

## CHAPTER 350B

### OCCUPATIONAL PENSION BENEFITS

2003-17

This Act comes into operation on a date to be fixed by proclamation.

#### **Amended by:**

2006-16

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

2003

2007

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#### **Guide to symbols in historical notes:**

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument



**CHAPTER 350B**

**OCCUPATIONAL PENSION BENEFITS  
2003-17**

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#### SCHEDULE

**BARBADOS****OCCUPATIONAL PENSION BENEFITS  
2003-17**

*An Act to provide for the establishment, management and regulation of Occupational Pension Plans.*

**Short title**

1. This Act may be cited as the *Occupational Pension Benefits Act*.

**Definitions**

- 2.(1) In this Act, unless the context otherwise requires,  
“account balance”, in respect of a member, means the market value of all employer contributions and member contributions, if any, plus all interest and earnings thereon;  
“actuarial present value”, for the purpose of determining the present value of a pension or benefit to be paid at a future date, means the value of the pension or benefit calculated by an actuary in the prescribed manner and with reference to a fixed date;

“actuary” means a person who has qualified as an actuary by examination of a prescribed actuarial society, institute or professional association and who is,

- (a) in the case of a person who is a national or a permanent resident of any Member State of the Caribbean Community,
  - (i) a fellow of an internationally recognized society or institute of actuaries; and
  - (ii) a current member of, and in good standing with, the Caribbean Association of Actuaries;
- (b) in the case of a person who is not a national or a permanent resident of any Member State of the Caribbean Community,
  - (i) a fellow of an internationally recognized society or institute of actuaries and a holder of a valid work permit; and
  - (ii) a current member of, and in good standing with, the Caribbean Association of Actuaries;

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“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan that is in excess of an amount that the member is required to contribute and that is used to provide a defined contribution benefit, but does not include a contribution in relation to which the employer is required to make an additional contribution to the pension fund;

“administrator” means the person or body that administers a pension plan;

“affiliated employer” has the same meaning as in the *Companies Act*, Cap. 308;

“annuity” means a contract granted by an insurance company to a member or deferred member that,

- (a) with respect to his entitlement to pension benefits, provides fixed, periodic payments for life;

(b) with respect to his entitlement to disability benefits, provides a fixed, periodic payment for the duration of the disability or to the normal retirement age of the plan, whichever shall first occur;

“assets”, in relation to an employer, means assets that in accordance with proper accounting practices, in the ordinary course of business, would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer;

“benefits” means pension benefits and ancillary benefits;

“bonus” means earnings in excess of the normal remuneration that are calculated by the application of a formula stipulated by the employer and paid at fixed intervals, but does not include money paid on an *ad hoc* basis or upon the exercise of the discretion of the employer;

“bridging benefit” means a periodic payment provided under a pension plan to a deferred or retired member of the pension plan, for a temporary period after retirement for the purpose of supplementing the deferred or retired member’s pension benefit until the deferred or retired member is eligible to receive benefits under the *National Insurance and Social Security Act*, Cap. 47;

“Caribbean Community” means the Caribbean Community established by the Treaty establishing the Caribbean Community signed on 4th July, 1973, as amended by the Revised Treaty of Chaguaramas establishing the Caribbean Community including the Single Market and Economy;

“certified copy” means a copy certified to be a true copy;

“claimant”, in relation to a pension plan, means a person other than a member, deferred member or retired member who, as a result of another person’s membership at any time in the pension plan, is or may be entitled to a benefit or right under the plan;

“class of employees” means one or more employees to whom a factor relating to employment can be commonly applied, including employment status and

trade union membership, but shall not include time interval of payment of wages;

“collective agreement” is an agreement negotiated by a trade union certified under the provisions of the *Trade Unions Act*, Cap. 361;

“commencement date” means the date on which this Act has been proclaimed;

“commuted value”, for the purpose of determining the lump sum amount that is equivalent to a pension or a benefit, means the value calculated by an actuary in the prescribed manner and as of a fixed date;

“continuous”, in relation to employment, membership or service, means employment or service without interruption, except where such interruption is attributable to pregnancy or caused by disability or suspension or lay-off for a period prescribed by the regulations;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“current service costs” means the cost of benefits for a fiscal year of a pension plan determined by an actuary in the prescribed manner;

“custodian” means

- (a) an insurance company licensed under the *Insurance Act*, Cap. 310; or
- (b) a financial institution licensed under the *Financial Institutions Act*, Cap. 324A

which has possession of and control over assets of a pension fund related to a pension plan;

“deferred benefit” means a benefit other than an immediate benefit;

“deferred member”, in relation to a pension plan, means a person entitled to a deferred benefit;

“deferred pension”, in relation to a member of a pension plan, means a pension other than an immediate pension;

“defined benefit” means a pension benefit determined in advance by reference to various factors including level of earnings and length of service;

“defined contribution benefit” means a pension benefit determined solely with reference to accumulated contributions made by or for the credit of a member, together with the yield on such accumulated contributions, and that is determined on an individual account basis;

“disability”, in relation to a member, means the inability to perform most or all of the tasks related to that member’s employment as a result of a physical or mental condition, whether or not that condition is a result of the member’s employment, but does not include the pregnancy of a member;

“document” includes

- (a) anything on which there is writing;
- (b) a map, plan, drawing or photograph; and
- (c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently retrieved or derived from the information so recorded or stored;

“employee” means a natural person who is employed by an employer;

“employer”, in relation to a member or a deferred or retired member of a pension plan, means

- (a) the person or persons from whom or the entity from which the member, deferred or retired member receives or received remuneration to which the pension plan is related;
- (b) a trade union; and
- (c) any registered professional body or association, however called; and

“employed” and “employment” have corresponding meanings;

“executor” includes a person appointed to administer the estate of an individual who dies intestate;

“file” means file with the Supervisor;

“fiscal year”, in relation to a pension plan and a related pension fund, means the fiscal year established by the administrator;

“immediate benefit” means a benefit under a plan that is payable to the member not later than the first day of the month following the termination of the employment or the retirement of the member;

“insurance company” means

- (a) a company registered under the *Insurance Act*, Cap. 310 that is authorised to undertake life insurance in Barbados; or
- (b) a company incorporated or registered in any Member State of the Caribbean Community that is licensed or otherwise permitted to engage in life insurance business;

“joint and survivor pension” means a pension payable during the life of the person entitled to the pension and thereafter during the life of the surviving spouse;

“member” means an employee who is or may be entitled to a benefit or to a refund of the contributions under the pension plan as a result of his employment;

“Minister” means the Minister responsible for occupational pensions under this Act;

“multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement to provide a benefit that is determined with reference to service with one or more of the employers, but does not include a plan where all the employers are affiliated employers;



- “multi-unit pension plan” means a pension plan established and maintained by one employer for two or more affiliated employers;
- “normal retirement age” means the age specified in a pension plan as the normal retirement age of members, but shall not be later than the year in which the member attains the retirement age specified for the member in the *National Insurance and Social Security Act, Cap. 47*;
- “partial winding-up” means the termination of part of a pension plan, including the distribution of all of the assets of the pension fund, including the surplus assets, related to that part of the pension plan;
- “participating employer”, in relation to a multi-employer pension plan, means an employer required to make contributions to the multi-employer pension plan;
- “pension” means a pension benefit that is being paid;
- “pension benefit”, in relation to a member or deferred member of a pension plan, means the entitlement of the member or deferred member, or of another person as a result of the death of a member or deferred member, to the periodic amounts provided under the pension plan or under this Act, but does not include an ancillary benefit;
- “pension committee” means a committee that is the administrator of a pension plan;
- “pension fund” means the fund established to provide benefits under or related to the pension plan;
- “pension plan” means an occupational retirement scheme organised and administered to provide pensions for employees who are members of the scheme or the beneficiaries of such members, but does not include
- (a) a plan under which pension benefits are provided only by contributions made by members;
  - (b) any other plan prohibited by this Act or regulations made under this Act;

“pensionable earnings” means the member’s basic salary or wages, overtime payments, commissions and bonuses, on which the calculation of the contributions or the retirement benefits is based;

“prescribed” means prescribed by the regulations;

“reciprocal transfer agreement” means an agreement related to two or more pension plans that provides for the transfer of assets of a pension fund, pension benefits or pensions or a combination thereof in respect of individual members, deferred or retired members;

“registration” means registration under this Act;

“retired member”, in relation to a pension plan, means a member who is receiving a pension under the plan or who is receiving payments from an annuity purchased to provide the pension benefits from the plan;

“Supervisor” means the Supervisor of Pensions;

“surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, as calculated by an actuary in accordance with generally accepted actuarial principles;

“termination”,

- (a) in respect of employment, includes the cessation of employment by reason of retirement or death;
- (b) in respect of the winding-up in whole or in part of a pension plan, means the cessation of the accrual of pensionable service under the plan, by members of the plan;

“trade union” means a union registered under the provisions of the *Trade Unions Act*, Cap. 361;

“winding-up”, in relation to a pension plan, means the distribution of the assets, including surplus assets, of the pension plan after the plan is terminated in whole or in part.

- (2) For the purposes of this Act, a person is employed in Barbados where
- (a) the person performs the services connected with such employment, either wholly or partly in Barbados; and
  - (b) the employer of such person is incorporated, registered or otherwise organised or managed in Barbados.
- (3) For the purposes of this Act, a reference to a “spouse” includes
- (a) a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death;
  - (b) a single man who was living together with a single woman as her husband for a period of not less than 5 years immediately preceding the date of her death.
- (4) For the purposes of subsection (3), a reference to a single woman or a single man includes a reference to a widow or widower or to a woman or man who is divorced.
- (5) Notwithstanding subsection (3), only one such relationship as is referred to in paragraph (a) or (b) of that subsection shall be considered for the purposes of the payment of a benefit under this Act.
- (6) For the purposes of this Act, any information, notice, or statement required to be given in writing, or the completion of any form approved by the Supervisor, includes the giving of such information, notice or statement or the completion of such form by electronic means.

