

THE PORT AUTHORITY ACT

REGULATIONS
(under section 19)

THE PORT AUTHORITY (SUPERANNUATION) REGULATIONS, 2004

*(Made by the Port Authority with the approval of the Minister on the
22nd day of September, 2004)*

L.N. 94A/2004

PART 1. Preliminary

1. These Regulations may be cited as the Port Authority (Super-annuation) Regulations, 2004. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“the Actuary” means a fellow by examination of the Institute of Actuaries in England, the Faculty of Actuaries in Scotland, the Society of Actuaries in the United States of America or the Canadian Institute of Actuaries, who has been appointed by the Trustees as Actuary for the purposes of the Scheme;

“actuarial equivalent” means the amount of benefit which an actuary certifies to be mathematically equivalent in value to another benefit;

“anniversary date” means the first day of April in each year;

“approved superannuation fund” and “approved retirement scheme” have the meanings respectively assigned to them under the Income Tax Act;

“continuous service” means a period of uninterrupted employment with the employer during which the employee was a member of the Scheme;

“contribution” means a contribution payable to the Fund under these Regulations;

“credited interest” on any contribution means interest at such rate as may from time to time be determined by the Trustees and credited annually, in arrears;

“deferred vested pensioner” means a member who terminates employment before eligibility for a pension but who had vested rights to a deferred pension payable from his early or normal retirement date;

“dependant” in relation to a member means the spouse, child, parent, any linear descendant of the member or of his spouse, or other relation by law of the whole-blood or half-blood;

- “early retirement date” means the first day of any month within ten years of a member’s normal retirement age, on which a member, with the consent, of the Trustees and the Authority, may retire or may be retired, as the case may be, after completing at least five years’ pensionable service;
- “employer” or “the Authority” means The Port Authority;
- “employee” means any person employed by the Authority on or after the appointed day, who meets the requirements of regulation 5;
- “Final pensionable emoluments” at any date means the average of the particular member’s last three years’ pensionable emoluments prior to that date;
- “Fund” means all assets of the Scheme and moneys, property or investment from time to time held by the Trustees for the purposes of the Scheme;
- “incapacitated” means having physical or mental deterioration which—
- (a) has been certified in writing by a duly qualified medical practitioner approved by the employer; or
 - (b) in the opinion of the employer, permanently prevents the member from following his normal employment or seriously impairs his earning capacity;
- “insurance company” means a life insurance company registered under the Insurance Act;
- “member” means any employee who is admitted to the Scheme in accordance with the provisions of regulation 5;
- “members’ 1968 Fund account” at any date means, in relation to a member of the 1968 Fund, the employer’s contribution plus the member’s compulsory contributions in the 1968 Fund accumulated with credited interest up to that date;
- “nominated beneficiary” means the dependant or other person appointed by a member to receive any amount due and payable to him in the event of his death;
- “normal retirement age” means the age of sixty-five years;
- “PAJ Staff 1968 Superannuation Fund” or “the 1968 Fund” means the Port Authority Superannuation Scheme established under the Port Authority Superannuation Scheme (Validation) Act, 1976;
- “pensionable emoluments” means taxable income not including any bonus payments, overtime, commissions or other ad hoc compensation;
- “pensionable service” means the period of continuous service during which a member has contributed to the Scheme;
- “pensioner” means a member who is in receipt of a pension under these Regulations;

“relevant law” means the Income Tax Act or any other applicable law;

“Scheme” means the Port Authority Staff 2004 Superannuation Scheme established under regulation 3;

“Scheme year” means a period of twelve calendar months beginning on the 1st year of April;

“spouse” means a persons of the opposite sex to a member who either—

(a) was lawfully married to the member at the date of the member’s retirement, death or earlier termination of service as the case may be; or

(b) not being lawfully married to the member—

(i) resided with the member for a continuous period of at least two years immediately preceding the date of the member’s death, at which date neither that person nor the member was lawfully married to any other person; and

(ii) has been established to the satisfaction of the Trustees to have been represented publicly as being the spouse of the member throughout such period;

“transferred member” means a former member of another approved superannuation fund or approved retirement scheme, who—

(a) has become a member of the Scheme;

(b) in respect of whom a transfer value payment to the Fund has been made by the trustees of that other superannuation fund or retirement scheme; and

(c) who is entitled to additional benefits from the scheme actuarially equivalent to the payment made into the Fund;

“transfer value” means assets received and accepted under regulation 10 or paid-out under regulation 11;

“Trustees” means the trustees or trustee for the time being of the Scheme appointed in accordance with the provisions of the Trust Deed;

“Trust Deed” means the trust deed dated the set out in the Schedule hereto which provides for the management of the Scheme, and all other deeds made supplemental thereto, for the time being in

Schedule.

force.

