

THE TOURISM WORKERS PENSION ACT, 2019

(Act 10 of 2019)

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SCHEDULES.

JAMAICA

No. 10 – 2019

I assent,

[L.S.]

PATRICK L. ALLEN,
Governor-General.

3rd day of September, 2019.

AN ACT to Establish a defined contribution pension scheme for tourism workers and self employed tourism workers to be known as the Tourism Workers Pension Scheme from which is to be paid retirement benefits in respect of each member and ancillary benefits for their beneficiaries; and for other connected matters.

[The date notified by the Minister
bringing the Act into operation]

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:—

PART I—*Preliminary*

1. This Act may be cited as the Tourism Workers Pension Act, 2019 and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Interpreta-
tion.

2. In this Act unless the context otherwise requires—

“actuary” means a person who—

(a) is a Fellow by examination of—

- (i) the Society of Actuaries in the United States;
- (ii) the Canadian Institute of Actuaries; or
- (iii) the Institute and Faculty of Actuaries in the United Kingdom; or

(b) is a member of such other institution as the Commission may prescribe,

and includes a firm of such persons;

“administrator” means a financial institution which is licensed pursuant to section 7 of the Pensions (Superannuation Funds and Retirement Schemes) Act and is appointed by the Board to administer the Scheme pursuant to section 36;

“approved pension plan” means—

- (a) a retirement scheme; or
- (b) a superannuation fund,

approved and registered under the Pensions (Superannuation Funds and Retirement Schemes) Act;

“auditor” means a person who—

- (a) is a registered public accountant as defined in section 2 of the Public Accountancy Act; and
- (b) satisfies such other requirements as may be prescribed by the Board,

and includes a firm of such persons;

“authorised person” means a person to whom the Board has delegated any of its functions in accordance with section 13;

“beneficiary” means a person, other than a member, who is entitled to the receipt of a benefit under the Scheme, and includes—

- (a) a nominated beneficiary pursuant to section 33;
- (b) a person who derives a beneficial interest in the Scheme under the last will and testament of a member; and
- (c) a person who has a beneficial interest in the Scheme by virtue of any other enactment;

“Board” means the Board of Trustees of the Scheme established under section 11;

“Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;

“credited interest” means interest at such rates determined from time to time by the Board, acting on the advice of the actuary or the investment manager, based on—

- (a) the positive or negative net yield of the Scheme during the relevant period after adjustments for gains and losses realised or unrealised and computed at the end of the financial year in which contributions are made;
- (b) any increase in the value of investment units allocated in respect of each component of the retirement savings account of a member; or
- (c) the appreciation or depreciation in value of the assets of the Scheme;

“document” means in addition to a document in writing, any thing or manner in which information of any description is recorded or stored;

“early retirement” means the period during which a member may elect to retire, between the date the member attains the age

of fifty-five years and a date prior to the date the member attains the age of sixty-five years;

“earnings” means—

- (a) in relation to a tourism worker, the emoluments declared by the employer of a tourism worker on which contributions to the Scheme are computed; and
- (b) in relation to a self employed tourism worker, the income declared by the self employed tourism worker on which contributions to the Scheme are computed;

“emoluments” means all salaries, wages, commissions and allowances paid to a tourism worker;

“financial year” means the twelve calendar month period beginning on the date of commencement of the Scheme and thereafter, the twelve month period commencing on each anniversary date of the Scheme;

“functions” includes duties and powers;

“investment manager” means a company which is licensed pursuant to section 8 of the Pensions (Superannuation Funds and Retirement Schemes) Act and is appointed by the Board in accordance with section 38, to invest and manage the resources of the Scheme;

“late retirement” means the period during which a member may elect to retire following the date a member attains the age of sixty-five years and a date prior to the date a member attains the age of seventy years;

“mandatory contributions” means contributions which are made—

- (a) on behalf of a member; or
- (b) by a member,

as a requirement for participation in the Scheme in accordance with section 19;

“member” means a tourism worker or a self employed tourism worker who—

- (a) satisfies the eligibility requirements pursuant to section 15 and has been admitted to the Scheme; and
- (b) has an accrued interest in the Scheme,

but does not include a tourism worker or a self employed tourism worker for whom a pension has been purchased or otherwise secured from the Scheme;

“normal retirement” means the date on which a member attains the age of sixty-five years;

“retirement savings account” means an account established and maintained by the administrator under section 23;

“Scheme” means the contributory Tourism Workers Pension Scheme established for the benefit of tourism workers and self employed tourism workers under section 9;

“self employed tourism worker” means a person who delivers a service to a tourism enterprise on his own behalf, and includes a tourism operator;

“tourism enterprise” has the meaning assigned to it in section 2 of the Tourist Board Act, and includes a tourist accommodation licensed under the Tourist Board Act for the purpose;

“tourism operator” means a person who conducts, manages or operates a tourism enterprise;

“tourism worker” means a person who is employed to a tourism enterprise whether or not the person is employed for a specific period commencing at approximately the same time in each year, or in two consecutive years;

“Trustee” means a member of the Board of Trustees established under section 11;

“voluntary contributions” means any contributions that members of the Scheme may elect to make in accordance with section 20.

PART II—*Powers of the Commission*

Regulatory oversight.

3. The Commission shall be responsible for the regulatory oversight of the Scheme in accordance with the provisions of this Act and in accordance with the Pensions (Superannuation Funds and Retirement Schemes) Act, and the Financial Services Commission Act.

Commission may issue directions.

4. The Commission may issue to the administrator, investment manager and the Trustees, directions to be followed in the performance of their respective functions under this Act and in accordance with the Pensions (Superannuation Funds and Retirement Schemes) Act.

Commission may require information.

5.—(1) The Commission may in writing, require the administrator, investment manager, or Trustees to furnish to the Commission, information relating to matters pertaining to their functions in relation to the Scheme, in accordance with this Act and the Pensions (Superannuation Funds and Retirement Schemes) Act.

(2) Pursuant to subsection (1), the Commission may—

- (a) require the administrator, investment manager or Trustees to produce records in relation to—
 - (i) the assets;
 - (ii) books;
 - (iii) account;
 - (iv) documents of the Scheme; or
 - (v) such other information,

for inspection as the Commission deems necessary;

- (b) procure copies of documents produced in accordance with subsection (2)(a) or such extracts that the Commission may deem necessary; and

- (c) examine on oath or affirmation in relation to the activities of the Scheme, any person who is, or has been, an administrator, investment manager, actuary, auditor, authorised person, Trustee, member or a personal representative of a member.

6.—(1) The Commission may investigate the activities of the Scheme, where it appears to the Commission that— Power to investigate.

- (a) the Scheme does not meet the funding or solvency requirements prescribed by the Commission;
- (b) the Trustees of the Scheme have failed to respond within a period of one month, to a written request for information, or have failed to furnish the information to the satisfaction of the Commission;
- (c) based on information in the possession of the Commission, an investigation should be carried out into the whole, or any part of the operations of the Scheme.

(2) The Commission may investigate the activities of the administrator, investment manager and the Trustees, in relation to their functions under this Act, or in accordance with the Pensions (Superannuation Funds and Retirement Schemes) Act.

7.—(1) Where the Commission undertakes an investigation of the activities of the Scheme, the Commission may petition the Judge of a Parish Court for a warrant authorizing entry to any premises where the Commission has grounds to believe specified information is being held, and which information has not been produced in compliance with section 5. Entry on premises.

(2) Where the Judge of a Parish Court issues a warrant pursuant to subsection (1), persons authorised to enter the premises specified in the warrant may—

- (a) enter and search the premises for information pursuant to an investigation under section 6; and

- (b) seize and remove any securities, accounts and documents, or take such other steps as are necessary to prevent any other person from interfering with them.

(3) Documents seized under this section shall be returned to the Trustees or to an authorised person as soon as practicable and, in any case, shall not be retained for longer than a period of two months from the date of the seizure or, if within that period criminal proceedings have been brought in respect of the seizure, the conclusion of those proceedings.

(4) A list of all documents seized under subsection (2) shall be prepared and a copy shall be given to the Trustees or to an authorised person.