PART I  
APPLICATION

**Application**

- 3.(1) This Act applies to
- (a) every pension plan and every registered retirement savings plan that is established by an employer for persons employed in Barbados or in respect of which an employer makes contributions for his employees; and
  - (b) a pension plan that is established for persons employed outside Barbados and that has a substantial connection with Barbados.
- (2) For the purposes of this section,
- (a) a pension plan has a substantial connection with Barbados where
    - (i) part or all of the benefits payable under the pension plan are payable in Barbados; or
    - (ii) the administrator of the plan or the custodian of the assets of a pension fund related to a pension plan is incorporated or registered in Barbados; or
    - (iii) the plan has been established for the benefit of employees of
      - (A) a corporation; or
      - (B) a subsidiary corporation or holding corporation of a corporationregistered under the *Companies Act*, Cap. 308;
  - (b) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
  - (c) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

## PART II

## ESTABLISHMENT AND ADMINISTRATION

**Prohibition re: establishment of pension plan**

4.(1) Subject to this Act, no person shall establish or administer a pension plan unless an application for the registration of the pension plan has been made to the Supervisor.

(2) No person shall maintain a pension plan unless the plan has been registered by the Supervisor and a valid certificate of registration exists in respect of the plan.

**Application for registration of pension plan**

5.(1) An application for the registration of a pension plan shall be made within 30 days of the establishment of the plan.

(2) The administrator of a pension plan shall apply to the Supervisor, within the prescribed period of time, for registration of the pension plan.

(3) An application for registration shall be in a form approved by the Supervisor and shall be accompanied by

- (a) the fee prescribed by the Minister responsible for Finance;
- (b) certified copies of the documents that create and support the pension plan, including any relevant collective agreement;
- (c) certified copies of the documents establishing the pension fund related to the plan;
- (d) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (e) an initial valuation of the pension plan that has been prepared and certified by an actuary; and
- (f) any other prescribed documents.

**Requirements of pension plan**

- 6.** A pension plan is not eligible for registration unless it provides
- (a) for funding sufficient to provide the pension or benefits under the pension plan in accordance with this Act and the regulations;
  - (b) for the accrual of benefits, subject to such conditions as may be prescribed by the regulations;
  - (c) a formula for computation of the employer's contributions to the pension fund or, in the case of a defined benefit pension plan, the benefits provided under the pension plan, that is not variable at the discretion of the employer; and
  - (d) that there shall be no reduction in benefits because a member is or will be entitled to a payment under the *Severance Payments Act*, Cap. 355A.

**No disqualification of pension for generous benefits**

- 7.** A pension plan shall not
- (a) be disqualified for registration or administration of that plan and related pension fund by reason only that it provides to members benefits more advantageous than those required by this Act; or
  - (b) be administered so as to deprive a member of benefits that are more advantageous than those provided by this Act.

**Requirements for administrator**

- 8.(1)** The Supervisor shall not register a pension plan unless he is satisfied that it is to be administered by an administrator that is,
- (a) the employer of persons benefitting or intended to benefit from the pension plan;

- (b) a body composed of one or more representatives of the employer participating in the pension plan and one or more representatives of the members, deferred or retired members of the pension plan;
  - (c) a body wholly composed of members and deferred and retired members of the pension plan;
  - (d) a person, body of persons, or 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;
  - (e) a board of trustees appointed pursuant to the pension plan or trust agreement establishing the pension plan and, in the case of a multi-unit or multi-employer pension plan, if
    - (i) at least one-half of the members of the board are representatives of members of the pension plan; and
    - (ii) two-thirds of the representatives referred to in subparagraph (i) are citizens or residents of Barbados or of any member state of the Caribbean Community; or
  - (f) an insurance company that provides the benefits under the pension plan where all the benefits under the pension plan are guaranteed by the insurance company.
- (2) A pension committee or a board of trustees that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

### **Information respecting pension plan**

9.(1) The documents establishing a pension plan and its related pension fund shall set out the following information:

- (a) the objects for which the pension plan is established, and the rules governing the administration of the pension plan and the pension fund;

- (b) the method by which the documents establishing the pension plan and the pension fund may be amended;
- (c) the method of appointment and removal of the administrator of the pension plan and the custodian of the pension fund;
- (d) the powers and duties of the administrator, including the power to delegate any part of the administration of the pension plan to another person;
- (e) the conditions for membership in the pension plan;
- (f) the benefits and rights that are to accrue upon disability, termination of employment, termination of membership, retirement, death or the winding-up in whole or in part of the pension plan;
- (g) the normal retirement age under the pension plan;
- (h) the requirements for entitlement under the pension plan to any benefit;
- (i) the contributions or the method of calculating contributions under the pension plan;
- (j) the method of determining benefits payable under the pension plan;
- (k) the method of calculating interest or earnings to be credited to contributions or benefits payable under the pension plan;
- (l) the method for allocation of gains and losses in a defined contribution plan;
- (m) the obligation of the administrator to provide members with information and documents required by or under this Act to be disclosed;
- (n) the method of receiving or transferring a member's accrued pension benefit from or to another pension plan or plans;
- (o) particulars of any predecessor pension plan under which members of the pension plan may be entitled to benefits;



- (p) the mechanism for payment of the cost of administration of the pension plan and the related pension fund;
  - (q) the mechanism for establishing, maintaining and amending the pension fund;
  - (r) the circumstances in which the pension plan would be discontinued and the method by which the assets of the pension fund are to be allocated consequent on such winding-up and the order of priority for such allocation;
  - (s) the types of investments to be made and the allocation of investment earnings;
  - (t) the treatment of surplus during the existence of the pension plan, and on the winding-up of the pension plan in whole or in part; and
  - (u) such other information as may be prescribed or required by the Supervisor.
- (2) The documents that create and support a multi-unit pension plan, or a multi-employer pension plan pursuant to a collective agreement or a trust agreement, shall set out the powers and duties of the board of trustees that is the administrator of the pension plan.

### **Certificate of registration**

**10.** Where the Supervisor is satisfied that a pension plan meets the requirements for registration under this Act, he shall register the plan and issue to the person responsible for the administration of the plan a certificate of registration in the prescribed form.

### **Registration of amendment of pension plan**

**11.(1)** Subject to subsection (2), the Supervisor, upon an application in this regard by the administrator, may register any amendment to a pension plan.

- (2) Subject to subsection (5), the Supervisor shall not register an amendment to a pension plan where the amendment is likely to have the effect of reducing
- (a) benefits, including benefits for which a member or deferred member has met all eligibility requirements under the plan necessary to exercise the right to receive payment of the benefit, which are accrued and have vested with respect to employment before the effective date of the amendment, whether or not such benefits accrued in the plan or a predecessor plan; or
  - (b) the actuarial present value or the commuted value of such accrued vested benefits.
- (3) Any provision in a pension plan that has the effect referred to in subsection (2) is void.
- (4) An amendment to a pension plan may be given effect from a date earlier than the date of its registration, but shall come into operation only after an application for registration has been filed with the Supervisor.
- (5) Subsection (2) shall not apply in respect of
- (a) a multi-employer pension plan established pursuant to a collective agreement or a trust agreement; or
  - (b) a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

**Refusal to register**

- 12.(1)** The Supervisor may
- (a) refuse to register a pension plan that does not comply with this Act and the regulations;
  - (b) direct that a plan be modified to comply with this Act and be re-submitted to the Supervisor by a stipulated date;

- (c) refuse to register an amendment to a pension plan if the amendment is void under this Act, or if the pension plan as sought to be amended would result in the plan ceasing to comply with this Act and the regulations; or
  - (d) revoke the registration of a pension plan if, at any time after registration, the plan does not comply with or is not administered in accordance with this Act and the regulations.
- (2) Where the Supervisor has directed that a plan be modified, the administrator may modify the plan and re-submit it by the date stipulated by the Supervisor.
- (3) Where the Supervisor
- (a) refuses to register a pension plan or an amendment to a pension plan; or
  - (b) revokes the registration of a pension plan,
- the Supervisor shall provide the administrator with written reasons for refusing to register a pension plan, revoking the registration of a plan, or refusing to register an amendment to a plan.
- (4) An administrator may appeal to a judge in chambers against a decision of the Supervisor.
- (5) A judge may confirm the decision of the Supervisor, may vary the decision or may direct that the applicant modify the plan to meet any requirement identified by the Supervisor.

### **Prohibition on contracting out**

**13.** Unless permitted by this Act, no person shall contract out of or waive a requirement imposed by this Act or the regulations on an employer or administrator, and any such contracting out or waiver is void.

**Prohibition re: administrator of insolvent plan**

**14.** No person who is a liquidator, receiver or a trustee in bankruptcy of an employer or administrator of a pension plan shall administer the pension plan of the bankrupt employer or administrator.

**PART III****ADMINISTRATION OF PENSION PLAN****Duties of administrator**

**15.(1)** The administrator shall ensure that the pension plan and the fund related to the plan are, at all times, administered in accordance with

- (a) the written provisions governing the pension plan and the fund related to the plan that were approved by the Supervisor for the registration of the pension plan; and
- (b) this Act and the regulations.

(2) The administrator

- (a) shall notify the Commissioner of Inland Revenue of the payment of any benefit under a pension plan;
- (b) shall, where a payment in a defined benefit plan exceeds the maximum benefit prescribed in the regulations, cause the benefit to be commuted and shall satisfy the Commissioner of Inland Revenue of the commutation.

**Annual returns**

**16.(1)** The administrator shall file

- (a) an initial valuation of the pension plan as prepared and certified by an actuary;

- (b) within 4 months of the end of a fiscal year of the pension plan, an annual return in the form approved by the Supervisor containing the financial statements of the pension fund;
  - (c) a valuation within 4 months of the end of the first fiscal year;
  - (d) a second valuation within 4 months after the third fiscal year;
  - (e) after the submission of the second valuation, a valuation for every successive triennium to be submitted within 4 months of the end of the triennium;
  - (f) where applicable, a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan or any amendment thereto; and
  - (g) such additional reports in respect of the pension plan as are required by the Supervisor or by the regulations.
- (2) Subsection (1)(b) and (c) do not apply to a defined contribution plan that has no surplus assets.
- (3) Subsection (1)(b) and (c) do not apply to prevent the administrator from filing a valuation of the plan more frequently than once every 3 years.

