

JAMAICA

No. 33 – 2013

I assent,

[L.S.]

(Sgd) P. L. Allen  
Governor-General.

17th day of December, 2013

AN ACT to Amend the Pensions (Superannuation Funds and Retirement Schemes) Act to make clear provision for the payment of licence fees both upon the initial grant and upon the renewal of a licence, and to validate and confirm the collection of fees by the Financial Services Commission, its officers and staff and other persons in support of those acts during the period commencing on the 1st day of March, 2005, and ending on the date of commencement of this Act and indemnify the Commission, its officers, staff and other persons acting on its behalf in respect of actions taken *bona fide* in execution of their duties in relation to such collection; and for matters connected therewith or incidental thereto.

WHEREAS section 8(5) of the Pensions (Superannuation Funds and Retirement Schemes) Act (hereinafter referred to as “the Act”)

provides that a person to whom a licence is granted shall, while the licence remains in force, pay the prescribed licence fee to the Financial Services Commission (hereinafter referred to as the Commission) in the prescribed manner:

AND WHEREAS the Act has been administered by the Commission, acting in good faith, on the basis that the Act contemplates that licence fees prescribed in the *Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006*, (hereinafter referred to as “the Regulations”), are payable both upon the grant of a licence, as well as annually, upon the renewal of the licence:

AND WHEREAS it is desirable that the Act and the Regulations be amended to expressly state that licence fees are payable both upon the initial grant of a licence, and annually on or before the anniversary of the initial grant of the licence:

AND WHEREAS the Commission, acting in good faith, collected annual licence fees during the period commencing on the 1st day of March, 2005, and ending on the day on which this Act comes into operation (hereinafter in this Act referred to as the “commencement date”), from institutions which were licensed to act as investment managers pursuant to section 8 of the Act:

AND WHEREAS it is desirable to—

- (a) validate and confirm the collection of licence fees done in good faith during the period commencing on the 1st day of March, 2005, and ending on the commencement date by the Commission, its officers, staff and other persons in support of those acts in the purported exercise of the Commission’s functions; and
- (b) consequentially amend the Act and the Regulations to expressly provide that the licence fees are payable both on the initial grant of the licence and on or before the anniversary of the grant of the licence:

AND WHEREAS it is also desirable to amend the Act to ensure consistency with the *Income Tax Act* with respect to contributions payable by an employee to a superannuation fund:

[18<sup>th</sup> day of December 2013 ]

NOW THEREFORE, BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same as follows:—

1. This Act may be cited as the Pensions (Superannuation Funds and Retirement Schemes) (Validation and Amendment) Act, 2013, and shall be read and construed as one with the Pensions (Superannuation Funds and Retirement Schemes) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title, construction and commencement.

2.—(1) Notwithstanding anything to the contrary in any enactment, all acts done in good faith during the period commencing on the 1st day of March, 2005, and ending on the commencement date by the Commission, its officers, staff and persons authorized to act on its behalf pursuant to the principal Act, in collecting licence fees for some persons to operate as investment managers, shall not be deemed to have been improper for the reason that such collection was not authorized by any enactment before the commencement date.

Validation and indemnity.

(2) The Commission, its officers, staff and persons authorized to act on its behalf are hereby freed, acquitted, discharged and indemnified, against the Queen's Most Excellent Majesty, Her Heirs and Successors as well as, against all persons, whatever, from all legal proceedings of any kind in respect of or consequent on those acts.

3.—(1) The provisions of the principal Act and of the Registration Regulations specified respectively, in the first column of Parts I and II of the Schedule to this Act, are amended in the manner specified in the second column thereof.

Amendment of principal Act and certain Regulations thereunder. Schedule.

(2) In this section the "Registration Regulations" means the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006.

SCHEDULE (Section 3)

PART I

*Amendment of the Pensions, (Superannuation Funds and Retirement Schemes) Act*

Provisions

Amendments

Section 2

1. Delete the definition of “administrator” and substitute therefor the following—
 

“administrator” means a company that is licensed pursuant to section 7;”.
2. Insert next after the definition of “approved superannuation fund” the following—
 

“assets under management” means the total assets being managed for superannuation funds and retirement schemes, whether or not those funds or schemes are approved or unapproved;”.
3. In the definition of “investment manager”, delete—
  - (a) the numerals “8(1) (a)” and substitute therefor the numeral “8”;
  - (b) the words “an approved superannuation fund or approved retirement scheme” and substitute therefor the words “a superannuation fund or retirement scheme”.
4. Insert next after the definition of “surplus” the following—
 

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

<u>Provisions</u>	<u>Amendments</u>
	5. In the definition of “trustee” delete the words “an approved superannuation fund or approved retirement scheme” and substitute therefor the words “a superannuation fund or retirement scheme”.
Section 4	Delete the word “approved” wherever it appears.
Section 5	Delete from subsections (2) and (3) the— <ol style="list-style-type: none"><li>(a) word “No” wherever it appears and substitute therefor, in each case, the words “Subject to section 10, no”;</li><li>(b) words “an approved superannuation fund or approved retirement scheme” wherever they appear and substitute therefor, in each case, the words “a superannuation fund or retirement scheme”.</li></ol>
Section 7	Delete from subsection (3)(c) the words “an approved superannuation fund or approved retirement scheme” and substitute therefor the words “a superannuation fund or retirement scheme”.
Section 8	<ol style="list-style-type: none"><li>1. Delete from subsection (2)(d) the words “approved superannuation funds or approved retirement schemes” and substitute therefor the words “superannuation funds or retirement schemes”.</li><li>2. Delete from subsection (3)(a) the words “an approved” and substitute therefor the word “a”.</li><li>3. Delete subsection (5) and substitute therefor the following—<p style="margin-left: 40px;">“ (5) A person to whom a licence is granted under this section shall pay the prescribed fee to the Commission on the date of the initial grant of the licence and thereafter, annually on or before each anniversary of the grant of the licence.”.</p></li></ol>
Section 10	<ol style="list-style-type: none"><li>1. Renumber subsection (3) as subsection (5).</li></ol>

