



CENTRAL BANK OF
TRINIDAD & TOBAGO

**Policy Proposals for the Establishment
of an
Occupational Pension Plans Bill**

December 2012

TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
1. INTRODUCTION	8
2. RIGHTS AND BENEFITS OF PENSION PLAN MEMBERS AND BENEFICIARIES.....	10
3. THE SUPERVISORY SYSTEM.....	22
4. THE SUPERVISED ENTITY	38
5. GOVERNANCE OF PENSION PLANS	45
6. PRUDENTIAL REQUIREMENTS	56
7. WIND UP OF PENSION PLANS	66
8. TRANSITIONAL ARRANGEMENTS	76
APPENDIX I – White Paper Excerpt	78
APPENDIX I(A) - WHITE PAPER FOR THE REFORM OF THE FINANCIAL SYSTEM	79
APPENDIX II - INTERPRETATION	80
APPENDIX III - PROPOSED SCHEDULE OF ADMINISTRATIVE FINES.....	86
APPENDIX IV - Fit and Proper Requirements.....	89
APPENDIX IV (a) - KNOWLEDGE REQUIREMENTS.....	91

ABBREVIATIONS

BIR	Board of Inland Revenue
CAPSA	Canadian Association of Pension Supervisory Authorities
CBA	Central Bank Act, Chap. 79:02
Central Bank	Central Bank of Trinidad and Tobago
DB	Defined Benefit
DC	Defined Contribution
FIA	Financial Institutions Act, 2008
IA	Insurance Act Chap. 84:01
IOPS	International Organization of Pension Supervisors
ITA	Income Tax Act
Judge in Chambers	Judge in Chambers of the High Court of Trinidad and Tobago
OPPA	Occupational Pension Plans Act
OPPB	Occupational Pension Plans Bill
PPD	Policy Proposal Document
TD&R	Trust Deed & Rules
TTSEC	Trinidad and Tobago Securities and Exchange Commission
1969 Draft Regulations	The Draft Board of Inland Revenue Regulations

EXECUTIVE SUMMARY

This policy proposal document (PPD) is a comprehensive framework for the regulation and supervision of occupational pension plans and is to be used as a basis to inform a new Occupational Pension Plans Bill (OPPB). The scope of the Occupational Pension Plans Act (OPPA), upon enactment of the OPPB, would include only those occupational pension plans that are tax approved by the Board of Inland Revenue (BIR).

The proposals cover the roles and responsibilities of the key stakeholders involved in pension plans and seek to strike a balance between the rights and obligations of the plan sponsor and the members of the pension plan.

The Central Bank of Trinidad and Tobago (the Central Bank) recognizes that concomitant with increased regulation is increased cost but views this as an unavoidable consequence of ensuring a robust regulatory framework that would afford greater protection to pension plan members and their beneficiaries as well as the financial system as a whole. Nevertheless, the Central Bank will consider measures to mitigate the regulatory burden on small pension plans as appropriate and has to date revised its proposals for administrative fines to be more proportionate.

The proposals are presented under the following six major sections and highlights of the content of each section are presented below:

Proposals related to **members and beneficiaries** aim to:

- Protect the rights of pension plan members with respect to benefits earned; and
- Strengthen communication between pension plan sponsors, trustees, management committees and members, so that members are informed of their benefits and are provided with other information on the pension plan in a timely manner.

Proposals related to the **supervisory system** seek to:

- Expand the regulatory framework for pension plans to include Regulations, Guidelines and Circulars;
- Strengthen the powers of the Inspector of Financial Institutions (Inspector), and the Central Bank to act; and

- Extend the range of preventive and corrective measures available to the Central Bank. This would include giving the Central Bank authority to levy administrative fines for breaches of certain provisions in the new Occupational Pension Plans Act.

Proposals related to the **supervised entity** would:

- Provide for more effective oversight of the establishment and operation of pension plans;
- Require the submission of regulatory returns, audited financial statements, actuarial valuation reports, and other information within specified timeframes;
- Clarify the registration process, including required documentation; and
- Introduce reporting requirements for the actuary and auditor to the Central Bank.

Proposals related to **governance** would:

- Delineate roles and responsibilities for corporate and individual trustees, management committees and plan sponsors;
- Introduce fit and proper requirements for management committee members and individual trustees; and
- Enhance the content of pension plans' TD&Rs.

Proposals related to **prudential requirements** would:

- Strengthen the internal controls and risk management of pension plans by:
 - ❖ Requiring investment limits, including connected party limits;
 - ❖ Identifying permissible assets; and
 - ❖ Requiring adequate investment policies and procedures.
- Provide the Central Bank with tools for more effective regulation of pension plan assets and liabilities.

Proposals related to the **wind up** of a pension plan would:

- Prescribe circumstances for the Central Bank to wind up a pension plan;
- Provide structure and accountability for the voluntary wind up of a pension plan;
- Outline the steps to be taken during the wind-up process; and
- Enhance communication with members during a wind up.

TRANSITION AND GRANDFATHERING

It is expected that pension plans would not be in a position to comply with some of the requirements of the OPPA upon its enactment. Consequently, specific transition periods have been proposed to allow plans that are either registered or in the process of being registered to comply with the OPPA upon its coming into force. Where no transition period is specified it is expected that plans would immediately comply with the provisions of the OPPA. In addition, pension plans applying for registration after enactment of the OPPA would be expected to immediately comply with all of the provisions of the OPPA.

Further, where it is not considered reasonable or prudent for a pension plan that was registered prior to the coming into force of the OPPA to comply with certain limits or stipulations in the OPPA, such exposures may be grandfathered¹. Where this is the case the treatment would be specified in the PPD.

CONSEQUENTIAL AMENDMENTS

Some proposals in the policy document may require consequential amendments to other pieces of legislation that affect pension plans. For instance, all provisions relating to the regulation of occupational pension plans in the Insurance Act would be repealed and replaced by the new OPPA.

In addition, amendments would be required to the Central Bank (Payment of Supervisory Fees and Charges) Regulations, 2011, as appropriate, as the application and registration fees pertaining to pension plans stipulated under Schedule I of those Regulations would no longer apply.

The Draft Board of Inland Revenue Regulations (the 1969 Draft Regulations) would not require any consequential amendments since it was never enacted. Consequently, the OPPA will incorporate relevant provisions from these Regulations as appropriate.

CONSTITUTIONAL REQUIREMENTS

Some proposals in the PPD may impinge on constitutional rights relating to property. In light of this, the intention is to seek passage of the OPPB by way of a special majority (i.e. three fifths of the members of both Houses of Parliament).

¹ Where a grandfather clause is inserted in the OPPA, the provisions of the OPPA would not apply. An example of a grandfather clause is the proposal that stipulates that subsidized mortgages would not be allowed save for those that existed prior to the OPPA coming into force.

CENTRAL BANK'S PROCESS FOR DEVELOPMENT / AMENDMENT OF LEGISLATION AND CONSULTATION WITH STAKEHOLDERS

Upon the issue of this revised PPD to relevant stakeholders and the public, the Central Bank would present the PPD to the Minister of Finance for approval by the Cabinet. Thereafter, drafting of the OPPB will commence. While the Central Bank will continue to consider comments on the revised PPD, such comments would be incorporated into the drafting of the OPPB as appropriate. Another revised PPD will not be issued for comment, however the Central Bank will continue to consult with the relevant stakeholders on any material changes to the approved policy.

Following the completion of a draft OPPB (which is expected to take several months), it will be issued to industry stakeholders for review and comment. The draft OPPB will be revised based on comments received and a public consultation on the draft OPPB will be scheduled. Following the public consultation on the draft OPPB, a final document will be prepared for submission to the Minister of Finance.

1. INTRODUCTION

The private pension fund industry in Trinidad and Tobago largely comprises occupational pension plans and annuity-type products that are sold by insurance companies, banks and trust companies. As at March 2012, pension plan assets accounted for approximately 13.3 percent of total assets of the financial system. Given the size and importance of the pension industry to the financial system and to the members of the plans, it is imperative that the Central Bank develop a robust regulatory and supervisory framework that would facilitate effective governance and supervision of pension plans.

The current legislative and regulatory structure governing occupational pension plans in Trinidad and Tobago is outdated and in need of modernization. Although the Insurance Act Chapter 84:01 (IA) deals with the regulation of occupational pension plans, these provisions are inadequate, primarily with regard to **registration requirements, the filing of annual accounts and the wind up of pension plans.**

The other major piece of legislation governing occupational pension plans, the Income Tax Act (ITA), focuses mainly on a pension plan's tax exempt status. While some minimal provisions relating to governance, contributions and retirement benefits are contained in the ITA, neither the ITA nor the IA substantively addresses such issues as governance, prudential requirements, supervision of pension plans or the rights of pension plan members and beneficiaries. The ITA requires a pension plan to be created through the establishment of a trust structure with the trustee, (whether corporate or individual), who would have overall responsibility for the administration of the pension plan.

The Board of Inland Revenue (BIR) uses its 1969 Draft Regulations² to approve the provisions contained in any proposed TD&R and to regulate the rights of pension plan members and beneficiaries. However, the 1969 Draft Regulations were never enacted. As a consequence, where appropriate the provisions of the draft Regulations would be incorporated in the OPPB.

Additionally, the Trustee Ordinance (Ch.8 No.3) which regulates the powers, rights and obligations of Trustees was enacted in 1939 but has not been updated to keep pace with a modern environment. Similar to the Draft Regulation, a new Trustee Act was drafted in 1981 but was never enacted.

² The BIR has indicated that it intends to propose changes to its legislation to allow it to focus only on tax issues.

The June 2004 *White Paper for the Reform of the Financial System of Trinidad and Tobago* (the White Paper), articulated a number of policy recommendations for legislative and other reform of the pensions industry, including the modernization and harmonization of legislation governing the pension sector. (Appendix 1 refers).

This Policy Proposal Document (PPD) sets out a framework for the regulation and supervision of tax approved occupational pension plans. The proposals in this document therefore take into account *inter alia* the structure and size of the pensions industry in Trinidad and Tobago, issues impacting the pensions industry, the need to protect the benefits of members of pension plans, and international standards and best practices regarding the regulation of occupational pension plans.

Approach

The mandate of the Central Bank with respect to the regulation of occupational pension plans covers:

- The safety and soundness of pension plans;
- The manner in which benefits are delivered; and
- Protection of members and beneficiaries from undue loss.

In developing these proposals, consideration was given to:-

- Legislation governing the pensions industry in Canada, the United Kingdom, South Africa, and Barbados. These jurisdictions were chosen as they have similar pension plan structures and their pension legislation is up to date;
- The Organization for Economic Co-operation and Development (OECD) Occupational Pensions Core Principles and Methodology;
- The International Organization of Pension Supervisors (IOPS) Principles for Pension Supervision;
- Canadian Association of Pension Supervisory Authorities (CAPSA) – Proposed Regulatory Principles for a Model Pension Law (2004 & 2008);
- Lawrie Savage and Associates proposals for a revised supervisory regime for approved pension plans; and
- The structure of the pension plans industry in Trinidad and Tobago.

2. RIGHTS AND BENEFITS OF PENSION PLAN MEMBERS AND BENEFICIARIES

The *White Paper* articulated social policy positions with respect to the treatment of rights of pension plan members and beneficiaries which were largely reflected in the 1969 Draft Regulations currently in use by the BIR.

However, the IA which is administered by the Central Bank and the 1969 Draft Regulations used by the BIR are deficient with respect to provisions pertaining to the rights of members and beneficiaries. Under the new legislation, the Central Bank's objectives as Regulator would include:-

- (i) Establishing and maintaining an appropriate legislative, regulatory and supervisory framework to govern the operations of occupational pension plans registered under the OPPA; and
- (ii) Promoting good governance and proper administration of occupational pension plans.

This PPD incorporates some social policy issues that have already been established by the Government and included in legislation such as the Income Tax and Finance Acts and draft Regulations. However, some issues have not been incorporated in the document as they have not yet been fully developed by the Government. These latter issues³ include:

- (i) Indexation of benefits and contributions;
- (ii) Minimum income replacement ratios;
- (iii) Minimum guaranteed levels of income maintenance in retirement; and
- (iv) Treatment of pension plans surpluses and deficits.

Some jurisdictions such as the United Kingdom (UK) and Canada have provisions in their respective pension legislation relating to the rights of pension plan members and beneficiaries. In particular, the UK Pension Act (1995) and the Pension Benefits Standards Act of Canada contain provisions relating to eligibility criteria, sex discrimination, vesting rights, portability and communication with members. The CAPSA and IOPS principles also view members' rights as important for pension legislation.

Similarly, it is proposed that the OPPA for Trinidad and Tobago should stipulate that the TD&R of pension plans must at a minimum treat with vesting, portability, retirement benefits, withdrawal benefits,

³ See Appendix 1 for an excerpt from the White Paper.

spousal benefits and disability benefits. The treatment of these rights and benefits in the TD&R should be consistent with all applicable laws and regulations such as the Income Tax Act and the Finance Act.

As such, the proposals with respect to rights and benefits are as follows:-

2.1 Access to pension plan participation

The Proposal

- a) The pension plan's TD&R must stipulate the criteria for membership eligibility and the criteria and process for affecting a waiver of the eligibility criteria, if necessary.
- b) The pension plan's TD&R must define the classes of employees who are entitled to join the pension plan.

The Rationale

Pension plan sponsors have the right to define the eligibility criteria for pension plan membership. These criteria should be documented in the pension plan's TD&R to ensure that employees are aware of the criteria and also to avoid discriminatory practices for example, between employees in the same class. It is also important that these criteria are objectively and consistently applied in practice.

It should be noted, however, that the PPD requires the TD&R of pension plans to contain a provision allowing eligibility criteria to be waived and the criteria and process to affect such a waiver.

2.2 Vesting Rights and Vested Periods

The Proposals

- a) A pension plan's TD&R must treat with vesting, including stipulating the maximum period after which a member's benefits would be vested.
- b) The maximum vesting period shall be five (5) years or such other time period that may be prescribed by the Government of Trinidad and Tobago in the Income Tax Act, the Finance Act or other written law.

- c) Once a member's benefits are vested, they should remain in the plan until the member takes normal, early retirement, or late retirement.
- d) Members whose benefits have been vested must have a right to a deferred pension.
- e) Once vested, refunds of members' contributions would only be allowed on grounds of critical illness. (*See section on withdrawal benefits*).

The Rationale

The Central Bank will not prescribe the treatment of vesting in the PPD. Although the maximum period for the vesting of benefits is currently five years, the 2010 budget statement indicated a proposal to reduce the maximum vesting period to two years. As a result, the proposed treatment of vesting in this PPD would allow flexibility in dealing with changes in vesting periods without having to amend the law where the Government changes its policy stance.

2.3 Portability Rights

The Proposals

- a) The treatment of portability of pension benefits must be detailed in the pension plan's TD&R. This treatment must be consistent with any applicable laws, including the Income Tax Act, Finance Act and the OPPA. However, at a minimum the OPPA and the pension plan's TD&R must stipulate that:
 - (i) the trustees, upon request, must transfer the value of benefits accrued by the transferring member to another approved pension plan or deferred annuity plan; and
 - (ii) the trustees may accept (in relation to a transferring member of another pension plan or deferred annuity plan) a transfer value. If the transfer value is accepted the qualifying service of the transferring member's previous employment must be considered in determining the transferring member's vesting rights and eligibility for benefits.

Rationale

Similar to other jurisdictions, a member should have the right to transfer benefits. Portability rights are not only beneficial to employees when they change jobs but they also assist individuals in managing their retirement assets as they change employers throughout their working lives, by facilitating consolidation of retirement income and the avoidance of forfeitures.