#### **Duty of care of administrator**

- 17.(1)** The administrator
- (a) shall exercise the care, diligence and skill in the administration of the pension plan and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person;
  - (b) shall administer the plan and invest the assets of the pension fund using all relevant knowledge and skill that the administrator possesses or, by reason of the responsibilities and duties to be discharged by the administrator, he ought to possess.

- (2) An administrator shall not permit his interest to conflict with his duties and responsibilities under this Act and the regulations.
- (3) The administrator may appoint an agent to perform any function on his behalf.
- (4) An administrator of a pension plan who employs an agent shall be satisfied of the agent's suitability to perform the functions for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.
- (5) Every
- (a) actuary who provides actuarial services with respect to the establishment or administration of a pension plan; or
  - (b) custodian of a pension fund
- shall be deemed to be an agent of the administrator.
- (6) The provisions of this Act relating to the administrator's duties and responsibilities shall apply to any other person, including an administrator's employee or agent, who performs any part of the functions or discharges any part of the responsibilities of an administrator in the same manner as they apply to an administrator.
- (7) Subject to subsection (8), the administrator or an employee or agent of the administrator is not entitled to receive remuneration or reward of any kind from the pension plan other than the reasonable fees and expenses related to the administration of the pension plan.
- (8) Where the administrator or an employee or agent of the administrator is a member of the pension plan, the administrator or agent is entitled to
- (a) the benefits payable under the plan;
  - (b) a refund of contributions with earnings thereon at the rates prescribed; and
  - (c) a distribution of surplus

to which he is entitled as a member.

**Provision of information by employer to administrator**

**18.(1)** An employer or body whose employees or former employees are members, deferred members or retired members of the pension plan shall provide to the administrator any information required by the administrator, in sufficient time, to enable the administrator to comply with the terms of the plan, this Act or the regulations.

(2) In subsection (1), employer includes a predecessor or successor of the employer, or an affiliated employer.

**Provision of information by Director to administrator**

**19.** The Director of the National Insurance and Social Security Scheme shall provide to an administrator any information with respect to a member, deferred member or retired member of the plan required by the administrator, in sufficient time to enable the administrator to comply with the terms of the plan, this Act or the regulations.

PART IV

DISCLOSURE OF INFORMATION

**Administrator to provide information about plan etc.**

**20.** The administrator shall provide in writing to each person who is or will be eligible to become a member of the pension plan

- (a) an explanation of the provisions of the plan that apply to the person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.

**Annual statement re: plan to members**

**21.** Within 4 months of the commencement of each fiscal year, the administrator shall provide to each member of the plan a written statement containing the prescribed information in respect of the pension plan and the member's entitlement at the end of the previous fiscal year.

**Statement upon termination of employment**

**22.(1)** Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a member in accordance with section 31, the administrator shall give to the member, or to any other person who by virtue of that member becomes entitled to a payment under the pension plan, a written statement, in a form approved by the Supervisor, which sets out

- (a) in the case of a defined benefit plan, the member's expected benefits at the normal retirement date, and the commuted value of the expected benefits as determined by an actuary;
- (b) in the case of a defined contribution plan, the amount of money standing to the member's account.

(2) Subsection (1) applies in respect of a multi-employer pension plan where a member ceases to be a member in accordance with section 31, but does not apply where a member terminates employment with an employer but continues to be a member of the plan.

**Administrator to permit inspection of documents by interested persons**

**23.(1)** The administrator of a pension plan shall make available for inspection, without charge, the prescribed documents and information in respect of the pension plan and the related pension fund on the written request of

- (a) a member;
- (b) a deferred or retired member;



- (c) the spouse of a member or deferred or retired member;
  - (d) a claimant;
  - (e) a representative of a trade union that represents members of the pension plan;
  - (f) an employer;
  - (g) a person required to make contributions under the pension plan on behalf of an employer;
  - (h) a former or successor administrator;
  - (i) an agent of a person described in any of (a) to (h) who is authorised in writing to act on that person's behalf; or
  - (j) such other person as may have an interest in the plan.
- (2) A person mentioned in subsection (1) shall be permitted to make extracts from or copy such documents or information, without charge.
- (3) The administrator may, before making available the requested documents or information, require the person to provide information establishing his entitlement to see such documents or information.
- (4) Notwithstanding subsection (1), the administrator shall not make available personal information that relates to another member without the consent of that member or the member's agent or legal representative.
- (5) Notwithstanding subsection (4), the administrator, for the sole purpose of enabling the sharing of the surplus in a plan, shall make available personal information that relates to any member, deferred or retired member or claimant of the plan, to an attorney-at-law authorised to practise law in Barbados if such attorney-at-law represents persons mentioned in subsection (1)(a) to (f).
- (6) An attorney-at-law and his client shall not disclose any personal information obtained under subsection (5).

**Inspection of documents held by Supervisor**

**24.** The persons mentioned in subsection (1) of section 23 are entitled to inspect at the offices of the Supervisor, during business hours of the Supervisor, the documents that comprise the pension plan and the related pension fund, and such other prescribed documents as are filed in respect of the pension plan and the related pension fund, and to receive copies of the documents upon payment of the prescribed fee.

PART V  
MEMBERSHIP

**Eligibility for membership of pension plan**

**25.(1)** Subject to subsection (2), every employee of a class of employees for whom a pension plan is established shall be eligible to be a member of the pension plan.

(2) Except as otherwise provided by this Act or the regulations, an employee shall be eligible for membership of a pension plan if the employee has completed 1 000 or more hours of employment with the employer to whom the pension plan relates in the fiscal year immediately before the year in which the employee applies for membership.

(3) Subject to the provisions of this Act, where the employee has satisfied subsection (2), unless he objects to becoming a member, his membership shall commence and shall continue until he has attained the normal retirement age.

(4) A multi-employer pension plan may require no more than 1 000 hours of employment with one or more participating employers in the fiscal year immediately before the year in which the employee becomes a member of the plan.

(5) A member of a pension plan does not cease to be a member by reason only that he has been employed for fewer than 1 000 hours in a fiscal year.

(6) Subsection (4) shall not apply to a person who is already a member of or who has qualified for membership under a plan that is in existence at the date of the commencement of the Act.

**Supervisor may direct acceptance of employee as member**

26.(1) Where there is a dispute as to whether or not an employee qualifies for membership of a pension plan, the Supervisor, where he is satisfied that the employee qualifies for such membership, may direct the administrator to accept the employee as a member of the plan.

(2) The Supervisor shall in making a determination referred to in subsection (1), take into account the nature of the employment and the terms of employment of the employee.

**Non-discriminatory treatment of employees**

27. An employer may not establish or maintain a separate pension plan for employees employed in part-time continuous employment if the employer maintains a pension plan for employees of the same class employed in full-time continuous employment.

PART VI

RETIREMENT AND VESTING

**Vesting of pension benefits**

28. Every pension plan registered after the commencement date of this Act shall provide for the full vesting of accrued benefits in each of its members within a period which does not exceed 36 months after the commencement of membership in the plan.

**Normal retirement age and entitlement to payment of pension**

**29.(1)** The normal retirement age under a pension plan submitted for registration after the commencement date of this Act shall not be earlier than 55 years of age and not later than the year in which the member attains the retirement age specified for the member in the *National Insurance and Social Security Act*, Cap. 47.

(2) Unless the pension plan specifies an earlier retirement age, every plan registered on or before the commencement of this Act shall be deemed to specify a normal retirement age that is not later than the year in which the member attains the retirement age specified for the member in the *National Insurance and Social Security Act*, Cap. 47.

(3) A member of a pension plan who retires on a date referred to in subsection (1) or (2) shall become entitled to the payment of the first instalment of his pension on the first day of the month following the attainment of his retirement age, and to subsequent instalments on the first day of each succeeding month.

(4) Subject to the rules of the applicable pension plan, a member of a pension plan who, after attaining his retirement age continues in employment and membership in a pension plan, may elect to continue accruing benefits under the plan up to the date of his retirement, and shall become entitled to the payment of the first instalment of his pension on the first day of the month following the revocation of his election to continue accruing benefits or of the month following the cessation of his employment, as the case may be.

(5) A pension plan may provide that a person entitled to a pension is entitled, before or on the date of retirement, to elect to receive up to 25 per cent of the commuted value of his pension by way of a single lump sum payment.

**Entitlement to deferred pension benefit**

- 30.** A member of a pension plan
- (a) who terminates membership in the plan prior to the normal retirement age under the plan; and
  - (b) who has been a member of the plan for a continuous period of over 36 months

shall be entitled to a deferred pension benefit equal to the member's accrued benefits.

**Termination of membership in pension plan**

- 31.(1)** A person who is
- (a) a member of a multi-employer pension plan;
  - (b) a member of a pension plan who is employed by the employer on a part-time basis; or
  - (c) a member of a pension plan who has been laid off from employment by the employer

is entitled to terminate his membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for 24 consecutive months or for such shorter period of time as is specified in the pension plan.

(2) For the purpose of determining benefits under this Act, a person mentioned in subsection (1) who terminates his membership in a pension plan shall be deemed to have terminated his employment.

(3) Subsections (1) and (2) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.

(4) For the purposes of this Act, a member of a multi-employer pension plan who terminates employment with a participating employer shall be deemed not to have terminated employment until the earliest of

- (a) the date of death of the member;
- (b) the date of retirement of the member; and
- (c) the date on which the member terminates active membership in the plan.

(5) Where a member of a multi-employer pension plan had been represented by a trade union that has ceased to represent the member and the member joins a pension plan, the member is entitled to terminate membership in the first plan.

(6) Subsection (5) does not apply where there is a reciprocal transfer agreement respecting the two pension plans.

