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THE NATIONAL PENSIONS LAW (10 of 1996)

(1998 Revision)

**THE NATIONAL PENSIONS (PENSION FUND INVESTMENTS)
REGULATIONS**

(1998 Revision)

Revised under the authority of the Law Revision Law (19 of 1975).

The National Pensions (Pensions Fund Investments) Regulations, 1998 originally made under the principal Law, as amended, as part of the Schedule thereto, and which came into force on the 1st June, 1998.

Revised this 21st day of July, 1998

**NATIONAL PENSIONS (PENSION FUND INVESTMENTS)
REGULATIONS**

(1998 Revision)

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**NATIONAL PENSIONS (PENSION FUND INVESTMENTS)
REGULATIONS
(1998 Revision)**

1. These regulations may be cited as the National Pensions (Pension Fund Investments) Regulations (1998 Revision). Citation

2. (1) In these regulations-

Definitions and
interpretation

“affiliate” means a company that is an affiliate within the meaning of subregulation (2);

“book value” means the acquisition cost of an asset of a pension fund, including all direct costs associated with the acquisition, prior to any external financing;

“derivative securities” means securities whose values, distributions or dividends depend, or are contingent, on the values or prices of other assets, commodities or securities, or on other variables;

“Eurobonds” means bonds that are offered outside the country of the borrower and outside the country in whose currency the bonds are denominated;

“expense ratio” means the total annualised expenses as a percentage of average net assets of a pension fund;

“investment grade” means a grade given to any security or other obligation by any two or more internationally recognised credit rating agencies to indicate that the security or other obligation is eligible for investment and that it has at least an adequate capacity to pay interest and repay principal;

“large capitalisation equity” means equity of a company which has equity market capitalisation equal to or more than that of the company which is ranked 470th in equity market capitalisation in the Standard & Poors 500 index from time to time;

“market value” means the most probable price that would be obtained for property in an arm’s length sale in an open market under conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and willingly;

“mutual or pooled fund” means a company or unit trust-

- (a) whose assets in investments which are excluded by regulation 4 do not exceed ten per cent of its total assets (except in the case of index funds); and
- (b) that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading risks and enabling investors in the mutual or pooled fund to receive profits or gains from the acquisition, holding, management or disposal of investments,
but does not include-
 - (c) a person licensed under-
 - 1995 Revision (i) the Banks and Trusts Companies Law (1995 Revision); or
 - 1998 Revision (ii) the Insurance Law (1998 Revision); or
 - (d) a person registered under-
 - 1997 Revision (i) the Building Societies Law (1997 Revision); or
 - 1998 Revision (ii) the Friendly Societies Law (1998 Revision);

“prime rated” means a minimum short-term credit rating of A-3 (Standard and Poors) or Prime 3 (Moody’s) or an equivalent rating given to any short-term interest-bearing security;

“real estate company” means a company which holds a portfolio of properties and includes a mutual or pooled fund or a segregated fund the principal object of which is to provide investors with a means of investing in a portfolio of real estate or leaseholds;

“related person” means a related person within the meaning of subregulation (3);

“security” includes a share of any class or series of shares, a debt obligation of a company, a certificate evidencing such share or debt obligation and a warrant;

“segregated fund” means a fund established by a company that is authorised to operate a fund in which money from one or more contributors is accepted for investment, the assets of which fund are maintained by the company as separate and distinct from the general funds of the company;

“small to medium capitalisation equity” means equity of a company which has equity market capitalisation less than that of the company which is ranked four hundred and seventieth in equity market capitalisation in the Standard and Poors 500 Index from time to time;

“traded publicly” means traded on an exchange, specified in the Schedule hereto, on which securities are traded if the prices at which they have been traded on that

market are regularly published in a newspaper or business or financial publication of general or regular paid circulation;

“venture capital” means investment in a company or undertaking with unlisted securities or which recently has been formed, with a view to providing finance for the development or expansion of that company; and

“voting share” means any share of any class of shares of a company that carries voting rights under all circumstances and any share of any class of shares that carries voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