2.4 Benefits of Pension Plan Members

2.4.1 Retirement Benefits

The Proposals

For **defined benefit (DB)** pension plans, the OPPA should specify that with respect to retirement benefits, the TD&R of every pension plan must:-

- a) Stipulate a normal retirement age.
- b) Stipulate a maximum retirement age if different from the normal retirement age and the conditions under which late retirement would be allowed⁴.
- c) Stipulate an early retirement age⁵.
- d) Stipulate how early reduction factors⁶ are determined.
- e) Permit pension plan trustees to purchase an immediate or deferred annuity from the pension plan assets in respect of an immediate or a deferred pension entitlement.

Rationale

Recent evidence shows that the ageing of the world's population presents a challenge for the sustainability of pension arrangements. Consequently, it is important that pension plans consider

⁴ Please note this provision is not requiring that pension plans permit late retirement. However, the TD&R must state whether it is or is not allowed. If permitted the TD&R must detail the treatment.

⁵ The Income Tax Act Chap 75:01 28(5) prohibits retirement before age 50 and stipulates that pensions must be level, paid as life annuities and guaranteed for a maximum of 15 years.

⁶ CAPSA regulatory principles allow early retirement pension reduction as long as the reduced pension is at least equal to the actuarial equivalent of the normal retirement pension. Bermuda occupational pension's legislation permits this once the commuted value of the early retirement pension is at least equal to the commuted value of the normal retirement pension.

allowing for late retirement.

Where the TD&R specifies that an individual is entitled to a specific pension then the trustee can buy an annuity to secure the payments provided that the annuity is among the permissible asset classes stipulated in the OPPA.

2.4.2 Spousal/ Dependent's benefits⁷

The Proposals

- a) A pension plan must allow for the payment of a spousal benefit or a dependents' benefit where there is no spouse.
- b) Where an automatic spousal benefit is not included as part of a member's benefits, the TD&R of the pension plan must allow the retiring member the right to surrender part of his/her pension to secure a reduced spousal benefit or where there is no spouse, a dependent's benefit at no additional cost to the member.

Rationale

It is noted that this provision applies in several other jurisdictions⁸ and although it is not in the 1969 Draft Regulations, the provision of spousal benefits is consistent with the direction of public pension reform as communicated in both budget speeches (2008/2009) and (2009/2010). Consequently, the Central Bank has adopted the indicated direction of public pension reform by requiring that spousal benefits be provided at the member's discretion, albeit without prescribing the quantum of these benefits.

2.4.3 Withdrawal Benefits

The Proposals

- a) Refunds of contributions will only be allowed for cases of critical illness. The Central Bank (after consultation with industry stakeholders) will issue guidelines on the criteria for the determination of critical illness.

⁷ Source: CAPSA Regulatory Principles

⁸ For example Canada and Bermuda.

- b) Where the trustee approves/ agrees to a refund of contributions on grounds of critical illness, the trustee must provide the BIR with a statement indicating that they have agreed to the refund of contributions in accordance with their pension plan's TD&R.
- c) Where there is a refund of members' contributions the member must receive documentation stating the rate used and the mechanism by which the rate of interest is determined. The rate of interest must be consistently applied among all classes of employee.

Rationale

Under the ITA, a vested member can apply to the BIR for a refund of contributions (subject to a 25% tax penalty) on the basis of hardship. However, no hardship criteria have been defined and in most cases the refunds tend to be approved by the BIR. Furthermore, the member forfeits the benefit of any employer contributions paid on his or her behalf. This has contributed to a build -up of surplus in some pension plans over the years.

2.4.4 Ill health/ Disability Benefits

The Proposals

- a) A pension plan must provide for the payment of ill health/ disability benefits and this should be stipulated in the pension plan's TD&R.
- b) The treatment of ill health/disability benefits in the TD&R must be consistent with the Income Tax Act, the Finance Act and the OPPA. However, at a minimum the pension plan's TD&R must stipulate that a member must be vested in order to be eligible for ill health/disability benefits.

2.5 Contributions

The Proposals

- a) The plan sponsor is required to submit to the trustee or his agent, all contributions to the pension plan (members and the sponsor).
- b) These contributions must be submitted within twenty (20) days of the end of the month in which

the contribution relates for current earnings, and forty (40) days of the date that salary increases are agreed upon with retroactive effect if the relevant pay period has passed.

- c) Pension plans may permit members to make additional voluntary contributions which can vary from year to year at the discretion of the member and should not construe any obligation on the employer to match same⁹.
- d) Pension plans may permit contributions to continue after normal retirement age.
- e) In DC plans the contribution arrears of both the employer and the employee should attract interest at either the interest rate that would have been earned if contributions were remitted on time or the 'repo' rate¹⁰ (averaged over a five year period), whichever rate is higher.

Rationale

To discourage the late remittance of contributions by the employer, in the case of DC plans, legislation would provide for interest to be charged on arrears of contributions, to compensate for the missed investment opportunities due to the late receipt of contributions. The rate of interest should be objective and observable and not left to the discretion of any one stakeholder. The rate of interest can either be the interest rate that would have been earned if contributions were remitted on time or the 'repo' rate, whichever rate is higher. The 'repo' rate is both objective and observable and should be averaged over a reasonable period to avoid any volatility arising from market conditions.

Currently, some approved deferred annuity products allow uneven contributions and this should also be allowed for pension plans. While regular contributions tend to be even and predictable, additional voluntary contributions should be allowed where an individual wishes to save towards his/her retirement through a pension plan and can afford to do so.

⁹ Similar provisions apply in the National Pensions Scheme (Occupational Pensions) Act of Bermuda, 1998, Clause 19. However, a table of contribution rates is specified in the First Schedule of this Act and employers and employees are required to contribute the same amount.

¹⁰ Interest will be paid based on the 'repo' rate on an annual basis. The grace period is one month. Interest payments will be calculated from the day after the contribution was supposed to be paid not the day after the grace period.

2.6 Communications with pension plan members and beneficiaries- Introduction

This section contains proposals on the type, form and timing of the different forms of communication that a member should receive from the date on which they join the pension plan to the date benefits cease to be paid.

The Proposals

- a) The plan sponsor is responsible for communication with pension plan members and beneficiaries. Where communication obligations have been delegated, the plan sponsor remains accountable for the communication function.
- b) In cases where the plan sponsor is no longer operating and the plan is being wound up, the trustee shall be responsible for communication.
- c) Within twenty (20) days of joining a pension plan, a new member must be provided with a summary description of the pension plan, and of their rights and obligations under the pension plan in the form of a membership booklet. At a minimum, this booklet should contain a description of benefits, and procedures for addressing members' concerns, queries and benefit claims.
- d) Benefit statements for active members of a DB pension plan must be provided at least **every three (3) years**. These benefit statements must be provided within twelve (12) months of the pension plan's valuation date. If the pension entitlements change, benefit statements must be produced within sixty (60) days of the changes receiving regulatory approval. The Central Bank will prescribe the nature of the information to be provided in benefit statements in regulations. For DC plans, benefit statements should be provided to active members at least once a year.
- e) Deferred pensioners and pensioners will only receive benefit statements if there is a change in the pension entitlement. This statement must be produced within sixty (60) days of the changes receiving regulatory approval.
- f) Plan members and beneficiaries must have access to an annual report¹¹ which provides:
 - i) a summary of the latest financial statements and actuarial valuation report;
 - ii) details of any changes since the last report was issued; and

¹¹ The trustees must prepare the report but the sponsor is responsible for its dissemination (on request).

- iii) details any changes in the composition of the management committee and individual trustees.
- g) Active members, deferred pensioners, pensioners and beneficiaries must have access to all relevant pension plan documents, including but not limited to:
- the TD&R and all amendments;
 - the audited financial statements;
 - the actuarial valuation report;
 - the recovery plan; and
 - the statement of investment policy.
- h) All members affected by amendments to the pension plan must be provided with descriptions of these amendments and information on how these amendments affect them within sixty (60) days of the receipt of notification of registration of the amendment by the Central Bank.
- i) If a member of a pension plan terminates employment with or ceases to be a member of a pension plan for reasons other than retirement or death and the member is entitled to a deferred pension, the member must receive an exit statement from the plan sponsor. At a minimum the statement must include the following:
- i) the name of the pension plan;
 - ii) the member's name and date of birth;
 - iii) the date on which the member joined the pension plan and in the case of DB plans the years of service credited under the plan for the purpose of calculating the pension benefit;
 - iv) the member's normal retirement date under the plan or the earliest date on which an unreduced pension is payable;
 - v) the pension benefits to which the member is entitled on termination and any options respecting those benefits, including early, normal and late retirement;
 - vi) name of beneficiary (where applicable); and
 - vii) the transfer value of the deferred pension.

The plan sponsor must provide the exit statement within twenty (20) days following the member's termination of employment or cessation of membership in the pension plan.

- j) If a member of a pension plan terminates employment or ceases to be a member of a pension plan for reasons other than retirement or death and the member is not entitled to a pension or deferred pension, the member must receive an exit statement from the plan sponsor. At a minimum the statement must include the following:
- i) the name of the pension plan;
 - ii) the member's name and date of birth;
 - iii) the dates on which the member joined the pension plan and ceased membership in the plan, respectively;
 - iv) in the case of DB plans, the years of service credited under the plan for the determination of pension benefits;
 - v) the amount of any refund; and
 - vi) any options that the member is entitled to elect and the time period in which the option must be exercised.

The plan sponsor must provide the exit statement within twenty (20) days following the member's termination of employment or cessation of membership in the pension plan.

- k) If a member or a former member who is not receiving payments from the pension plan dies, the plan sponsor must provide the beneficiary with a statement within twenty (20) days of receiving a copy of the member's death certificate and nominated beneficiary's information (if not already provided). At a minimum, the statement must include the following:
- i) the name of the pension plan;
 - ii) the name of the deceased member or former member;
 - iii) the dates on which the member joined the pension plan and ceased membership in the plan, respectively;
 - iv) in the case of DB plans, the years of service credited under the plan for the determination of pension benefits; and
 - v) the amount and method of payment payable to the beneficiary.
- l) At least forty (40) days prior to a member's normal retirement date and twenty (20) days after the member provides notice of his/her early retirement date the plan sponsor must provide the member with an exit statement. At a minimum, the statement must include the following:

- i) the options with respect to payment which are available to the member;
 - ii) the name of the pension plan;
 - iii) the date on which the member joined the pension plan and in the case of DB plans the years of service credited under the plan for the purpose of calculating the pension benefit;
 - iv) name of beneficiary;
 - v) commencement date for payment of the pension benefit; and
 - vi) any benefit payable in the event of the member's death.
- m) Electronic delivery of documents would be acceptable, provided alternate arrangements are made for those who do not have access to such media.

Rationale

The disclosure of information in a timely manner enables pension plan members to monitor their benefits and the financial soundness of their pension plans. In addition, the disclosure of appropriate, frequent and timely information among members can ensure the smooth operation of a pension plan.

The purpose of the exit statement is to provide the member with a record of their actual benefits entitlement at the time of leaving the pension plan. This would be especially useful for deferred pensioners who migrate.

2.7 Entitlement process and rights of redress

The Proposals

The resolution of members' and beneficiaries' complaints should be the responsibility of either the Management Committee or the Individual Trustees. Consequently, the OPPA would require the following:-

- a) The management committee or individual trustee(s) must have a documented complaints policy and procedures detailing the complaints process.

- b) The management committee or individual trustee(s) must ensure that arrangements for the resolution of disagreements between prescribed persons about matters in relation to the pension plan are made and implemented.
- c) The management committee or individual trustees must disclose for the benefit of plan members and beneficiaries, the arrangements for handling complaints.
- d) A member or beneficiary must have the right to lodge a written complaint, as prescribed by the policy and any complaint so lodged must be properly considered and replied to in writing in consideration of the matter by the management committee or individual trustee(s) within a reasonable period of time¹², as specified by the Central Bank, after the receipt of the complaint.
- e) Where the member or beneficiary is not satisfied with the response or where no response is received within a reasonable timeframe, as specified by the Central Bank, the member or beneficiary may lodge the complaint with the Central Bank or a body designated by the Central Bank¹³.
- f) A register of complaints with the requisite details should be kept by the management committee or individual trustee(s) and made available to the Central Bank, upon request.

Rationale

Members and beneficiaries (and individuals claiming the right to be deemed a member or beneficiary under a pension plan) must be entitled to a fair process or procedure in which their entitlements, rights and benefits under the pension plan may be claimed or asserted. A fundamental right of members and beneficiaries is the right to a fair, transparent process by which to assert claims against the pension plan. Individuals should be able to initiate and pursue their right to participate in a pension plan in the manner set forth by regulations and the TD&R.

There are numerous ways to establish a claims process, including the establishment of an internal dispute resolution procedure. Good practice would also ensure that the procedure makes use of an independent arbitrator, board or tribunal, which may include member representatives. Some jurisdictions have established independent Pensions Tribunal or a Pensions Ombudsman to treat with disputes and complaints.

¹² Guidelines would be issued on this matter as one time limit may not be appropriate in all circumstances.

¹³ It has been proposed that the Office of the Ombudsman will be expanded to deal with pension complaints. However, the details of this arrangement have not been finalized.

3. THE SUPERVISORY SYSTEM

3.1 Scope of the OPPA

The Proposals

- a) The OPPA would provide for the regulation of *occupational pension plans* which are approved under the ITA and are either:
- already registered at the Central Bank; **OR**
 - submitted for registration at the Central Bank¹⁴
- b) Once approved by the BIR, pension plans shall fall under the regulatory ambit of the OPPA, whether or not they are already registered or in the process of being registered by the Central Bank.
- c) An occupational pension plan for which no application was made to the BIR, or for which approval has not been received from the BIR, falls outside of the scope of the OPPA.
- d) All pension plans already registered under the IA will be deemed registered under the OPPA.
- e) The Chairman of the BIR shall within twenty (20) days of the end of each quarter provide the Central Bank with a list of pension plans approved by the BIR, in the previous quarter. Where no pension plans have been approved during the quarter, a nil report should be submitted to the Central Bank.

Rationale

While the Central Bank recognizes that there are numerous types of pension arrangements, it was necessary to define a 'world' of pension plans in order to establish the scope of regulation. As a result, a decision was taken to regulate only tax approved occupational pension plans.

¹⁴ New plans may submit documentation to the BIR and Central Bank simultaneously but the Central Bank would not register any arrangement unless approved by the BIR. The Central Bank acknowledges that if the application is submitted simultaneously some of the registration documentation which the plan would receive from the BIR would not be available, for example, the tax approval letter. However, the registration would not be complete until all relevant documents are received.

3.2 Components of the Regulatory Framework

The Central Bank will implement a regulatory framework similar to what applies to banks, non-bank financial institutions and insurance companies, and which is consistent with international standards. Accordingly, the framework for tax-approved occupational pension plans would consist of:-

- a) **Primary legislation** - The OPPA, upon enactment of the OPPB by Parliament.
- b) **Regulations** – Secondary legislation to support primary legislation and which would have the force of law. Regulations under the OPPA may cover any area under the OPPA such as the communication with plan members and prudential criteria.
- c) **Administrative Circulars** – these are definitive statements on the law and may be issued by the Central Bank to clarify matters of the law as well as remind stakeholders (plan sponsors, trustees etc) of their statutory obligations. For example, the Central Bank may issue administrative circulars reminding registrants of the deadline date for submission of regulatory returns.
- d) **Guidelines** – are statements of best practice, compliance with which is recommended.
- e) A **Supervisory Framework** comprising of on and off-site examinations and regulatory intervention and enforcement action to facilitate timely addressing of issues. The latter shall include payment of administrative fines, issue of compliance directions and provisions for the wind up of pension plans.

3.3. Scope of Responsibilities and Authority

- a) The legislation that would enable the regulation of occupational pension plans will be the OPPA, which the Central Bank will be responsible for administering. The Central Bank also has a broader regulatory and policy-making mandate deriving from its own governing legislation, the Central Bank Act, Chap. 79:02 (the CBA). The provisions of the OPPA will therefore take precedence over all other Acts that govern occupational pension plans, with the exception of the CBA. Operationally, the Central Bank's powers under the OPPA will be administered by

the Inspector appointed by the President under section 7 of the Financial Institutions Act, 2008 (FIA).