## PART VII

## BENEFITS

### **Entitlement to payment**

**32.(1)** Subject to this section, a member is entitled, at the date of termination of membership in the plan, to payment of a pension of an amount that is the highest of

- (a) the commuted value of vested benefits accrued in respect of the employment of the member;
- (b) the actuarial present value of the vested benefits accrued in respect of the employment of the member; and
- (c) the value of the contributions the member was required to make under the pension plan, plus earnings thereon to the date of payment.

- (2) An increase in the commuted value or the actuarial present value of a benefit in respect of employment before the commencement date of this Act
- (a) that results from an amendment to the pension plan made on or after that date; and
  - (b) to which a member is entitled on the date of termination of employment
- shall be included in calculating the commuted value or the actuarial present value of the benefit for the purposes of subsection (1).
- (3) The following shall be included for making the determination under subsection (1):
- (a) the benefits that result from additional voluntary contributions;
  - (b) benefits resulting from contributions made in the case where a multi-employer pension plan permits a member who has not accrued the maximum pension benefits permitted under the plan in a fiscal year to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year;
  - (c) ancillary benefits related to the employment of the member on or after the commencement date of this Act and for which the member has met, on the date of termination, all eligibility requirements under the pension plan;
  - (d) benefits and ancillary benefits related to employment of the member before the date of the establishment of the pension plan, in the case of a plan established on or after the commencement date of this Act and for which the member has met, on the date of termination, all eligibility requirements under the pension plan; or
  - (e) any other benefits prescribed for the purposes of this subsection.
- (4) A member's contributions to a pension plan made on or after the commencement date of this Act, and the earnings thereon to the date of termination of employment, shall not be used to provide more than 50 per cent of the lower of the commuted value and the actuarial present value, on the date

of termination, of the contributory benefits accrued after the commencement date of this Act to which the member is entitled under the pension plan on termination of employment.

(5) A member who is entitled to a benefit on termination of employment or membership in a plan is entitled, on the date of termination, to payment of a lump sum equal to the amount by which the member's contributions made on or after the commencement date of this Act, and earnings thereon to the date of termination, exceed 50 per cent of the lower of the commuted value and the actuarial present value of the vested benefits accrued after the commencement date of this Act.

(6) The benefits referred to in subsection (3)(a), (b) and (e) may be excluded in determining the contributions and that part of the commuted value or actuarial value of a benefit to which subsections (4) and (5) apply.

(7) Where a defined benefit accrued by a member of a pension plan is at any time converted in whole or in part into a defined contribution benefit, the provisions of this section apply as if the member terminated employment on the effective date of the conversion.

#### **Ancillary benefits**

**33.(1)** A pension plan may provide for the following ancillary benefits only:

- (a) disability benefits;
- (b) pre-retirement death benefits in excess of those provided in section 39;
- (c) bridging benefits;
- (d) supplemental benefits, other than bridging benefits, payable for a temporary period of time;
- (e) early retirement options and benefits in excess of those provided by section 35;



- (f) postponed retirement options and benefits in excess of those referred to in section 29(4);
- (g) payments due to a member on termination of employment under the *Severance Payments Act*, Cap. 355A; or
- (h) any prescribed ancillary benefit.

(2) For the purposes of subsection (1), after the commencement date of this Act, where the consent of an employer is a requirement for entitlement to receive an ancillary benefit and a member has met all other eligibility requirements, the employer shall be deemed to have given the consent to the member.

#### **Election re: payment of accelerated pension benefits**

**34.(1)** A member or a deferred member may, at any time within 10 years of attaining the normal retirement age, elect to receive an early retirement pension under the pension plan provided he has met the eligibility requirements for the early retirement pension.

(2) The actuarial present value of an early retirement pension for a member or deferred member must not be less than the actuarial present value of the member's or deferred member's benefits in the pension plan.

(3) An election under subsection (1) shall be made in writing, signed by the member or deferred member and delivered to the administrator of the pension plan.

#### **Portability options**

**35.(1)** A member of a pension plan who terminates employment or ceases to be a member of the pension plan in accordance with section 31 shall be entitled to require the administrator to pay an amount equal to the higher of the commuted value or the actuarial present value of the benefits in the case of a defined benefit plan, or the account balance in the case of a defined contribution plan,

- (a) to the pension fund of a new employer;

- (b) into a prescribed registered retirement savings plan;
    - (c) to purchase from an insurance company, an annuity for the member or deferred member under which payments will not commence before the earliest date on which the member or deferred member would have been entitled to receive payment of benefits under the pension plan.
- (2) The entitlement under subsection (1) is subject to the prescribed limitations as are applicable in respect of the transfer of funds from pension plans.
- (3) Subsection (1) does not apply to
  - (a) a member of a defined benefit pension plan whose employment is terminated by the employer and who is entitled to an immediate payment of a pension benefit under the plan or under this Act; or
  - (b) a member of a defined contribution plan where the member elects to purchase a deferred life annuity from an insurance company if,
    - (i) the pension plan permits the election;
    - (ii) the election is made after the commencement date of this Act;
    - (iii) the member is within 10 years of attaining the normal retirement age when the member makes the election.
- (4) A member may exercise his entitlement under subsection (1) by delivering to the administrator, within the prescribed period, a document in the form approved by the Supervisor and signed by the member and containing
  - (a) the prescribed period prior to his date of termination; and
  - (b) a direction to pay the benefits, respecting the member, in accordance with subsection (1).
- (5) The administrator shall comply with the direction within the prescribed period after delivery of the document referred to in subsection (4).
- (6) If a member who has an entitlement under subsection (1) does not deliver a direction as required by subsection (4), the administrator may deal with the

commuted value or actuarial present value or account balance in the manner prescribed by the regulations.

(7) The Supervisor may direct any person to whom payment under subsection (1) has been made to repay, forthwith or within such further period as the Supervisor permits, an amount not greater than the amount of the payment together with earnings thereon

- (a) where the payment exceeds the prescribed limitations relating to a transfer of funds from a pension fund;
- (b) in a case where the approval of the Supervisor is required in respect of payment, the payment is made without such approval; or
- (c) where there is a failure to comply with a term or condition attached to the approval.

(8) The administrator is discharged on making the payment or transfer in accordance with the direction of the member or deferred member if the payment or transfer complies with this Act and the regulations.

#### **Joint and survivor pension**

**36.(1)** Where a member or deferred member of a pension plan has a spouse on the date that the payment of the first instalment of the pension is due, the pension payable to that member or deferred member shall be a joint and survivor pension.

(2) The actuarial present value of the joint and survivor pension referred to in subsection (1) shall not be less than the aggregate of

- (a) the value of the member or deferred member's defined contribution account balance, accumulated additional voluntary contributions, if any, and earnings thereon; and
- (b) the actuarial present value of the member's or deferred member's defined benefit.

(3) The amount of the pension payable to the survivor of the member or deferred member shall not be less than 60 per cent of the pension payable to the member or deferred member during the life of that member.

(4) Subsections (1) and (2) do not apply

(a) if payment of the pension under the plan has commenced before the commencement date of this Act; or

(b) if the member or deferred member is living separate and apart from his spouse on the date that payment of the first instalment of the pension is due.

(5) Where

(a) payments of pension benefits have commenced under an annuity after the commencement date of this Act; and

(b) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid in the same manner as a joint and survivor pension in accordance with the requirements of this section and the issuer of the annuity shall make payments accordingly.

(6) For the purposes of subsection (5), the issuer of the annuity shall be deemed to be the administrator.

(7) Subsections (1) and (2) do not apply in respect of a member or deferred member, if the spouse of the member or deferred member delivers a waiver respecting the spouse's right to receive a pension benefit by virtue of the entitlement of the member or deferred member, in the form approved by the Supervisor, to

(a) the administrator; or

(b) the issuer of the annuity.

(8) The waiver is not effective unless the form is delivered to the administrator or the financial institution by which the annuity is payable, as the case may be,

within the 12 months preceding the commencement of payment of the pension benefit.

(9) A person who has delivered a waiver under subsection (7) may cancel it by delivering a written and signed notice of cancellation to the administrator or the financial institution, as the case may be, before the commencement of payment of the pension benefit.

(10) If a waiver is in effect on the date of death of the member or deferred member, subsections (1) and (2) apply as if the member or deferred member did not have a spouse on the date of his death.

#### **Submission of information re: survivor benefits**

**37.(1)** The administrator, before he pays a pension or benefit or the commuted value of the pension or benefit, may require the person entitled to the payment or the executor of the estate to provide him with information needed to enable him to calculate and pay the relevant amounts.

(2) The person entitled to the payment or the executor shall provide the information referred to in subsection (1) to the administrator.

(3) Where the administrator makes a payment in accordance with the information provided pursuant to subsection (2) and such other information as he may reasonably take into account, he shall not be liable for any error made as a result of a proper reliance on that information.

(4) Any amount paid under this section to a person or estate to which the person or estate is not entitled shall be refunded to the administrator, whether or not such refund is demanded or, in the appropriate case, shall be deducted from payments made subsequent to the over-payment of the pension.

(5) A deduction made under subsection (4) shall not exceed one-third of the amount that the person would normally have received as a benefit payment for the period in respect of which the payment is made.

**No disqualification upon re-marriage**

**38.** The surviving spouse of a retired member of a pension plan who is receiving a pension under the plan remains entitled to the pension despite his or her subsequent re-marriage.

**Lump sum payment of benefit to survivor**

**39.(1)** If a member or deferred member dies before payment of his pension benefit is due to commence, the person who is the spouse of the member or deferred member on the date of the member's or deferred member's death shall receive a lump sum payment equal to the aggregate of

- (a) the value of the member's or deferred member's vested defined contribution account balance, including accumulated additional voluntary contributions, if any; and
- (b) the commuted value of the member's or deferred member's vested defined benefit and the member's entitlement to additional contributions under section 36(2), if any, calculated as at the date immediately before the date of death,

unless the spouse of the member or deferred member elects, in the form determined by the Supervisor and supplied by the administrator, to receive an immediate or deferred pension of an actuarially determined equivalent value to the benefits provided under the pension plan.

(2) Subsection (1) does not apply if the spouse of the deceased member or deferred member has delivered to the administrator, or to the insurance company responsible for payment of the deceased member's pension, or annuity, a waiver in the form determined by the Supervisor.