PART II. *The Scheme*

Establishment and
administration
of
Scheme.

3.—(1) There is hereby established a scheme to be called the Port Authority Staff 2004 Superannuation Scheme for the payment of—

- (a) pensions and other benefits to members on retirement; and
- (b) benefits on the death of members to their dependants or estates.

(2) The main purpose of the Scheme is the provision of—

- (a) retirement benefits for the members upon retirement at a specified age or earlier upon grounds of ill-health; and
- (b) benefits to the spouse, child, dependant or other beneficiary of a member who has died.

(3) The Scheme shall be administered by the Trustees in accordance with the provisions of the Trust Deed and these Regulations.

PART III. *The Fund*

Establishment,
payments in and
out.

4.—(1) There is hereby established a Fund to be called the Port Authority Pension Fund the assets of which shall consist of—

- (a) employer's contributions payable under regulation 9;
- (b) members' contributions payable under regulation 8;
- (c) members' transfer value;
- (d) any moneys, property or investments from time to time held by the Trustees for the purposes of the Scheme; and
- (e) moneys and other assets including interest, dividend, rent or capital appreciation upon the investments of the Fund.

(2) The assets referred to in paragraph (1) shall be held by the Trustee under an irrevocable trust, as specified in the Trust Deed.

(3) Payments out of the Fund shall be made to meet—

- (a) all the benefits and other amounts payable under the provisions of these Regulations; and
- (b) expenses incurred in the management of the Scheme.

(4) Moneys in the Fund from time to time shall not form part of the revenue or assets of the employer.

(5) No person shall have an interest in, or right to, any part of the Fund except as provided for in the Scheme.

PART IV. *Eligibility Conditions*

Membership

5.—(1) The membership of the Scheme shall comprise every employee

on the permanent staff of the employer who after the appointed day has attained the age of 18, but has not attained the age of 55.

(2) Membership of the Scheme is a condition of employment with the employer.

(3) An employee who on the continuation date was a member of the 1968 Fund shall be entitled to a supplementary pension from the Scheme on his early, ill-health, normal or late retirement date, as the case may be, as set out in these Regulations.

6.—(1) The Trustees may require any member, nominated beneficiary or potential beneficiary under the Scheme to produce such evidence and information with respect to age, disability and survival as they may from time to time reasonably require for the purposes of administering the Scheme.

Evidence and information.

(2) If such evidence or information is not produced, the Trustees may withhold any benefit in relation to which the evidence or information is required, until such time as it is produced or as instructed by the Administrator General or as prescribed by law.

7. In the absence of any nominated beneficiary, the amount payable shall be paid by the Trustees in their discretion, upon completion of all necessary legal formalities to—

Payment where no nominated beneficiary.

- (a) any one or more persons who could have been nominated beneficiary or beneficiaries as aforesaid; or
- (b) the deceased member's legal personal representative.

PART V. *Contributions to Fund*

8.—(1) Each member, other than a member of the PAJ Staff 1968 Superannuation Fund, shall, starting from his actual date of membership, pay contributions (hereinafter called "members' basic contributions") to the Scheme in each Scheme year, of an amount equal to five percent of his pensionable emoluments.

Amount of members' contributions.

(2) Payment of such contribution shall cease at the member's actual retirement date or his earlier termination of employment or death.

(3) A member may by written notice to the employer elect to pay additional voluntary contributions (hereinafter called "members' additional voluntary contributions").

(4) The aggregate of the member's basic contributions and member's additional contributions shall not exceed ten per cent of the member's remuneration or such percentage prescribed under the relevant law.

(5) A member's payment of contributions under this regulation shall be by deduction from his pensionable emoluments, and each amount so deducted shall be paid over to the Trustees within seven days from the

deduction date.

(6) Payment of member's additional voluntary contributions shall cease at the earlier of—

- (a) the end of the month in which the member submits a written request to his employer for discontinuance of those contributions; or
- (b) the date on which the member's service with the employer ends, on account of his termination, death or retirement, whichever shall first occur.

Employer's
contribution.