- b) In regulating and supervising occupational pension plans, the Inspector will:
- (i) Register occupational pension plans.
 - (ii) Cancel the registration of occupational pension plans after wind up.
 - (iii) Obtain information (including statutorily required filings, reports and financial and other statements) in such format and at such frequency as the Central Bank may from time to time require and as permitted under the OPPA and its Regulations.
 - (iv) Enforce compliance with the provisions of the OPPA and its Regulations, through the powers available to it under the OPPA and its Regulations such as issuing compliance directions. Prior to a compliance direction being issued persons will be served with a notice and given time to make representation to the Inspector regarding the matters specified therein. Non-compliance with compliance directions would constitute an offence under the OPPA, or grounds for winding up.
 - (v) Ensure that there is a mediation system in place. The mediation system will provide redress to pension plan members and their beneficiaries.
- c) In exercising its responsibilities and authorities the Central Bank:-
- (i) May provide recommendations to the Minister for the making of regulations¹⁵ on any issue considered necessary to give effect to the OPPA;
 - (ii) May issue guidelines to the industry. While non-compliance with a guideline would not automatically constitute an offence, it may form the basis for the Central Bank to conduct an on-site examination into the operations of a pension plan or take other regulatory action. If the examination reveals some weaknesses regarding the operations of the pension plan, the Central Bank may initiate preventive or corrective measures. These measures may include the issuance of compliance directions to ensure that situations of

¹⁵ The FIA 2008 permits the Minister to make regulations after receiving recommendations of the Central Bank subject to negative resolution of Parliament. In the interest of harmonization of legislation dealing with the financial sector and as a useful tool for swiftly and efficiently achieving regulatory objectives, it is proposed that the OPPA be similarly structured. All regulations shall be subject to the negative resolution of Parliament.

financial weakness, inadequate controls or risk management, are appropriately dealt with.

- (iii) Shall consult with trustees, management committees, plan sponsors and other affected persons when developing or amending Regulations or Guidelines. However, if urgent action is required, the Minister may issue or amend a Regulation without formal consultation. Similarly, when circumstances so warrant the Central Bank may issue a Guideline without formal consultation.
- (iv) Will indemnify its staff for any action taken in good faith during the course of carrying out their duties.

Rationale

In most jurisdictions, there are several levels of requirements that apply to regulated financial services. Although the categories and terminology differ somewhat, the main categories could be referred to as Acts, Regulations and Guidelines. This proposal is consistent with that general framework and seeks to provide an appropriate balance with respect to flexibility, accountability, and legal certainty.

Guidelines which are generally statements of best practice provide flexibility to the regulator to address issues in the pensions industry in a relatively short timeframe. The issuance of Guidelines relates to provisions of the OPPA and will address areas such as governance, communication with plan members and beneficiaries, risk management and internal controls, as appropriate.

3.4 The Supervisory Framework

3.4.1 On-site monitoring

The Proposals

The OPPA should provide that:-

- a) The Inspector can make or cause to be made any examination and inquiry into the affairs or operations of each pension plan as he considers necessary or expedient, for the purpose of

satisfying himself that the provisions of the OPPA are being observed and that the pension plan is being operated in accordance with the TD&R and all relevant laws.

- b) The Inspector or a person authorized by the Central Bank has the power to visit the premises of, inspect and make copies of any books, records, accounts, minutes or other documents and convene meetings with the trustee, management committee, investment manager and plan sponsor to discuss issues related to regulatory compliance. These parties would be obliged to provide any information requested by the Central Bank.
- c) On-site examinations would be conducted at the frequency, scope and interval determined by the Central Bank.
- d) The Central Bank will request any information required from the auditors, actuaries, investment managers and other service providers, through the trustees. The Central Bank may also request information from the persons who may have held the respective positions over the last ten (10) years. However, the Central Bank reserves the right to contact any of the above-mentioned service providers directly, if necessary. When the Central Bank exercises this right it shall copy the trustees on the request, as appropriate. The TD&R of the pension plan must stipulate who (the Central Bank being an exception) would bear any costs incurred from the service providers furnishing the Central Bank with the requested information.

3.4.2 Off-site monitoring

The Proposals

- a) In the performance of its duties under the OPPA, the Central Bank or the Inspector shall at all reasonable times have access to all books, records, accounts, minutes of meetings and any other documents relating to the pension plan, including documents stored in electronic form, of any plan sponsor, trustee and management committee.

Rationale

The Central Bank's or the Inspector's access to timely and accurate information on the financial condition and other aspects of the performance of a regulated institution is critical to the regulatory process. The Central Bank and/or the Inspector must be able to evaluate the financial performance

and condition of pension plans, in order to assess whether the pension plan is operating in a safe and sound manner. In its evaluation, the Central Bank or Inspector would use a combination of on-site and off-site monitoring of the pension plan.

3.4.3 Intervention and Enforcement

The Proposals

- a) The Inspector shall take such preventive and corrective action as provided for in the OPPA or any regulations made pursuant to the OPPA where, based on information available to him, he considers that:
- (i) The pension plan is not being administered in accordance with the pension plan's TD&R;
 - (ii) The pension plan does not comply with the OPPA or other legislation governing pension plans; or
 - (iii) The plan sponsor, trustee or management committee is contravening a requirement of the OPPA.
- b) The trustee, management committee and plan sponsor would be required to comply with the on-site examination report recommendations made by the Inspector. If these persons fail to both comply and/or provide a valid reason for their non-compliance, the Inspector may then have recourse to enforcement powers, including the power to issue directions.
- c) The Inspector will be empowered by the OPPA to issue compliance directions¹⁶ to the trustees, management committee and plan sponsor as applicable. Non-compliance with a compliance direction would be an offence; however, the OPPA will recognize the right of the party that receives a compliance direction to appeal to a Judge in Chambers of the High Court of Trinidad and Tobago (Judge in Chambers).
- d) Where the trustees, plan sponsor, or management committee are guilty of an offence, they may be criminally charged if they directed, authorized, assented to, acquiesced in, participated in, or

¹⁶ A compliance direction is a preventive/corrective tool which can be applied to prevent unsafe or unsound acts or to rectify areas of non-compliance with applicable laws and regulations.

acted negligently in the contravention of the OPPA. Alternatively, the Central Bank can offer the trustees, plan sponsor and management committee the option to discharge their criminal liability through the payment of an administrative fine¹⁷.

3.4.3.1 Compliance Directions

a) Where the Central Bank or Inspector is of the opinion that the trustees, plan sponsor or management committee:-

- (i) Is committing, has committed or is about to commit an act, or is pursuing, has pursued or is about to pursue any course of conduct, this is an unsafe or unsound practice;
- (ii) Is committing, has committed or is about to commit, is pursuing, has pursued or is about to pursue a course of action that is prejudicial to the interests of the members of the pension plan;
- (iii) Is violating, has violated, or is about to violate any of the provisions of the OPPA or any Regulations made thereunder; or
- (iv) Is breaching or has breached any requirement or failed to comply with any measure imposed by the Central Bank or the Inspector in accordance with the Act or any Regulations made thereunder,

the Inspector may issue a direction to the trustees, plan sponsor or management committee, including a direction requiring the trustees or management committee of the pension plan to convene a special meeting of the trustee or management committee at which the Central Bank will be present to address these issues.

b) Directions may also be issued where:

- (i) the directors and officers of a corporate trustee fail to maintain the fit and proper criteria;
- (ii) members of the management committee or individual trustees fail to meet or maintain the fit and proper criteria. The management committee and the individual trustees will

¹⁷ Such an option will only be offered for non-fraud type offences.

- be required to submit a listing of its members and their compliance with the knowledge requirements to the Central Bank annually. Both management committee members and individual trustees will be required to submit annual attestations of their fitness and propriety by January 31st of each calendar year in the form specified by the Central Bank. The form of this annual attestation will be specified in a Guideline;
- (iii) the trustee fails to submit a recovery plan to the Central Bank when the pension plan's funding ratio is below 100%;
 - (iv) The plan sponsor fails to remit contributions to the trustee as specified.
- c) The Inspector may issue a direction to the trustees, plan sponsor or management committee requiring the person to whom it is addressed to:
- (i) comply with the OPPA and regulations made thereunder, as well as, any other written law;
 - (ii) give an undertaking to the Central Bank to take such corrective action as the Central Bank may require;
 - (iii) take certain steps or refrain from adopting or pursuing a particular course of action; and
 - (iv) impose limitations on the activities of the pension plan.
- d) Before the Inspector issues a direction he will serve a notice of intention ("Notice"). The Notice will specify:
- (i) the facts of the matter;
 - (ii) the directions that are intended to be issued; and
 - (iii) the time and place at which representation may be made.
- e) The Inspector may proceed to issue the directions if:
- (i) the person served with the Notice fails to attend at the stipulated time and place; and

- (ii) after considering the representations made in response to the Notice, he believes that the matters detailed in the Notice are established.
- f) If the Inspector believes that the length of time required for representations to be made might be prejudicial to pension plan members or to the stability of the financial services industry he may make an interim direction which has effect for a maximum of twenty (20) days. However, this direction may continue to have effect after the expiration date if no representation was made during the period, or if after assessing representations made, the Inspector is not satisfied that there are adequate grounds to revoke the direction.
- g) If a person fails to comply with a direction the Inspector may apply to a Judge in Chambers for an Order to require compliance with the direction, cease the contravention or take any other action that the Judge deems appropriate.
- h) It is further proposed that the Central Bank be given the power to direct a plan sponsor to replace the trustee.
- i) The Central Bank may require the management committee to have a member elected individual on the management committee replaced. Where the management committee member is elected by the pension plan sponsor the Central Bank may direct the plan sponsor to remove the individual. However, the member (plan sponsor and employee representatives) may be re-appointed or re-elected at a later date, conditional to meeting any requirements set out by the Central Bank.
- j) If the Central Bank believes that the trustees, plan sponsor or management committee is in contravention of the OPPA, the Central Bank may in addition to, or in lieu of, the above mentioned actions issue a cease and desist order, seek a restraining order or other injunctive or equitable relief.

Rationale

These proposals aim to ensure that the Central Bank has adequate powers to bring about prompt corrective action. The measures are consistent with IOPS Principle 4 (Adequate Powers) which states that "*Pension supervisory authorities should be endowed with the necessary investigatory and enforcement powers to fulfill their functions and achieve their objectives*".

It should be noted that the OPPA would provide for appeals against decisions of the Central Bank through a Judge in Chambers.

3.4.3.2 Administrative Fines

The Proposals

- a) It is proposed that the Central Bank be given the power to offer to persons, the opportunity to discharge certain criminal liabilities where they have committed an offence by paying an administrative fine.
- b) The Central Bank would have the power to assess and impose administrative fines on key stakeholders for breaching certain sections of the OPPA. For instance, since the Central Bank considers employers' non-remittance of employees' pension contributions (when such had been deducted from their salaries) a serious breach¹⁸, it is proposed that the employer be subject to the maximum administrative fine¹⁹ for this offence. All the employees' and employer's contributions must be remitted within twenty (20) days of the end of the month in which deductions were made. All employers' contributions as recommended by the actuary to be contributed by the employer must also be remitted within twenty (20) days from the end of each month, in which those contributions were accrued. Failure of the plan sponsor to remit all contributions (employer and employee) within the stipulated timeframes would attract a penalty.
- c) The imposition of administrative fines shall also apply to the late submission of actuarial returns, audited financial statements, semi-annual returns or information requested by the Central Bank as well as for breach of investment limits.
- d) The Inspector may exercise his powers to take enforcement action against the trustee when the investment limits are breached.
- e) A trustee who contravenes any requirement to submit information or returns to the Central Bank is guilty of an offence and shall pay the relevant fine, except where the trustee can submit evidence to the Central Bank that the sponsor submitted information to the trustee, actuary or auditor after the agreed date. Where it is proven that the plan sponsor was responsible for the

¹⁸ The involvement of all stakeholders (including workers and their respective trade unions) is necessary in ensuring that correct contributions are made by workers and their employers and that same is remitted to the relevant account. The Central Bank cannot monitor this activity on an ongoing basis.

¹⁹ The suspension of tax benefits was discussed with the BIR for their consideration but legislative changes to the ITA would be necessary before this can be implemented.

late submission of data, the Central Bank would fine the plan sponsor for failure to provide information.

- f) Where a person opts not to discharge his criminal liability through the payment of the administrative fine the matter would be pursued through a Judge in Chambers.
- g) It is proposed that the OPPA will include a schedule that summarizes specific contraventions in respect of which administrative fines will be applied under the OPPA (please see Appendix iii "*Proposed Schedule of Administrative Fines*"). It should be noted that the administrative fines levied in respect of small pension plans (that is, pension plans with an asset size of less than twenty-five (25) million TTD) would be 50% of the fines listed in the aforementioned *Proposed Schedule of Administrative Fines*.
- h) It is further proposed that the OPPA includes a section, which allows the Minister, upon recommendation from the Central Bank to amend the schedule to the OPPA from time to time by Order published in the Gazette subject to negative resolution of Parliament.
- i) All administrative fines imposed by the Central Bank will be collected by the Central Bank and paid into the Consolidated Fund.
- j) Where a breach is not corrected within fifteen (15) days following the date of a Notice to pay the administrative fine (penalty), whether or not the fine is actually paid, the person in breach would be then be liable to the criminal penalty in respect of the breach or offence.
- k) The Inspector should have the authority to either waive the administrative fine or grant an extension of time as may be reasonably sufficient for either the submission of the required returns or the payment of administrative fines in the case where there may be a hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like.

Rationale

IOPS Principle 4 recommends that Pension supervisory authorities should be endowed with the necessary investigatory and enforcement powers to fulfill their functions and achieve their objectives. This Principle states:

“.....On the suspicion of problems, pension supervisory authorities should have the power to conduct a full investigation, to oblige funds to submit documents and information, and to impose corrective measures and remedial actions if their orders are not obeyed – up to and including the power to impose administrative sanctions such as fines, the power to direct management, the power to revoke licenses and the power to refer matters for criminal prosecution.”

In developing the schedule that summarizes specific contraventions with respect to the administrative fines, the Central Bank took into consideration:-

- industry comments received on the December 2009 PPD;
- regional and international precedent including criminal penalties levied in other jurisdictions; and
- the asset size and membership of local pension plans.

As a consequence, the Central Bank revised:

- the quantum of criminal penalties and administrative fines; and
- the types of offenses that warranted action and the persons to be penalized for the offence.

It was also determined that consistent with local precedent all fines must be paid into the consolidated fund. This would mitigate any conflict of interests concerns created by the Central Bank receiving the monies from fines in which they levied. In addition, there is a view that offsetting of fees with fines can create a ‘moral hazard’ issue arising from the offender not feeling the impact of the fine. The Central Bank also assessed the United Kingdom (U.K.) system of using administrative fines to off-set supervisory costs. This system ensures that the pension plan does not benefit by receiving an off-set of supervisory fees. However, this was considered administratively burdensome and cannot be implemented at this time.

After completion and evaluation of the exercise the Central Bank revised the quantum of fines to allow smaller pension plans (asset size less than \$25 million TTD) to pay 50% of the fines listed for large pension plans.

3.4.3.3. Other Enforcement Powers

The Proposals

It is proposed that where the plan sponsor, trustee or management committee contravenes the provisions of the OPPA, the Central Bank may:

- a) Require a meeting to be convened and may direct the relevant party to comply with such measures as it may require to prevent any further contravention and may impose conditions;
- b) Require the removal of **any** individual or entity (including a corporate trustee) who refuses to comply with a direction;
- c) Require the trustees or management committee, forthwith or within such time as may be specified to take all such measures as it may consider necessary to rectify the situation if, in the opinion of the Central Bank (from off-site monitoring or an on-site examination), the trustees or management committee is conducting the business of the pension plan in an unlawful or unsound manner or it is otherwise in an unsound condition. This would include a power on the part of the Central Bank to replace a trustee or management committee member or members with a Central Bank appointee; and
- d) Take any other regulatory action as prescribed in the OPPA.