(3) A person who has delivered a written waiver referred to in subsection (2) may cancel the waiver by a written notice in the form determined by the Supervisor.

(4) For the purposes of this section, the deferred pension or benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's or deferred member's employment was terminated on the date immediately before the date of the member's death.

(5) Where a member or deferred member dies leaving no spouse, or if subsection (2) or (3) applies, the benefit described in subsection (1) shall be paid

(a) to the beneficiaries appointed in writing by the member or deferred member and filed with the administrator; or

(b) where no beneficiary has been appointed, or where the beneficiaries appointed by the member or deferred member pre-decease the member or deferred member, to the estate of the member or deferred member.

(6) For the purposes of this section, a spouse who on the date of the death of a member, deferred or retired member has been living separate and apart from the member, deferred or retired member shall not qualify for the payment of a benefit as a spouse unless that person can satisfy the administrator that

(a) a spousal relationship existed at the date of the death of the retired member; and

(b) the separation was for a period not exceeding one year.

(7) If the pension plan provides for payment of benefits to or for dependent children of the member, deferred or retired member upon the death of the member, deferred or retired member, the commuted value of the payments may be deducted from the entitlement of the beneficiaries designated under subsection (5) or the executor of the estate, as the case may be.

(8) If a member referred to in subsection (1) dies before completion of one year of membership in the pension plan, the person who is the spouse of the member on the date of the member's death shall receive a lump sum payment equal to the member's contributions, plus earnings thereon calculated at the date immediately before the date of death.

**Variation of payment of benefits to disabled members**

**40.(1)** A pension plan shall be deemed to permit variation in the terms of payment of a pension or deferred pension of a member where

- (a) the life expectancy is likely to be shortened considerably by the mental or physical disability of the member or deferred member;
- (b) such circumstances respecting the shortened life expectancy, as prescribed, exist and the prescribed conditions for the variation are satisfied; and
- (c) the variation is approved by the Supervisor.

(2) A variation under subsection (1) shall not result in a reduction of a disability benefit provided under a pension plan.

**Payment of small benefits in a lump sum**

**41.** A pension plan that provides defined benefits may provide for the payment to a member of a lump sum of the commuted value of his accrued benefit if the member's accrued benefit is not more than 2 per cent of the maximum insurable earnings specified under the *National Insurance and Social Security Act*, Cap. 47, in the year that the member terminated employment.

**Payment of account balance**

**42.** A defined contribution pension plan may provide for payment to the member of the member's account balance if the account balance is less than 20 per cent of the maximum annual insurable earnings under the *National Insurance and Social Security Act* in the year that the member terminated employment.



**Treatment of maintenance orders under Cap. 214 or Cap. 216**

**43.(1)** An order made for maintenance under the *Family Law Act* or the *Maintenance Act* is not effective to require payment of a pension benefit before the earlier of

- (a) the date on which payment of the pension benefit commences; and
- (b) the date on which the relevant member attains the normal retirement age.

(2) An order referred to in subsection (1) is not effective to cause a party in respect of whom the order is made to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member during the period when the party and the member were spouses.

(3) If an order referred to in subsection (1) affects a pension, the administrator of the pension plan shall re-value the pension in the prescribed manner, and the cost of the re-evaluation shall be borne by the pension fund.

(4) A spouse on whose behalf a certified copy of an order referred to in subsection (1) is given to the administrator of a pension plan has the same entitlement, on termination of employment by the member, to any option available in respect of the spouse's interest in the pension benefits as the member named in the order has in respect of his pension benefits.

**No discrimination on basis of sex**

**44.** From the commencement date of this Act, the sex of a member or the beneficiary of a member, under a pension plan, shall not be taken into account in

- (a) determining the amount of contributions required to be made by a member of the plan; and
- (b) the provision of eligibility conditions for membership or eligibility for benefits.

**Increase of benefits to take account of inflation**

**45.(1)** Pensions or pension benefits may be increased by an employer for the purpose of providing a member of a pension plan protection against inflation, unless the increase

- (a) is greater than that permitted under this Act or regulations; or
- (b) is not granted to all of the members or beneficiaries under the pension plan.

(2) Subject to this section, the payment of an increase of benefit shall be made from the pension fund in accordance with the pension plan, and regard shall be had only to the status of the pension fund and not to any fiduciary duty or other factor.

(3) Subject to subsection (1),

- (a) if a plan is fully funded and has surplus at least equal to the actuarial present value of the increase required by this clause, the administrator shall provide the prescribed minimum benefit increase;
- (b) if a plan is not fully funded or has insufficient surplus to provide the increase required by subsection (2), the administrator shall not provide the increase unless the plan has received an amount of money equal to the actuarial present value of the increase from the employer.

(4) An increase paid under this section shall be disclosed, in writing, annually to each member of the plan whether or not the increase applies to such member.

**Reduction of benefits**

**46.** The reduction of a pension benefit or bridging benefit that may be required by a pension plan in relation to payments under the *National Insurance and Social Security Act*, Cap. 47 shall not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

## PART VIII

## FUNDING AND CONTRIBUTIONS

**Contributions to pension fund**

**47.** An employer required to make contributions under a pension plan, or a person required to make contributions under a pension plan on behalf of an employer, shall make the contributions in the prescribed manner and in accordance with the prescribed requirements for funding,

- (a) to the pension fund; or
- (b) if pension benefits under the pension plan are paid by an insurance company, to the insurance company that is the administrator of the pension plan.

**Contributions to be paid promptly**

**48.(1)** The administrator of a pension plan and any agent of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.

(2) If a contribution is not paid when due, the administrator or the agent, as the case may be, shall notify the Supervisor in the prescribed manner and within the prescribed period.

(3) An administrator or agent is not in breach of any fiduciary duty to which he is subject by reason of communicating in good faith to the Supervisor any information or opinion on any matter of which he becomes aware and which may affect the proper administration of a pension plan.

**Contribution received by employer to be paid to pension fund**

**49.(1)** Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed

to hold the money in trust for the employee until the employer pays the money into the pension fund.

(2) Money withheld by an employer for the purposes of subsection (1), whether by payroll deduction or otherwise, from money payable to an employee shall be deemed to be money received by the employer from the employee.

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

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

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

(6) The provisions of this section apply whether or not the money has been kept separate and apart from other money or property of the employer.

(7) Subsections (1) to (6) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan.

#### **Accrual of payment into pension fund**

**50.(1)** Payments that an employer is required to make into a pension fund accrue on a daily basis.

(2) Earnings on outstanding contributions shall be calculated and credited at rates not less than the prescribed rates, and in accordance with prescribed requirements.

**Proceedings to ensure payment of contributions**

**51.(1)** The administrator shall commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations, unless a court of competent jurisdiction has declared that the employer is insolvent or a bankrupt.

(2) Subsection (1) shall not apply where the contributions due are *de minimis*.

**Recipient of pension fund contributions to be bonded**

**52.** The administrator of a multi-employer pension plan may require a person who receives contributions to the pension fund or who administers or who is responsible for the investment of monies from the pension fund to be bonded in an amount required by the administrator or such other amount as is prescribed.

**Pension plan agreement to be submitted to administrator**

**53.** An employer who is required to make contributions to a multi-employer pension plan shall furnish to the administrator of the plan a copy of the agreement and the documents that require the employer to make the contributions and set out the contributions the employer is required to make and any other obligations of the employer under the pension plan.

**Investments to be chosen in accordance with stipulated criteria**

**54.** Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and prescribed by the regulations.

PART IX  
LOCKING IN

**Restriction on refund of paid contributions**

**55.(1)** Except as is otherwise permitted under this Act or the regulations, a member of a pension plan is not entitled to a refund from a pension fund of contributions made or any earnings on such contributions.

(2) Subsection (1) does not prevent the refund of

- (a) an additional voluntary contribution and earnings thereon to a member or deferred member;
- (b) a contribution to the pension plan made by a member, together with earnings thereon, if the member terminates employment and is not entitled to a pension or deferred pension under the provisions of the pension plan or of this Act;
- (c) payment of a lump sum in accordance with section 41;
- (d) payment of a member's account balance in accordance with section 42; or
- (e) contributions in such other circumstances as are prescribed.

(3) Subsection (1) does not prevent the refund of an over-payment by the employer into a pension fund or of an amount paid by the employer that should have been paid out of the pension fund, if the employer makes application to the Supervisor within 90 days after the end of the fiscal year in which the over-payment or amount was paid and the Supervisor approves the refund.

**Certain transactions void**

**56.(1)** Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan or from a pension fund is void.

(2) Subsection (1) does not apply to prevent the transfer of money or an entitlement to benefits under this Act by an order under the *Family Law Act*, Cap. 214 or the *Maintenance Act*, Cap. 216.

**Contributions exempt from execution**

57.(1) Subject to subsection (2),

- (a) money payable under a pension plan;
- (b) money transferred or to be transferred from a pension fund
  - (i) to another pension fund by virtue of a reciprocal transfer agreement;
  - (ii) to a prescribed registered retirement savings plan;
  - (iii) or for the purchase of an annuity; or
- (c) money paid or to be paid from an annuity or a prescribed registered retirement savings plan

is exempt from execution, seizure or attachment.

(2) Payments under a pension plan or that result from a purchase or transfer under this Act are subject to execution, seizure or attachment in satisfaction of an order for maintenance enforceable in Barbados to a maximum one-half of the money payable.

(3) Subsection (2) applies to orders for maintenance enforceable in Barbados, whether made before or after the commencement date of this Act.

**Non-commutation of pension benefits**

58.(1) A pension, benefit, annuity or prescribed registered retirement savings plan that results from a transaction permitted under this Act to which a person is entitled is not capable of being commuted or surrendered during the person's life.

(2) A transaction that purports to commute or surrender a pension, benefit, annuity or prescribed registered retirement savings plan is void.

- (3) Subsections (1) and (2) do not apply to
- (a) a variation of a pension to a disabled person;
  - (b) the lump sum payment of a small pension benefit under section 41 of this Act; or
  - (c) to the payment of a member's account balance under section 42.