9.—(1) The employer shall be an ordinary annual contributor and such contributions (hereinafter called "employer's ordinary annual contributions") shall, in each Scheme year be—

- (a) such amount as the Actuary shall advise to be necessary together with the members' basic contributions;
- (b) payable to the Trustees in installments at least once per month.

(2) At no time shall the employer's ordinary annual contributions in relation to all contributing members exceed ten per cent or such other percentage prescribed under the relevant law.

(3) The amount paid by the employer under this regulation shall be sufficient to cover the benefits and the administration expenses of the Scheme.

(4) Subject to paragraph (5), the employer shall on the advice of the Actuary make such additional contributions as may be necessary to—

- (a) maintain the solvency of the Fund;
- (b) provide for augmentation of pensions in payment of deferred or accrued pensions;
- (c) provide for improvement to other benefits.

(5) No additional payment shall be made under paragraph (4) which will prejudice the approval of the Fund or its status as an approved super-annuation fund under the relevant law.

Actuarial
valuations.

10.—(1) The Trustee shall submit the financial position of the Fund to an actuarial investigation once at least every three years and for that purpose all necessary accounts and information shall be furnished by the Trustees to the Actuary.

(2) Upon every such investigation the Actuary shall—

- (a) report in writing to the Trustees;
- (b) recommend the rate of employer's salary ordinary contributions

to be payable until the next triennial actuarial review on the financial position of the Fund;

- (c) recommend the rate of special employer’s contributions necessary to defray any deficiency revealed by that triennial actuarial investigation; and
- (d) make such other recommendations as may be considered necessary having regard to the results of the actuarial investigation.

PART VI. Transfer Of Assets Into Fund

11.—(1) If any member is entitled to benefits under any other approved retirement scheme or superannuation fund (hereinafter referred to as “the other Scheme”) the Trustees shall, for the purposes of this section, at the written request of such member, subject to any undertaking given to the Commissioner of Taxpayer, Audit and Assessment in accordance with the relevant law, accept from the trustees of the other Scheme, assets equivalent in value to that member’s accrued rights under the other Scheme.

Power to accept transfers in.

(2) Upon receipt of assets under paragraph (1), the Trustees shall grant to the member such rights and benefits under the Scheme as the Actuary shall advise to be actuarially equivalent to the assets transferred into the Fund on the member’s behalf, and shall notify the member accordingly.

(3) Before accepting any asset into the Fund or conferring any right or benefit under this regulation, the Trustees shall satisfy themselves that such acceptance or conferment will not prejudice the approval of the Scheme or its status as an approved superannuation fund under the Income Tax Act.

PART VII. Transfer of Assets to Another Approved Superannuation Scheme or Fund

12.—(1) If any member terminates his membership in the Scheme and becomes a member of another approved retirement scheme or approved superannuation fund (hereinafter referred to as “the other Scheme”) the Trustees may, at the request and with the written consent of the member and, subject to acceptance by the other approved retirement scheme or superannuation fund, pay the transfer value to the administrators of the other Scheme subject to regulation 30(2) (a)(i).

Power to make transfer out.

(2) Payment under paragraph (1) may be in substitution of the whole or part of the benefits which would otherwise arise under the Scheme in consequence of the member being a member thereof.

PART VIII. Retirement Dates

13. The normal retirement date shall be the last day of the month in which the member attains his normal retirement age.

Normal retirement date.

Early retirement date.

14.—(1) With the consent of the employer and the Trustees, a member who has completed at least five years of pensionable service may retire on the last day of any month, within ten years of his normal retirement date.

(2) The date on which the member retires under this regulation shall be called his early retirement date.

Ill-health retirement date.

15.—(1) A member who has completed at least five years of pensionable service and is incapacitated before he attains his normal retirement age shall be retired on the last day of the month in which his incapacity occurred.

(2) Upon such retirement the member shall thereafter subject himself to such periodic medical examination by the appointed medical practitioner as may be required by the Trustees to determine whether the disability continues unabated.

(3) The date on which the member is retired under this regulation shall be called his ill-health retirement date.

Late retirement date.

16.—(1) At the employer's request a member's employment may be continued after his normal retirement date for a period not exceeding five years, in which case his pension shall not commence until his actual date of retirement.

(2) The actual date under this regulation shall be called the late retirement date and shall be the last day of the month that he was actively at work.

PART IX. *Pension Payable*

Normal retirement pension.

17.—(1) The annual amount of the normal retirement pension payable to a member, starting on or after the normal retirement date, shall be at an annual rate equivalent to two per cent of the member's final pensionable emoluments multiplied by his pensionable service.