(2) For the purpose of these regulations-

- (a) a company shall be deemed to be affiliated with another company if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled or is legally or beneficially owned by the same person or group of persons;
- (b) the affiliate of every company shall be deemed to be affiliated with all companies with which the company is affiliated;
- (c) a company shall be deemed to be a subsidiary of another company if-
 - (i) it is controlled or legally or beneficially owned by-
 - (A) that other company;
 - (B) that other company and one or more companies each of which is controlled or legally or beneficially owned by that other company; or
 - (C) two or more companies each of which is controlled or legally or beneficially owned by that other company, or
 - (ii) it is a subsidiary, within the meaning of sub-subparagraph (i)(A), of a company that is that other company’s subsidiary;
- (d) a company shall be deemed to be controlled by a person if-
 - (i) voting shares of the company that carry more than fifty per cent of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the person; and
 - (ii) the votes carried by the voting shares referred to in subparagraph (i) are sufficient, if exercised, to elect a majority of the board of directors of the company;
- (e) a company shall be deemed to be the holding company of all its subsidiaries; and

- (f) a person shall be deemed to own voting shares that are owned by another company controlled by that person.
- (3) For the purposes of this regulation a person shall be deemed to be related to-
 - (a) every company that the person controls and every affiliate of every such company;
 - (b) every partner of the person who has a substantial beneficial interest in a partnership in which the person has a substantial beneficial interest; and
 - (c) every trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity to a trustee.

Asset allocation

- 3. (1) An administrator shall ensure that-
 - (a) between forty per cent and seventy per cent of the market value of the assets of the pension fund is invested in-
 - (i) large capitalisation equities which are traded publicly;
 - (ii) small to medium capitalisation equities which are traded publicly up to a maximum of ten per cent of the market value of the assets of the pension fund;
 - (iii) investment grade convertible debentures which are traded publicly; or
 - (iv) closed end or open end mutual or pooled funds which invest in equities or convertible debentures and either are listed on a stock exchange specified in the Schedule or are authorised as an undertaking for collective investments in transferable securities pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989;
 - (b) between twenty per cent and forty per cent of the market value of the assets of the pension fund is invested in-
 - (i) bonds issued by the United States Treasury;
 - (ii) investment grade bonds;
 - (iii) investment grade corporate bonds;
 - (iv) investment grade Eurobonds;
 - (v) investment grade preference shares which are traded publicly;
 - (vi) fully secured first mortgages, the total value of which shall not exceed ten per cent of the market value of the assets of the pension fund; or

- (vii) closed end or open end mutual or pooled funds which invest at least ninety per cent of their assets in investment grade bonds, mortgages or preference shares; and
- (c) twenty-five per cent or less of the market value of assets of the pension fund is invested in-
 - (i) United States Treasury Bills;
 - (ii) investment grade treasury bills of foreign countries prescribed for the purpose by the Superintendent;
 - (iii) investment grade commercial paper;
 - (iv) investment grade money market funds;
 - (v) investment grade bank certificates of deposits; or
 - (vi) fixed term deposits or cash held with a bank rated as investment grade or a clearing bank in the Islands.

(2) In the allocation of the assets of a pension fund the administrator shall ensure that the selection of investments shall be made with consideration given to the overall context of the investment portfolio without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation given the nature of the investment.

(3) In making a selection of investments the administrator shall take into account the demographic composition of the members of the pension plan from time to time and the difference between the amount of contributions made to a fund and the benefits that are paid out of that fund.

- (4) (a) At least seventy per cent of the market value of the assets of a pension fund shall be denominated in the currency of the United States of America and no more than twenty per cent of the market value of the assets shall be denominated in the currency of the Islands; and
- (b) In the case of depository receipts, mutual funds and similar equity-related investment vehicles, the principal location of the underlying investments shall be considered by the administrator in determining proper currency allocation.

(5) Subject to subregulation (8), a person engaged in selecting an investment for, or making a loan from, a pension fund shall not select an investment or make a loan except in a category or sub-category of investment or loan that is specifically permitted by these regulations.

(6) An administrator of a pension plan that was established before, and was in effect on, the 1st June, 1998 shall comply with these regulations by the 1st September, 1998.

(7) Every investment that is made by a pension fund on or after the 1st June, 1998 shall be in accordance with these regulations.

(8) An administrator shall, in administering the investments of the pension fund, provide written guidelines of the policy to be followed where there is an actual or perceived conflict of interest on the part of the administrator or an agent officer or employee of the administrator.

(9) The guidelines referred to in subregulation (8) shall include minimum disclosure requirements with respect to an actual or perceived conflict of interest including the timing of the disclosure.

Prohibited investments

4. (1) An administrator shall not invest the assets of a pension fund in-

- (a) derivative securities;
- (b) securities purchased on margin;
- (c) venture capital;
- (d) limited partnerships;
- (e) shares in companies which are not traded publicly; or
- (f) real estate.