(5) A person who obstructs the entry of a person executing a warrant issued in accordance with subsection (1) commits an offence and is liable, on conviction before the Judge of a Parish Court, to a fine not exceeding five hundred thousand dollars or imprisonment for a term not exceeding six months.

Action on completion of an investigation.

8. After an investigation of the Scheme under this Part, the Commission—

- (a) shall transmit to the Trustees a summary of any findings made, or conclusions arrived at as a result of the investigation;
- (b) may, without prejudice to any other powers conferred by this Part, issue to the administrator, investment manager or Trustees, directions in writing in respect of the conduct of the business of the Scheme.

PART III—*Establishment of the Scheme and Board of Trustees*

Establishment of Scheme.

9.—(1) For the purposes of this Act, there shall be established under irrevocable trust, a defined contribution scheme to be known as the Tourism Workers Pension Scheme.

(2) The Scheme shall be for the purpose of providing retirement and other benefits—

- (a) for members of the Scheme whether upon normal retirement, early retirement or late retirement;
- (b) for members, due to ill-health or a disability; and
- (c) to the beneficiaries of a member, upon the death of that member.

(3) Upon the date of commencement of this Act, the Minister, following consultation with the Board and with the Commission, shall establish a uniform set of regulations and standards for the administration and investment management of the Scheme.

10.—(1) There shall be paid into or transferred to the Scheme, an endowment of one billion dollars, paid in such instalments as may be appropriated by Parliament over a period not exceeding four years.

Resources of the Scheme.

(2) The additional resources of the Scheme shall consist of—

- (a) contributions paid by tourism operators on behalf of members of the Scheme within their employment;
- (b) mandatory and voluntary contributions paid by members;
- (c) transferred assets accepted by the Trustees pursuant to section 27;
- (d) interest, dividends or other investment income accruing from whatever source and any investments, policies, monies, property and other assets received, from time to time, by way of addition or accretion into the Scheme; and
- (e) donations paid into the Scheme from time to time.

11.—(1) There shall be established, with effect from the date on which the Scheme is established, a Board of Trustees which shall be vested with the administration, investment management and control of the Scheme.

Establishment of the Board of Trustees.

(2) The Board shall be a body corporate to which section 28 of the Interpretation Act shall apply.

(3) Every Trustee appointed to the Board shall be registered with the Financial Services Commission in accordance with the Pensions (Superannuation Funds and Retirement Schemes) Act.

Part A.
First
Schedule.

(4) The provisions of Part A of the First Schedule shall have effect in relation to the constitution and operation of the Board and matters in relation thereto.

Functions of
the Board.

12.—(1) The Board shall prudently invest the assets of the Scheme with financial institutions that are licensed with the Commission and place deposits in deposit taking institutions licensed under the Banking Services Act, and shall manage the assets of the Scheme in a manner consistent with the statement of investment policies and principles pursuant to section 48.

(2) Subject to the provisions of this or any other enactment, the Board shall have the power to do all such things as are in the opinion of the Board, necessary for, or conducive to the proper discharge of its functions, and in particular, but without prejudice to the generality of the foregoing, the Board shall—

- (a) have management and control of all moneys paid or assets transferred into the Scheme;
- (b) exercise financial prudence in the management and investment of the Scheme;
- (c) receive all sums paid under this Act as contributions, grants, interest, dividends, deposits by members or by tourism operators on behalf of members;
- (d) receive all moneys realised from investments and sale of property or any other form of payment whatsoever;
- (e) purchase or otherwise secure retirement benefits for members and other benefits to which their beneficiaries are entitled under this Act;

- (f) acquire in any manner, and hold, take or give on lease or hire, mortgage, pledge, sell, or otherwise dispose of, any movable or immovable property as the Board may consider fit;
- (g) maintain a general account in respect of the Scheme and retirement savings accounts in respect of each member of the Scheme;
- (h) furnish to each member, a statement of the amount accruing to the credit of the individual retirement savings account of that member pursuant to section 23;
- (i) ensure that the books of accounts relating to the Scheme are audited at the end of each financial year;
- (j) ensure that written policies and procedures for the governance of the Scheme are in place to facilitate the effective operation and management of the Scheme, not limited to complaints resolution procedures;
- (k) keep or cause to be kept, proper records of all members and of all withdrawals and other matters necessary to be recorded for the proper administration and management of the Scheme;
- (l) pay or cause to be paid, all expenses, taxes and assessments of any kind levied upon the Scheme or upon any money or property forming a part of the Scheme;
- (m) safeguard all records of the Scheme, in the case of a member, for a period of not less than seven years after the liability of the Scheme to that member or the beneficiary of that member, as the case may be, has been extinguished, and in any other case, for seven years from the date of the last transaction to which the records relate;

- (n) cause to be prepared within four months after the end of each financial year—
 - (i) a statement of receipts and payments;
 - (ii) a statement of income and expenditure;
 - (iii) a statement of assets and liabilities; and
 - (iv) a statement of investments showing the face value, purchase price and market value of each investment; and
 - (o) transmit to the Minister a copy of each of the statements prepared under paragraph (n) within three months of the date of completion of each statement.
- (3) In exercising its functions under this Act the Board may—
- (a) open and operate bank accounts;
 - (b) appoint committees consisting of at least two Trustees to exercise such powers as are entrusted to them;
 - (c) appoint auditors, attorneys, actuaries or other such advisors as the Board deems necessary for the proper investment management and administration of the Scheme; and
 - (d) insure the scheme or individual assets or investments of the scheme.

Delegation of functions.

13.—(1) The Board may, by written authorisation, delegate to an authorised person, any of its functions under this Act, other than the power to delegate.

(2) Every delegation under subsection (1) is revocable and the delegation of a function shall not preclude the performance of that function by the Board.

(3) Where the Board delegates any of its functions to any two or more Trustees, the Board may authorise such persons to issue receipts and discharges for moneys or property payable, transferrable or deliverable to the Trustees or any of them.

14. The Board may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such employees as may be necessary for the proper performance of its functions. Staff.

PART IV—Membership and Contributions to the Scheme

15.—(1) The following persons are eligible to become members of the Scheme— Eligibility for membership.

- (a) a tourism worker who, at the date of commencement of this Act, is over eighteen years but has not attained the age of sixty years, and is not a member of an approved pension plan;
- (b) a person who is over eighteen years but under sixty years and becomes a tourism worker after the date of commencement of this Act; and
- (c) a self employed tourism worker upon the approval by the Board of an application for membership in accordance with section 17.

(2) Pursuant to subsection (1), a person shall not be eligible for membership in the Scheme unless such person is ordinarily resident in Jamaica for a continuous period of not less than six months prior to the date of admission into the Scheme.

16. A tourism worker who satisfies the criteria set out in section 15 (a) or (b) shall become a member of the Scheme upon the first deduction of a contribution from the earnings of the tourism worker by the tourism operator for payment into the Scheme. Membership of employed tourism workers.

17.—(1) A self employed tourism worker who wishes to become a member of the Scheme shall make an application to the Board in the prescribed form. Membership of self employed tourism workers.

(2) Where the Board receives an application pursuant to subsection (1), the Board may direct, in writing, that the applicant furnishes the Board with particulars regarding the employment of the applicant and the applicant shall comply with the direction.

(3) After considering the application and any particulars provided, the Board shall, if satisfied that the applicant is a self employed tourism worker, approve the application for membership and notify the self employed tourism worker of its decision.

Contribution to the Scheme by tourism operators.

18.—(1) Subject to the provisions of this Act, every tourism operator shall be liable to remit to the investment manager in the manner specified in subsection (3), periodic contributions to the Scheme in respect of every tourism worker in his employment, who is a member of the Scheme.

(2) The liability of a tourism operator to pay contributions in respect of each tourism worker within his employment shall commence with the first payment of earnings, and the deduction of contributions, from each tourism worker upon becoming a member of the Scheme.

(3) The tourism operator shall remit to the investment manager an amount equal to three per cent of the earnings of the tourism worker in the first three years following the date of commencement of this Act and five per cent of the earnings of the tourism worker thereafter.

(4) The contributions made in respect of each tourism worker by a tourism operator shall accrue daily and shall be paid monthly in arrears by the tourism operator to the investment manager.