(2) A member is entitled to such additional voluntary pension as shall be purchased by the member's additional voluntary contributions together with credited interest thereon up to his normal retirement date.

(3) A member for whom a transfer value has been received and accepted under regulation 11 is entitled to such additional pension as shall be purchased by the transfer value accumulated with credited interest thereon up to the date of retirement.

(4) An employee who, on the effective date, was a contributing member of the PAJ Staff 1968 Superannuation Fund shall, on being retired at his normal or early retirement date under the provisions of that superannuation fund, be entitled to receive from the Scheme, a supplementary pension payable in normal form as provided in regulation 25.

(5) Such amount of supplementary pension shall top up the pension which can be provided under the 1968 Fund from the member's 1968 Fund account to two per cent of his pensionable service up to his date of retirement times his final pensionable emoluments.

(6) For the purpose of paragraphs (4) and (5) the amount of pension from the member's 1968 Fund account to be taken into account is the normal form of annuity which can be purchased, or otherwise secured, by that account at his normal retirement date.

18.—(1) A member who has retired at an early retirement date is entitled to an annual pension (called the early retirement pension) of an amount equal to two per cent of the member's final pensionable emoluments multiplied by his pensionable service as at his early retirement date actuarially reduced to take account of the period by which his early retirement date precedes his normal retirement age.

Early retirement pension.

(2) A member who retires pursuant to paragraph (1) is entitled to such additional pension as shall be purchased by the member's additional voluntary contributions accumulated with credited interest thereon up to his early retirement date.

(3) A member for whom a transfer value has been received and accepted under regulation 11 is entitled to such pension as shall be purchased or otherwise secured by the transfer value together with credited interest to the date of retirement.

19.—(1) A member, who in the opinion of the medical practitioner approved by the employer, has become incapacitated, shall be retired on the first day of the month following the month in which he became so incapacitated.

Ill-health retirement pension.

(2) A member who retires at an ill-health retirement date is entitled to an annual pension of an amount equal to two per cent of the member's final pensionable emoluments multiplied by the pensionable service.

(3) A member who retires pursuant to paragraph (2) is entitled to such additional pension as shall be purchased by the member's additional voluntary contributions together with credited interest to the date of retirement.

(4) An employee who, on the appointed day, was a contributing member of the 1968 Fund shall, on being retired at his ill-health retirement date under the provisions of that superannuation fund, be entitled to receive from the Scheme a supplementary ill-health retirement pension payable in normal form as provided in regulation 25.

(5) The amount of such supplementary ill-health retirement pension shall be the annual amount necessary to top up the pension which can be provided under the 1968 Fund from the member's 1968 Fund account to two percent of his pensionable service in the 1968 Fund up to his date of early retirement times his final pensionable emoluments with no actuarial reduction.

(6) For the purpose of paragraphs (4) and (5) the amount of pension from the 1968 Fund to be taken into account is the normal form of annuity which can be purchased, or otherwise secured, by the member's 1968 Fund account at his ill-health retirement date.

(7) A member for whom a transfer value has been received and accepted under regulation 11 is entitled to such pension as shall be purchased or otherwise secured by the transfer value together with credited interest to the ill-health retirement date.

Re-entry after ill-health pension.

20. If a pensioner re-enters the employment of the employer after ill-health retirement and resumes as a member of the Scheme until he retires, his pension on retirement after re-entry shall be computed by taking into account the actuarial value of the benefits paid and the benefits subsequently accrued to the member.

Late retirement.

21.—(1) A member who has retired at a late retirement date is entitled to a late retirement pension of an annual amount equal to two per cent of the member's final pensionable emoluments multiplied by the pensionable service.

(2) A member who retires pursuant to paragraph (1) is entitled to such additional pension as shall be purchased or otherwise secured by the member's additional voluntary contributions accumulated with credited interest thereon up to the late retirement date.

(3) A member for whom a transfer value has been received and accepted hereunder is entitled to such pension as shall be purchased by the transfer value accumulated with credited interest to the date of retirement.

(4) An employee who, on the appointed day, was a contributing member of the PAJ Staff 1968 Superannuation Fund shall, on being retired at his late retirement date under the provisions of that superannuation fund, be entitled to receive from the Scheme a supplementary late retirement pension payable in normal form as provided in regulation 25.