Rationale

The Central Bank should have the ability to take action against persons who may not be acting in the best interest of the pension plans' members and beneficiaries. It is therefore necessary that the Central Bank has the power to impose immediate sanctions on such persons. Nevertheless, it should be noted that the offender has the right to challenge the Central Bank through the Courts.

Therefore, in addition to preserving the ability of the Central Bank to seek criminal prosecution for offences, the penalty provision would give the Central Bank the power to deal with serious violations and "repeat offenders", that is, persons who violate the prohibitions on several occasions.

3.5 Powers of the Court

The Proposals

It is proposed that a wider range of remedies under the OPPA be made available to the regulator. One such additional remedy would be that the Central Bank may request that the Court:

- a) order a person to comply with the requirement in respect of which the person was convicted in addition to any punishment it may otherwise impose; and
- b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person or to the spouse or other dependant of the convicted person, order the convicted person to pay, notwithstanding the maximum amount of any fine that may otherwise be imposed, an additional fine in an amount equal to the Court's estimation of the amount of those monetary benefits.

3.6 Appeals

The Proposal

- a) It is proposed that the appeals jurisdiction be to a Judge in Chambers, as currently provided for under the IA.
- b) During the pendency of an appeal any order, decision or direction made by the Central Bank shall remain binding unless the judge grants a stay of action.
- c) In determining an appeal, the Judge in Chambers may confirm, reverse or vary an order, decision or direction made or given by the Central Bank.
- d) The Judge in Chambers may give directions with respect to the payment of costs/expenses incurred because of the appeal.

Rationale

The plan sponsor, trustees, or management committee should have the right to appeal any decision by the Central Bank and so it is important that effective mechanisms exist for this purpose.

3.7 Regulatory Co-operation and the Sharing of Information

The Proposals

- a) The Central Bank will not disclose any information regarding the business or affairs of a pension plan or information concerning members of a pension plan that is obtained in the course of its official duties unless so required under compulsion of law.
- b) Notwithstanding the above, it is proposed that the Central Bank be given the power to cooperate and share information with such local regulatory and Government agencies as appropriate for regulatory purposes. Consequently, the Central Bank should be able to share information with:
 - (i) the BIR for *inter alia* purposes related to the registration of a pension plan or the amendment of its TD&R;
 - (ii) the TTSEC for regulatory purposes;
 - (iii) the Deposit Insurance Corporation (DIC) or other protection scheme established for the purpose of protecting pension plan members and their beneficiaries; and
 - (iv) the Office of the Financial Services Ombudsman or other dispute resolution scheme established for the purpose of resolving complaints regarding the administration of the pension plan.
- c) The Central Bank may also share information with the Financial Intelligence Unit and law enforcement authorities as required for purposes such as combating money laundering and the financing of terrorism under the Proceeds of Crime Act, 2000, the Anti-Terrorism Act, 2005, or any other relevant legislation for the combating of money laundering and terrorist financing.
- d) The Central Bank must be satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed, and used strictly for the purpose for which it is disclosed. As such, the Central Bank would be required to enter into a Memorandum of Understanding with such agency or body to ensure that information sharing arrangements are codified and reflect the required level of confidentiality.

Rationale

The sharing of information with another local financial authority, such as the BIR is essential to the effective supervision and regulation of the financial system. Accordingly, the Central Bank must have the power to share information, subject to legal and confidentiality requirements.

Effective information-sharing agreements would also enable the Central Bank to deliver statutory obligations and achieve an effective and efficient working relationship with other relevant authorities. This is especially true in cases where the action of another authority is likely to have an effect on the operations of a registrant.

These proposals are consistent with IOPS Principle 7 – Consultation and Cooperation, which states that “Pension supervisory authorities should consult with the bodies they are overseeing and cooperate with other supervisory authorities”.

3.8 Access to Central Bank Examination Reports**The Proposals**

Central Bank examination reports issued to individual trustees and management committees may be shared by the individual trustees and management committees with the plan sponsor only. However, the examination reports issued to all entities regulated by the Central Bank, which would include corporate trustees and investment managers must be treated as private and confidential and cannot be shared with the plan sponsor, or other third parties. The distribution of these reports is prohibited except with the written approval of the Central Bank.

Rationale

Currently, the Central Bank prepares separate examination reports for individual trustees, management committees, corporate trustees and investment managers. The PPD requires corporate trustees and investment managers to treat the report as confidential unless the Central Bank grants approval for the report to be shared. This requirement is being proposed due to the confidential nature of the information contained in Central Bank’s reports. Moreover, confidentiality rules prohibit the Central Bank from sharing information except under certain circumstances.

4 THE SUPERVISED ENTITY

4.1 Application for Registration

The Proposals

- a) A pension plan which has applied for and received tax approval from the BIR must apply to the Central Bank for registration **within twenty (20) days of receiving such approval.**
- b) The pension plan must submit all relevant documents itemized in 4.2, including an application fee of \$1,000 to the Central Bank for which a receipt will be issued upon payment. A copy of the receipt must be included with the documents submitted for registration.
- c) The Central Bank will register the new pension plans within) sixty (60) days of receiving **all** the relevant documents stipulated in the legislation.
- d) A pension plan, once registered with the Central Bank will be required to pay an annual supervisory fee in accordance with the *Central Bank (Payment of Supervisory Fees and Charges) Regulations 2011*. The TD&R of the pension plan must stipulate whether the plan sponsor or the pension plan would bear the cost of the fee. The supervisory fee would be payable annually or in such other timeframe as may be prescribed by the Central Bank.

Rationale

The current process for registration of pension plans is very inefficient. There is a duplication of roles between the BIR and the Central Bank. The proposals seek to streamline the process and to remove such duplication. As the Regulator, the Central Bank has the authority to regulate pension plans that have received tax approval from the BIR. This authority extends to pension plans that have not completed the registration process at the Central Bank.

4.2 Registration Documentation

The Proposals

- 4.2.1 An application for registration of a new pension plan must be submitted to the Central Bank on the prescribed form and must be accompanied by the following pension plan documents:

- (i) A copy of the executed TD&R, bearing the BIR stamp of approval. Where a copy of an executed TD&R is not yet available, the applicant may submit a *draft* TD&R to the Central Bank along with the other registration documents. Where a draft TD&R is submitted with an application for registration, the Central Bank will provide feedback on the draft TD&R within sixty (60) days of receipt. However, approval for registration will not be granted until the applicant has submitted the final, executed TD&R containing all the required revisions to the Central Bank for review;
- (ii) A copy of the tax approval letter from the BIR;
- (iii) A copy of the receipt from the Central Bank showing payment of the appropriate application fee;
- (iv) The name and address of the plan sponsor;
- (v) Articles of incorporation or continuance of the plan sponsor;
- (vi) A letter listing the names and addresses of all potential and actual service providers;
- (vii) A list of names and addresses of the corporate trustee, individual trustees²⁰ and management committee members as appropriate. Annual updates of such persons will be required;
- (viii) A named point of contact for the trustee for the receipt of all correspondence from the Central Bank. The trustee is responsible for notifying the Central Bank within twenty (20) days of the change of the point of contact;
- (ix) In the case of DB plans an initial actuarial valuation report²¹; and
- (viii) Any other documents that the Central Bank may deem relevant²².

4.2.2 It is required that:

²⁰ When applicable, updated names of trustees should be submitted to the Central Bank.

²¹ Requirement does not apply to defined contribution plans.

²² Similar provisions and requirements are seen in the South African Pension Fund Act 1956, the Pensions Benefit Standards Act. (Canada 1985) and the LSA draft legislation.

- (i) A notice of registration will be published in the Gazette and in at least two daily newspapers published and circulated in Trinidad and Tobago. The notice of registration would also be published on the Central Bank's website.
- (ii) The OPPA would provide for the sharing of information between the Central Bank and the BIR with respect to the registration of, and amendments to, existing pension plans.

Rationale

These documents are necessary to determine that the pension plan is being established in accordance with the OPPA. The Central Bank recognizes that new applicants will have to provide documents to both the Central Bank and the BIR and will devise procedures, in conjunction with the BIR, to streamline the registration process.

4.3 Amendments to the Trust Deed and Rules (TD&R)

The Proposals

- a) The trustee is responsible for ensuring that the TD&R is in compliance with the law and regulations.
- b) Where a pension plan is required to amend its TD&R, it would be required to pay an application for registration of amendment fee of \$250 to the Central Bank for which a receipt will be issued upon payment.
- c) An application for registration of an amendment must be submitted to the Central Bank by the trustee and shall be accompanied by:
 - (i) Either the executed supplemental deed or the draft supplemental deed effecting the amendment to the Central Bank. Where a draft supplemental deed is submitted, the Central Bank will provide feedback on the DRAFT supplemental deed with all the required revisions within sixty (60) days. However, it should be noted that approval of the amendment to the TD&R will not be granted until an executed supplemental deed containing all the required revisions has been submitted to the Central Bank for review.

- (ii) A copy of the actuarial costing of the proposed amendment if it pertains to a change in member benefits or will affect the financial position of the pension plan (for defined benefit plans).
- (iii) All amendments with tax implications²³ that have been approved by the BIR. It should be noted that amendments without tax implications will be registered by the Central Bank without BIR approval. The trustee is responsible for determining whether an amendment has tax implications.
- (iv) The Central Bank shall approve an amendment to the TD&R within sixty (60) days of receiving all required documents.
- (v) A copy of the receipt from the Central Bank showing payment of the appropriate registration fee.

Rationale

There is room for improved efficiency in the regulatory approval of amendments²⁴. A risk based approach can be effective, but only if properly enforced. The approach suggested here will be carefully monitored to ensure that pension plan members' interests are well protected.

4.4 Reporting to the Central Bank

The Proposals

- a) The Inspector will have no discretion with respect to the administration of the OPPIA regarding deadlines that are proposed in this section except for instances where a person is unable to comply with the prescribed time limit because of circumstances beyond his control. Such circumstances include, but are not limited to, the occurrence of events such as hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like. Where such circumstances arise, the Inspector may grant an extension of time as may be reasonably sufficient to submit the required information.

²³ There would be duplication of efforts if both the Central Bank and the BIR have to independently approve and register such amendments. The BIR can provide clear guidelines with examples about the types of amendments that could be automatically registered by the Central Bank and the types that need tax approval before registration. The trustee must use these guidelines and when in doubt seek advice from the BIR.

²⁴ The Pensions Benefit Standards Act (Canada 1985) Section 11.

- b) A pension plan may be required to furnish information in a particular form and within such period of time as either prescribed or specified by the Central Bank in legislation, regulations or Guidelines, respectively.
- c) Annual audited financials for the pension plan must be filed with the Central Bank within six months of the pension plan's financial year-end²⁵.
- d) Semi-annual returns for the pension plan must be filed with the Central Bank within thirty (30) days after the end of each six (6) month period, that is December and June
- e) Actuarial valuation reports must be done at least once every three years and submitted to the Central Bank within nine months of the statutory date for the actuarial valuation, or with such greater frequency as required by the Central Bank²⁶.
- f) Pension plans that allow affiliated plan sponsors to participate must submit a deed of adherence to the Central Bank within twenty (20) days of the execution of the deed which permits the inclusion of another participating plan sponsor.
- g) A recovery plan must be submitted to the Central Bank within sixty (60) days of the due date of the actuarial valuation report when a pension plan's funding ratio is below 100%.

Rationale

The existing legislative framework is deficient in terms of stipulating reporting requirements to the Central Bank. Sections 61 and 185 of the IA stipulate that trustees are required to submit an actuarial valuation report within nine months of the valuation date. However, there is some ambiguity concerning the time frame for the submission of statutory actuarial valuation reports as although Part II of the IA (sections 10 – 87) does not apply to privately administered pension plans, section 61(2b) states that actuarial valuation reports prepared in accordance with section 185 should be submitted within nine months of the date of inquiry.

The OPPA should therefore make the statutory deadline for the submission of actuarial valuation reports very clear. In this regard, the Central Bank has included, under the Governance section,

²⁵ The IA Section 184 (1) refers. Insurance companies are required to file their annual returns within six months of the end of the financial year (IA 61) and banks registered under the FIA have a comparable timeframe of three months.

²⁶ The Pension Funds Act of South Africa requires submission of audited accounts six months after the end of the financial year (Section 15 (1)).

statutory responsibilities for the plan sponsor to submit the data required by the trustees to comply with the filing requirements above.

The CAPSA principles require the administrator of a pension plan to file information returns, actuarial information for defined benefit (DB) pension plans, and financial information to the regulatory authority within a specified time frame

4.5 External Auditor and Actuary to Report to the Central Bank

The Proposals

- a) It is proposed that the auditor be required to report in writing, to the Central Bank any of the following irregular transactions or conditions that have come to their attention in the ordinary course of their duties:
 - (i) Any change in the accounting policy, or any presentation of, or any failure to present, facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the pension plan;
 - (ii) Any contravention of the pension plan's TD&R;
 - (iii) Transactions of an irregular nature that have significant or material impact on the pension plan's financial position;
 - (iv) Transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardize the pension plan's financial viability;
 - (v) Transactions between the pension plan and the plan sponsor; that have the potential to jeopardize the meeting of pension benefits' obligations;
 - (vi) Transactions or conditions indicating that a trustee has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize the financial viability of the pension plan;
 - (vii) Transactions or conditions which contravene any provisions of the new OPPA or any regulation made there under; and

- (viii) Any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section.
- b) During the ordinary course of his duties the actuary is required to report in writing, to the Central Bank on any issue which meets one or more of the following criteria where:
 - (i) Major recommendations made by the actuary are not being followed by the relevant stakeholder;
 - (ii) Transactions or conditions which contravene any provisions of the OPPA or any regulation made thereunder relating to on-going funding requirements are executed;
 - (iii) Any contravention of the pension plan's TD&R which the actuary identifies;
 - (iv) Any other transactions or conditions which in the opinion of the actuary should be included in a report under this section.
- c) The Central Bank will investigate all reports made under (a) and (b) which were identified by the actuary and auditor.
- d) It is also proposed that where the auditor and actuary have received a request in writing from the Inspector with regards to any such matter specified under the law, that the auditor and actuary should be required to report such findings to the Inspector. The Inspector shall share such findings with the plan sponsor, trustee or management committee as appropriate.
- e) No contractual duty which an external auditor or actuary may have shall be regarded as being contravened for communication in good faith to the Central Bank, concerning any information to which this section applies.
- f) Auditors of a pension plan must be a practising member in good standing with the Institute of Chartered Accountants of Trinidad and Tobago (ICATT) or such other professional association of auditors as the Central Bank may approve.

Rationale

The Central Bank's main source of information relating to a pension plan should be the trustees and where applicable, the management committee. However, auditors and actuaries have an important

function and should be able to identify and report on unusual events to the Central Bank in order to ensure that the Central Bank can take the appropriate action, where necessary.

5 GOVERNANCE OF PENSION PLANS

One of the objectives of the Central Bank is to promote good governance and the proper administration of pension plans. As such, it is proposed that the OPPA specify roles and responsibilities of pension plans to treat with governance, risk management and administration of pension plans.