(2) The assets of a pension fund shall not be loaned to or, invested in the securities of-

- (a) the administrator of the pension plan;
- (b) an officer, employee or agent of the administrator;
- (c) a person responsible for holding or investing the pension fund or a custodian or investment manager of the fund or any officer or employee of that person, custodian or manager;
- (d) an employer, who contributes to the plan, an employee of the employer and, where the employer is a company, an officer or director of the employer;
- (e) the spouse or child of any person referred to in paragraphs (a) to (d);
- (f) where the employer is a company-
 - (i) any person who directly or indirectly holds more than ten per cent of the voting shares carrying more than ten per cent of the voting rights attached to all voting securities of the company or the spouse or child of that person; or
 - (ii) any person who directly or indirectly together with a spouse or child holds more than ten per cent of the voting shares carrying more than ten per cent of the voting rights attached to all securities of the company;
- (g) a company that is an affiliate of the employer; or

- (h) a company wholly owned or controlled directly or indirectly by a person referred to in subparagraphs (a) to (g),

except that an administrator of a pension fund in respect of which a bank that is the holder of an “A” licence issued under section 5(1) of the Banks and Trust Companies Law (1995 Revision) and which operates as a clearing bank in the Islands is an employer may invest the assets of the pension fund in deposit or current accounts at that bank or its affiliates on condition that-

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- (i) the consent in writing of the Superintendent to the banking arrangements has been previously obtained;
- (ii) only money that is part of the assets of the pension fund is held in such accounts; and
- (iii) the accounts are audited annually by the pension fund’s auditor who shall deliver a copy of his report to the Superintendent.

- (3) An administrator shall not engage in short selling for a pension fund.

5. The asset allocation of a pension fund shall be reviewed by the administrator at least once each month to ensure that it is in compliance with these regulations.

Review of asset allocation

6. (1) The aggregate amount of a pension fund that may be invested in the securities of or loaned to any single company, person, association or country shall be limited to five per cent of the total market value of a pension fund’s assets at the time the investment or loan is made.

Investment in securities and loans

(2) Subregulation (1) does not relate to investments in United States Treasury securities.

- (3) For the purpose of subregulation (1)-

“person” includes a related person or group of related persons.

- (4) An administrator shall ensure that-

- (a) all bonds, bills and commercial paper in which the fund has invested are of investment grade;
- (b) all bank certificates in which the pension fund has invested do not exceed-
 - (i) one per cent of the issuing bank’s total shareholder equity; or
 - (ii) five per cent of the issuing bank’s shareholder equity if the bank is the holder of an “A” licence issued under section 5(1) of the Banks and Trust Companies Law (1995

1995 Revision

	Revision) and if the approval in writing of the Superintendent has previously been obtained;
	(c) the companies in which the pension fund has invested have made an annual profit for at least three of the five years immediately preceding the date of investment;
	(d) the guaranteed investment certificates in which the pension fund may have invested are issued by an insurance company or companies rated by internationally recognised credit rating agencies at a grade of A or higher; and
	(e) all securities in which the pension fund has invested are traded publicly in markets with proper registration and custodian facilities.
Investment in companies, etc.	7. A pension fund shall not own more than ten per cent of any class of shares of a company, mutual fund, or unit trust.
Investment in mutual or pooled funds	8. The administrator of a pension fund shall not invest in closed end mutual or pooled funds which are not traded publicly.
Mortgages, etc.	9. (1) The funds of a pension plan shall not be loaned on the security of a mortgage or other security agreement on real estate or leaseholds where the amount paid for the mortgage or agreement, together with the amount of indebtedness under any mortgage or other security agreement on the real estate or leasehold ranking equally with or superior to the loan, exceeds sixty per cent of the market value of the real estate therein at the time the advances were approved. (2) The administrator may accept as payment or part payment a mortgage or other security agreement, and may advance funds secured by a mortgage or other security agreement that would otherwise contravene this section in order to protect an existing investment of the pension fund.
Financial statements	10. (1) The administrator shall file with the Superintendent audited financial statements for the pension fund and the pension plan at the plan's financial year end. (2) The financial statements shall- (a) be filed within six months after each financial year end of the plan occurring on or after the 1st December, 1998; (b) be comprised of a statement of net assets, statement of operations, and a statement of changes in net assets and shall be prepared on the accrual basis of accounting; (c) be prepared in accordance with generally accepted international accounting principles; and