(5) The amount of such supplementary late retirement pension shall be the annual amount necessary to top up the pension which can be provided under the 1968 Fund from the member's 1968 Fund account to two per cent of his pensionable service in the 1968 Fund up to his date of late retirement times final pensionable emoluments.

(6) For the purpose of paragraphs (4) and (5) the amount of pension from the 1968 Fund to be taken into account is the normal form of annuity which can be purchased, or otherwise secured, by the member's 1968 Fund account accumulated with credited interest thereon up to his late retirement date.

22. The maximum annual pension payable to a member before any commutation pursuant to regulation 23 shall not exceed an amount representing two percent of the member's final annual remuneration at retirement multiplied by his service (but counting a maximum of thirty-three and one-third such years) or such higher maximum as may be permitted from time to time by the relevant law.

Maximum pension.

23.—(1) A person who is a member or deferred vested pensioner immediately prior to the commencement of any pension to which he may be entitled under these Regulations, may commute a portion of that pension into a lump sum gratuity.

Gratuity and reduced pension.

(2) The gratuity shall not exceed the lesser of—

- (a) the annual pension before commutation multiplied by 3.125; and
- (b) one hundred and twenty thousand dollars or such sum as may be permitted from time to time by the relevant law,

and the consequent reduced pension shall be determined by the Actuary.

24. Where a member's pension payable under the Scheme is less than twelve thousand dollars per annum before any commutation under regulation 23, the Trustees may, in their absolute discretion, at the date on which the pension is due to commence, grant in lieu of the pension such lump sum as the Actuary shall certify to be appropriate.

Full commutation of trivial pension.

25. Subject to these Regulations, the normal form of pension payable pursuant to regulations 17(1), 19, 20 and 23 shall be in monthly installments throughout the lifetime of the member, but in no event shall the payments cease before sixty monthly payments have been made.

Normal form of retirement pension.

26.—(1) Subject to paragraph (2), a member may, with the approval of the Trustees, elect to have the actuarial equivalent of his normal form of pension paid in any of the forms specified hereunder, namely—

Alternative forms of pension.

- (a) an actuarially reduced pension, payable for life with one hundred and twenty monthly payments guaranteed, so however, that if a pensioner dies prior to his receiving all such monthly payments guaranteed under this sub-paragraph, the balance of such payments shall be made as and when due, to his nominated beneficiary or beneficiaries or failing such beneficiary or beneficiaries, to his personal representative;
- (b) an increased pension which is the actuarial equivalent of the member's pension payable under regulation 17, 18, 19 or 21, as the case may be, and payments shall cease immediately on his death, irrespective of the number of payments which have been made;

- (c) a reduced pension which is the actuarial equivalent of the pension payable under regulation 17, 18, 19 or 21, as the case may be, which shall be payable to the pensioner while both the pensioner and the nominated beneficiary at the time of election are alive and, after the first death, shall be continued in the same or a reduced amount to the survivor until his death; or
- (d) conversion of the pension payable under regulation 17, 18, 19 or 21, as the case may be, into another form of pension that is the actuarial equivalent of the pension to which he is entitled under these Regulations and the payment of which is allowable under the provisions of the relevant law.

(2) An election under paragraph (1) shall be made before payment of any benefit commences and once the form of pension has been accepted by the Trustees, it may not be rescinded by the member after payment of the pension has commenced without the written consent of the Trustees.

(3) In no circumstance shall the consent of a nominated beneficiary be required as a condition to the right of a member to revoke or change any option previously elected.

PART X. *Other Benefits*

Benefits on death
in service.

27. On the death of a member while in service with the employer, a lump sum equal to the member's accumulated compulsory basic and additional voluntary contributions shall be paid to his nominated beneficiary or legal personal representative, together with credited interest to his date of payment.

Death of a pen-
sioner.

28. Subject to Part VIII, on the death of a pensioner prior to receiving the guaranteed months pension payments, the nominated beneficiary or personal representative shall receive monthly pension until the total number of guaranteed months payments have been paid.

Death of a deferred
vested pensioner.

29. On the death of a deferred vested pensioner an amount equal to the actual value of the deferred vested pension shall be paid to his nominated beneficiary or personal representative, together with credited interest to the date of payment.

Benefits available
on early termina-
tion.

30.—(1) If for any reason, other than death, ill-health retirement or early retirement, a member ceases to be employed by the employer, he may, by notice in writing to the Trustees, make an election in accordance with paragraph (2).