Mandatory contributions by members.

19.—(1) As a contribution towards a pension provided under this Act, a tourism operator shall deduct from the earnings of each tourism worker who is a member of the Scheme, mandatory contributions, being an amount equal to three per cent of the earnings of the tourism worker in the first three years following the commencement of the Act and five per cent of the earnings of the tourism worker thereafter.

(2) A self employed tourism worker who has been admitted to the Scheme shall remit to the investment manager, at least once annually, the mandatory contributions payable under the Scheme, being an amount equal to three per cent of the earnings of the self employed tourism worker in the first three years following the commencement of the Act and five per cent thereafter.

Voluntary contributions.

20.—(1) Subject to subsection (2), in addition to the mandatory contributions specified under section 19, a member may elect to make voluntary contributions to the Scheme by submitting written notice to the Board in the prescribed form.

(2) Notwithstanding subsection (1), the aggregate contributions to the Scheme in respect of each member in any year including where applicable, contributions made on behalf of a member by a tourism operator, shall not exceed the limit imposed under the Income Tax Act in respect of ordinary annual contributions to an approved pension plan.

(3) A member who has elected to make voluntary contributions may vary or terminate the payment of such contributions by submitting written notice to the Board in the prescribed form.

21. A tourism operator that has defaulted in paying to the investment manager the contributions made by, or on behalf of a tourism worker, commits an offence and is liable, on conviction before the Judge of a Parish Court, to a fine not exceeding three million dollars, and the court may order the tourism operator to pay—

Offence for default of payment.

- (a) interest at a rate of one per cent per day from the date on which the payment of the contributions was due until the date payment is made; and
- (b) the expenses of collection of such contributions; and
- (c) restitution in accordance with section 24A of the Criminal Justice Administration Act.

22. The payment of mandatory contributions into the Scheme by a tourism operator on behalf of a member, or by a self employed tourism worker shall cease—

Cessation of contributions to the Scheme.

- (a) in the case of the tourism worker—
 - (i) upon the termination of the services;
 - (ii) on retirement; or
 - (iii) upon death;
- (b) in the case of a self employed tourism worker—
 - (i) on retirement;
 - (ii) upon death; or
 - (iii) otherwise ceases to be a self-employed tourism worker,

whichever comes first.

PART V—*Maintenance of Members' Accounts and
Payment of Benefits*

Retirement
savings
account.

23.—(1) The administrator shall establish and maintain a retirement savings account in the name of each member.

(2) The administrator shall cause the contributions to be credited to the retirement savings account of each member, upon receipt of notice that the contributions to be paid in accordance with Part IV have been duly remitted to the investment manager.

(3) Each retirement savings account shall, at the date of assessment, consist of the aggregate of the following components—

- (a) mandatory contributions of each member together with any voluntary contributions both accumulated with credited interest up to that date;
- (b) where applicable, the contributions paid by the tourism operator on the behalf of a member accumulated with credited interest up to that date;
- (c) where applicable, transferred assets received by the Board in respect of a member from an approved pension plan in accordance with section 27, accumulated with credited interest up to the date of assessment, which shall be segregated in respect of the amount of the transferred assets that represent contributions made by the member, and where applicable, contributions made by the former employer to that approved pension plan; and
- (d) bonuses and allocations from surplus that are granted from time to time by the Board, accumulated with credited interest up to that date.

Statement of
retirement
savings
account.

24. Within four months after the end of each financial year for the Scheme, the Board shall provide each member with a statement of the retirement savings account of that member for the financial year detailing, where applicable, each of the components set out in section (23)(3).

25. Credited interest shall be payable on all contributions made to the Scheme and shall begin to accrue on the date on which contributions are received into the Scheme.

Credited interest on contributions.

26. The contributions paid by or on behalf of a member shall immediately vest in that member.

Vesting of benefits.

27.—(1) The Board may accept a transfer to the Scheme of any or all of the assets from an approved pension plan on behalf of a member of the Scheme.

Transfers to the Scheme from an approved pension plan.

(2) A member to whom subsection (1) applies shall be entitled to benefits under the Scheme, in lieu of benefits from the approved pension plan from which the transfer was made.

28.—(1) At the request of a member who meets the eligibility requirements for and joins another approved pension plan, the Board shall transfer all the assets standing in the retirement savings account of the member to the trustees of—

Transfers from the Scheme to a pension plan.

- (a) the approved pension plan, subject to the consent of the trustees of that approved pension plan and any other approval that may be required under the Pensions (Superannuation Funds and Retirement Schemes) Act and the Income Tax Act; or
- (b) an overseas pension plan, subject to the approval of the Trustees or such other governing body of that pension plan, and any other approval that may be required by an overseas pensions regulatory authority.

(2) For the purpose of subsection (1), an “overseas pensions regulatory authority” means an authority in a foreign country which, in relation to pensions, exercises regulatory functions similar to the functions of the Commission.

(3) The Board shall deduct from the amount transferred under subsection (1), a sum to reasonably compensate the Scheme for all actual or anticipated expenses and losses incurred in effecting the transfer.

(4) The Board shall give a statement of transfer to—

- (a) the member who requested the transfer; and
- (b) the trustees of the approved pension plan to which the assets are to be transferred.

Retirement
benefits.

29.—(1) The Board shall apply the balance of the retirement savings account of a member at the date of retirement to purchase an annuity for the member, or otherwise secure the pension of the member.

(2) The normal annuity purchased by the Board for the member shall commence at the date of retirement of the member and shall be payable monthly for the lifetime of the member with guaranteed payments of sixty months (hereinafter to be referred to as the “normal annuity”).

(3) Notwithstanding subsection (2), a member shall have the right to elect in *lieu* of the normal annuity, that the retirement savings account be applied in one or more of the following ways—

- (a) a portion of the annuity be commuted and a lump sum be paid with a reduced annuity;
- (b) a part of the annuity be surrendered and paid to the member upon retirement for the purchase of an annuity upon the death of a spouse, or for a dependant who is expected to survive the member;
- (c) variation of the period for which the annuity payments are guaranteed to some other period to be chosen by the member.

(4) Where a member elects to commute a portion of the annuity and to receive a lump sum, the lump sum payment shall be made on the first date on which the pension becomes payable to the member, and shall not exceed the commuted value of one-quarter of the retirement savings account of the member at the date of retirement, or twelve and one-half times one-quarter of the annual annuity before commutation, whichever is higher.

(5) If the annual annuity to be purchased for a retiring member does not exceed fifty per cent of the national minimum wage, then the member may elect in *lieu* of the annuity, a lump sum equal to the value of the retirement savings account at the date of retirement of the member.

30.—(1) Each member shall notify the administrator in writing of the date of retirement prior to that date. Retirement of a member.

(2) Notwithstanding subsection (1), a member may, upon the advice of a medical practitioner registered under the Medical Act, and subject to the approval of the Board, retire at any time due to ill health or a disability which is of permanent nature, or that is likely to become permanent, and prevents the member from continuing gainful occupation.

31.—(1) The liability of the Board shall be discharged in respect of a member where— Discharge of liability of the Board.

- (a) a transfer of the member's retirement savings account is made from the Scheme to an approved pension plan pursuant to section 28;
- (b) the member's retirement savings account is applied towards the purchase of a deferred annuity upon the cessation of membership in the Scheme;
- (c) the member's retirement savings account is applied upon the retirement of the member towards the purchase of an annuity; or
- (d) the member's retirement savings account is applied to the benefit of the beneficiaries of the member on the death of the member.

(2) Where the Board discharges its liability to a member under subsection (1), the member shall cease to be entitled to any further benefits or to have any further interest under the Scheme.

(3) The Board shall, upon purchasing an annuity, securing a pension, or upon the payment of a lump sum, require the member, or the beneficiary, as the case may be, to duly execute a form of release and discharge, releasing the Trustees, their agents and employees from all actions, accounts, claims and demands whatsoever arising directly or indirectly under the Scheme in relation to the said member or the beneficiary, as the case may be.

Augmentation
of retirement
benefits.