The proposals pertaining to the governance of pension plans and the roles and responsibilities carved out for trustees, management committees and plan sponsors have been guided by the following considerations:-

- a) Corporate trustees are experienced financial professionals responsible for significant aspects of the daily functioning of the pension plan.
- b) The existing legislation is silent on the duties of the management committee and the corporate trustee, resulting in a lack of clarity regarding their respective roles. The management committee comprises representatives from the plan sponsor and members (including pensioners). These parties have an interest in the effective management of the pension plan and are in the best position to oversee the performance of the corporate trustee and ensure the assets of the pension plan are being invested appropriately.
- c) The current legislation does not address certain potential conflicts of interest that may arise from the selection of a corporate trustee and investment manager within the same financial group. Consequently, the OPPB would require a corporate trustee to consult with the management committee in terms of selecting and approving an investment manager and other service providers. Further, the management committee should be required to review the performance of the pension plan, in particular the investments from time to time.
- d) Actuaries, auditors and investment managers play important roles in the operation of the pension plan and their responsibilities should be encapsulated in service agreements or contracts. Trustees will be held accountable for their performance (see below for details).

- e) The role of the plan sponsor is not currently defined in the Insurance Act. However, the Central Bank acknowledges that the plan sponsor has a significant role in the administration of the pension plan and communicating with plan members and beneficiaries. As a result the OPPIA will stipulate duties for the plan sponsor.

The Proposals

5.1 Structure of Pension Plans

The 1969 Draft Regulations and Section 30 of the Income Tax Act require all pension plans to have one of the following:

- A corporate trustee AND a management committee; *or*
- A board of trustees comprising a minimum of three individual trustees²⁷.

The new OPPIA would require that this structure be maintained.

5.2 Composition of the Management Committee and the Board of Trustees

5.2.1 Each management committee and board of trustees must comprise:

- a) At least one plan sponsor representative;
- b) A pensioner representative when the number of pensioners exceeds 25% of active member cohort. *A deferred pensioner may act as the pensioner representative;*
- c) At least one representative of active members elected by them. If there are no active members the management committee must have a minimum of two (2) pensioner representatives and one plan sponsor representative;
- d) A Chairman and Secretary, not necessarily selected from a – c above.
- e) Alternate management committee members should also be appointed or elected as appropriate to act for each management committee member and their duties should include attending

²⁷ All pension plans with individual trustees must comply with the Fit and Proper requirements outlined in this policy proposal document (Appendix IV).

meetings, voting and making decisions in the event that the management committee member is absent or unavailable.

5.2.2 The TD&R of each pension plan must clearly specify the composition, terms of appointment and removal of, management committee members or individual trustees.

5.3 Duties of the Plan Sponsor

The plan sponsor is responsible for:

- a) Communicating any changes to the pension plan's TD&R to members and beneficiaries.
- b) Communicating both current and new benefits to members.
- c) Ensuring that communication with pension plan members and beneficiaries is carried out in accordance with the pension plan's TD&R and legal requirements.
- d) Appointing a corporate trustee or ensuring that a properly constituted board of trustees is in place, as appropriate.
- e) Ensuring that a proper and functional management committee is in place including company and member representatives and their alternates, as appropriate.
- f) Providing the trustee with any plan member data that it requires to carry out its functions. This includes the date of departure, if a plan member is leaving the pension plan.
- g) Establishing a date or dates with the trustee that is within sixty (60) days of the valuation date, for the delivery of data to the actuary.
- h) Establishing good record-keeping and systems to facilitate compliance with the stipulated timeframes for submission of data. *The plan sponsor may delegate the responsibility of maintaining data to a third party. However, ultimate responsibility rests with the plan sponsor.*
- i) Paying over to the trustee, all employee and plan sponsor contributions within twenty (20) days of the end of the month in which deductions were made.

- j) Remitting to the trustee or custodian, all payments that are due or have accrued where a pension plan is being wound up.
- k) Providing benefit statements at least triennially to active members of DB plans and annually for active members of DC plans.
- l) Providing exit statements to leavers.
- m) Notifying the Central Bank within five (5) days of any bankruptcy or liquidation proceedings.
- n) Providing the management committee and board of trustees with adequate resources to allow them to fulfill their mandate.
- o) Ensuring that the management committee members and board of trustees receive on-going training at least annually, as stipulated in the pension plan's TD&R.
- p) Providing plan members (on request) with the annual report prepared by the trustees.

5.4 Duties of the Management Committee

The management committee is responsible for:

- a) Overseeing, in conjunction with the corporate trustee, the assets of the pension plan. This will include:
 - i. ensuring that the assets of the pension plan are invested in accordance with the requirements and restrictions as may be prescribed in the Statement of Investment Policy (SIP) and investment limits prescribed in law;
 - ii. reviewing reports on the performance of the pension plan's investments provided by the corporate trustee or investment manager at least quarterly;
 - iii. meeting with the trustees and/or investment managers at least annually to review the investment performance; and
- b) It is further proposed that where the management committee does not possess the requisite skills to perform the duties required in 5.4 (a) (i) to (iii) above, the management committee must

retain the services of an investment advisor or other skilled professional to assist in carrying out its mandate.

- c) Establishing and documenting policies and procedures for the effective operations and administration of the pension plan which **at a minimum** address:
 - (i) Conflicts of interest: This policy must include provisions addressing investment in the shares of the pension plan in the corporate trustee's group of companies, such investments in related parties should not exceed the limit of 10% to a single related party or all related parties; and
 - (ii) Claims and/ or disputes: This policy must detail a dispute resolution procedure which is consistent with the TD&R and the legislation.
- d) Meeting at least quarterly, or at such greater frequency as the management committee may determine, to discuss matters relating to the administration of the pension plan and investment of the funds. Each meeting of the management committee must have minutes and the minutes must be maintained by the secretary of the management committee.
- e) Management committee members (including their alternates) and individual trustees must submit to the Central Bank by January 31st of each year, key personnel information in a format specified by the Central Bank. The submission should provide details of the training received by Management Committee members and individual trustees in the previous year.
- f) Such other duties and functions as the Central Bank may specify.

5.5 Duties of the Corporate Trustee

The corporate trustee shall be the legal owner of the assets with responsibility for:-

- a) Selecting the asset custodian as required²⁸.
- b) Selecting the actuary, investment manager and auditor in consultation with the management committee.

²⁸ The corporate trustee may act as custodian if desired.

- c) Developing the SIP (with the advice of the actuary and in consultation with the plan sponsor, management committee and investment manager) and reviewing it at least annually.
- d) Ensuring funds are invested in accordance with the SIP and any laws and Regulations pertaining to investment of the pension plan assets.
- e) Ensuring the investment manager complies with the SIP by routine monitoring of the performance of pension plan investments of the investment reports submitted by the investment manager.
- f) Ensuring the TD&R's compliance with legislation.
- g) Ensuring the pension plan is being administered in accordance with the pension plan provisions and legal requirements.
- h) Providing the Central Bank with all information required from the service providers of the pension plan, where appropriate.
- i) Submitting amendments of the TD&R to the Central Bank and the BIR for registration and approval.
- j) Ensuring that where the pension plan is in deficit the actuary prepares a recovery plan for submission to the Central Bank.
- k) Monitoring the monthly remittance of members' and plan sponsor's contributions within twenty (20) days of the end of the month to which the contributions relate and reporting to the Central Bank, any material negative variances or missed contributions in the previous quarter within twenty (20) days of the end of each quarter.
- l) Ensuring the orderly wind-up of the pension plan. This will include depositing any monies belonging to members and beneficiaries which have not been claimed after five (5) years, with the Central Bank. The Central Bank will place these monies in the Consolidated Fund. It should be noted that once the trustees have deposited the monies with the Central Bank their liability to the pension plan will be extinguished²⁹.
- m) Ensuring that the actuary has access to necessary information and is made aware of developments that might materially affect the actuarial valuation.
- n) Submitting the actuarial valuation report to the Central Bank and the management committee no later than nine (9) months after the valuation date.

²⁹ The details surrounding this process will be specified in a guideline.

- o) Submitting audited financial statements and supervisory returns to the Central Bank in the requisite timeframes.
- p) Submitting investment reports provided by the investment manager, to the management committee as required but at least on a quarterly basis.
- q) Communicating with members and beneficiaries where the plan sponsor is no longer operating or the plan is being wound up.
- r) Preparing a statement to exiting plan members indicating:
 - (i) the value of a member's deferred pension benefit;
 - (ii) a member's transfer in/out value from/to another approved pension plan or annuity product;
 - (iii) The value of a member's refund if the member is not yet vested.

This statement must be provided within twenty (20) days of the date that the member gave notice of exit.

- s) Preparing an annual report to plan members and beneficiaries which should include:
 - (i) a summary of the latest financial statements and actuarial valuation report;
 - (ii) details of any changes since the last report was issued; and
 - (iii) any changes in the composition of the management committee and individual trustees, where applicable.

5.6 Duties of Individual Trustees

Where a pension plan has a board of trustees, comprising individuals, its duties will be the combined responsibilities of the management committee and corporate trustee.

5.7 Fit and Proper Requirements³⁰

The Proposal

- a) The board of trustees and the management committee (including alternate MC members) are required to be fit and proper³¹.
- b) The Central Bank, in order to assess the on-going fitness and propriety of the individual trustees and management committee members, will require members of the board of trustees, the management committee (including alternates) to submit annual attestations of their fitness and propriety by January 31st of each calendar year in the form specified by the Central Bank. The form of this annual attestation will be specified in a Guideline.

5.8 Selection of Investment Managers

The Proposals

- a) Local and foreign investment managers must be fit and proper.
- b) A local investment manager will be considered fit and proper if it is:
 - (i) An institution licensed under the FIA; or
 - (ii) An insurance company registered under the IA.
- c) A foreign investment manager must be licensed and regulated in its home jurisdiction.
- d) Criteria by which a Regulator will be considered 'satisfactory' will include whether the Regulator:
 - (i) adheres to international standards regarding regulation and supervision,
 - (ii) conducts on- site supervision,
 - (iii) imposes prudential and other reporting requirements on the entity,

³⁰ Appendix IV (A) details fit and proper requirements for corporate trustees, individual trustees and management committee members. In addition, Appendix IV (B) details knowledge requirements for the board of trustees and management committee as a collective body and as individuals.

³¹ A corporate trustee must be either an institution licensed under the FIA or registered with the TTSEC and therefore would be subject to on-going fit and proper assessments.

- (iv) is not from a jurisdiction that is subject to sanctions,
 - (v) is not from a jurisdiction that appears on a list of countries that either do not or insufficiently comply with international standards applicable to regulation and supervision and/or AML/CFT.
- e) The Central Bank will issue circulars as appropriate regarding 5 (i to v) above.
- f) Where a trustee is seeking to appoint a foreign investment manager, the Central Bank should be notified within seven (7) days of such appointment being made and receive all relevant documentation pertaining to the appointment. If the Central Bank does not object within ten (10) days of receiving the notification, the trustee may proceed to engage the foreign investment manager. It should be noted, however, that a de facto no objection does not prevent the Central Bank from objecting in a later period if matters come to its attention that indicates that the foreign investment manager is not fit and proper.
- g) The TD&R must provide policies and procedures for the selection of fit and proper persons/companies as trustees, management committee members, investment managers and investment advisors as well as for their removal where necessary. The TD&R must also indicate the mechanism for the selection of such persons.

Rationale

The proposals seek to ensure that persons responsible for the operations, administration and investments of the pension plan are fit and proper and capable of performing their duties. The proposals also seek to ensure that there is sufficient oversight of these persons. As such the proposals require local investment managers to be licensed under the FIA and local investment advisors to be registered by the TTSEC. Similarly, foreign investment managers and advisors must meet the criteria specified by the Central Bank.

5.9 Content of the Trust Deeds and Rules (TD&R)

It is proposed that the requirements outlined in the Fourth Schedule of the IA be incorporated into and strengthened in the new OPPA. It is proposed that the TD&R of a registered pension plan should include at a minimum:

- a) Provisions on the following matters:
- i) the whole of the objects for which the pension plan is established;
 - ii) the effective date of the pension plan;
 - iii) the early, normal and late retirement ages;
 - iv) the criteria for selection and terms of appointment and removal of trustees, investment managers, auditors, actuaries and other service providers;
 - v) the vesting in the trustees of all property belonging to the pension plan;
 - vi) the conditions under which members' benefits become vested;
 - vii) the protection of the vested rights of members to the pension plan;
 - viii) portability options and mechanisms;
 - ix) a requirement for all assets of the pension plan are to be held in the name of the trustees³² or its agents;
 - x) employee contribution rates and criteria including provisions related to additional voluntary contributions;
 - xi) the conditions under which a person may become a member of or cease to be a member of a pension plan;
 - xii) the types of benefits payable under the pension plan (e.g. death in service, pension to spouse/ dependants, early retirement, ill health etc.) and the methods used to calculate and increase these benefits; and
 - xiii) the preparation of all statements of accounts, balance sheets and reports required by the OPFA.
- b) Communication with pension plan members including, but not limited to providing:
- i) every member with the location of and if requested access to a copy of the TD&R of the pension plan and of all amendments thereof, the annual report prepared by the trustees

³² Assets may be held on behalf of the trustee in nominee accounts

- and the latest statements of accounts, balance-sheets and actuarial valuation report prepared in accordance with the requirements of this OPPA upon request;
- ii) every member with benefit statements, exit statements and any other disclosure requirements; and
 - iii) for the settlement of disputes with members.
- c) A Statement as to whether the plan sponsor or the pension plan is responsible for providing indemnification in the form of liability insurance to persons serving as management committee members and individual trustees for any action done in good faith in the execution or intended execution of a duty or authority under the Act or any Regulations made thereunder.
 - d) The circumstances in which the pension plan may be wound up and the method used to secure the benefits of the members on wind up;
 - e) The deposit of monies belonging to plan members and beneficiaries which have not been claimed after five (5) years (to the date in which notification of wind up was published), with the Central Bank.
 - f) The procedure(s) to be followed when appointing and removing persons to the management committee and board of trustees and the manner in which such persons can be removed;
 - g) Stipulations on whether the pension plan or the plan sponsor will bear the costs of the following requirements under the OPPA:
 - i. the costs associated with the winding up of the pension plan;
 - ii. administrative expenses including the payment of the Supervisory fees in accordance with the Central Bank's (Payment of Supervisory Fees and Charges) Regulations 2011;
 - iii. the requests by the Central Bank for the provision of a revised actuarial valuation report;
 - iv. requests by the Central Bank for information from the actuary and auditor;
 - v. provision of training to management committee members and individual trustees (at least annually); and

- vi. the replacement of the corporate trustee and the appointment of a new corporate trustee by the Central Bank.
- h) The method by which the TD&R may be amended, including the extension of pension plan benefits to associated or subsidiary employers;
- i) The stipulated tenure and the details of the composition, quorum, election and demission of office of individual trustees, where applicable;
- j) Training of management committee members (at least annually); and
- k) Treatment of surplus and deficits on an on-going basis and on wind up, whether full or partial.

Rationale

All registered pension plans in Trinidad and Tobago are required to be established under an irrevocable trust. The TD&R is the main legal document of the pension plan and it facilitates the creation of this irrevocable trust. As such, the TD&R, must include certain provisions which guide the governance and administration of the pension plan. Plan sponsors are given the discretion to specify the details as they relate to plan sponsor's commitment and undertaking to the pension plan. Furthermore, the trustees use this document to guide their decisions and actions.

A requirement for pension plan documents to specify how certain matters such as surplus will be dealt with may reduce the need for costly action such as bringing the matter to the court for decision.

6 PRUDENTIAL REQUIREMENTS

This section proposes prudential requirements for the safe and sound operations of pension plans and covers the following topics:-

- Actuarial valuations;
- Recovery plans for pension plans with funding ratios below 100 percent; and
- Investment of pension plans assets.