Provisions

Amendments

2. Insert next after section (2) the following as subsections (3) and (4)—
- “ (3) Trustees who intend to act as the administrator or investment manager of a superannuation fund or retirement scheme, shall designate as the administrator or investment manager of the fund or scheme—
- (a) a trustee who is registered as a corporate trustee under this Act; or
- (b) a company owned and controlled by the sponsor or the trustees.
- (4) The corporate trustee or the company that has been designated under subsection (3) by the trustees shall be an entity licensed as an administrator or an investment manager pursuant to section 7 or 8, as the case may be.”
- Section 11 Delete from subsection (2) (a) the word “approved” wherever it appears.
- Section 13 In subsection (2) delete—
- (a) paragraph (c) and substitute therefor the following—
- “(c) the sponsor is an annual contributor to that fund who shall make such contributions as may be prescribed by the Income Tax Act;”;
- (b) from paragraphs (e) and (g), the words “ten per cent of that member’s annual salary or wages” wherever they appear and substitute therefor in each case the words “such amount as may be prescribed by the Income Tax Act”.
- Section 14 Delete from subsection (3) (c), the words “twenty per cent of annual income or emolument” and substitute

<u>Provisions</u>	<u>Amendments</u>
	therefor the following “such contribution limits as may be prescribed by the Income Tax Act”.
Section 35	Renumber subsections (6) and (7) as subsections (7) and (8) and insert next after subsection (5) the following as subsection (6)—  “ (6) Where the Trust Deed and Plan Rules or the Master Trust Deed of a superannuation fund or retirement scheme do not contain a power to amend the trust, the trustees shall be deemed to have the power to amend these constitutive documents to comply with the requirements of this Act and the regulations made thereunder.”.

PART II

*Amendments to the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations, 2006*

<u>Provisions</u>	<u>Amendments</u>
Regulation 6	In sub-paragraph (b) (ii) delete the words “fund or scheme” and substitute therefor the words “superannuation fund or retirement scheme”.
Regulation 11	Delete the full stop at the end of paragraph (f) and substitute therefor a semicolon and insert next after paragraph (f) the following as paragraph (g)—  “(g) sales representatives for retirement schemes.”.
Regulation 18	Delete from sub-paragraph (1) the word “approved” wherever it appears.
Second Schedule	Insert in—  (a) paragraph 23, immediately after the word “valuations” the words “and reports”;  (b) paragraph 28, immediately after the word “of” the words “providing pension benefits and”;  and

[No. ] *The Pensions (Superannuation Funds and Retirement Schemes) (Validation and Amendment) Act, 2013*

<u>Provisions</u>	<u>Amendments</u>								
	(c) paragraph 32, immediately after the words "of surplus" the words "or deficit".								
Fourth Schedule	Delete the Fourth Schedule and substitute therefor the following—								
	“           FOURTH SCHEDULE       (Regulation 3)								
	<i>Schedule of Fees</i>								
	<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: center;"><u>Service</u></th> <th style="text-align: center;"><u>Fee Amount</u></th> </tr> </thead> </table>	<u>Service</u>	<u>Fee Amount</u>						
<u>Service</u>	<u>Fee Amount</u>								
	LICENSING								
	Investment Manager's licence fees—								
	The fees payable will be determined by assets under management as at December 31, of the year immediately prior to the—								
	0.10% of assets under management								
	(a) date of initial grant of the licence; and								
	(b) anniversary date of the licence thereafter								
	APPLICATION								
	<table border="0" style="width: 100%;"> <tbody> <tr> <td style="width: 80%;">1. Registration as a Trustee (per Superannuation Fund or Retirement Scheme)</td> <td style="text-align: right; vertical-align: bottom;">\$5,000.00</td> </tr> <tr> <td>2. Licensing as an Administrator or Investment Manager</td> <td style="text-align: right; vertical-align: bottom;">\$25,000.00</td> </tr> <tr> <td>3. Registration of a Superannuation Fund or Retirement Scheme</td> <td style="text-align: right; vertical-align: bottom;">\$30,000.00</td> </tr> <tr> <td>4. Registration of a Responsible Officer</td> <td style="text-align: right; vertical-align: bottom;">\$5,000.00</td> </tr> </tbody> </table>	1. Registration as a Trustee (per Superannuation Fund or Retirement Scheme)	\$5,000.00	2. Licensing as an Administrator or Investment Manager	\$25,000.00	3. Registration of a Superannuation Fund or Retirement Scheme	\$30,000.00	4. Registration of a Responsible Officer	\$5,000.00
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3. Registration of a Superannuation Fund or Retirement Scheme	\$30,000.00								
4. Registration of a Responsible Officer	\$5,000.00								



Service	Fee Amount
OTHER	
1. Each alteration to the information stated in the application for the registration and licensing, including any supporting documents	\$2,000 per alteration.
2. Each additional copy of a certificate of registration or licence	\$1,000 per copy.
3. Each amendment to the constitutive documents of a superannuation fund or retirement scheme	\$5,000 per amendment. ”.

Passed in the House of Representatives this 12th day of November, 2013.

MICHAEL A. PEART

*Speaker.*

Passed in the Senate this 29th day of November, 2013.

FLOYD E. MORRIS

*President.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.*

*Clerk to the Houses of Parliament.*