PART X  
WINDING-UP

**Winding-up of pension plan**

**59.** This Part applies in respect of the winding-up of a pension plan where the termination of the plan occurs after the commencement date of this Act.

**Supervisor may order winding-up**

**60.(1)** The Supervisor may direct the winding-up of a pension plan, in whole or in part, where the following circumstances exist:

- (a) the plan does not have an administrator or the administrator fails to act;
- (b) the registration of the plan is refused or revoked;
- (c) there has been a cessation or suspension of
  - (i) contributions by the employees or employers to the pension fund;  
or
  - (ii) accrual of benefits under the plan;
- (d) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (e) the employer has been adjudged insolvent or bankrupt by a court of competent jurisdiction;



- (f) the members of the pension plan cease to be employed by the employer as a result of the discontinuance or the reorganization of all or part of the employer's business;
  - (g) all or part of the employer's business or all or part of the assets of the employer's business is sold, assigned or otherwise disposed of and the successor who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the successor;
  - (h) in the case of a multi-unit pension plan, a participating employer ceases to participate in the plan;
  - (i) in the case of a multi-employer pension plan,
    - (i) there is a significant reduction in the number of members; or
    - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
  - (j) any other prescribed event occurs or prescribed circumstance exists.
- (2) Subject to subsection (3), the administrator may wind-up a pension plan in whole or in part.
- (3) The winding-up of a pension plan shall not commence until the administrator has given written notice of a proposal to winding-up the pension plan to,
- (a) the Supervisor;
  - (b) each member, deferred member and retired member of the pension plan;
  - (c) each claimant receiving payments from the pension plan; and
  - (d) each union that represents members of the pension plan.
- (4) The notice of proposal to winding-up shall contain the information prescribed by the regulations.

(5) Notwithstanding subsection (1), where the proposal is made to wind-up part of a pension plan, the administrator is not required to give written notice to members, deferred and retired members or claimants if they will not be affected by the proposed partial winding-up.

#### **Date of termination of pension plan**

**61.(1)** Subject to subsection (2), the effective date of the winding-up of the plan shall not be earlier than the date on which contributions

- (a) cease to be received by the pension plan; or
- (b) in a case other than where the winding-up results from a cessation of contributions, on the date on which the last notice is given under subsection (3) of section 60.

(2) The Supervisor may change the effective date of the winding-up of the plan if the Supervisor is of the opinion that there are reasonable grounds for the change.

#### **Duties of administrator regarding winding-up of pension plan**

**62.(1)** The administrator of a pension plan that is to be wound-up, shall

- (a) perform any act for and on behalf of the pension plan, and represent it in and out of court;
- (b) compile an inventory of the assets and liabilities of the pension plan;
- (c) determine the amount each member is entitled to receive in respect of benefits;
- (d) determine the amount due to each deferred or retired member in respect of the deferred or retired member's pension or deferred pension;
- (e) determine the amount due to each claimant;
- (f) set out the method of allocating and distributing the assets of the pension plan;

- (g) set out the reasonable costs of winding-up the plan;
- (h) set out the amount of the deficit in the plan, and the administrator's proposed course of action, if any, to obtain funding of all or any part of the deficit;
- (i) set out the priorities for distribution of the assets in the plan; and
- (j) perform any other function as may be prescribed.

(2) Where a pension plan that is to be wound-up in whole or in part does not have an administrator or the administrator fails to act, the Supervisor may appoint a person to carry out the winding-up who shall have the powers, functions and duties of an administrator.

(3) The Supervisor may terminate the appointment of an administrator appointed by him if the Supervisor considers it reasonable to do so.

(4) The costs of

- (a) winding-up a pension plan; or
- (b) appointing an administrator under subsection (2),

shall be borne by the plan and shall have priority over any other payment to be met from the plan.

### **Rights of members upon a winding-up**

**63.** On a partial winding-up of a pension plan, members, deferred and retired members, and claimants affected by the winding-up shall have, on the effective date of the partial winding-up, all of the rights, benefits, powers and obligations that they would have if the plan were fully wound-up on the date of the partial winding-up of the pension plan.

**Statement of entitlement to benefits etc. upon a winding-up**

**64.(1)** Within the prescribed period of time, the administrator shall give a statement to each person entitled to a refund, benefit, pension or deferred pension from the pension plan which sets out

- (a) the person's entitlement under the pension plan;
- (b) the payment options available to the person; and
- (c) any other prescribed information.

(2) If a person to whom a statement is given under subsection (1), is required to make an election, the person shall make the election within the prescribed period of time or shall

- (a) be deemed to have elected to receive immediate payment of a pension benefit, if eligible therefor; or
- (b) receive a pension commencing at the earlier of the earliest date permitted in the plan and the earliest date permitted under this Act.

**Determination of benefits etc. upon a winding-up**

**65.(1)** For the purpose of determining the amounts of pension benefits and any other benefits and entitlement accrued at the date of the winding-up of the pension plan

- (a) the employment of each member of the pension plan affected by the winding-up and who, but for this clause, would have continued employment shall be deemed to have been terminated on the effective date of termination of the plan;
- (b) each member's pension benefits, on the first day of the winding-up, shall be determined as if the member had satisfied all eligibility conditions for a deferred pension; and
- (c) provision shall be made for vesting of benefits in accordance with this Act and the rights provided under section 66.

(2) A person entitled to a benefit or a deferred pension from a plan which is being wound-up is entitled to exercise the transfer rights of a member who terminates employment under section 31.

**Entitlement to “grow-in” benefit**

**66.(1)** A member of a pension plan whose combination of age and years of continuous employment or membership in the pension plan equals at least 55 and who has attained at least 50 years of age on the date of termination of the pension plan has the right to receive

- (a) a pension in accordance with the terms of the pension plan if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of
  - (i) the normal retirement age under the pension plan; and
  - (ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the plan were not terminated and if the member’s membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the plan was not terminated and if the member’s membership continued to that date.

(2) For the purpose of winding-up the plan, to determine the combination of age and employment or membership, a one-twelfth credit shall be given for each month of age and for each month of continuous employment or membership in the plan on the date of termination of the plan.

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not terminated and if the membership of the member were continued shall be included in calculating the benefit under subsection (1).

(4) For the purposes of subsection (3), if the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the bridging benefit shall be pro-rated by reference to the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of benefits and a full bridging benefit under the pension plan if the pension plan were not terminated.

(5) Membership in a pension plan that is being wound-up shall be deemed to subsist for the period of notice of termination of employment required under section 20(1) or 20(2) of the *Severance Payments Act*, Cap. 355A.

(6) Subsection (5) shall not apply for the purpose of calculating the amount of a member's benefit where the member is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment.

(7) For the purpose of subsection (1)(a), where

- (a) the consent of an employer is an eligibility requirement for entitlement to receive payment of an ancillary benefit; and
- (b) the member would, but for this subsection, meet all other such eligibility requirements,

the employer shall be deemed to have given the consent.

#### **Payments to be made by employer in the case of a winding-up**

**67.(1)** Where a pension plan is terminated and is being wound-up, in whole or in part, the employer shall pay into the pension fund an amount equal to the total of all payments that are due or that have accrued under this Act, the regulations and the pension plan that have not been paid into the pension fund.

(2) The amount referred to in subsection (1) shall include an amount that

- (a) provides for the payment of all of the benefits under the plan on the date of winding-up; and

(b) provides payment of the reasonable costs of winding-up the plan.

(3) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times.

**Administrator to submit report respecting winding-up**

**68.(1)** The administrator shall, prior to the distribution of all assets in the plan except surplus assets, prepare and submit a report respecting a winding-up to the Supervisor for approval, setting out the matters in section 62.

(2) No payment shall be made out of the pension fund related to a pension plan that is being wound-up until the Supervisor has approved the report respecting the winding-up.

(3) Subsection (2) does not apply to prevent

(a) the continuation of payment of a pension or any other benefit which commenced before the notice of the proposal to winding-up the pension plan was given;

(b) the commencement of payment of a pension in accordance with the pension plan or this Act;

(c) the payment of reasonable costs of the winding-up, subject to inclusion of the costs in the report respecting the winding-up and the ultimate approval of the Supervisor; and

(d) the making of any other payment that is prescribed or that is approved by the Supervisor.

(4) Where necessary, the administrator shall, prior to the distribution of the surplus assets in the plan, prepare and submit a supplementary report to the Supervisor for approval setting out the amount of the surplus in the plan, and the method and the amount of surplus allocated to each member, deferred and retired member and claimant entitled thereto.

(5) Where the money in a pension fund is not sufficient to pay all the pension benefits and other benefits on the winding-up of the pension plan in whole or in

part, the pension benefits and other benefits shall be reduced in the prescribed manner and the priorities for the payment of benefits shall be determined in the prescribed manner.

(6) The Supervisor may refuse to approve a report or supplementary report respecting a winding-up that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members, deferred members and retired members and claimants of the pension plan.

(7) Where a report respecting a winding-up or a supplementary report is approved by the Supervisor, the administrator shall make payments out of the pension fund only in accordance with the proposed scheme set out in the report.

## PART XI

### SURPLUS

#### **Payment of surplus**

**69.(1)** Notwithstanding any provision of a pension plan or of a trust related to the pension plan, or any fiduciary obligation to the contrary, where in the case of a partially wound-up pension plan or a continuing pension plan

- (a) an actuary certifies that there is a surplus in a pension plan; and
- (b) the Supervisor approves a distribution of the surplus,

the surplus may be shared between the employer and any

- (i) members;
- (ii) deferred members;
- (iii) retired members;
- (iv) a person who is receiving an annuity; and



- (v) claimants who are receiving pensions or other payments from the plan, or who are entitled to receive an immediate pension

who consent in writing to the sharing in accordance with Part XI.

(2) Notwithstanding the provisions of the plan or a trust relating to the plan or any law to the contrary, only those individuals specified in subsection (1) may be entitled to share in the surplus in a plan.

