



CENTRAL BANK OF  
TRINIDAD & TOBAGO

# **Guideline on amending a Pension Plan's Trust Deed and Rules and correcting the Register of Pension Plans**

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# Guideline on amending a Pension Plan's Trust Deed and Rules and correcting the Register of Pension Plans

## 1. INTRODUCTION

- 1.1 The Central Bank of Trinidad and Tobago ("Central Bank"/"Bank") regulates all privately administered pension fund plans ("pension plans"/"plans") in Trinidad and Tobago in accordance with the Insurance Act, 2018 ("Insurance Act"/"Act").<sup>1</sup> No pension plan should be established and operated unless it is established under trust and registered with the Central Bank<sup>2</sup>.
- 1.2 The Bank registers pension plans' originating Trust Deed and Rules and amendments thereto. The originating Trust Deeds and Rules and any subsequent amendments<sup>3</sup> are not valid until they are registered by the Bank.<sup>4</sup>

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<sup>1</sup> The Insurance Act, 2018 was proclaimed by the President of the Republic of Trinidad and Tobago with effect from January 1, 2021. The Insurance Act, 2018 replaced the Insurance Act, 1980.

The Central Bank supervises and regulates privately administered pension plans established under trust in accordance with Section 217 of the Insurance Act, 2018 which states that "Subject to the provisions of this Part, where a plan establishes a fund under trusts which is subject to the laws of Trinidad and Tobago, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Trinidad and Tobago, and the main purpose of that fund is—

- (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established;
  - (b) the provision of pensions to the spouses of persons who are or have been so employed and of periodical allowances, to or in respect of the children of such persons; or
  - (c) the assurance of capital sums on the death of persons who were so employed,
- such a plan shall be qualified for registration under this Part if the Rules of the plan comply with the requirements set out in Part I of Schedule 4."

<sup>2</sup> Section 216 (1) of the Insurance Act, 2018 states that

"No person may establish or operate a privately administered pension fund plan (hereinafter referred to as "a plan") in Trinidad and Tobago unless the plan is registered under this Part. "

Failure to register a privately administered pension plan is a breach of Section 216 (1) of the Insurance Act, 2018, and as a result of which, the Central Bank can pursue various legal remedies to ensure compliance.

<sup>3</sup> See paragraph 4.1 on page 6 for the definition of an "amendment".

<sup>4</sup> Section 219 (1) of the Insurance Act, 2018

- 1.3 The Central Bank maintains a register of pension plans<sup>5</sup> ("register of pension plans"/"register"). The register is a record of the pension plans' and the Trustees' names and addresses and any changes thereto.
- 1.4 The process of registering amendments or correcting the register of pension plans is sometimes delayed when the Bank receives documents which cannot be registered due to drafting inadequacies, errors or omissions. Therefore, the Bank has seen it fit to issue this Guideline to assist Plan Sponsors and Trustees<sup>6</sup> in preparing documents which meet the requirements for registration.

## 2. PURPOSE OF THE GUIDELINE

- 2.1 The purpose of this Guideline is to inform Plan Sponsors and Trustees of the legislation which they should be aware of, and steps that they are to take, prior to submitting amendments to Trust Deeds and Rules to the Bank for registration or documents to correct the register.
- 2.2 This Guideline does not suggest wording either for amendments or for documents prepared for the correction of the register. However, checklists of confirmations, which should be completed by the preparer of an amendment or application for correction of the register prior to the submission of documents to the Central Bank, are provided at Appendices III and IV to assist in the process of preparing documentation.

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<sup>5</sup> See Section 218 (3) of the Insurance Act, 2018. The Bank maintains the register of pension plans in an electronic format. The list of registered pension plans can be found on the Bank's website.

<sup>6</sup> Trust Deeds and Rules and Supplemental Deeds are made between Plan Sponsors and Trustees. See Appendix 1 for the definitions of "Plan Sponsor" and "Trustee".