32.—(1) The Board may augment the total of the retirement savings account of a member to an amount that is sufficient to purchase the prescribed minimum annual pension if the balance in the retirement savings account at the date of retirement is insufficient to purchase the prescribed minimum annual pension.

(2) The augmentation of the pension of a member shall be subject to the following conditions—

- (a) the member commenced participation in the Scheme on the date of commencement of this Act;
- (b) the member elected normal or late retirement;
- (c) prior to the date of retirement, the member made regular contributions to the Scheme;
- (d) the member continuously contributed to the Scheme for a minimum of five years prior to retirement;
- (e) the retirement savings account of the member is insufficient to purchase the minimum annual pension unless the sum is increased; and
- (f) the resources of the Scheme are sufficient to support the increase of the value of the retirement savings account of the member without jeopardising the solvency of the Scheme, or without affecting the entitlement of other members.

Nominated
beneficiary.

33.—(1) A member may from time to time nominate a person or persons (hereby referred to as the “nominated beneficiary”) to whom payment shall be made, and where there is more than one nominated beneficiary, stipulate the proportions in which payment shall be made of any sums payable upon the death of the member.

(2) The nomination of a beneficiary and the proportions to which each nominated beneficiary is entitled, shall be made to the Board in the prescribed form and shall be lodged with the Board.

(3) Where a member elects to cancel the nomination of a nominated beneficiary, the member shall submit a notice of cancellation to the Board in the prescribed form.

(4) Upon the death of a member, the Board shall cause payment to be made in accordance with the nomination that is in force at the time of death of the member.

(5) If a member elects more than one nominated beneficiary, but fails to inform the Board of the proportions to which each nominated beneficiary is entitled, then it shall be deemed that each beneficiary is entitled to an equal proportion of the benefits payable on the death of the member.

(6) In the event of the death of a nominated beneficiary in the lifetime of a member, and the failure of a member to nominate a new nominated beneficiary, the surviving nominated beneficiaries shall take in equal shares, the share to which the deceased nominated beneficiary would have been entitled, and if there is only one surviving nominated beneficiary, that nominated beneficiary shall be entitled to the receipt of the whole sum.

(7) Upon the death of a member, the nominated beneficiaries shall be entitled to receive the total sum standing in the retirement savings account of the member at the date of payment.

(8) If no nomination is made, or if no nominated beneficiary survives the member, the payment shall be made to the personal representative of the member on production of a grant of representation.

34.—(1) If a member or beneficiary has not claimed moneys or benefits payable under the Scheme, then no later than eight weeks after such moneys or benefits become payable, the administrator shall make such inquiries as are reasonable, to locate the member or beneficiary, including where necessary, advertising for the location of the member or the beneficiary of the member as the case may be, on an annual basis in a local and overseas national daily newspaper. Unclaimed benefits.

(2) Where unclaimed benefits have been advertised in accordance with subsection (1), the Board shall, where the benefits remain unclaimed, retain the moneys or benefits payable in the Scheme, and the moneys or benefits shall not revert to the Scheme except after a period of thirty years has elapsed.

(3) In the event of the winding up of the Scheme, the moneys or benefits shall immediately revert to the Scheme after the period of advertisement.

Appointment
of legal
representative
for a minor.

35.—(1) Where a minor is entitled to benefits under the Scheme and no legal representative has been appointed to act on behalf of the minor, or the person who has been appointed is, in the opinion of the Board, unfit, unwilling or unable to act, the Board shall make an application to the Supreme Court for the appointment of a legal representative.

(2) Where an application is made to the court for the appointment of a legal representative for a minor, the cost for the legal proceedings shall be deducted from the benefits to which the minor is entitled.

PART VI—*Management and Administration of the Scheme*

Appointment
of
administrator.

36.—(1) The Board shall appoint an administrator of the Scheme on such terms as it deems fit.

(2) During the period of appointment, the administrator shall maintain its licence with the Commission.

Functions of
the
administrator.

37.—(1) In accordance with the provisions of this Act and any regulations made hereunder, the administrator shall carry out the following functions—

- (a) establish for each member a retirement savings account with a unique personal number;
- (b) credit the retirement savings account of each member with the mandatory contributions and any voluntary contributions paid by the member, together with the contributions of the tourism operator, in the case of a tourism worker;
- (c) provide support services to the members, including access to the account balances and statements on demand for the retirement savings account of each member;
- (d) calculate the benefits to which a member or beneficiary is entitled as at the date that the benefit is accrued;

- (e) ensure the provision of retirement benefits in accordance with the provisions of this Act; and
- (f) carry out any other functions as may be directed by the Board from time to time.

(2) The administrator shall ensure that all income earned from the investment of the Scheme is distributed to the credit of the retirement savings account of each member, save for the deduction of clearly defined and reasonable expenses, charges and costs for transactions approved by the Board, or any income set aside by the Board and deposited into the reserve account maintained under section 53.

38.—(1) The Board shall, upon such remuneration as the Board considers reasonable, appoint an investment manager to invest and manage the assets of the Scheme.

Appointment of investment manager.

(2) During the period of appointment, the investment manager shall maintain its licence with the Commission.

39.—(1) The investment manager shall—

- (a) comply with the provisions of this Act and any regulations made hereunder;
- (b) develop an investment strategy for the Scheme for the approval of the Board;
- (c) prudently invest and manage the assets of the Scheme in a manner consistent with the statement of investment policies and principles of the Scheme, and in accordance with the approved investment strategy;
- (d) provide regular information on the investment strategy, market returns, and other performance indicators to the Board for the benefit of the members of the Scheme;
- (e) maintain books of account on all transactions undertaken in relation to the Scheme; and
- (f) report to the Board on any matter relating to the assets of the Scheme at such intervals as may, from time to time, be determined by the Board.

Functions of the investment manager.

(2) The same person may be appointed as the administrator and investment manager.

Duty of care of the administrator and investment manager.

40. In the exercise of their respective functions, the administrator and investment manager shall—

- (a) perform their functions exercising the care, skill and diligence which is usual, necessary and proper for administrators and investment managers to employ;
- (b) not make statements or forecasts that are misrepresentative, false, deceptive or conceal facts;
- (c) not commit acts or engage in a course of conduct that would misrepresent, mislead or create a false impression;
- (d) keep, maintain and safeguard accurate and complete records and other documents on matters pertaining to their function in relation to the Scheme for a period of not less than seven years after—
 - (i) in the case of a member, the liability of the Scheme to that member or the beneficiary of that member, as the case may be, has been fully extinguished; or
 - (ii) the date of the last transaction to which the records relate, in any other case;
- (e) provide regular, timely, clear, fair, complete and accurate information and reports to the Board, or to an authorised person.

Revocation of appointment.

41.—(1) The Board shall revoke the appointment of the administrator or the investment manager, if either the administrator or the investment manager—

- (a) procured a licence as a result of misleading or false representation in a material particular;
- (b) no longer satisfies the criteria specified in the Pensions (Superannuation Funds and Retirement Schemes) Act;

- (c) failed to conduct his respective functions under the Scheme otherwise than in accordance with sound pension principles and practices;
- (d) failed to make payment of a pension or a pension benefit within a reasonable time;
- (e) failed, without reasonable excuse, to furnish the Commission with information required by the Commission, within thirty days of a request being made;
- (f) no longer satisfies the fit and proper requirements under this Act; or
- (g) contravenes any of the provisions of this Act or regulations made hereunder, or any condition, direction or requirement imposed under this Act, or under the Pensions (Superannuation Funds and Retirement Schemes) Act, or is an accessory to such contravention.

(2) Where the Board revokes the appointment of an administrator or an investment manager, the Board shall within fourteen days of the revocation, designate an administrator or an investment manager, as the case may be, and shall notify the Commission of the designation, giving full details of the change, including the date and reasons for the change.

PART VII—*Accounts and Audit of the Scheme*

42.—(1) Subject to subsection (2), the Board shall, from time to time, appoint an auditor for the purpose of auditing the accounts of the Scheme on such terms as it deems fit. Appointment of auditor.

(2) The Board shall not appoint a person as an auditor unless—

- (a) the person is qualified for appointment as an auditor of a company under the Companies Act; and
- (b) the Commission, upon receipt of notice of the proposed appointment, reviews the qualification and other information provided by the Board, and determines that the person to

be appointed is a suitable person to perform the functions of auditor.