(2) Where the termination is—

- (a) prior to the completion of five years of pensionable service the member may elect to—
- (i) leave his member's compulsory basic contributions and additional voluntary contributions, if any, and his transfer value, if any, all accumulated with credited interest, to provide a deferred pension commencing either his early retirement date or his normal retirement date, which shall be of such amount actuarially equivalent to the value of these amounts at his early or normal retirement date, as the case may be; or
 - (ii) take a cash refund of his own contributions (compulsory basic and additional voluntary) accumulated with credited interest up to his date of termination, and receive a deferred pension, starting at his early retirement date or normal retirement date, actuarially equivalent to his transfer value, if any, accumulated with credited interest to his early or normal retirement date; or
 - (iii) have all the amounts specified in sub-paragraph (i) transferred to the trustees of another approved superannuation fund or approved retirement scheme that he proposes to join;
- (b) after the completion of at least five years pensionable service, the member may, unless he is convicted of fraud, elect to—
- (i) take a cash refund of his own contributions (compulsory basic and additional voluntary) accumulated with credited interest up to his date of termination, and receive a deferred vested pension starting at his early retirement date or normal retirement date actuarially equivalent to his transfer value, if any, together with credited interest up to his early or normal retirement date, as the case may be; or
 - (ii) receive a deferred vested pension commencing at his early or normal retirement date equal to two per cent of the member's final pensionable emoluments at the date of termination for each year of pensionable service, plus additional deferred vested pension starting from his early or normal retirement date, actuarially equivalent to—
 - (A) his additional voluntary contributions, if any, accumulated with credited interest; and
 - (B) his transfer value, together with credited interest thereon up to his early or normal retirement date,

as the case may be; or

- (iii) have the actuarial value of the deferred vested pension specified in sub-paragraph (ii), transferred to the trustees of another approved superannuation fund or approved retirement scheme that he proposes to join.

PART XI. *Beneficiary's Incapacity to Act*

Incapacity.

31.—(1) Paragraph (2) shall apply in any case where a member or other beneficiary is detained in legal custody or is, in the opinion of the Trustees, suffering from any incapacity rendering him unable to manage his affairs or to give a proper receipt for the pension or other moneys payable to him hereunder.

(2) For the purposes of paragraph (1), the trustees may in their discretion, pay the moneys payable to the member or beneficiary, as the case may be, to any person or institution or body supporting or caring for him or to any of his relatives or dependants, to be applied for his benefit or the benefit of his dependants.

(3) The receipt of the person or the supporting person, institution or body for any sum or sums so paid shall be a complete discharge to the Trustees for the money paid and the Trustees shall not be under any liability to see to the application thereof.

PART XII. *Assignment or Adjustment of Benefits*

Non-assignment of benefit.

32. A member or nominated beneficiary shall not assign, mortgage or otherwise deal with his beneficial interest under the Scheme.

Bankruptcy of member.

33.—(1) If a member or nominated beneficiary becomes bankrupt, he shall forfeit all such interest which shall vest in the Trustees who may, at their discretion, apply the same or any part thereof in cases of financial hardship only for the maintenance, personal support or benefit of—

- (a) the member or any other beneficiary; and
 (b) the member's or beneficiary's spouse, children or other dependants or such one or more of them,

in such manner in all respects as the Trustees in their absolute discretion think fit.

(2) The employer shall determine whether a person mentioned in paragraph (1) is an undischarged bankrupt.

Augmentation of benefits.

34.—(1) At the request of the employer (or at the discretion of the Trustees but in that event subject to the agreement of the employer) the Trustees shall—

- (a) increase all or any of the pensions and other benefits payable under the Scheme; or
- (b) provide benefits or additional benefits under the Scheme for members, deferred vested pensioners or nominated beneficiaries.

(2) The payment of increased benefits under paragraph (1) shall be subject to the payment into the Fund by the employer of such additional contributions (if any) as the Trustees and the employer (acting on the advice of the Actuary) shall determine to be necessary to ensure that—

- (a) the actuarial solvency of the Fund is not thereby impaired; and
- (b) the status of the Scheme as an approved retirement Scheme under the relevant law would not thereby be prejudiced.

PART XIII. *Miscellaneous*

35.—(1) Contributions and benefits under these Regulations shall be calculated and remitted in the same currency as the salary of the relevant member. Currency for benefits.

(2) The Trustees may, subject to any requirement of law relating to foreign exchange control, pay a benefit in a currency selected by the member or his beneficiary at the current rate of exchange on the date the payment is made.