### **3. STATUTORY REQUIREMENTS FOR AMENDING A PENSION PLAN OR APPLYING FOR THE CORRECTION OF THE REGISTER**

3.1 Plan Sponsors and Trustees are to acquaint themselves with the requirements of the Insurance Act. Some salient sections of the Insurance Act to note in this regard are as follows:

- 1) Part 1 of Schedule 4: The content of a pension plan's originating Trust Deed and Rules and amendments thereto must conform to the requirements of Part I of Schedule 4 of the Insurance Act.<sup>7</sup>
- 2) Section 217: The Central Bank shall register originating Trust Deeds and Rules only if they comply with Part 1 of Schedule 4 of the Insurance Act.
- 3) Section 218 (3): The Central Bank shall enter in the register the address of the pension plan and the names and addresses of the trustees.
- 4) Section 218 (4): the trustees shall, within fifteen business days of the amendment of a pension plan's Trust Deed and Rules or the change in the address of the pension plan and/or the names and addresses of the trustees, apply for the registration of the amendment or for the correction of the register.
- 5) Section 219 (1): An amendment to a Trust Deed or Rules, or both, of a registered plan shall not be valid unless the amendment is registered.
- 6) Section 219 (2): Where an application for the registration of an amendment is made, the Central Bank shall register the

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<sup>7</sup> Sections 217 (1) and 219 (1) of the Insurance Act, 2018



amendment where it is satisfied that the Trust Deed or the Rules, or both, as amended, would not have disqualified the plan from registration, that is, contravened Section 217 (1) or Part I of Schedule 4 of the Insurance Act.

- 3.2 Plan Sponsors and Trustees should note the fees applicable for the registration of originating Trust Deeds and Rules, amendments and the correction of the register. The fees are stated in the Insurance (Pension Fund Plans Registration Fees) Regulations, 2020. Pension plan stakeholders were advised of these fees in the Inspector of Financial Institutions' Circular Letter entitled "Payment of Registration Fees" dated March 1, 2021<sup>8</sup>.

#### **4. AMENDMENTS TO A PENSION PLAN'S TRUST DEED AND RULES**

- 4.1 An "amendment" refers to a change made to any of the provisions of the Plan's originating Trust Deed and Rules and any subsequent change made if the originating Trust Deed and Rules were previously amended.
- 4.2 Amendments which contravene the requirements of Part 1 of Schedule 4 of the Insurance Act cannot be registered by the Central Bank.
- 4.3 An amendment must be prepared in accordance with the process for amendments stated in the plan's Trust Deed and Rules. An application for registration of an amendment should not be forwarded to the Central Bank unless the Plan Sponsors and Trustees have verified that the process for making the amendment, as stated in the plan's Trust Deed and Rules, have been complied with.

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<sup>8</sup> The Circular Letter can be viewed at: <https://www.central-bank.org.tt/core-functions/supervision/pensions-sector/pensions-sector-circular-letters>.

- 4.4 Section 218 (5) of the Insurance Act states the following:
- “An application for an amendment or for the correction of the register in respect of a change shall be addressed to the Central Bank and shall —
- (a) be in the form prescribed;
  - (b) be signed by one of the trustees of the plan; and
  - (c) be accompanied —
    - (i) in the case of an amendment, by two copies thereof signed by one of the trustees; or
    - (ii) in the case of a change, by such particulars as may be necessary for the correction of the register.
- 4.5 The Central Bank does not specify the form in which applications for an amendment to Trust Deeds and Rules or for the correction of the register of pension plans is to be made. Trustees and Plan Sponsors should follow the requirements of their Pension Plan's Trust Deed and Rules in this regard.
- For instance, the Trust Deed and Rules may require that the amendment be done through:
- a. a resolution from the Plan Sponsor's Board of Directors;
  - b. a supplemental deed, or
  - c. both documents may be required.
- 4.6 There should be no ambiguity as to the intent or purpose of the amendment or how it will impact the membership or operations of the pension plan. Therefore, amendments should be written in a detailed and easily comprehensible manner.
- 4.7 Plan Sponsors and Trustees should ensure that all relevant clauses and/or rules of the pension plan's Trust Deed and Rules affected by the amendment are changed within the amending board resolution or

supplemental deed. For instance, if a plan is being converted from a defined benefit to a defined contribution plan<sup>9</sup>, a comprehensive review of all the plan's rules pertaining to contributions and the benefits payable both prior to and after the conversion date is to be undertaken to determine whether they remain relevant and accurately reflect the changed structure of the pension plan.

