 (1) The Commission may require any person being a trustee, or officer of any fund for the registration of which under this Act application has been made, or of any registered fund, to furnish any information or explanation which may be necessary for the proper exercise and performance of the powers and duties of the Commission under this Act.

(2) In the event of any breach of trust being committed by the trustees of a registered fund by reason of their making any unauthorized investment or by reason of their committing a breach of any rule of the fund being a rule required by this Act as a qualification for registration of the fund thereunder, the Commission shall have the like remedies in all respects for the breach of trust as if it were a person beneficially interested in the fund.

[Section 10 subsection (2) amended by 2016 : 42 s. 8 effective 27 July 2016]

Offences

11 (1) If, in respect of any registered fund, default is made in complying with any of the requirements of this Act relating to accounts and reports, in making application in accordance with the requirements of this Act for the registration of any amendment of the rules or for correction of the register in respect of any change in the address of the fund or

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in the names and addresses of the trustees; or in sending to the Commission notice of the winding up of the fund, every trustee and other officer of the fund shall be guilty of an offence under this Act:

Provided that it shall be a good defence to any proceedings against any person in respect of an offence under this subsection to prove that the default occurred without his consent or connivance and was not facilitated by any neglect on his part.

(2) If any person lawfully required under this Act by the Commission to furnish any information or explanation which could with reasonable diligence be furnished by him makes default in complying with any such requirement within fourteen days after written notice thereof has been delivered to him, he commits an offence under this Act.

(3) Where a person commits an offence under this Act for which no specific penalty is provided:

Punishment on summary conviction: a fine of \$3,000 and, in the case of an offence consisting of a continuing default, a fine of \$3,000 for every week in which the default has been continued.

Minister of Finance authorized to give assurance

12 (1) The Minister may enter into an arrangement with the trustees of any registered fund or with any commingled pension trust funds company that shall make application to him therefor, whereby such trustees or such company, as the case may be, may be given an assurance that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, then the imposition of any such tax shall not be applicable to such registered fund or to such company, as the case may be, or to any of the operations thereof.

(2) Any such arrangement as is referred to in subsection (1) may include an assurance that the aforesaid taxes shall not be applicable to the shares, debentures or other obligations of the commingled pension trust funds company or to the distributions being by way of payments of pensions or like benefits made by the trustees of the registered fund or by the commingled pension trust funds company.

(3) Any such assurance as aforesaid may be for any period not exceeding fifty years from the date of the commencement of this Act and may be in such form as the Minister may determine.

(4) Any such assurance as aforesaid shall continue to have effect notwithstanding any change in the trustees of a registered fund.

(5) Any such assurance as aforesaid shall cease to have effect, in the case of a registered fund, on the cancellation of its registration and, in the case of a commingled pension trust funds company, should the offering and management of pooled investment facilities for registered funds cease to be its sole purpose.

[Section 12 amended by 1992:65 effective 13 July 1992]

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Tax to apply to persons normally resident in Bermuda

13 In the event of the enactment of any legislation in Bermuda imposing any tax referred to in section 12, then nothing contained therein shall be construed so as to prevent the application of any such tax to persons ordinarily resident in Bermuda to whom it is appropriate that such tax should be applied.

Discretion of Commission

14 Subject to this Act, an application for registration of a pension trust fund or any amendment or rectification relating to a registered fund shall be in such form as the Commission may determine; and the register and certificate of registration shall be in such form and contain such particulars as the Commission may determine.

Minister may amend fees by order

15 (1) The Minister may, by order under this section, amend the fees set out in sections 3, 4 and 5.

(2) The affirmative resolution procedure shall apply to an order made under this section.

[Section 15 inserted by 2016 : 42 s. 7 effective 27 July 2016]

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SCHEDULE REQUIREMENTS AS TO RULES OF REGISTERED FUNDS

The rules of a pension trust fund, to be qualified for registration under this Act, must make provision for the following matters, that is to say:

- 1 The whole of the objects for which the fund is established.
- 2 The appointment and removal of trustees.
- 3 The vesting in the trustees of all property belonging to the fund.
- 4 The investment in the names of the trustees or in the name of nominees of all capital moneys belonging to the fund and for authorizing the investments, if any in addition to those authorized by law, in which the trustees may invest such moneys; so, however, that the rules of a fund may provide for the deposit of such moneys with a bank, and may also provide for their deposit with the employers of persons employed in the undertaking or combination of undertakings in connection with which the fund is established.
- 5 The making of contributions to the fund by the employers of persons employed in the undertaking or combination of undertakings in connection with which the fund is established.
- 6 The contributions payable to the fund, and the rates of benefit payable thereout or the method of calculating the benefits so payable.
- 7 The conditions on which persons may become and may cease to be respectively, contributors to and entitled to benefits from, the fund.
- 8 The circumstances in which the fund may be wound up and the manner in which the assets thereof are in that event to be applied.
- 9 The method by which the rules may be amended.
- 10 The preparation of all statements of accounts, balance-sheets and reports required by this Act to be prepared.
- 11 The supply on demand to every person having any rights in the fund, being a person who is or has been employed in the undertaking or combination of undertakings in connection with which the fund is established, of a copy of the rules of the fund and of all amendments thereof, and of the latest statement of accounts, balance-sheet and report prepared in accordance with the requirements of this Act.

[Assent Date: 4 November 1966]

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[Amended by:

1968 : 156

1976 : 7

1978 : 2

1981 : 59

1984 : 12

1985 : 27

1989 : 60

1992 : 65

1999 : 49

2016 : 42]