(3) If the Commission objects to the appointment of the auditor, the Board may, upon receipt of the decision, lodge an appeal in accordance with section 39 of the Pensions (Superannuation Funds and Retirement Schemes) Act.

(4) Where the Board has lodged an appeal in accordance with section 39 of the Pensions (Superannuation Funds and Retirement Schemes) Act, the Board shall not take any steps until the appeal has been heard and determined.

(5) All expenses associated with the undertaking of an audit shall be paid from the Scheme.

(6) The auditor appointed under subsection (1) shall not be a Trustee of the Scheme, or a director, officer or employee of the Board, or of a tourism operator contributing to the Scheme.

Functions of
auditor.

43.—(1) The auditor shall—

- (a) audit and inspect the books of account, statements of account, balance sheets and documents of the Scheme; and
- (b) prepare and sign a report on completion of the audit and inspection.

(2) The auditor shall be granted access to all documents requested or otherwise required for the purpose of performing the audit.

(3) The report prepared by the auditor in accordance with subsection (1)(b) shall be open to inspection by the Minister, tourism operators and members of the Scheme.

Annual
report.

44.—(1) The Board shall, within four months of the end of each financial year, prepare and submit to the Minister, the Commission, and to members upon request, an annual report of the Scheme.

(2) The annual report prepared in accordance with subsection (1) may be made available electronically.

(3) The annual report shall include the following information—

- (a) the operations and performance of the Scheme relative to the targets of the Scheme;
- (b) the names and contact information for members of the Board, administrators, investment managers, auditors and actuaries of the Scheme;
- (c) the value of the Scheme as at the last actuarial valuation, the funding and solvency ratios, the date of the actuarial valuation and the definition and interpretation of the ratios;
- (d) the amount and type of contributions that are overdue in excess of ninety days, specified monthly;
- (e) the interest rate used to accumulate contributions over the period, expressed as an annual effective rate;
- (f) the yield earned on investments of the Scheme during the statement period expressed as an annual effective rate;
- (g) adjustments to retirement savings account disclosing the amount and basis of the adjustments, and the source of funds to make that adjustment;
- (h) the number of unpaid contributions of a tourism operator or a member, within seven days after the end of the month in which they were due or deducted, as the case may be; and
- (i) a reminder of the requirement for each member to notify the Board and the administrators of any change of information.

(4) The annual report shall include the audited financial statements of the Scheme.

PART VIII—*Actuarial Review of the Scheme*

45.—(1) Subject to subsection (2), the Board shall appoint an actuary to manage the financial risks of the Scheme on such terms and conditions as it may consider appropriate. Appointment of actuary.

(2) The Board shall not appoint a person as an actuary unless the Commission, upon receipt of notice of the proposed appointment,

reviews the qualification and other information provided by the Board, and determines that the person to be appointed, is a suitable person to perform the functions of an actuary.

(3) If the Commission objects to the appointment of the actuary, the Board may, upon receipt of the decision, lodge an appeal in accordance with section 39 of the Pensions (Superannuation Funds and Retirement Schemes) Act.

(4) Where the Board has lodged an appeal in accordance with section 39 of the Pensions (Superannuation Funds and Retirement Schemes) Act, the Board shall not take any steps until the appeal has been heard and determined.

Functions of
actuary.

46.—(1) The actuary shall conduct an actuarial review of the Scheme at least once every three years to examine the financial position of the Scheme and its ability to meet its existing and contingent liabilities.

(2) In exercise of its functions, the actuary shall have access to all necessary accounts and membership data and all such information as the actuary may require relating to the Scheme.

(3) On each actuarial review, the actuary shall—

- (a) submit a written report to the Board, copied to the Minister, on the financial position of the Scheme;
- (b) make such recommendations as the actuary shall consider appropriate for the improvement of the Scheme,

and the Board, having regard to the actuarial report, may take such action as it deems necessary and appropriate.

(4) Where an actuarial review discloses a surplus, such surplus may be applied as determined by the Board, in consultation with the actuary.

PART IX—*Investment of the Assets of the Scheme*

Investments
to be in name
of the
custodian
trustee.

47.—(1) All investments and assets of the Scheme shall be in the name of a custodian trustee which shall be a body corporate appointed by the Board.

(2) If it is impracticable for the assets and investments of the Scheme to be in the name of a custodian trustee, subject to the approval of the Board, such assets and investments shall—

(a) be held in trust for the Trustees and the assets and investments constituting the Scheme shall be separately identifiable; or

(b) be separately identified in the records of the trust, where the separation of assets and investments within the trust is not practicable.

48.—(1) The Board shall cause to be prepared a written statement of investment policies and principles which shall be subject to such investment guidelines which may be established by the Commission from time to time.

Preparation of statement of investment policy and principles.

(2) The statement of investment polices and principles shall include—

- (a) the rate of return objectives for the Scheme, stated gross and net of investment expenses, each of which shall be consistent with, and appropriate for the economic environment and circumstances of the Scheme;
- (b) an outline of the risks of the Scheme, and the level of risk that can be tolerated by the Scheme;
- (c) the outlook of the continuity and the maturity profile of the Scheme and the assets and liabilities of the Scheme;
- (d) the liquidity needs of the Scheme and other legal, regulatory or special constraining circumstances affecting the investments of the Scheme; and
- (e) the target asset mix of the Scheme, consistent with its risks returns expectations.

(3) The Board shall review the statement of investment policies and principles at least once every twelve months, or at such greater frequency as may be prudent in the circumstances, and any modifications thereto shall be subject to such investment guidelines which may be established by the Commission from time to time.

General rules relating to investment transactions of the Scheme.

49. The following rules shall govern all investment transactions of the Scheme—

- (a) investment transactions shall be made with the prior approval of the Board and shall be consistent with the statement of investment policy and principles; and
- (b) investment transactions shall be undertaken at arm's length and at a price comparable in the market for similar investment transactions.

Considerations underlying the statement of investment policies and principles.

50. In preparing, reviewing and revising the statement of investment policies and principles, the Board shall take into account—

- (a) the type, benefits and features of the resources of the Scheme;
- (b) the management of interest, liquidity, credit, currency and other financial risks to which the Scheme is exposed;
- (c) the characteristics of the liabilities of the Scheme;
- (d) the funding and solvency levels and requirements relevant to the Scheme;
- (e) the prevailing economic conditions and circumstances;
- (f) the expenses of the Scheme;
- (g) the diversification of the investment portfolio by asset classes, and within asset classes;
- (h) any other matter affecting the investment of the Scheme that would be appropriate to be considered in the development and preparation of the statement of investment policies and principles.

PART X—*Financial Provisions*

Uses of assets of the Scheme.

51.—(1) Subject to subsection (2), no part of the Scheme shall be used for, or diverted for any purpose other than for the payment of benefits for members and their beneficiaries.

(2) All costs, charges and expenses incurred by the Board for the administration and management of the Scheme, and in carrying out the provisions of this Act, shall be paid from the Scheme.

52. The Board shall establish such accounts as are necessary for the proper administration of the Scheme into which shall be paid— Funding of the Scheme.

- (a) such moneys or assets as may accrue to, or vest in, the Board in the course of the exercise of its powers;
- (b) income from the investment of the moneys held in the accounts; and
- (c) all moneys from other sources provided to the Board.

53. There shall be maintained, a reserve account, into which shall be deposited any income of the Scheme that the Board determines should be set aside to stabilise the returns to members. Reserve account.

54. The benefits provided under the Scheme shall not be— Benefits of the Scheme not assignable.

- (a) assigned or charged in any way; or
- (b) subject to garnishment, attachment, execution or levy of any kind.

55. A tourism operator, a member, beneficiary or any other person or association shall have no rights, title or interest to the assets of the Scheme except as provided for in this Act and any regulations made hereunder. No interest in the Scheme except as provided.

56.—(1) Winding up of the Scheme may be undertaken voluntarily, or by an order of the Court. Winding up of Scheme.

(2) Where the Scheme is to be wound up voluntarily, it shall be undertaken by the direction of the Commission.

