

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

BR 70/2000

**NATIONAL PENSION SCHEME (OCCUPATIONAL PENSIONS)
ACT 1998**

1998 : 36

**THE NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO. 2) 2000**

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

Citation

1 These Regulations which amend the National Pension Scheme (General) Regulations 1999 may be cited as the National Pension Scheme (General) Amendment Regulations (No. 2) 2000 .

**Inserts new Part V in National Pension Scheme (General) Regulations
1999**

2 The National Pension Scheme (General) Regulations 1999 are amended by inserting next after Part IV the following new Part—

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PART V

PENSION FUND INVESTMENTS

Interpretation

25 In this section—

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

"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;

"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
- (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

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

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

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

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.

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

(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.

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.

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

Defined contribution pension plan

28 The administrator of a defined contribution pension plan shall ensure that a reasonable range of investments 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.

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
 - (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) an insurance contract approved by the Commission; or
 - (d) investments in open-ended mutual funds or units in a unit trust.

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

(4) In determining the percentage of shareholder equity under paragraph (1) (a), the most recently published balance sheet shall be used.

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.

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.

Borrowing

32 An administrator of a pension plan shall not borrow on behalf of the pension fund without the prior approval of the Commission.

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.

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.

Prohibited investments

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

- (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 of employee of that person;

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

- (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;
- (f) the spouse or child of any person referred to in paragraphs (a) to (e); 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, 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 105 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 105 percent of the outstanding market value of the assets.

(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

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

(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.

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.

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.

**NATIONAL PENSION SCHEME (GENERAL) AMENDMENT
REGULATIONS (NO.2) 2000**

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".

Dated this 13th day of September, 2000

Minister of Finance