6.1 Actuarial valuations

- a) Actuarial valuations must be performed at intervals of not more than three years. Intervals referred to are the periods between valuation dates. With respect to pure DC³³ pension plans the actuary will not be required to perform actuarial valuations; however, the trustees will be required to submit a letter certifying that the pension plan is a pure DC plan.
- b) The submission of triennial actuarial valuation reports which were required at effective valuation dates within 9 months of the effective date of a wind up will be waived.
- c) The trustees must ensure that actuarial valuation reports are submitted to the Central Bank and the management committee no later than 9 months after the valuation date.
- d) The actuarial valuation and report must be prepared in accordance with:
 - (i) standards of acceptable actuarial practice issued by the Caribbean Actuarial Association (CAA). If there are no applicable standards published by the CAA the standards published by the professional body that awarded the actuary his accreditation must be used; and
 - (ii) the relevant provisions of OPPA, Regulations and Guidelines issued by the Central Bank and give due consideration to the plan's statement of investment policies.
- e) During the review of an actuarial valuation report the Central Bank may request additional information from the trustee to facilitate the adequate assessment of the report. However, the Central Bank reserves the right to contact the actuary directly. In cases where the actuary directly receives a request for information the trustees will be copied on the correspondence. The TD&R must stipulate who (the Central Bank being an exception) would bear the cost of providing the Central Bank with additional information.
- f) If after reviewing the actuarial valuation report the Central Bank has issues or concerns regarding any matter related to the valuation, the Central Bank may address such in writing to the trustees.

³³ A "pure defined contribution plan" is defined in the glossary and refers to a plan that is not exposed to actuarial risk.

- g) Where the Central Bank is not satisfied with the responses provided by the trustee or is not satisfied that the valuation was prepared in accordance with actuarial standards or any Regulations prescribed) the Central Bank may:
- (i) request a meeting with the trustee and/or actuary;
 - (ii) require the trustee to submit a revised actuarial valuation report; or
 - (iii) instruct the trustee to employ a different actuary to prepare an actuarial valuation and file a new actuarial valuation report, taking into account the matters specified in the Central Bank's directions.
- h) Where the Central Bank exercises its right under g) above, the TD&R must stipulate who (the Central Bank being an exception) would bear the cost of the revised actuarial valuation.
- i) The Central Bank may request more frequent actuarial valuations in response to changing circumstances, if deemed necessary. Where the Central Bank requires more frequent actuarial valuations or a new actuarial valuation pursuant to g) above, the Central Bank will provide the trustees with its reasons for such requests.

6.2 Recovery plan

- a) When a pension plan's funding ratio is below 100%, the trustee must submit to the Central Bank for approval a recovery plan prepared by the actuary. The recovery plan must be submitted within sixty (60) days of the due date of the actuarial valuation report.
- b) If after twenty (20) days of submission of the recovery plan, the Central Bank raises no objection to its contents, the pension plan should consider the recovery plan approved.
- (i) However, where the Central Bank objects to the recovery plan within the twenty (20) day period, the Central Bank will indicate a date for resubmission of the recovery plan to the trustee.
- c) When a pension plan has submitted a recovery plan and it is approved, the plan sponsor must fund the pension plan at least as rapidly as required by the recovery plan.
- d) A recovery plan must set out –

- (i) a schedule of special contributions to be paid by the plan sponsor to amortize the funding deficit;
 - (ii) the date when the funding deficit is expected to be eliminated;
 - (iii) the date at which the recovery plan was prepared; and
 - (iv) if the recovery plan is being revised, the date at which it was last revised and the reasons for any revisions.
- e) The period for amortization of a funding deficit must not exceed ten (10) years from the valuation date.
- f) A recovery plan shall be considered discontinued when the funding ratio equals or exceeds 100%. The actuary must provide the actuarial valuation report as support.
- g) A recovery plan must be revised when the deficits determined by an actuarial valuation are greater than the present value of outstanding future special contributions under the existing recovery plan.
- h) A revised recovery plan must not extend beyond the period within which a previously identified deficit is to be funded. Consolidation of deficits will be allowed once the actuary can demonstrate that the original schedule has not been extended by consolidation.
- i) Where the Central Bank is not satisfied that the revised recovery plan is in accordance with the provisions set out in this section the Central Bank may take any such action as is allowed under the OPPA, to ensure that an adequate recovery plan is submitted for approval.

Rationale

The Central Bank recognizes that funding shortfalls may occur. The OPPA would seek to address such shortfalls by requiring a recovery plan. Pensions are, by their nature, long-term obligations and trustees are responsible for the management of pension plans. Going concern funding requirements reflect this perspective. Requiring a going concern deficit to be funded over 10 years, as well as, not extending the period for funding existing deficits is in line with international best practices. The following example depicts how we expect deficits to be funded: If a valuation at date X sets a 10 year contribution schedule to fund the deficit and three years later at the next valuation the actuary discovers that these contributions set out in the original recovery plan will not be sufficient then the employer pays:

- The existing contributions required from the first recovery plan over the next 7 years of the initial 10 year period; and
- further contributions determined by a new recovery plan to fund the balance of the deficit discovered at this valuation over the next 10 years.

While the Central Bank would prefer that the recovery plan be submitted at the same time as the actuarial valuation it is recognized that there may be a need for consultation between the plan sponsor, trustees and actuaries on the finalization of such a plan. Therefore, time will be allowed for the plan to be submitted after the actuarial valuation report is submitted.

6.3 Investment of the Plan's Assets

- a) For self-administered pension plans, the assets must be separated from the assets of the plan sponsor, custodian, investment manager and trustees. The assets must be held in the name of the trustees or the trustee's agents for the benefit of the pension plan.
- b) Trustees and investment managers are required to undertake all investment transactions at arm's length, with rates and terms comparable to those available in the market for similar investment transactions.

6.4 Permissible Asset Classes

Details of permissible asset classes for pension plans will be further detailed in Asset Regulations to be made pursuant to the OPPA. However, in summary a pension plan may invest in the following classes of assets:-

- a) Cash deposits in any institution licensed under the Financial Institutions Act, 2008.
- b) Bonds, debentures, or other similar evidence of indebtedness:-
 - (i) of, or guaranteed by, the Government of Trinidad and Tobago;
 - (ii) subject to local assets ratio limits, with an investment grade rating from a credit rating agency recognized by the Central Bank of Trinidad and Tobago, which is issued or guaranteed by a sovereign state other than the Government of Trinidad and Tobago which

said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the investment. Where the bond falls below investment grade the pension plan will be afforded a period of three (3) months to six (6) months to unwind its position;

(iii) in state owned enterprises or other body without share capital established and empowered pursuant to a statute of Trinidad and Tobago and payable in Trinidad and Tobago dollars;

(iv) of a CARICOM sovereign state which does not have an investment grade rating from a credit rating agency recognized by the Central Bank subject to local assets ratio limits.

(v) Of or guaranteed by multilateral lending agencies such as-

- The International Bank for Reconstruction and Development (World Bank)
- The Inter American Development Bank
- Caribbean Development Bank
- The International Monetary Fund
- The International Finance Corporation
- Bank for International Settlement
- European Investment Bank
- Any other multilateral lending agency to which Trinidad and Tobago is a party.

with an investment grade rating from a credit rating agency recognized by the Central Bank

(vi) of a company incorporated in Trinidad and Tobago and such bonds, debentures or other similar evidence of indebtedness are fully secured by a charge registered under the Companies' Act upon real estate or upon the plant or equipment or other tangible assets of the company used in the transaction of its business.

c) The fully paid ordinary shares or preferred shares in a: -

(i) company incorporated in Trinidad and Tobago;

(ii) foreign companies listed on a recognized stock exchange in an approved jurisdiction.

d) Units, certificates or other evidence of participation in a collective investment scheme in Trinidad and Tobago or any country approved by the Central Bank up to a limit of 10%.

- e) Mortgages or other titles for repayment of loans secured by real estate or leaseholds in Trinidad and Tobago, not exceeding 50%.
- f) Real estate or leaseholds in Trinidad and Tobago, not exceeding 30% of the value of the assets of the pension plan.
- g) Repurchase agreements whose underlying securities are listed among the permissible assets. These agreements must be collateralized and the reporting entity must receive collateral equal to 105% of the securities sold under the agreement.
- h) Deposit administration contracts and annuities with insurers registered under the Insurance Act.
- i) Derivatives for hedging purposes.
- j) Other investments which are not listed as prohibited or inadmissible in an aggregate amount not exceeding the lesser of ten percent of its assets.

6.5 Investment Limits and Restrictions

Notwithstanding the permissible assets classes specified in section 6.4, quantitative limits and restrictions have been placed on some categories of assets in order to limit the plan's exposure to such assets. For the application of quantitative investment limits, pension plan assets must be valued and reported in accordance with International Financial Reporting Standards (IFRS).

It should also be noted that the requirements detailed under this sub-section may be placed in Regulations to the OPPA.

The following limits will apply:

- a) A pension plan may invest up to 50% of its assets in equities.
- b) A maximum of 10% of the portfolio of a pension plan may be invested participations in a collective investment scheme.
- c) A pension plan would be required to invest a minimum of 75% of its assets in instruments issued in Trinidad and Tobago.

- d) The ratio of any one mortgage to total assets will be limited to a maximum of 10%. The ratio of total mortgages to total assets will be limited to 50%. The large exposure limit will apply to mortgages and the maximum loan to value ratio will be 90% for mortgages with indemnity insurance and 80% for mortgages without it.
- e) A pension plan shall not, invest in or loan its funds upon the security of, or hold (a) securities issued by an insolvent corporation; (b) any investment or security which in the opinion of the Inspector was designed to evade any prohibitions of these regulations.
- f) No trustee may invest the assets of a pension plans in the equity, debentures or other evidence of indebtedness of the employer or any subsidiary or associate of the employer or of any company of which the employer is a subsidiary or an associate, other than for:
 - (i) investments in mutual funds with exposures to the employer or any subsidiary or affiliate of the employer;
 - (ii) government securities where the employer is a Statutory Board or Corporation or is wholly owned or majority owned by the Government of Trinidad and Tobago; and
 - (iii) deposits where the employer or any subsidiary or affiliate of the employer is a financial institution licensed under the FIA.

6.6 Counterparty Exposure Limits

- a) A maximum of 25% of the assets of a pension plan may be invested in any one counterparty or group of counterparties.
- b) A maximum of 10% of the assets of a pension plan may be invested in any one connected party.

6.7 Exemptions from Large Exposure Limits

- a) Deposits with licensed financial institutions and pension plans invested under deposit administration contracts will not be counted against the large exposure limit.

- b) The following credit exposures will not be counted against the large exposure limit:
- (i) Credit exposures which are fully guaranteed by the Government of Trinidad and Tobago that is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;
 - (ii) Credit exposures which are fully guaranteed by a sovereign state, other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency recognized by the Central Bank, which said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question, but which exposure is subject to the local assets ratio limit;
 - (iii) Credit exposures which are fully secured at all times by cash in Trinidad and Tobago dollars or other currencies readily convertible to Trinidad and Tobago dollars, delivered to the registrant and placed with it in a pledged special account; for a period of less than one month and fully secured by investments that are investment grade, as rated by a credit rating agency recognized by the Central Bank, so, however, that the trustee shall give the Central Bank prior notice of such exposure being incurred.

6.8 Local Assets Ratio

- a) A pension fund must invest at least 75 percent of the value of the fund's assets in assets originating in Trinidad and Tobago.
- b) For the purpose of subsection a), assets not exceeding ten percent of the fund's assets shall be deemed to be assets originating in Trinidad and Tobago where such assets originate from any of the member states of the Caribbean.

6.9 Statement of Investment Policies

- a) The trustee of every pension plan will be required to develop a Statement of Investment Policy (SIP). This document should be developed in consultation with the management committee, the plan sponsor, the investment manager and the actuary.

- b) The SIP must at a minimum be consistent with any investment restrictions and limitations prescribed in law or regulations.
- c) The minimum content of the SIP would include inter alia the following:
 - (i) the responsibilities of the management committee, trustee, investment manager, and the plan sponsor with respect to the investments of the pension plan;
 - (ii) the nature of the pension plan's liabilities;
 - (iii) the key risks that the pension plan faces and strategies to mitigate these risks;
 - (iv) the investment objectives and specific investment goals of the pension plan, as well as performance targets;
 - (v) statutory asset class and concentration limits;
 - (vi) permissible asset classes and desired asset class weights;
 - (vii) the policies and procedures for rebalancing the portfolio;
 - (viii) if any or all of the investments are outsourced, the criteria by which external asset managers and investment funds are selected;
 - (ix) reporting and monitoring requirements, both on a retrospective and prospective basis;
 - (x) the policies and procedures for identifying and resolving conflicts of interest that might arise in connection with the investment of the pension plan's assets; and
 - (xi) a requirement for annual review of the SIP and any revisions if appropriate.

Rationale:

OECD Pension Principles and Methodology Core Principle 5 on Asset Management states that:

“Investment by pension plans should be adequately regulated. This includes the need for an integrated assets/liabilities approach, for both institutional and functional approaches, and the consideration of principles related to

diversification, dispersion, and maturity and currency matching. Quantitative regulations and prudent-person principles should be carefully assessed, having regard to both the security and profitability objectives of pension plans. Self-investment should be limited, unless appropriate safeguards exist. Investment abroad by pension plans should be permitted, subject to prudent management principles.”

As such the Central Bank deems it necessary that the pension industry is prudentially regulated in terms of the investments it undertakes in order to provide diversification, dispersion and proper risk management. A permitted list of assets in which the pension plan will be allowed to invest is one aspect of such regulation accompanied by limits to the quantities in which pension plans can be invested. It should be noted that the permissible asset classes and quantitative investment limits for pension plans should **solely** apply to self-administered pension plans.

7 WIND UP OF PENSION PLANS

This section seeks to present legislative proposals for the wind up of an occupational pension plan in Trinidad and Tobago with specific focus on the following issues:

- Regulatory order to wind up a pension plan
- Procedure for the wind up of a pension plan by the Central Bank
- Right of appeal
- Voluntary dissolution of a pension plan
- Timelines for the wind up of a pension plan
- Application of pension plan assets on the wind up of a pension plan
- Communication with members
- Liability and Surplus in wind up
- Liability of plan sponsor on the wind up of a pension plan

In these proposals, “wind up” means in relation to a pension plan, the distribution of the assets, and surplus assets, of the pension plan after the pension plan is terminated partially³⁴ or in full.

³⁴ A partial wind up means the termination of part of a pension plan and the distribution of the assets of the pension plan related to that part of the pension plan.

There are three very important dates that should be clearly defined in any wind up process:

- the date the plan sponsor gives notice to wind up the pension plan;
- the date the benefits stop accruing in the pension plan or the effective date of wind up; and
- the date on which benefits are secured by the wind up.

7.1 Regulatory order to wind up a pension plan

The Central Bank may order the wind up of all or part of a pension plan in the following circumstances, or in any other circumstance as may be prescribed in regulations:

- a) if the plan sponsor, either local or foreign becomes insolvent or bankrupt (as defined in any bankruptcy and insolvency laws) or discontinues its operations in Trinidad and Tobago;
- b) if there has been a cessation, suspension or shortfall of the plan sponsor's or employees' contributions required by actuarial advice or the TD&R ;
- c) if there is a failure to pay benefits by the trustee in accordance with the TD&R.

Rationale

The Central Bank must have the power to mandate the wind up of a pension plan that can no longer meet its obligation to its members in any of the above mentioned circumstances. The power to wind up will also allow the Central Bank to ensure that the wind up is being conducted in accordance with the legislation and the TD&R.

The Central Bank should have the power to order the wind up of a pension plan in cases where the plan sponsor is unable to meet its obligations, for example in cases where there are issues of non-compliance related to funding and solvency.