- (d) identify-
 - (i) the name of the pension plan for which the statements have been prepared;
 - (ii) the registration number of the pension plan; and
 - (iii) the financial period for which the financial statements have been prepared.
- (3) The statement of net assets referred to in subregulation (2) shall disclose at least-
 - (a) the market value, book value and the percentage of a fund's assets held in each category of investments referred to in regulation 3 at the end of the period to which the statement refers;
 - (b) income accrued and not yet received;
 - (c) payments due and payable by-
 - (i) the employer or employers; and
 - (ii) the members; and
 - (d) amounts payable, indicating by whom the amounts are payable and their nature and amount.
- (4) The financial statements shall disclose-
 - (a) related party transactions;
 - (b) for individual investments where either the book value or the market value exceeds one per cent of the book value or market value of the pension fund, information with respect to each category of investments specified in regulation 3 that sets out-
 - (i) for insured contracts, the name of the insurance company and type of contract;
 - (ii) for mutual or pooled funds or segregated funds, the name of the operator of each fund, the name of each fund, the primary category of investments held in each fund and the market value of the investment in each fund; and
 - (iii) for term deposits and guaranteed investment certificates, the name of the entity where the funds are deposited and the aggregate market value or book value of the investment in each fund;
 - (c) the expense ratio for the financial year;
 - (d) the terms of any agreement related to payments for administrative assistance for or for investment advice in respect of the fund; and
 - (e) the investment performance of the pension fund during the year calculated in accordance with the Performance Presentation Standards of the Association of Investment and Research.

(5) The statement of operations referred to in subregulation (2) shall include-

- (a) realised gains or losses;
- (b) investment income;
- (c) all fees and expenses incurred by the plan; and
- (d) unrealised gains and losses.

(6) The statement of changes in net assets referred to in subregulation (2) shall include a reconciliation between the market value of total investments at the beginning and end of the period, and shall disclose at least-

- (a) contributions from members and employers;
- (b) benefit payments; and
- (c) refunds and transfers, indicating their nature and amounts.

(7) An auditor of a pension fund shall report to the administrator immediately when, in the course of reporting on the financial statements, he becomes aware that there are circumstances that indicate that there has been, or may be, a contravention of the Law or these regulations, and the auditor shall immediately send a copy of his report to the Superintendent.

(8) A financial statement submitted for filing shall be approved by the administrator and the approval shall be evidenced by the manual or facsimile signature of-

- (a) the administrator;
- (b) where the administrator is a pension committee, board of trustees, agency or commission acting as the administrator, two members duly authorised to signify the approval; or
- (c) where the administrator is an approved provider or trust company, an officer of the its provider or trust company duly authorised to sign on its behalf.

Register of members

11. The administrator shall prepare and submit, together with the financial statement each year, a register of the members of the pension plan, and the register shall specify-

- (a) the name of each member;
- (b) the date of birth of each member;
- (c) the employer of each member; and
- (d) the value of the accrued benefit of each member.

Restriction on borrowing

12. An administrator shall not borrow on behalf of the pension fund.

Investments and loans in the name of the pension fund

13. All investments and loans of a pension fund shall be held in the name of, or for the account of, the fund.

14. Unless otherwise permitted by these regulations, an administrator shall not directly or indirectly pledge or mortgage the assets of the pension fund.

No pledging,
mortgaging, etc., except
as permitted by the
regulations
Acceptance of bonds,
debentures, etc., by the
pension fund

15. Where a pension fund owns investments in a company and, as a result of arrangements for the reorganisation or liquidation of the company, or for the amalgamation of the company with another company, the investments are to be exchanged for bonds, debentures or other evidences of indebtedness, or shares that result in the limitations set out in this Part being exceeded, the pension fund may accept and hold such bonds, debentures or other evidence of indebtedness or shares.

SCHEDULE

regulation 2

Stock Exchanges on which Securities must be Traded in order to be Traded Publicly for the Purposes of these Regulations

New York	Madrid	Frankfurt	Milan
American	Paris	Dublin	Singapore
NASDAQ	Stockholm	Vienna	Bangkok
Toronto	Copenhagen	Oslo	Sydney
London	Zurich	Helsinki	Auckland
Tokyo	Geneva	Brussels	Kuala Lumpur
Osaka	Amsterdam	Hong Kong	Cayman Islands

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