(3) In subsection (2) “current rate of exchange” means the rate published by the Bank of Jamaica for conversion of Jamaican dollars to the currency of the country which is required by the member.

36.—(1) The employer shall maintain the necessary records of age, pensionable service and pensionable emoluments for each member and shall make these available to the Trustees. Certification of records.

(2) Where there are differences between the employer’s and the member’s records with regard to pensionable service or pensionable emoluments, the records of the employer shall be considered as conclusive in determining such pensionable emoluments or pensionable service.

(3) The Trustees shall keep records of all their proceedings and acts and shall keep all such books of accounts, records and other data as may be necessary for the proper administration of the Scheme and the Fund.

37. An amendment of the Scheme shall not, up to the date of change, adversely affect— Amendment not to have adverse effect.

- (a) pensions being paid to pensioner;
- (b) benefits already earned by pensioners;
- (c) benefits already earned by deferred pensioners;

- (d) the status of the Scheme as an approved retirement scheme or an approved superannuation fund, as the case may be, under the relevant law.

Discontinuance of Scheme.

38.—(1) Where the employer proposes to discontinue the Scheme, it shall give the Trustees not less than six months' notice, in writing thereof.

(2) Upon being notified under paragraph (1), the Trustees shall cause an actuarial valuation to be made of the assets and liabilities of the Fund and shall apply the Fund on the written advice of the Actuary, so far as the assets permit and subject to paragraph (3), after the payment of all sums which may then be owing and the costs, charges and expenses of the winding-up as follows—

- (a) any benefits which are payable or are in the process of payment under these Regulations at the date of winding-up shall continue to be paid or fully secured;
- (b) any member who has attained normal retirement age on the date of the winding-up of the Scheme but who is still in the employment of an employer shall be deemed to have retired and become a pensioner on the day preceding such date and shall be entitled to benefits calculated under regulation 17 and such benefits shall be secured;
- (c) any benefits contingently payable on the attainment of normal retirement age or on death in respect of deferred pensioners shall be secured;
- (d) any member who on the date of winding-up of the Scheme was eligible for early retirement pension under regulation 18, disregarding the membership requirement may elect to receive such benefits, and shall be deemed to have retired and become a pensioner on the day preceding such date and such benefits shall be secured;
- (e) each person who is a member on the date of the winding-up of the Scheme and whose benefits have not been secured under sub-paragraph (a), (b) or (d), shall—
- (i) subject to sub-paragraph (f) be paid an amount equal to the value of his member's compulsory basic and additional voluntary contributions accumulated with credited interest to the date of winding-up; and
- (ii) have secured in respect of his transferred assets accumulated with credited interest to the date of winding up, an actuarially equivalent deferred yearly annuity payable in equal monthly installments to commence at his normal retirement age;

- (f) a member entitled to benefit under sub-paragraph (e) may elect to leave with the Trustees his compulsory basic contributions and transferred assets both accumulated with credited interest up to the date of winding-up and there shall be secured in lieu thereof, a deferred yearly pension payable in equal monthly instalments to commence at his normal retirement age, of the amount as the Actuary or any insurance company determines to be actuarially equivalent;
- (g) a member who makes the election permitted by sub-paragraph (f) may further elect to leave with the Trustees his voluntary contributions accumulated with credited interest up to the winding-up date and there shall be secured in lieu thereof, a deferred yearly pension of an amount actuarially equivalent, payable in equal monthly instalments to commence at normal retirement age;
- (h) any election made under sub-paragraph (e) or (f) must be made within thirty days after the Trustees have given notice of the option to the member and, if no election has been made within such period, the member shall be deemed not to have made such election under these sub-paragraphs;
- (i) there shall be secured for each member who elected to receive benefits under sub-paragraph (g) or (h) as far as the remaining funds will allow, an additional deferred yearly pension payable in equal monthly instalments to commence at normal retirement age, so, however, that the total deferred pension payable under all sub-paragraphs of this regulation shall not exceed the pension actuarially equivalent to the amount of the member's account at the date of winding-up or such lesser amount as the Actuary or an insurance company may determine having regard to the sufficiency of the funds of the Scheme;
- (j) any remaining funds shall be secured for all persons entitled to immediate contingent or deferred pensions and who were employed to the Authority on the date of winding-up of the Scheme or on the date on which they became pensioners contingent or deferred annuity of an amount for each person as is determined on an equitable basis by the Actuary provided that no such additional annuities or other benefits shall be such as would prejudice the approval of the Scheme under the relevant Act were the Scheme to continue in being ;
- (k) if any funds remain they shall be paid by the Trustees to the employer.