(3) In the case of a fully wound-up plan, the Supervisor shall not approve a distribution of surplus unless

- (a) provision has been made for the payment of all liabilities of the pension plan for benefits and pensions as calculated for purposes of the winding-up of the pension plan and all costs of the winding-up; and
- (b) the employer establishes that at least
  - (i) two-thirds of the members who were members on or after the commencement date of this Act; and
  - (ii) two-thirds of the deferred or retired members who were deferred or retired members on or after the commencement date of this Act

consent, in writing, to the surplus-sharing transaction.

(4) In the case of a partially wound-up plan, the Supervisor shall not approve a surplus-sharing transaction unless

- (a) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of continuing the pension plan; and
- (b) the employer establishes that at least
  - (i) two-thirds of the members who were members on or after the commencement date of this Act and who are affected by the winding-up; and

- (ii) two-thirds of the deferred or retired members who were deferred or retired members on or after the commencement date of this Act and who are affected by the winding-up

consent, in writing, to the surplus-sharing transaction.

(5) In the case of a continuing plan, the Supervisor shall not approve a surplus-sharing transaction unless the employer establishes that at least

- (a) two-thirds of the members who were members on or after the commencement date of this Act; and
- (b) two-thirds of the deferred or retired members who were deferred or retired members on or after the commencement date of this Act

consent, in writing, to the surplus-sharing transaction; and

- (c) where
  - (i) all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least 2 years of the current service costs is retained in the pension fund as surplus; or
  - (ii) the pension benefits under the plan are not guaranteed by an insurance company, the greater of an amount equal to 2 years of the current service costs, and an amount equal to 25 per cent of the liabilities of the pension plan, calculated in the prescribed manner is retained as surplus.

(6) Where a member, deferred member or retired member is unable to consent

- (a) by reason of his mental incapacity; or
- (b) because he cannot be found after reasonable efforts to find him have been made,

the Supervisor may give his approval as if such member, deferred member or retired member had provided his consent.

(7) For the purposes of this section, “employer” means the employer, affiliated employer or the receiver or trustee in bankruptcy of such an employer, and, in the case of a multi-employer pension plan, a participating employer.

### **Withdrawal of surplus**

**70.** A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be deemed, after the commencement date of this Act, to permit the withdrawal of surplus.

### **Deemed distribution of surplus**

**71.(1)** A pension plan that does not provide for payment of surplus money on the termination of the pension plan shall be deemed, after the commencement date of this Act, to require that the surplus be distributed at the conclusion of the winding-up among the members, deferred members and claimants of the pension plan and to permit the payment of surplus to retired members of the plan.

(2) In the case of a fully wound-up plan, the Supervisor shall not approve a distribution of surplus under subsection (1) unless provision has been made for the payment of all costs of the winding-up and liabilities of the pension plan respecting the payment of benefits and pensions as calculated for the purposes of the winding-up of the pension plan.

## **PART XII**

### **ESTABLISHMENT OF NEW PENSION PLANS AND TRANSFERS**

### **Disposal of business and transfer of plan**

**72.(1)** Where

- (a) an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer’s business or all or part of the assets of the employer’s business; and

- (b) a member of the pension plan as a result of the sale, assignment or other disposition referred to in paragraph (a), becomes an employee of the successor employer and also becomes a member of a pension plan provided by the successor employer, that member
- (i) continues to be entitled to the benefits provided under the employer's pension plan in respect of his employment up to the effective date of the sale, assignment or disposition, without further accrual;
  - (ii) is entitled to receive credit in the pension plan of the successor employer for the period of membership in the former employer's pension plan, and for the period of employment with the former employer, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
  - (iii) is entitled to receive credit in the former employer's pension plan for the period of employment with the successor employer and for the period of membership in the successor employer's pension plan for the purpose of determining eligibility for benefits under the employer's pension plan.
- (2) Where the successor employer assumes responsibility for the accrued pension benefits of the former employer's pension plan, the pension plan of the successor employer shall be deemed to be a continuation of the former employer's plan with respect to any benefits or assets transferred.
- (3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, to be continuous.
- (4) Subject to subsection (5), where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the benefits provided under the former employer's pension plan, with the prior approval of the Supervisor, a transfer of assets shall be made from the pension

fund related to the employer's pension plan to the pension fund related to the plan provided by the successor employer in accordance with the prescribed terms and conditions.

(5) The Supervisor shall not approve a transfer of assets where the terms of the transfer do not

- (a) provide for the protection of the benefits and rights of the members, deferred and retired members and claimants; or
- (b) meet the prescribed terms and conditions.

(6) The Supervisor, may direct the transferee to return to the pension fund, with interest, assets transferred without the prior approval of the Supervisor required by subsection (4).

(7) Where

- (a) a multi-employer pension plan is formed through the participation of a trade union that represents some or all of the members of the plan; and
- (b) those members cease to be represented by that union, are represented by a new union and change to a new pension plan connected to the new union,

all the assets and liabilities shall be transferred from the old pension plan to the new pension plan

- (i) in respect of the persons who have made an election under section 34; or
- (ii) in respect of the persons who are not entitled to make an election under section 34 but who have been determined to have transferred to the new plan, in accordance with the regulations.

(8) Subsection (7) does not apply where there is a reciprocal transfer agreement respecting the pension plans.

(9) In this section, “successor employer” means the person who acquires the business or the assets of the former employer.

**Establishment of new pension plan**

**73.(1)** Where a pension plan is established by an employer to be a successor to an existing pension plan, herein referred to as an original pension plan, and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound-up and the successor pension plan shall be deemed to be a continuation of the original pension plan.

(2) The benefits and rights under the original pension plan in respect of employment before the establishment of the successor pension plan shall be deemed to be the benefits and rights under the successor pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the successor pension plan.

(4) No assets may be transferred from the pension fund of the original pension plan to the pension fund of the successor pension plan

(a) without the prior consent of the Supervisor; or

(b) where the terms of the transfer are contrary to the prescribed terms and conditions.

(5) The Supervisor, by order, may require the transferee to return assets to the pension fund, with interest calculated in the prescribed manner, which were transferred without the prior consent of the Supervisor or transferred contrary to a prescribed term or condition.

## PART XIII

## DIRECTIONS AND ORDERS

**Directions to administrator**

**74.(1)** The Supervisor, in writing, may direct an administrator or any other person concerned in the operation of a pension plan to take or to refrain from taking any action in respect of a pension plan or a pension fund where

- (a) the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
- (b) the pension plan does not comply with this Act and the regulations; or
- (c) the administrator of the pension plan or the other person is contravening a requirement of this Act or the regulations.

(2) A direction given under subsection (1) shall specify

- (a) with precision, the action which is to be undertaken; and
- (b) the date by which the specified action must be completed.

(3) Where a person in respect of whom a direction is given fails to comply with the direction by the time specified, the Supervisor may apply to the Court to have the direction enforced.

(4) The Court may

- (a) make an order in the terms of the Supervisor's direction;
- (b) vary the direction; or
- (c) revoke the direction.

**Administrator may seek directions**

**75.(1)** The administrator of a pension plan may seek directions from the Supervisor on any matter concerning the application of this Act or the regulations to the pension plan under his administration.

(2) The Supervisor may give directions in writing to the administrator respecting any matter referred to him and may give notice of the directions to any other person the Supervisor considers to be concerned in the matter.

#### PART XIV

#### APPEAL

##### **Appeals against decision of Supervisor**

**76.(1)** Where the Supervisor makes a decision or direction under this Act, the Supervisor shall forward the decision or order, together with written reasons therefor, to the administrator and to any other person likely to be affected by the decision.

(2) A “decision” includes an approval, and the giving of a consent.

(3) A person affected or likely to be affected by the decision or order of the Supervisor, may appeal against the decision or order to a Judge in Chambers.

(4) The Judge may, by order,

(a) confirm without modification, amend or revoke the order of the Supervisor; and

(b) direct the Supervisor to take such action as he considers the Supervisor ought to take in accordance with this Act and the regulations.

(5) The Judge may attach such terms and conditions to his order as he considers proper to give effect to the provisions of this Act.

(6) An application for an appeal referred to in subsection (3) shall be made within 30 days after receipt of the decision or order from the Supervisor.

(7) A party to a hearing under this section shall be afforded an opportunity to examine, before the hearing, any documents or any other evidence which may be produced by any other party at the hearing.



(8) Documents and any other evidence produced at a hearing shall, upon the request of the person who produced them, be released to that person within a reasonable time after the matter in issue has been determined by the Judge in Chambers.

## PART XV

### SUPERVISOR OF PENSIONS

#### **Supervisor of Pensions**

77.(1) For the purposes of this Act there shall be a Supervisor of Pensions who shall be responsible for the general administration of this Act, and whose office shall be a public office.

(2) Where any function under this Act or by any statutory instrument made or issued hereunder is required to be performed by the Supervisor, that function may be performed by some other public officer authorised to do so by the Supervisor.

#### **Immunity**

78. Neither the Supervisor nor any member of his staff shall be personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Act or the regulations or for any neglect or default in the execution, in good faith, of such a duty or authority.

#### **Power to monitor pension plans**

79. The Supervisor shall

- (a) take such action as would enable him to properly monitor and evaluate the organisation and regulation of pension plans and the compliance with this Act and regulations;
- (b) advise and make recommendations to the Minister in respect of pension plans; and

- (c) promote the establishment, extension and improvement of pension plans.

**Power to collect statistics****80.(1)** The Supervisor

- (a) shall collect such statistics, in relation to pension plans, as are prescribed; and
- (b) for the purposes of paragraph (a), may require an administrator of a pension plan, an employer or any other person concerned with the pension plan or pension fund, to furnish him such information relating to the pension plan and relevant pension fund as is necessary.
- (2) The information referred to in subsection (1) shall be supplied at the times and in the form prescribed.
- (3) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Supervisor.

**Administrator to secure appraisal of assets of pension fund**

- 81.(1)** The Supervisor may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers, or the Supervisor may obtain the appraisal at the expense of the employer or employers.
- (2) The administrator shall deliver the appraisal to the Supervisor within the period of time specified by the Supervisor.