- 4.8 The clauses or rules of a pension plan's Trust Deed and Rules which stipulate the procedure for making amendments thereto are to be complied with and documents evidencing this compliance are to be submitted to the Central Bank, along with the board resolution and/or supplemental deed effecting the amendment.

In accordance with the pension plan's amendment requirements, these evidentiary documents may include, but not be limited to:

- 1) The Trustees' written consent to the amendment. Where the Trust Deed and Rules requires this, the Trustees must provide a letter to the Bank stating that they consent to the amendment. Where the Trust Deed and Rules provide for the Trustees' consent, but omits the word "written", the amendment should contain wording which states that the Trustees' consent to the amendment.
- 2) Evidence of the pension plans' Management Committee's and/or Members' consent.
- 3) An actuarial certificate.
- 4) Evidence that the Board of Inland Revenue has approved the amendment.

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<sup>9</sup> A defined benefit plan stipulates the payment (benefit) to be received by a pensioner. The benefit is typically calculated based on a formula which utilises the member's years of pensionable service and a percentage of pensionable salary.

In a defined contribution plan, the benefit payable is typically determined by the amount of money paid into the plan by the employer and member, the returns on the plan's investments and the annuity purchase rates at the time the member retires.



The necessity to submit any of the documents listed above will be specific to the requirements of each pension plan's Trust Deed and Rules. The Bank may request additional documentation to verify that the amendment conforms to the pension plan's amendment clauses and rules and to the requirements for registration as specified in the Insurance Act.

- 4.9 There should be no grammatical errors, incorrect names, dates and incorrect clause and rule references contained in documents submitted to the Central Bank.
- 4.10 Amendments must be forwarded to the Bank in draft form for review prior to the finalised, executed/signed amendments being forwarded for registration. Where applicable, drafts of items 1) to 3) listed in section 4.8 above must be submitted with a draft amendment.

Where it is found that an executed/signed amendment contains errors that prohibit registration, a further amendment, to correct the errors contained in the initial amendment, will be required. Once the correcting amendment is acceptable, both amendments will be registered simultaneously. The registration fee will be payable on each amendment.

- 4.11 See Appendix III for the checklist of confirmations which should be completed prior to amendments being submitted to the Central Bank for review. If the answer to any of the confirmation questions is "No", the Plan Sponsor and/or Trustees must take remedial action before the documents are submitted.

## 5. APPLICATION FOR CORRECTION OF THE REGISTER

- 5.1 Section 218 (5) of the Insurance Act states that an application for the correction of the register in respect of a change shall be addressed to the Central Bank and shall:
- (a) be in the form prescribed;
  - (b) be signed by one of the trustees of the plan; and
  - (c) be accompanied –
    - (i) in the case of an amendment, by two copies thereof signed by one of the trustees or
    - (ii) in the case of a change, by such particulars as may be necessary for the correction of the register.
- 5.2 An application for the correction of the address of a pension plan should take the form of a letter addressed to the Bank, signed by one of the pension plan's trustees.
- 5.3 The register of Trustees is changed once the appointment and removal of trustees is done in accordance with the processes stated in the plan's Trust Deed and Rules.
- 5.4 The following table outlines the typical methods for appointing and removing trustees and the documents required to change the register of Trustees.