(3) Where the Scheme is to be wound up by an order of the Court, it shall be undertaken by a petition of the Commission, or a member, on the grounds that the winding up of the Scheme is necessary to protect the interests of the members.

(4) Where a decision is taken to wind up the Scheme pursuant to subsection (2) or subsection (3), notice of the winding up shall be given in the prescribed form to—

- (a) the Commission; and
- (b) members,

within fourteen days of the direction or order to wind up the Scheme.

(5) Pursuant to subsections (2) and (3), the Board shall cause an actuarial valuation to be made of the assets and liabilities of the Scheme.

(6) Subject to the written advice of the actuary, the Board shall, to the extent that the resources permit and after the payment of all debts owed by the Scheme, apply the resources of the Scheme in the following order of priority—

- (a) expenses arising from the winding up of the Scheme ;
- (b) voluntary contributions and transfer values;
- (c) benefits accrued in respect of members who have attained normal retirement; and
- (d) benefits accrued in respect of all other members.

(7) Pursuant to subsections (2) and (3), the Board shall secure the interests of the members in any one or more of the following ways—

- (a) purchasing normal annuities;
- (b) transferring, with the consent of each member concerned, and on the advice of the investment manager, such part of the assets as is certified by the actuary to be appropriate in the circumstances, to an approved pension plan, with a view to benefits being obtained from that approved pension plan; or
- (c) by such other means as the Board in its absolute discretion thinks fit, so that, as far as practicable, no part of the assets shall remain in the Scheme after the completion of the winding up.

(8) The Board shall, after discharging its liabilities in accordance with subsection (7), distribute any remaining surplus among the members of the Scheme in accordance with the advice of the actuary and in such manner that the Board deems just and equitable.

(9) Where a shortfall arises in the application of the resources of the Scheme, subject to the written advice of the actuary, the Board

shall, to the extent necessary, reduce the value of the benefits to be secured from the balance of the retirement savings account of each member, after securing voluntary contributions and transfer values.

(10) Upon securing the interest of each member, the Board shall require each member, or the beneficiary of a member, as the case may be, to duly execute a form of release and discharge, releasing the Trustees, their agents and employees from all actions, accounts, claims and demands whatsoever arising directly or indirectly under the Scheme, in relation to the said member or beneficiary.

PART XI—*Miscellaneous*

57.—(1) Subject to the provisions of this Act and any regulations made hereunder, the Board shall provide to each member, beneficiary or personal representative, such information as may be required.

Duty to provide information to members and beneficiaries.

(2) The information provided under subsection (1) shall be clear, accurate, complete and timely, and where the use of technical jargon is unavoidable, it shall be accompanied by an explanation in simple language.

(3) The Board shall prepare and distribute, free of charge, to each member of the Scheme, a benefit statement, which meets the minimum standard specified in Part A of the Second Schedule.

Part A. Second Schedule.

(4) The Board shall prepare and distribute, a benefit statement which meets the minimum standard specified in Part B of the Second Schedule, to a member, beneficiary or the personal representative of a member, as the case may require, within sixty days of being notified of a change relating to that member.

Part B. Second Schedule.

(5) The change referred to in subsection (4) may be—

- (a) the termination of employment of a member;
- (b) transfers to an approved pension plan; or
- (c) the retirement or death of the member.

(6) The Board shall—

- (a) supply free of charge to each new member, upon his becoming a member of the Scheme, a copy of the information folder

for the Scheme, along with a copy of the members' handbook, and shall likewise supply subsequent amendments thereof; or

- (b) give prospective members the opportunity to read and obtain clarification about the contents of the information folder for the Scheme, and the members' handbook, where applicable, prior to joining the Scheme.

(7) The members' handbook shall include a written explanation of—

- (a) the benefits, rights and obligations of members and beneficiaries, including a statement of their right to have access to certain information, and their right to information which is required to be disclosed;
- (b) complaints resolution procedures;
- (c) procedures for claiming benefits,

and shall state the names and contact information of the members of the Board, the administrator, investment manager, auditor and actuary of the Scheme.

(8) An information folder shall include the following information—

- (a) a description of the operations of the Scheme;
- (b) the fees and deductions for taxes, administration and investment management and other expenses of the Scheme and highlight changes made during the financial year;
- (c) the scope and limitation of investments of the Scheme, indicating the intended composition of the portfolio of the Scheme, according to the class of investments;
- (d) a description of the application of earnings of the Scheme and an explanation of risks; and
- (e) a statement setting out—
 - (i) the list and respective values of the assets and securities in the Scheme for the current year; and

- (ii) the rates of return earned and the basis of calculation used for each of the previous years and cumulatively for the previous years, which basis of calculation shall be consistent over the entire period of presentation.

(9) Subject to subsection (10), a member, a beneficiary or a personal representative may, within fifteen working days of the Board receiving his request, examine and make or purchase copies of—

- (a) the certificates of registration of the members of the Board;
- (b) the names and contact information of the members of the Board, the administrators and the investment managers of the Scheme;
- (c) the members' handbook and any amendments thereto;
- (d) the benefit statement described in subsection (3);
- (e) the information folder and any amendments thereto;
- (f) the policies and procedures manual; and
- (g) the annual report.

(10) The fee for obtaining copies shall not exceed the reasonable cost, as determined by the Board, of making the documents available.

(11) The Board may, before providing the documents or information under subsection (9), require the person requesting the information to provide a certificate of birth, marriage, death, declaration of paternity or other Court Order, or where applicable, evidence of authority to act on behalf of a member, which establishes his right to see such documents or obtain such information.

58.—(1) The Board shall convene one Annual General Meeting in ^{Meetings.} addition to any other meeting each year.

(2) The Annual General Meeting shall be convened within six months after the end of each financial year.

(3) The Board shall convene a general meeting, upon the written request of the administrator, or upon the request of fifty or more members, at such time and place as the Board sees fit.

(4) The members, auditors, administrator, investment manager, actuary, the Board and their legal advisors shall be entitled to attend and speak at the meeting convened under this section.

Part A.
Third
Schedule.

(5) The provisions of Part A of the Third Schedule shall have effect in relation to the procedure at general meetings convened under this section.

Notice of
meetings.

59.—(1) A meeting under section 58 shall be called by giving at least twenty eight days notice to the members.

(2) The notice under subsection (1) shall specify the date, time and place of the meeting and in the case of special business, the terms of the resolution that is to be proposed.

(3) The Board shall cause a copy of the notice of its Annual General Meeting to be advertised in at least one daily newspaper printed and circulated in the Island.

(4) Notice of the Annual General Meeting shall be accompanied by the reports of the Board and the auditor.

(5) The accidental omission to give notice of a meeting, or the non-receipt of notice of a meeting by any person entitled to receive notice, shall not invalidate the proceedings at that meeting.

Special
meetings.

60.—(1) The Board shall convene a special meeting—

- (a) upon receipt of a notice signed by not less than thirty per cent of the members requesting a special meeting; and
- (b) by giving seven days' notice specifying the place, date and time of the meeting.

(2) A notice under subsection (1) shall specify the issues to be discussed at the meeting.

Part B.
Third
Schedule.

(3) The provisions of Part B of the Third Schedule shall have effect in relation to the procedure at special meetings.

61. An investment manager, administrator, Trustee or employee of the Board who misappropriates the assets of the Scheme commits an offence and shall be liable, on conviction in the Supreme Court, to a fine or imprisonment for a term not exceeding ten years, or to both such fine and imprisonment. Offences.

62.—(1) The Minister may, after consultation with the Board and the Commission, make regulations for such matters as may be necessary or expedient for the purposes of this Act. Regulations.

(2) Without prejudice to the generality of the foregoing, regulations may provide for all or any of the following—

- (a) the enrolment and registration of members;
- (b) the obligation of members of the Scheme;
- (c) the payment of benefits to members;
- (d) the cessation of benefits;
- (e) the prescribing of fees;
- (f) the matters which may be appealed and appeals procedures; and
- (g) complaints procedures.

(3) Regulations made under subsections (1) and (2) shall be subject to affirmative resolution.