**Annual report**

- 82.(1)** The Supervisor shall, not later than 6 months after the 31st December in each year, furnish to the Minister for presentation to each House of Parliament a report on the administration of this Act during that year.

(2) The report referred to in subsection (1) shall contain information respecting the status and operation of pension plans and such other information as the Supervisor considers to be relevant or as the Minister requires.

(3) The Minister shall, as soon as practicable after the receipt of the Supervisor's report, cause a copy of the report to be laid before each House of Parliament.

## PART XVI

### INVESTIGATION BY SUPERVISOR

#### **Supply of information to Supervisor and investigation**

**83.(1)** The Supervisor may demand from

- (a) the administrator of a pension plan; or
- (b) in the case where a pension fund is the subject of a trust, the trustees of the fund

information relating to the pension plan or pension fund, as the case may be.

(2) Where

- (a) it appears to the Supervisor that a pension plan or pension fund is not being properly managed;
- (b) an administrator has failed to submit reports in accordance with section 16 or 68; and
- (c) an administrator has failed to comply with any direction of the Supervisor or may otherwise be in breach of this Act or regulations,

the Supervisor may investigate the whole or any part of the pension plan or pension fund or may appoint a person, to be known as an inspector, to make an investigation and to report to the Supervisor the results of the investigation.

- (3) Except in the case where the Supervisor has reasonable grounds to believe that prior notification may result in information being tampered with or destroyed, the Supervisor shall give to the administrator or trustees, as the case may be, at least 7 days notice, in writing, of the investigation.
- (4) An inspector exercising a power under this section shall provide identification at the time of entry.
- (5) No person shall hinder or obstruct the Supervisor or inspector in carrying out an investigation under this section.
- (6) The reasonable costs of the investigation shall be paid out of the pension fund, by the employer or by such other person as the Supervisor considers reasonable or advisable in the circumstances.

### **Conduct of investigation**

**84.(1)** In making an investigation under this Part, the Supervisor or the inspector may

- (a) require the administrator, or trustees of a pension fund to produce any books, accounts, documents or statistics relating to the pension plan or pension fund for his inspection and to allow him to make such extracts from them or copies of them, as he considers fit;
- (b) examine on oath in relation to the pension plan or pension fund, any person who is, or has at any time been,
  - (i) an administrator, trustee, member, auditor, officer, agent, or other person connected with a pension plan;
  - (ii) the executor of the estate of a retired member; or
  - (iii) an employer connected to the plan or pension fund that is being investigated; and
- (c) for the purpose of paragraph (b), administer oaths.

(2) A person specified in paragraph (b) of subsection (1) shall produce to the Supervisor or the inspector, at his request, any books, accounts, documents or statistics relating to the pension plan or pension fund and which are available to the person, and shall give to the Supervisor or the inspector, at his request, any information in his possession relating to the pension plan or pension fund.

(3) A person specified in paragraph (b) of subsection (1) shall not refuse to be sworn or to give information on examination on oath and shall not, in reply to a request made under subsection (2), give any false information.

(4) A person who contravenes this section is guilty of an offence.

### **Entry and search of premises**

**85.(1)** Where a magistrate is satisfied on information on oath laid by the Supervisor or by any person authorised by the Supervisor for the purpose that there are reasonable grounds for suspecting that there are on any premises, any books, accounts, documents or statistics, production of which is required in accordance with section 84 and which

- (a) have not been produced in compliance with that requirement;
- (b) are likely to be tampered with or destroyed if notice of an investigation is given; or
- (c) are kept in a private residence or on premises that are not connected to the pension plan or pension fund

the magistrate may issue a warrant authorising any member of the Police Force, together with any other persons named in the warrant,

- (A) to enter the premises specified in the information using such force as is reasonably necessary for the purpose;
- (B) to search the premises and seize and remove any books, accounts, documents or statistics appearing to be the books, accounts, documents or statistics relating to or connected with the pension plan or pension fund; or

(C) to take, in relation to any books, accounts, documents or statistics so appearing, any other steps that may appear necessary for preserving them and preventing interference with them.

(2) A warrant issued under this section shall continue in force until the expiration of the period of one month after the date on which it is issued.

(3) Any books, accounts, documents or statistics that have been seized under this section may be retained for a period of 3 months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.

#### **Penalty for divulging of information and other offences**

**86.(1)** A person shall not either directly or indirectly, except in the performance of any duty under this Act, make a record of, or divulge or communicate to any person, any information acquired by him under this Part.

(2) A person performing any duty under this Part shall take an oath, in the manner and form specified, to maintain secrecy in conformity with this section.

(3) Any person who contravenes any of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for one year, or to both.

#### **Action after completion of investigation**

**87.** After an investigation under this Part in respect of any person or entity referred to in section 84(1)(b) has been completed, the Supervisor

(a) shall transmit to the person or entity concerned a summary of the conclusions arrived at by him as a result of the investigation; and

(b) may, without affecting any other powers conferred by this Part, issue such directions in writing to the administrator or trustees, as the case may be, as he thinks necessary to address the situation disclosed in the conclusions.

## PART XVII

## MISCELLANEOUS

**Non-application of the rule against perpetuities**

- 88.** The rules of law relating to perpetuities shall not apply
- (a) to any trust created in respect of a pension plan or pension fund relating thereto; or
  - (b) any disposition made for the purposes of a pension plan or pension fund relating thereto.

**Transitional**

- 89.(1)** Where, at the commencement of this Act, there exists a pension plan that is registered under the *Income Tax Act*, Cap. 73, or in respect of which an application for registration has been made, that pension plan shall be regarded as provisionally registered under this Act for a period of 3 years from the date of the commencement of this Act or for such shorter period as the Supervisor directs; and the Supervisor shall issue in respect of that plan a temporary certificate in the prescribed form.
- (2) Notwithstanding subsection (1), the Minister may by order extend the period of provisional registration where he is satisfied that special circumstances warrant such an extension.
- (3) The administrator of a pension plan referred to in subsection (1) shall submit an application for the registration of a pension plan within one year from the commencement of the Act.
- (4) Every pension plan made before the commencement date of this Act shall be deemed to have been made under this Act and the Act shall apply with full force and effect to such plans.

(5) The rights of every member, deferred or retired member or claimant of a pension plan made before the commencement of this Act shall be preserved and shall be exercisable as if such rights were conferred under this Act.

(6) The duties and obligations imposed upon every employer, administrator, member or other person concerned in a pension plan that existed immediately before the commencement of this Act shall continue to exist as if such obligations were imposed by this Act.

### **Offences**

**90.** Any person who contravenes

- (a) any provision of this Act or any regulation made under this Act; or
- (b) any direction or requirement given or made by the Supervisor or an inspector appointed under section 84,

is guilty of an offence, unless he can prove that he did not knowingly contravene the enactment.

### **Penalties**

**91.** All offences against this Act for which no other penalty is prescribed shall be punishable on summary conviction thereof

- (a) in the case of a company, by a fine of \$50 000, and, where the offence is a continuing offence, by a further fine of \$500 for every day during which the offence continues; and
- (b) in the case of an individual, by a fine of \$25 000 or imprisonment for one year, and, where the offence is a continuing offence, by a further fine of \$250 for every day during which the offence continues.

### **Limitation**

**92.** No proceeding under this Act shall be commenced after 5 years after the date when the matter in the proceeding occurred or is alleged to have occurred.



**Power to enter into agreements**

**93.** The Supervisor may, subject to the approval of the Minister enter into agreements with the authorised representative of any Member State of the Caribbean Community to provide for

- (a) the reciprocal registration of any pension plan registered in that member state;
- (b) the enforcement of legislation respecting the establishment of pension plans and the grant and payment of pension benefits; and
- (c) the sharing of information regarding the operation of a pension plan.

**Regulations**

**94.** The Minister may make regulations for giving effect to the Act and, without affecting the generality of this provision, may make regulations respecting the following:

- (a) the forms to be used under this Act;
- (b) the time within which any document specified in this Act to be transmitted, filed or served shall be transmitted, filed or served;
- (c) the requirements that shall be complied with in the administration of a pension plan;
- (d) the requirements that shall be complied with regarding the records that shall be kept by the administrator of a pension plan, and the period of time for which such records shall be retained by the administrator;
- (e) the requirements that shall be complied with regarding the audit of pension plans and pension funds, and prescribing the persons who may perform the audits;
- (f) the manner of determining the portion of a pension benefit, a pension, a deferred pension or an ancillary benefit that is attributable to employment before the commencement date of this Act, or that is

- attributable to employment on or after the commencement date of this Act;
- (g) the prohibition of or regulation of the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *National Insurance and Social Security Act, Cap. 47*;
  - (h) the procedure governing the winding-up of pension plans and prescribing priorities or the method of determining priorities on winding-up, including priorities in allocation of assets;
  - (i) prescribing procedures that shall govern the establishment of advisory committees and the appointments of members of advisory committees;
  - (j) the fees that shall be paid under this Act for any service provided by the Supervisor;
  - (k) the methods of calculating the values of assets and liabilities of pension funds;
  - (l) the criteria that must be complied with before any surplus may be paid out of a pension fund;
  - (m) the prescribing of the rate or the method of determining the rate at which an employer shall pay money due from the employer under this Act on the winding-up of a pension plan, and prescribing the manner of payment and to whom the payments shall be made;
  - (n) the regulating or prohibiting of the investment of money from pension funds and prescribing activities or ventures in which such money may be invested;
  - (o) prescribing the rate of interest and the method of calculating interest payable under this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;
  - (p) prescribing reports that shall be submitted to the Supervisor, the contents of the reports and the persons by whom the reports must be prepared; and

- (q) prescribing procedures that shall govern the appointments of members of pension committees.

**Act does not bind Crown**

**95.** This Act does not bind the Crown, except where the Minister by order otherwise provides.

**Amendment of enactments**

**96.** The enactments set out in the *Schedule* are amended in the respects set out in the *Schedule*.

**Commencement**

**97.** This Act shall come into operation on a date to be fixed by proclamation.

**SCHEDULE**

*(Section 96)*