<b>METHODS OF APPOINTMENT</b>	
<b>PROCEDURE IN THE TRUST DEED AND RULES</b>	<b>DOCUMENTS REQUIRED FOR REGISTRATION</b>
<p>1. Board of Directors' Resolution to appoint or remove the Trustee (where the pension plan has either a corporate trustee or for the Plan Sponsor's individual representative trustees)</p>	<ul style="list-style-type: none"> <li>● Board of Directors' Resolution:                             <ul style="list-style-type: none"> <li>➢ certified in the manner prescribed in the applicable company law;</li> <li>➢ containing the effective date of the appointment and removal of trustees if the date of the resolution is not intended to operate as the effective date.</li> </ul> </li> </ul>
<p>2. Election or removal of the Members' Representative Trustee (where a pension plan has individual trustees)</p>	<ul style="list-style-type: none"> <li>● Minutes of the meeting of the members held to elect the Trustee or a letter from a representative of the members, which state:                             <ul style="list-style-type: none"> <li>➢ that the Trustee was elected in accordance with the Trust Deed and Rules;</li> <li>➢ the effective date of commencement of the new trustee's tenure and the effective date of termination of the former trustee.</li> </ul> </li> <li>● A resolution passed at a meeting of Members, effecting the appointment of the Members' Representative Trustee and/or the removal of a former trustee, signed by the meeting's chairperson.</li> </ul>

<b>METHODS OF APPOINTMENT</b>	
<b>PROCEDURE IN THE TRUST DEED AND RULES</b>	<b>DOCUMENTS REQUIRED FOR REGISTRATION</b>
<p>3. Deed (where the pension plan has either a corporate trustee or individual trustees)</p>	<p>➤ The executed Deed of Appointment<sup>10</sup></p> <p>The Deed of Appointment is required to vest the pension plan's fund in the trustees.</p>

5.5 Board Resolutions and Deeds of Appointment must be forwarded in draft form for review prior to the finalised, executed/signed amendments being forwarded for registration.

5.5 See Appendix IV for the checklist of confirmations which should be completed prior to documents being submitted to the Central Bank for review. If the answer to any of the confirmation questions is "No", the Plan Sponsor and/or Trustees must take remedial action before the documents are submitted.

## 6. COMMUNICATION WITH MEMBERS

6.1 Part 1 (j) of Schedule 4 of the Insurance Act states in part that all persons having any rights in a pension plan, that is a person who is or was an employee of the Plan Sponsor, is entitled, upon request, to copies of the pension plan's Rules and any amendments thereto. Therefore, Plan Sponsors and Trustees are required to ensure that all members receive the documents to which they are entitled.

<sup>10</sup> See Appendix IV – Checklist for Preparing a Deed of Appointment of a Trustee

- 6.2 Plan Sponsors and Trustees should also ensure that any changes to the pension plan's Rules, especially those related to the contributions and benefits payable, are communicated to the plan's membership in a timely manner. The Central Bank's Guideline on Communication with Pension Plan Members should be reviewed for further details on informing a pension plan's membership of the content of the plan's Trust Deed and Rules and keeping them updated on their benefit entitlements<sup>11</sup>.

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<sup>11</sup> The Central Bank's Guideline on Communication with Pension Plan Members can be viewed at <https://www.central-bank.org.tt/corefunction/supervision/pensions-sector/pension-sector-legislation-and-guidelines>.

## APPENDIX I – DEFINITIONS

**Pension Plan Membership** – employees of the Plan Sponsor who are members of the Pension Plan, deferred pensioners who have left the service of the Plan Sponsor but are entitled to a pension at a future date; pensioners in receipt of monthly pension payments.

**Plan Sponsor** – an employer who establishes a pension plan in accordance with the requirements of the Insurance Act, or any replacement legislation, for the benefit of his or her employees.

**Trustee** – an individual or company appointed by a Plan Sponsor to hold the plan assets and carry out the purposes of a trust in accordance with the provisions of the trust instrument and general principles of trust law.