63. For the purposes of the Income Tax Act—

- (a) the resources of the Scheme shall be exempt from income tax; and
- (b) any sum paid by any person by way of contribution to the Scheme shall in computing profits or gains for the purpose of an assessment of income tax, be allowed to be deducted as an expense incurred in the year in which the sum is paid.

Exemption
Re: Income
Tax.

FIRST SCHEDULE (Section 11(4))

Part A

The Board of Trustees

Constitution
of the Board
of Trustees.

1.—(1) The Minister shall appoint as Trustees, such persons who satisfy the fit and proper criteria specified in paragraph 8.

(2) The Board shall consist of not less than seven members appointed by the Minister and shall include not less than three representatives from the tourism industry and a minimum of four member representatives.

(3) The Minister shall have the power to appoint additional Trustees to the Board.

(4) Where the Minister exercises the power to appoint additional Trustees to the Board, the Board shall comprise of fifty per cent plus one member representative.

(5) The Minister may appoint any person to act temporarily in place of any Trustee in the absence or inability of that Trustee to act.

(6) Where a vacancy occurs in the membership of the Board, for any reason, the Minister shall appoint a new Trustee to replace that Trustee.

Chairperson
and deputy
chairperson.

2.—(1) The Minister shall appoint a chairperson and a deputy chairperson from among the members of the Board of Trustees.

(2) In the case of the absence or inability of the chairperson to act, the deputy chairperson shall exercise the functions of the chairperson, in any case where the deputy chairperson is present at the meeting and is able to act.

(3) In the case of the chairperson and the deputy chairperson being absent from a meeting or being unable to act, the Trustees present at the meeting shall elect one of their number to act as chairperson of the meeting.

Trust
secretary.

3. The Trustees shall elect one of their numbers to act as a secretary to the Board.

Office of
chairperson
or member
not a public
office.

4. The office of chairperson, deputy chairperson, trust secretary or Trustee shall not be a public office for the purpose of chapter V of the Constitution.

5. The names of all the Trustees as first constituted and every change in the membership thereof, shall be published in the *Gazette*. Publication of membership.

6.—(1) The period of office for each Trustee shall not exceed three years. Tenure of office.

(2) Every Trustee shall be eligible for reappointment.

7. On the application of a Trustee, the Minister may grant leave of absence to that Trustee. Leave of absence.

8. For the purposes of paragraph 1, a person is a “fit and proper” person if— Fit and proper.

(a) the person—

(i) has not been convicted of an offence involving dishonesty or an offence specified under the Proceeds of Crime Act or an offence that is similar to any such offence in another jurisdiction;

(ii) is not a bankrupt within the meaning of the Insolvency Act; and

(iii) is compliant with any tax or other statutory requirement imposed on the person;

(b) the employment record of a person or other information does not give the Minister any reasonable cause to believe that the person carried out any act involving dishonesty or any act involving impropriety in the course of the professional life of the person; and

(c) the person is, in the opinion of the Minister, a person of sound probity, and is able to exercise competence, diligence and sound judgment in fulfilling his functions as a Trustee.

9. The Minister may revoke the appointment of a Trustee if the Trustee— Revocation of appointment.

(a) no longer satisfies the requirements for appointment under this Act, or any other enactment;

(b) fails to discharge the functions conferred upon the Trustee;

(c) contravenes any of the provisions under Part B.

Resignation. 10.—(1) Any Trustee other than the chairperson, may at any time resign his office by instrument in writing, addressed to the Minister and transmitted through the chairperson, and from the date of receipt by the Minister of such instrument, the Trustee shall cease to be a member of the Board.

(2) The chairperson may at any time resign his office by instrument in writing addressed to the Minister, and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Protection of the Board. 11.—(1) A Trustee of the Board shall not be personally liable for any act or default done or omitted to be done in good faith in the exercise of his functions as Trustee.

(2) The Board shall be indemnified out of the Scheme against all liabilities and expenses incurred in the investment management and administration of the Scheme, except where there is evidence of fraud or dishonesty on the part of the Trustees whereby loss and damage is suffered by the Scheme.

(3) The Board shall have the benefit of all indemnities conferred upon Trustees generally by the Trustees Act or any statutory modification or reenactment thereof for the time being in force.

(4) The Trustees may seek judicial determination or a declaratory judgment, as the case may be, regarding any question of construction of this Act or regarding any action to be performed hereunder.

(5) The costs and expenses (including legal fees) of any action, suit or proceeding brought by or against the Board or any Trustee in respect of the Scheme, shall be paid from the Scheme, except actions resulting from the Board or any Trustee acting in bad faith.

Remuneration of Trustees. 12. There shall be paid from the Scheme to the chairperson and other Trustees such remuneration (whether by honorarium, salary or fees) and such allowances as the Minister with responsibility for the Public Service may determine.

13.—(1) The Board shall meet at least once every quarter, or at such times as may be necessary for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board shall determine.

Procedure,
quorum and
meetings.

(2) The Board may conduct meetings by telephone conference, video link or any form of electronic or digital media that may be deemed appropriate.

(3) The chairperson may at any time call a special meeting of the Board at the request of any Trustee or the Minister.

(4) The Board shall cause proper minutes of all meetings to be kept and made available for inspection by the Minister.

(5) The powers, duties and discretions of the Board shall be exercised by—

- (a) resolutions passed by a majority of all Trustees present at a meeting;
- (b) a written resolution signed by all the Trustees as if it was passed at a duly constituted meeting and may consist of several documents in like form, each signed by one or more of the Trustees.

(6) The chairperson, in addition to his regular vote, shall have a casting vote in any case in which the voting is equal.

(7) A document certified by the trust secretary to be a true copy of the resolution of the Trustees shall be sufficient evidence of its validity.

(8) The quorum for meetings of the Board shall be fifty per cent plus one of the total number of Trustees.

Part B

Conflict of Interest

14.—(1) A person shall not accept an appointment as a Trustee or as an authorised person if there is, or is likely to be, a conflict of interest between his role as a Trustee or authorised person, and his role in any other capacity.

(2) Further to subparagraph (1), the following persons shall not be eligible to accept an appointment as a Trustee—

- (a) a person performing the service of actuary, auditor, banker or attorney-at-law for the Scheme;
- (b) a person retained by the Scheme to perform the functions of administrator or investment manager.

(3) A Trustee shall not use information obtained in his capacity as Trustee or use his position as Trustee to further or seek to further his own or the private interest of another person, if this would result in a breach of his fiduciary duty to the persons entitled to benefit under the Scheme.

(4) An authorised person shall not use information obtained in his capacity, or use his position to further or seek to further his own or the private interest of another person, if this is likely to result in a breach of his fiduciary duty to the Board.

(5) The Board shall make a determination as to whether a conflict of interest exists, in the absence of the party whose interest it is reported will, or is likely to, conflict with the interest of the members of the Scheme.

(6) A Trustee or an authorised person—

- (a) shall not make a decision or participate in making a decision or seek to influence a decision where an actual or perceived conflict of interest arises regarding that Trustee or authorised person; and
- (b) shall, when he is present at the Board meeting where a matter in which he has an interest arises—
 - (i) disclose in full the nature of his interest that could reasonably be expected to conflict with that of the Scheme or his role as Trustee respectively; and
 - (ii) withdraw from the meeting without voting or deliberating upon the matter.

(7) A Trustee or an authorised person shall not continue to act in a matter where an actual or potential conflict of interest arises unless that Trustee or authorised person makes full disclosure to the Board and the Board consents in writing for that Trustee or authorised person to do so.

(8) Where a Trustee or an authorised person has clients with conflicting interests in relation to a transaction, the Trustee or authorised person shall not continue to act unless he takes reasonable steps to ensure that the interest of the Scheme is treated fairly.

(9) A person breaches the prohibitions against conflict of interest if he knew or ought reasonably to have known that a conflict of interest has occurred, but failed to take the required remedial steps in accordance with this section.

SECOND SCHEDULE

(Section 57(3) and
57(4))

PART A

Minimum Standard for Benefit Statement for Members

Each Statement shall contain the following sections.