7.2 Procedure for the compulsory wind up of a pension plan by the Central Bank

- a) In the case of the above mentioned circumstances where the Central Bank orders the wind up of all or part of a pension plan, the Central Bank must give written notice of its intention to wind up the pension plan to the plan sponsor, trustee and management committee specifying the grounds upon which the Central Bank proposes to wind up the pension plan and the effective

date of wind up. The trustees have fifteen (15) days to make representation on behalf of the pension plan to the Central Bank. If the Central Bank does not agree with the position presented on behalf of the pension plan, it will proceed with the execution of the wind up proceedings except where the trustees (on behalf of the pension plan) appeals the decision to wind up the plan with a Judge in Chambers. The executed wind up notice³⁵ will indicate the new effective date of wind up and the grounds under which the order was made. The effective date of wind up must not be later than sixty (60) days after the final notice is received.

- b) On the direction of the Central Bank the trustee will place a written notice of an order to wind up in the daily newspapers and the Gazette for a minimum of ten (10) days.
- c) Where the Central Bank orders the wind up of a pension plan, the Central Bank has the power to appoint a trustee to replace the pension plan's existing trustee. The Central Bank will give due consideration in invoking such power.
- d) The cost of the wind up, including if the Central Bank appoints a new trustee is to be paid in accordance with the pension plan's TD&R. Where the TD&R is silent on the costs of a wind-up, such costs shall be paid out of the pension plan.
- e) The trustee must prepare and provide the Central Bank with a preliminary wind up report no later than one year from the date notice to wind up the pension plan was given.
- f) The trustees shall prepare a preliminary wind up report setting out the details laid out below:
 - (i) The most recent audited financial statements and a statement providing an estimate of the value of assets as at the wind up date;
 - (ii) A copy of the most recent actuarial valuation, if such valuation has not yet been submitted to the Central Bank;
 - (iii) Expected timetable for the completion of the wind up process;
 - (iv) The manner in which the wind up benefits are to be secured, e.g. by the purchase of annuities, or by the transfer of assets to another registered pension plan;
 - (v) Planned application and treatment of any surplus or deficit on wind up;

³⁵ The effective date is the date after which members no longer earn benefits under the pension plan scheme

- (vi) Copies of all information or communication provided or proposed to be provided to members and beneficiaries about the proposed wind up.
- g) The Central Bank will review and approve the preliminary wind up report within sixty (60) days. If the Central Bank does not object to the preliminary wind up report submitted by the trustee within this stipulated time frame the preliminary wind up report may be deemed approved.
- h) If the Central Bank is not satisfied with the preliminary wind up report the trustee will be notified and may be required to resubmit the report within twenty (20) days of receiving the notification that the Central Bank was not satisfied with the report. In this case, the Central Bank will have an additional sixty (60) days after the new report is re-submitted to approve the report.
- i) The Central Bank may require the trustee to submit annual progress reports. Where requested, the trustee shall submit the progress report within twenty (20) days of receiving the request to submit same to the Central Bank.
- j) Once the trustee has fulfilled the requirements of the approved preliminary wind up report the trustee will submit a DRAFT final wind up report to the Central Bank.
- k) The Central Bank will review and approve the DRAFT final wind up report within sixty (60) days. Once the Central Bank approves the DRAFT final wind up report the trustee shall purchase the annuities or transfer the assets of the pension plan to another pension plan. If the assets are being transferred to another pension plan it must be completed within six (6) months of the approval of the DRAFT final wind up report.
- l) After the purchase of the annuities or transfer of the assets the trustee will submit the following to the Central Bank:
 - i) the final wind up report;
 - ii) final audited financial statements stating that the fund has a zero balance;
 - iii) a copy of the wind up actuarial valuation report showing the amounts due to each member or beneficiary, deferred pensioner and pensioner;
 - iv) copies of the relevant pages of the deferred annuities purchased for each member, deferred pensioner and pensioner confirming that the amounts used to purchase the annuities are the amounts stated in the valuation report; and

- v) the certificate of registration (if relevant).
- m) Once the final wind up report is approved and the other documents listed in l) are received the pension plan will be de-registered.
- n) The Central Bank may set out these procedures for the wind up of a pension plan and the details of the wind up report in guidelines or regulations.

Rationale

It is very important that the Central Bank has the power to initiate a compulsory wind up in the cases proposed above. The CAPSA principles also speak of the regulatory authority's power to wind up a pension plan under specific circumstances and outline the manner in which it should take place. Outlining the procedure that needs to be adopted will mitigate against misinformation between the regulator and the trustee regarding the wind up process. It should be noted, that the Central Bank may place the procedural aspects of the wind up procedure in regulations or guidelines.

7.3 Right of appeal

- a) The plan sponsor or the trustees should have the right to appeal an order by the Central Bank to wind up the pension plan.
- b) Such an appeal should be lodged with a Judge in Chambers within **four weeks** of receipt of a Notice to wind up the plan.

Rationale

There must be provisions in place for the governing body of a pension plan to appeal any major decision of the Central Bank. This appeal should be lodged with an independent party within a specified period.

7.4 Voluntary dissolution of a pension plan

- a) The pension plan may be dissolved in such circumstances as may be specified for that purpose in its TD&R and in the manner provided by the TD&R. The assets of the pension plan shall, subject to the said provisions, in that event be distributed in the manner provided by the TD&R.

Similar to mandatory wind up the following procedures which are to be applied during a voluntary wind up, whether partial or otherwise, may be set out in Regulations:-

- b) In the case of a partial wind up, the TD&R of the pension plan should include rules that set out the conditions that would trigger a partial wind up and ensure that all members, former members and other persons eligible for benefits under the pension plan have the same rights and benefits they would have had on a full wind up.
- c) A plan sponsor who has decided to wind up the pension plan in whole or in part must give written notice simultaneously to the Central Bank, trustees and management committee of its intention.
- d) This notice must specify the effective date of and reasons for the wind up. The notice must be published in the Gazette and placed in the daily newspaper for a minimum of ten (10) days.
- e) The date of notice to wind up shall not be later than sixty (60) days before the benefit accrues and contributions cease.
- f) The trustees shall prepare a preliminary wind up report setting out the details laid out below:
 - (i) an up-to-date statement of the value of the pension plan's assets, including details of any uncertainties or significant changes from the most recent audited financial statements of the pension plan;
 - (ii) a copy of the most recent actuarial valuation, if such valuation has not yet been submitted to the Central Bank;
 - (iii) expected timetable for the completion of the winding up of the pension plan;
 - (iv) the manner in which the wind up benefits are to be secured, e.g. by the purchase of annuities or by the transfer of assets to another registered pension plan;
 - (v) planned application and treatment of any surplus or deficit on wind up; and
 - (vi) copies of all information or communication provided or proposed to be provided to members and beneficiaries about the proposed wind up.
- g) The trustee(s) must provide the Central Bank with a copy of the preliminary wind up report no later than one year from the date notice was given of the wind up.

- h) The Central Bank will review and approve the preliminary wind up report within sixty (60) days. If the trustee does not receive any correspondence from the Central Bank within this stipulated time frame the preliminary wind up report may be deemed approved.
- i) If the Central Bank is not satisfied with the preliminary wind up report the trustee will be notified and may be required to resubmit the report within twenty (20) days of receiving the notification that the Central Bank was not satisfied with the report. In this case, the Central Bank will have an additional sixty (60) days after the new report is re-submitted to approve the report.
- j) The Central Bank may require the trustee to submit annual progress reports. Where requested, the trustee shall submit the progress report within twenty (20) days of receiving the request to submit same to the Central Bank.
- k) Once the trustee has fulfilled the requirements of the approved preliminary wind up report the trustee will submit a DRAFT final wind up report to the Central Bank.
- l) The Central Bank will review and approve the DRAFT final wind up report within sixty (60) days. Once approved, the trustee shall purchase the annuities or transfer the assets of the pension plan to another pension plan. If the assets are being transferred to another pension plan it must be completed within six (6) months of the approval of the DRAFT final wind up report.
- m) After the purchase of the annuities or transfer of the assets the trustee will submit the following to the Central Bank:
 - i) the final wind up report;
 - ii) final audited financial statements stating that the fund has a balance of zero;
 - iii) a copy of the wind up actuarial valuation report showing the amounts due to each member or beneficiary, deferred pensioner and pensioner;
 - iv) copies of the relevant pages of the deferred annuities purchased for each member, deferred pensioner and pensioner confirming that the amounts used to purchase the annuities are the amounts stated in the valuation report; and
 - v) the certificate of registration (if relevant).

- n) Once the final wind up report is approved and the other documents listed in g) are received the pension plan will be de-registered
- o) It should be noted that if at any point in the execution of the above process the Central Bank is of the view that the process has not been effectively performed or executed, the Central Bank reserves the right to appoint an independent trustee to take over the process to distribute the wind up benefits of the pension plan in accordance with the pension plan's TD&R. The Central Bank may direct that expenses incurred in connection with the distribution be paid out of the pension plan.
- p) The Central Bank may set out these procedures for the wind up of a pension plan and the details of the wind up report in guidelines or regulations.

Rationale

Even though the rules of the pension plan may provide for the voluntary wind up of a pension plan, it is necessary to address in legislation the steps to be taken and the procedures that should be followed in such a circumstance. The wind up of a pension plan is often fraught with issues of insufficient data and varying interpretations of the requirements of the TD&R. Requiring that wind up procedures are properly documented and executed as stipulated in the OPPA will help mitigate some of the above mentioned challenges.

7.5 Application of assets of pension plan on wind up

- a) All new pension plans must have a priority order for the application of pension plan assets in the event of a wind up stipulated in their TD&R.
- b) Existing pension plans that do not stipulate a priority order for the application of pension plan assets in the event of a wind up must make an amendment to their TD&R to include a priority order.

Rationale

In a situation where the wind up of a pension plan is imminent, all affected parties must have a clear understanding of how the assets of the pension plan will be distributed. Going forward, new and existing pension plans must ensure that a priority order is stipulated in their TD&R.

7.6 Communication with members and beneficiaries during wind up

- a) In any case of a wind up, the trustees of the pension plan must give written notice to its members and beneficiaries. This notice must specify the effective date of and reasons for the wind up and should take the form of a letter sent to all members and beneficiaries and a public notice in the form of an advertisement in the daily newspaper and the Gazette for a minimum of two weeks. The notice must provide the parties with contact information for the trustees of the pension plan.
- b) The public notice must be given within ten (10) days of the date that the trustees receive notice of wind up.
- c) The trustees should issue a progress report to the members and beneficiaries at least every twelve months thereafter.

Rationale

It is very important that all affected parties are notified of an intention to wind up, within a reasonable time frame. This will allow each person entitled to a benefit the opportunity to understand the wind up process and be assured that it is being carried out in accordance with the pension plan's TD&R. Ongoing communication between trustees and pension plan members and beneficiaries will allow members and beneficiaries to be kept abreast of key milestones in the wind up process and alleviate the anxiety which may be created by lack of information.

7.7 Liabilities, Deficit and Surplus in Wind up

- a.) The value of liabilities must be determined by an actuary in accordance with the requirements of the pension plan's TD&R.
- b.) The TD&R of the pension plan must stipulate the course of action which should be taken if a plan is in deficit at the time of wind up.
- c.) Disposal of surplus must be in accordance with the pension plan's TD&R.

- d.) In existing pension plans³⁶ where the TD&Rs are silent on the use of surplus on wind up, the trustee must amend the TD&R to determine the use of surplus. The stated transition period for the amendment of the TD&R will apply.

Rationale

Currently, some pension plans' TD&Rs have rules addressing the use of surplus on wind up. The OPPA will seek to ensure that all pension plans have rules in their TD&R dealing with the use of surplus and addressing a deficit on wind up. However, the trustee must seek the advice of the pension plan actuary in determining the use of the surplus.

7.8 Liability of plan sponsor on wind up³⁷

- a) Upon the wind up of a pension plan, in whole or in part, the plan sponsor shall pay to the pension plan, all contributions required under the terms of the TD&R that have accrued to the date of wind up or partial wind up.
- b) Outstanding contributions are deemed to be the debt of the plan sponsor and rank *pari passu* with employee emoluments³⁸.

Rationale

A pension is a deferred payment and forms part of a contractual arrangement between the plan sponsor and employee. The employee agrees to defer the payment of current wages in exchange for the promise of a future pension payment. The ultimate risk for plan members is the loss of their retirement income and in many cases membership in a pension plan is mandatory. Consequently, the plan sponsor has an obligation to pay outstanding contributions that have accrued to the date of wind up.

³⁶ This refers to plans which are already approved and in operation when the OPPB is passed into law.

³⁷ National Pension Scheme (Occupational Pensions) Act 1998 (Bermuda).

³⁸ This will require consequential amendments to be made in the OPPB to the Company's Act and the Bankruptcy Act (if necessary).

8 TRANSITIONAL ARRANGEMENTS

Table A (below) shows the proposed transitional periods that would be allowed for certain provisions within the PPD. These transition periods will begin on the date that the OPPB is enacted.

TABLE A: Proposed Transition Periods

Clause	Transition period
Prudential Requirements	
<u>Counterparty Exposure Limit</u> Maximum of 10% of the pension plan's assets to be invested in a single counterparty or related counterparties.	2 years
<u>Equity Limit</u> A pension plan may invest up to 50% of its assets in equities	2 years
<u>Collective Investment Scheme Limit</u> A maximum of 10% of the portfolio of a pension plan may be invested in participations in a collective investment scheme	2 years
Development or amendment of the Statement of Investment Policy	1 year
Compliance with all other quantitative investment limits stipulated in section 6 (Prudential Requirements) but not specifically addressed above.	1 year
Governance of Pension Plans	
Provision of benefit statements by the plan sponsor.	1 year ³⁹
Provision of membership booklets by the plan sponsor	60 days
Provision of exit statements by the plan sponsor	60 days
Provision of indemnification insurance for management committee members and individual trustees by the plan sponsor for actions performed in good faith.	1 year

³⁹ Within one (1) year of the enactment of the OPPA benefit statements must be provided, where not previously provided and thereafter every three (3) years.

Clause	Transition period
Development and implementation of documented complaints' policies and procedures by the management committee or individual trustees (as appropriate).	1 year
Development and implementation of a conflict of interest policy by the management committee.	1 year
Compliance with the fit and proper requirements for individual trustees and management committee members.	1 year
Management Committee members acquiring the knowledge requirements stipulated in the Schedule of the OPPA.	6 months
Amendments to the TD&R for all relevant provisions in the OPPB by the trustees.	3 years
Reporting Requirements	
Annual reports prepared by the trustees and made available to plan members by the plan sponsor.	1 year
Submission of actuarial valuation reports to the Central Bank.	1 year
Submission of recovery plans (where applicable) to the Central Bank.	1 year
Semi-annual returns submitted to the Central Bank.	1 year

8.1 The OPPA would not require the re-registration of pension plans already registered under the IA. Pension plans registered under the IA would be deemed to be automatically registered under the OPPA. Pension plans will be registered under the previous IA where applications for registration have been filed before the commencement date of the OPPA.

APPENDIX I – White Paper Excerpt

1. Consolidate and modernize, where possible and practical, the various pieces of legislation and the fragmented regulations that govern the industry.
2. Execute the regulation and supervision of pensions within an integrated regulatory framework, so as to more effectively regulate the institutions managing these funds.
3. Establish prudential criteria for the management of pension plans. These criteria should involve prudent quantitative and qualitative limits on the types of investments in which pension plans can engage, disclosure requirements buttressed by financial reporting standards, best practice, corporate governance and fiduciary standards (fit and proper management).
4. Undertake strict enforcement of prudential criteria and information disclosure requirements.
5. Codify the portability of pension rights in law so that it is not left up to the discretion of the rules of individual pension plans. This will ensure that members are not constrained or lose benefits when they switch from one pension plan to another.
6. Ensure that fund managers are capable of implementing the required prudential criteria by adopting the most up-to-date and rigorous standards for benchmarking, portfolio insurance and for measuring and limiting the risk exposures contained in the pension portfolios under their management.