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## APPENDIX II - PART 1 OF SCHEDULE 4, INSURANCE ACT, 2018

### PART I

#### Requirements as to the Trust Deed and Rules of Registered Pension Fund Plans

1. The Trust Deed and Rules of a plan qualified for registration under this Act shall make provision for the following matters:

- (a) the whole of the objects for which the plan is established;
- (b) the appointment and removal of trustees;
- (c) the vesting in the trustees of all property belonging to the plan;
- (d) the investment in the names of the trustees of all capital money belonging to the plan and for authorizing the investments, if any, in addition to those authorized by law, in which the trustees may invest such moneys; but the Rules of a plan may provide for the deposit of such moneys with an institution licensed under the Financial Institutions Act;
- (e) the making of contributions to the plan by the employers of persons employed in the undertaking or combination of undertakings in connection with which the plan is established;
- (f) the contributions payable to and the rates of benefits payable from the fund or the method of calculating benefits so payable;
- (g) the conditions on which persons may become and may cease to be contributors to and entitled to benefits from the fund;
- (h) the protection of the vested rights of contributors to the plan;
- (i) the preparation of all statements of accounts, balance sheets and reports required by this Act to be prepared;
- (j) the supply (on demand) to every person having any rights in the plan, being a person who is, or has been employed in the undertaking in connection with which the plan is established, of a copy of the Rules of the plan and of all amendments thereof, and of the latest statements of accounts, balance sheets and report prepared in accordance with the requirements of this Act;
- (k) the circumstances in which the plan may be wound up

### APPENDIX III - CHECKLIST FOR PREPARING AN AMENDMENT TO A PENSION PLAN

An amendment to a Pension Plan's Trust Deed and/or Rules	Confirmation ("Yes" or "No")/ Comments if the confirmation is "No"
Does the amendment comply with the requirements of Part 1 of Schedule 4, of the Insurance Act, 2018?	
Have all prior deeds or resolutions been submitted for approval by the Board of Inland Revenue or registration by the Central Bank?	
Have all the requirements stated in the Trust Deed and Rules for amending the plan been followed? For instance, have the written approvals required from the Trustees, Management Committee and/or Members been received?	
If a board resolution is required, has the resolution from the Plan Sponsor's Board of Directors approving the amendment been executed? Alternatively, has the Plan's Sponsor's corporate secretary certified in writing that the resolution was passed?	
Does the resolution from the Plan Sponsor's Board of Directors, if required, include the effective date of the amendment?	
Have all the clauses and rules of the Trust Deed and Rules affected by the amendment been examined to determine whether further amendments are required?	
Have all affected clauses and rules been properly referenced in the amendment?	
Do the Recitals adequately reference all previous amendments made to the Trust Deed and Rules?	
Has the amendment been thoroughly reviewed for improper referencing, numbering or grammatical errors?	

## APPENDIX IV - CHECKLIST FOR PREPARING A DEED OF APPOINTMENT OF A TRUSTEE

Deed of Appointment of a Trustee	Confirmation ("Yes" or "No")/ Comments if the confirmation is "No"
Does the amendment comply with the requirements of Part 1 of Schedule 4, of the Insurance Act, 2018?	
Have all prior deeds of appointment of trustees or resolutions been submitted for registration by the Central Bank?	
Have all the requirements for appointment and/or election and removal of trustees stated in the Trust Deed and Rules been followed?	
Have the required documents confirming the appointment or election of Trustees been received from the Plan Sponsor and/or the members?	
Are there any gaps in the succession of the plan's trusteeship and, if so, have they been addressed in the current deed of appointment?	
Are the dates of the appointment and revocation of the appointment of trustees correctly stated in the deed?	
Where there are individual trustees, does the deed identify the persons who are the Plan Sponsor's representative trustees and the Members' representative trustees?	
Does the deed of appointment state that the plan is vested in the new and continuing trustees?	
Has the document been thoroughly reviewed for incorrect referencing, incorrect numbering or grammatical errors?	