- A. Basic Information
- B. Benefits
- C. General

A. Basic Information

The basic information section shall contain general information about the Statement, the Scheme, tourism operators of the Scheme and the member or beneficiary to whom the Statement is to be given. This shall include:

Regarding the Statement

- (a) statement period

Regarding the Scheme

- (a) full name;
- (b) administrator registration number;

Regarding the tourism operator who employs the tourism worker:

- (a) full name
- (b) contact information

Regarding the members of the Scheme

- (a) full name;
- (b) administrator member reference number;
- (c) Taxpayer Registration Number (TRN),
- (d) contact information (address, telephone no. *etc.*);
- (e) date of birth;
- (f) gender;
- (g) date of entry into Scheme;
- (h) normal retirement age and date.

B. Benefits

This section shall disclose the balance in the retirement savings account of the member as at the end of the statement period.

The balance in the retirement savings account of the member should be distinguished by the following sources, where applicable—

- (a) amounts attributable to the mandatory contributions of the member, with interest;
- (b) amounts attributable to the voluntary contributions of the member, with interest;
- (c) amounts attributable to the contributions paid by the tourism operator on the behalf of a member, with interest;
- (d) amounts attributable to surplus distribution, with interest; and
- (e) amounts attributable to any other lump sum amounts.

The additional information that shall be included, where applicable includes—

- (a) the mandatory contributions of the member which includes—
 - (i) accumulated contributions as at the start of the statement period;
 - (ii) contribution payments during the period;
 - (iii) accumulated contributions as at the end of the statement period; and
 - (iv) accumulated contributions and total contributions accumulated with interest together with amounts equivalent to the appreciation in value of investment units (if any) allocated to the contributions;
- (b) the voluntary contributions of the member which includes—
 - (i) accumulated contributions as at the start of the statement period;
 - (ii) contribution payments during the period;
 - (iii) interest; and
 - (iv) accumulated contributions as at the end of the statement period;
- (c) contributions made by tourism operators on behalf of a member which includes—
 - (i) accumulated contributions as at the start of the statement period;

- (ii) contribution payments during the period;
 - (iii) interest; and
 - (iv) accumulated contributions as at the end of the statement period;
- (d) transfer values which include—
- (i) accumulated transfer values as at the start of the statement period;
 - (ii) net transfer values paid during the period;
 - (iii) interest; and
 - (iv) accumulated transfer values as at the end of the statement period; and
- (e) assumptions used, for example, the value of annuity rates, interest rates, increases in salary and a brief discussion of the effects of future variance of actual experience from those assumed.

The following information must also be included in the Benefits section—

- (a) the normal form of pension payable at retirement with a brief description;
- (b) the name, date of birth, relationship and contact information for the named beneficiary of a member. (Attention should be drawn to the need for the appointment of a person to receive benefits if the named beneficiary is a minor); and
- (c) the benefit type and amount on death of the member.

C. General

The General section shall include—

- (a) a prominent statement that “The annual report for the Scheme for the year ending on [insert date] will be available on request as at [insert date]”;
- (b) a paragraph explaining the importance of the Statement, that it should be carefully reviewed for accuracy, that all errors should be reported to the Trustees or administrator as quickly as possible and that it should be retained to ensure that they receive their correct benefits at retirement;
- (c) a declaration signed by the administrator testifying, that to his best knowledge and belief, the information contained in the Statement is true, complete and correct and that it complies with the requirements of the Act and any regulations thereunder.

Part B

*Minimum Standard Benefit Statement for a Beneficiary or
Personal Representative on Change of Status*

Each Statement shall contain the following sections:

- A. Basic Information
- B. Benefits
- C. General

A. *Basic Information*

Same requirement outlined in Part A of this Schedule

B. *Benefits*

The benefits payable should be distinguished by the following sources where applicable—

- (a) amounts attributable to the mandatory contributions of the member with interest;
- (b) amounts attributable to the voluntary contributions of the member with interest;
- (c) amounts attributable to contributions paid by a tourism operator on the behalf of a member with interest;
- (d) amounts attributable to transfer values with interest;
- (e) amounts attributable to surplus distribution with interest;
- (f) amounts attributable to any other lump sum amounts; and
- (g) date and reason for termination of employment, if applicable.

Benefit payment options must be given. If the reason for termination is not retirement or death, one of the options that must be disclosed is that no lump sum payments will be made where all payments are fully annuitized.

All default options shall be clearly identified.

There should be clear evidence of the benefit option chosen by the member or beneficiary.

C. *General*

This section should include a paragraph outlining the options that the person has with regard to the institutions from which they could receive their pension benefit, e.g., insurance companies.

This section should also include the general information required under Part A of this Schedule.

THIRD SCHEDULE (Section 58(5))

Part A

Procedure at General Meetings

- Chairperson. 1. The Chairperson of the Board of Trustees shall preside as Chairperson at every general meeting or if there is no such Chairperson, or if he shall not be present within thirty minutes after the time appointed for the holding of the meeting, or is unwilling to act, the members present shall elect one of their number to be Chairperson of the meeting.
- Quorum. 2.—(1) The quorum of a general meeting shall be not less than thirty per cent of the total membership of the Scheme present in person or by proxy.
- (2) The Board shall not transact any business at the meeting unless a quorum is present at the commencement of business.
- (3) If within half an hour from the time appointed for the meeting there is no quorum, the meeting may be adjourned to such day and time, not being less than fifteen days and not more than thirty days thereafter.
- Resolution. 3.—(1) A resolution shall be decided by a show of hands unless a poll is demanded, by the Chairperson or one or more members, before or on the declaration of the results.
- (2) Unless a poll is demanded, a declaration by the Chairperson that a resolution has been carried shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such a resolution.
- Polls. 4.—(1) Where a poll is demanded, it shall be taken in such manner as the Chairperson may direct.
- (2) A resolution of a poll shall be deemed to be a resolution of the meeting at which the poll is demanded.
- (3) A poll demanded on the election of the Chairperson or on the question of adjournment shall be taken forthwith.
- (4) Notwithstanding subparagraph (3), a poll demanded on any other question shall be taken at such time and place as the chairman directs.

(5) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question for which the poll is demanded.

(6) Every member who is present in person or by proxy shall have one vote where a poll is taken.

5.—(1) A member who is unable to be present at a meeting may authorise any other person (who need not be a member) to vote for him at that meeting and the person so authorised, shall have a vote for each member by whom he is so authorised, and shall have the same right as the member to speak at the meeting. Votes by proxy.

(2) The instrument appointing a proxy shall be in writing and shall be deposited, not less than forty eight hours before the meeting at which it is to be used, at such place as the Board shall, by notice, direct.

(3) A person who fails to comply with the provisions of subparagraph (2) shall be unable to vote at a meeting.

(4) The instrument appointing a proxy shall be valid for twelve months after the date of execution.

(5) A vote by proxy shall be valid, notwithstanding the death or insanity of the member or revocation of a proxy, unless notice of the death or insanity of the member or the revocation of the instrument is received by the Board before the commencement of the meeting at which the proxy is used.

(6) In every notice of a meeting, there shall be a prominent statement that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of that member, and that the proxy need not be a member.

6. The Board shall cause to be kept minutes of all proceedings at every general meeting, and all such minutes shall be signed by the Chairperson of the meeting. Minutes.

PART B (Section 60(3))

Special Members' Meeting

1. The members shall, before proceeding to business, appoint a chairperson from among the members present to chair a special members' meeting. Chairman.

- Quorum. 2.—(1) The quorum at a special members' meeting shall be at least thirty per cent of the members of the Scheme.
- (2) Where at least thirty per cent of members are not present at the commencement of the meeting, the meeting shall be adjourned to any later hour in the same day or any later day and hour as the members present in person may decide.
- Votes. 3.—(1) Every member present in person at a special members' meeting shall have one vote and voting by proxy is not permitted.
- (2) The chairperson appointed in accordance with paragraph 1 shall have, in addition to his regular vote, a casting vote in the event of the equality of votes.
- Memorandum. 4. The chairperson at a special members' meeting shall, at the close of the meeting, forward to the Board a written memorandum signed by him, setting out all the resolutions put and carried by a simple majority of the members present.
- Minutes. 5. The Board shall cause minutes to be kept of all special members' meetings and all such minutes shall be signed by the chairperson of the meeting.