APPENDIX I(A) - WHITE PAPER FOR THE REFORM OF THE FINANCIAL SYSTEM**Objective of Legislation**

The proposed new pension legislation is intended to modernize the pension industry by developing and implementing a comprehensive pension regime for Trinidad and Tobago.

Core Principles and Amendments

The proposed new legislation, which will accompany the reformed pension regime, will address a number of core issues in the industry, including:

- Consolidation and modernization of the various pieces of dated legislation.
- Integrated regulation and supervision of the industry.
- Provisions for the establishment of minimum requirements/benchmarks governing the operations of the industry, including:
 - ❖ Portability and transferability.
 - ❖ Prudential criteria for the management of pension plans.
 - ❖ Fit and proper criteria for fund managers and trustees.
 - ❖ Entry and exit criteria.
 - ❖ Corporate governance.
 - ❖ Reporting requirements.
 - ❖ Information disclosure.
 - ❖ Financial reporting standards.

APPENDIX II - INTERPRETATION

“active member” means a member of a pension plan whose service with the employer has not been terminated.

“actuarial liabilities” is an actuary’s estimate of the present value of the future benefits expected to be paid out of a pension plan, using actuarial methods and assumptions.

“actuarial valuation” – an investigation by an actuary into the ability of a pension plan to meet its liabilities. This investigation assesses the funding level and recommends a contribution rate based on comparing the actuarial value of assets and the actuarial liabilities.

“actuarial valuation report” means a written report, prepared and signed by an actuary, calculating a pension plan’s actuarial value of assets and its actuarial liabilities.

“actuarial value of assets” means net assets or net assets adjusted to take account of market volatility, liquidity or such other risks or circumstances the actuary considers appropriate.

“actuary” – “actuary” means a fellow of a professional association of actuaries and possessing such other qualifications as may from time to time be specified by the Inspector.

“additional voluntary contributions” means contributions which a member elects to pay to the pension plan in addition to the regular contributions in order to secure additional benefits.

“auditor” means a person or company whose responsibility is to audit the financial statements of a pension plan and is in possession of a practicing certificate from the Institute of Chartered Accountants of Trinidad and Tobago (ICATT) or possesses such other qualifications as approved by the Central Bank.

“beneficiary” – a person who on the death of a member, is entitled to payment of benefits under the pension plan.

“connected party”- for the purposes of the OPPB, a person is a connected party of a pension plan where the person is:

- a. the plan sponsor, the corporate trustee or investment manager of the pension plan;
- b. a financial holding company, holding company or controlling shareholder or significant shareholder of the plan sponsor of the pension plan;
- c. a person who holds ten percent or more of any class of shares of a person referred to in paragraphs (a) and (b);
- d. an affiliate of a person referred to in paragraphs (a) and (b);
- e. a director or officer of a person referred to in paragraphs (a) and (b)
- f. a director, officer, individual trustee or member of the management committee of the pension plan;
- g. a member or beneficiary of the pension plan; and
- h. a relative⁴⁰ of a person referred to in paragraphs (e), (f) and (g); and
- i. an entity that is controlled by a person referred to in paragraphs (e), (f) and (g).

“corporate trustee” – a company licensed under the FIA that acts as a trustee.

“counterparty”- for the purpose of measuring the counterparty credit exposure limit means the borrower, the other party to or participant to a loan, investment or other agreement, the issuer of a security in the case of an investment in a security, or the party with whom the contract is made in the case of a derivative contract.

“days” means working days.

“deferred pensioner” – a former active member prospectively entitled to benefits under the pension plan but who has not yet started to receive benefits.

“defined benefit pension plan” – are post-employment benefit pension plans other than defined contribution pension plans.

⁴⁰ Refer to definition of relative in interpretation section

“defined contribution plan” – a plan in which an employee’s benefits during retirement depend on the contributions made to and the investment performance of the assets in his or her account, rather than on the employee’s years of service or earnings history.

“effective date of an actuarial valuation” is the date by reference to which the assets of a pension plan are valued and the actuarial liabilities calculated.

“fair value” – has the meaning assigned in the international accounting standards (IAS 39).

“fully funded on an ongoing basis” a pension plan that has the financial stability to make current and future benefits payments to pensioners.

“funding ratio” means 100 multiplied by A/B, A and B calculated as at the same date, where A is the actuarial value of assets on the basis of a funding valuation, and B is the funding actuarial liability of the fund.

“funding actuarial liability” is the actuarial liability of the fund on the basis of a funding valuation.

“funding deficit” is the amount by which the actuarial value of the assets does not cover the funding actuarial liability of the fund.

“funding valuation” means a valuation of assets and actuarial liabilities of a pension plan on a going concern basis using methods and assumptions determined by the actuary.

“investment manager” – a person or company that invests and manages the assets of a pension plan.

“management committee” – a committee which liaises between the plan sponsor and the trustees and directs the trustees in the administration of a pension plan. The management committee must include at least one employee representative, one employer representative and one pensioner representative when pensioner numbers exceed 25% of active member cohort.

“Minister” – the Minister to whom responsibility for finance is assigned.

“net assets” - is the difference between the actuarial value of assets and the actuarial liabilities. It is also referred to as the surplus in the pension plan.

“officer” – a chief executive officer, chief operating officer, president, vice president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief investment officer, chief compliance officer, chief risk officer or chief actuary and any other individual designated as an officer by its articles of incorporation or continuance, bye-laws or other constituent document, or resolution of the directors.

“pension plan” – an arrangement approved under section 28 of the ITA under which payments are made in trust to a trustee(s) by the employee and / or plan sponsor, in respect of that employee, to be used by the trustee(s) to provide benefits for the employee in accordance with the TD&R.

“pensioner” – a former active member currently in receipt of a pension from the pension plan.

“plan member” – includes active member, deferred member and pensioner.

“plan sponsor” – the person or body with whom the member of the pension plan has a contract of employment relevant to that pension plan.

“pure defined contribution pension plan” – is a pension plan with benefits to members based on the amount contributed to a pension plan by the plan sponsor and/ or members accumulated with interest. This does not include pension plans where the employer which sponsors the pension plan guarantees a rate of return or which has pensions in payment. Such a pension plan is not exposed to actuarial risk.

“qualifying service” is employment (or combined periods of employment) that is unbroken by resignation, termination or retirement except for a temporary absence

“related group” means (a) two or more companies with the same controlling shareholder or holding company; (b) a company in which any of the companies referred to in (a) has a significant shareholding; (c) the direct and indirect subsidiaries of the companies referred to in (a); (d) a company in which any of the companies referred to in (c) has a significant shareholding; and (e) the controlling shareholder and/or holding company referred to in (a).

“relative” in respect of any person means the spouse, including a cohabitant as defined in the Cohabital Relationships Act, parent, brother, sister, children, including the children of a cohabitational relationship, adopted children and step-children of the person.

“plan sponsor” - the person, usually a company or employer who sets up a retirement plan for the benefit of the organization’s employees.

“qualifying service” - is employment (or combined periods of employment) that is unbroken by resignation, termination or retirement except for a temporary absence

“service contract” - includes engagement letter for the actuary or auditor and the investment management agreement for the investment manager.

“service providers” - refer to the actuary, auditor and investment manager.

“solvency ratio” means 100 multiplied by C/D, C and D calculated as at the same date, where C is the actuarial value of assets on the basis of a solvency valuation, and D is the solvency actuarial liability of the pension plan.

“solvency valuation” means a valuation of assets and actuarial liabilities of a pension plan that assumes:-

- a. the wind up of the pension plan would be at the effective date of the valuation;
- b. the pension plan will realize its assets;
- c. the pension plan will purchase annuities on terms that would be sufficient to satisfy its liabilities;
and
- d. the expenses are those that the pension plan would likely incur in connection with the wind up.

“total value of assets” is the actuarial value of all pension plan assets on the basis of an actuarial valuation conducted.

“trust deed and rules” – a legal document, executed in the form of a deed which establishes, regulates or amends a trust – a deed which governs a pension plan.

“trustee” – an individual or company appointed to carry out the purposes of a trust in accordance with the provisions of the trust instrument and general principles of trust law.

“unfunded liability” is the greater of B-A and zero; where B and A are defined as in the funding ratio

.

“vested / vesting” – is the minimum period of membership required for a member to be automatically entitled to a pension.

APPENDIX III - PROPOSED SCHEDULE OF ADMINISTRATIVE FINES

It should be noted that the administrative fines levied in respect to small pension plans (i.e. pension plans with asset size of less than twenty - five (25) million TTD) would be 50% of the fines listed for large pension plans.

	Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine – Plan Sponsor	Administrative Fine – Corporate Trustees	Administrative Fine – Individual Trustees (total)	Administrative Fine – Management Committee Members (total)
	Failure to submit an application for registration with the Central Bank ⁴¹ .	\$150,000 Plus \$20,000 per day for each day that the offence continues	-	\$50,000	\$50,000	-
	Failure to submit actuarial valuation report within stipulated deadline ⁴²	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	-
	Failure to submit annual audited financials within the stipulated deadline ⁴³ .	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	-
	Failure to submit semi-annual returns within the stipulated deadline.	\$50,000 Plus \$5,000 per day for each day that the offence continues	-	\$1,000 per diem for each day that the offence continues up to a maximum of 15 days	\$1,000 per diem for each day that the offence continues up to a maximum of 15 days	-
	Failure to provide information to the regulator within the stipulated time.	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	\$5,000 per diem for each day that the offence continues up to a maximum of 15 days	-
	Failure to provide information to the trustee or	\$100,000 Plus \$10,000 per day for	\$5,000 per diem for each day that the offence			

⁴¹ This applies to plans approved by the BIR. Trustees must submit an application for registration by the Central Bank within 30 days of BIR approval.

⁴² If the trustee can prove that the sponsor submitted data late, the sponsor will be fined.

⁴³ If the trustee can prove that the sponsor submitted data late, the sponsor will be fined.

	Offence	Criminal Penalty (Applicable only on summary conviction)	Administrative Fine – Plan Sponsor	Administrative Fine – Corporate Trustees	Administrative Fine – Individual Trustees (total)	Administrative Fine – Management Committee Members (total)
	management committee within the stipulated time.	each day that the offence continues	continues up to a maximum of 15 days			
	Failure to adhere to connected party limits	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$50,000 (where applicable)	\$50,000 (where applicable)	-
	Failure to adhere to investment limits	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$50,000 (where applicable)	\$50,000 (where applicable)	-
	Acquisition of shares of the plan sponsor	\$100,000 Plus \$10,000 per day for each day that the offence continues	-	\$50,000 (where applicable)-	\$50,000 (where applicable)	-
	Failure to remit contributions	\$100,000 Plus \$10,000 per day for each day that the offence continues	\$75,000	-	-	-
	Failure to provide plan members with benefit statements every three years or when there is a material change to benefits, within twelve months of the pension plan's year end.	\$100,000 Plus \$10,000 per day for each day that the offence continues	\$50,000	-	-	-
	Failure to provide members with descriptions of amendments within sixty (60) days of the date the amendment	\$100,000 Plus \$10,000 per day for each day that the offence continues	\$50,000	-	-	-

	Offence	Criminal Penalty (Applicable only on summary conviction)		Administrative Fine – Plan Sponsor	Administrative Fine – Corporate Trustees	Administrative Fine – Individual Trustees (total)	Administrative Fine – Management Committee Members (total)
	was approved.						
	Failure to provide membership booklets to new members within 20 days of joining the pension plan.	\$50,000 Plus \$5,000 per day for each day that the offence continues		\$25,000	-	-	-
	Failure to provide exit statement as prescribed and within the time frames stipulated in the OPPA.	\$100,000 Plus \$10,000 per day for each day that the offence continues		\$50,000	-	-	-
	Failure to meet with the trustees and/or investment manager at least quarterly to discuss the investment performance of the plan.	-		-	-	\$50,000	\$50,000
	Failure to establish and document policies which address conflicts of interest and detail dispute resolution procedures.	\$100,000 Plus \$10,000 per day for each day that the offence continues		-	-	\$50,000	\$50,000
	Failure to maintain a register of complaints.	-		-	-	\$50,000	\$50,000

APPENDIX IV - Fit and Proper Requirements

A. Fit and Proper Requirements for Corporate Trustees, Individual Trustees and Members and Alternates on Management Committees.

- (1) Corporate trustees, individual trustees and members of management committees (and their alternates) of a pension plan must be fit and proper. Members of the board of trustees (i.e. individual trustees), the management committee (and their alternates) are required to submit annual attestations of their fitness and propriety by January 31st of each calendar year in the form specified by the Central Bank. The form of this annual attestation will be specified in a Guideline.
- (2) In determining whether an individual and/ or entity is fit and proper, consideration will be placed on probity, competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence that is necessary in fulfilling or is likely to fulfill those responsibilities and to whether the interests of members or potential members and beneficiaries of the pension plan are, or are likely to be, in any way threatened by the individual or entity's position.
- (3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the individual or entity in question and, in particular, to any evidence that the individual or entity has:-
 - (a) been convicted of an offence involving fraud or other dishonesty or violence;
 - (b) contravened any provision made by or under an enactment appearing to the Central Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or un-discharged bankrupts;
 - (c) engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit their method of conducting business;
 - (d) an employment record which leads the Central Bank to believe that the person or entity carried out an act of impropriety in the handling of his plan sponsor's business;

- (e) engaged in or been associated with any other business practices or otherwise conducted themselves in such a way as to cast doubt on their competence and soundness of judgment.

B. Integrity and Skills

The business of the trustee, actuary, auditor, investment manager must be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

APPENDIX IV (a) - KNOWLEDGE REQUIREMENTS**Requirement for knowledge and understanding: Individual Trustees and Management Committee members**

- 1) The Board of (Individual) Trustees and Management Committees (and their alternates) must collectively possess the requisite skills, competence and expertise to adequately carry out their responsibilities in accordance with the OPPB and the TD&R. Consequently, the Board of Trustees and Management Committees must comprise at least one trustee or committee member who is knowledgeable in respect of two or more of the following areas:-
 - a) the principles relating to:
 - i. the funding of occupational pension plan; and
 - ii. investment of the assets of such pension plans.
 - b) any statement of investment principles;
 - c) the statement of funding principles most recently prepared or revised;
 - d) financial statements and actuarial valuation reports;
 - e) any other document recording policy for the time being adopted by the trustees relating to the administration of the pension plan generally; and
 - f) such other matters as may be prescribed.

- 2) However, notwithstanding 1.) above, each member of the Board of (Individual) Trustees and member of the management committee (and their alternates) must within four(4) months of their appointment as a trustee or management committee member become conversant with :
 - a) the TD&R of the pension plan;
 - b) the laws relating to pensions and trusts that govern the operations of the pension plan; and
 - c) the Statement of Investment Policy (SIP) of the pension plan.

Requirement for knowledge and understanding: Corporate Trustees

- 1) This section applies to any company which undertakes the trustee functions for an occupational pension plan.

- 2) A company to which this section applies must, in relation to each pension plan, ensure that each individual who exercises any function with the company as trustee of the pension plan is conversant with each of the following documents so far as it is relevant to the exercise of the function.
- 3) Those documents are—
 - a) the TD&R of the pension plan;
 - b) any statement of investment principles;
 - c) the statement of funding principles most recently prepared or revised; and
 - d) any other document recording policy for the time being adopted by the trustees relating to the administration of the pension plan generally.
- 4) A company to which this section applies must ensure that any individual who exercises any function which the company has as trustee of any pension plan has knowledge and understanding of—
 - a) the law relating to pensions and trusts;
 - b) the principles relating to:
 - i. the funding of occupational pension plans; and
 - ii. investment of the assets of such pension plans.
 - c) such other matters as may be prescribed.
- 5) The degree of knowledge and understanding required by subsection (6) is that appropriate for the purposes of enabling the individual to properly exercise the function in question.
- 6) References in this section to the exercise by an individual of any function of a company are to anything done by the individual on behalf of the company which constitutes the exercise of the function by the company.