(3) Where the balance of the Fund, after allocation to benefits under sub-paragraph (2) (a), is sufficient to provide a full allocation for all persons in the categories defined in sub-paragraph (2) (b), (c), (d) or (e), the latter allocation shall be reduced in the proportions as advised by the Actuary.

(4) The provision of benefits to be made under this regulation shall be arranged by the Trustees and shall be made in any one or more of the following ways—

- (a) by purchase of non-assignable annuities;
- (b) by transferring, with the consent of each member concerned, such part of the funds as is certified by the Actuary to be appropriate in the circumstances to another superannuation scheme approved by the competent authority on that behalf with a view to benefits being obtained from that Scheme;
- (c) by such other means as the Trustees in their absolute discretion think fit but so that no part of the Funds shall remain under the Trusts Deed after the duration of the period referred to in paragraph (2) (d).

(5) Notwithstanding the other provisions of this regulations the Trustees shall if so required by law, obtain the specific approval to their winding up proposals of the appropriate regulatory authority established by law for that purpose.

Settlement of questions.

39. Subject to the provisions of these Regulations, the Trustees may decide all questions relating to the Scheme and their decision shall be final and shall not be made in such a way to discriminate against any member or employee.

Member acting as Trustee.

40. A Trustee who is a member may exercise his powers and execute his duties as a Trustee notwithstanding that he is a member, and no decision or exercise of a power or discretion by the Trustee shall be invalidated or questioned on the grounds that the Trustees or any of them had a direct or personal interest in the mode or result of such decision or of exercising such power or discretion.

Non-Scheme benefit.

41. Where a member of staff of the Authority has served for a period in excess of ten years and is not entitled to pension hereunder, the Authority may in its discretion grant the member a special retirement benefit.

SCHEDULE

(Regulation 2)

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THE PORT AUTHORITY ACT

The Port Authority Superannuation Staff (2002) Scheme

1. **The Pension Scheme.** (1) As from the date of admission of each member to the scheme the Port Authority of Jamaica shall deduct at appropriate times from every payment in respect of wages or salaries paid to such member such sum or sums as shall be provided for by the Regulations and shall contribute out of its own monies to the scheme such sum or sums as specified to be employer's contributions payable under the Regulations;
- (2) The Port Authority of Jamaica shall pay the members' contributions pursuant to this clause to the Trustees within one month of the deduction date.
2. **Appointment and Removal of the Trustees, Number of Trustees, Meetings.** (1) The power of appointing Trustees (whether new, substituted or additional) of the Scheme shall be vested in the Minister. At all times there shall be at least seven (7) Trustees.
- (2) The Chairman of the Trustees shall be appointed by the Minister. The Trustees shall appoint one of their numbers to Secretary Trustee.
- (3) The Authority shall appoint the Trustees to be the Trustees of the Scheme and the Trustees by accepting office as such trustees agree to join in this Statutory Trust for the purpose of declaring the trusts, interests and purpose thereof. The administration and management of the Scheme shall be vested in the Trustees and the fund shall be held by them upon irrevocable trust for application in accordance with the Statutory Trust and the Regulations.
- The Authority may remove or replace any Trustee appointed hereunder, provided that such removal would not reduce the number of appointed Trustees to less than seven (7).
- A Trustee may at any time by notice in writing resign as a Trustee of the Fund.
- The Trustee shall do all things necessary to give effect to any removal or resignation and to vest the Fund in such new or additional Trustee or Trustees as may be appointed in accordance with the Statutory Trust.
- The Trustees shall meet at least quarterly at such time and place as they shall decide and make regulations for the conduct of their business and all other matters in connection with their work.
- The Chairman of the Trustees and five (5) Trustees shall form a quorum. A quorum shall be competent to meet and transact the business of the Scheme notwithstanding a vacancy in the number of Trustees. All questions shall be decided by a majority vote of the Trustees present and voting. In the event of a tie the Chairman shall have a casting vote. A Resolution in writing signed by all the Trustees shall be as valid as a resolution passed at a duly constituted meeting of the Trustees and may consist of several documents in like form, each signed by one or more of the Trustees.
- Investment of the Fund*
3. **Duties and powers of the Trustees.** The Trustees shall accept and receive all sums of money paid to them from time to time by the Authority and shall hold, invest and re-invest such monies and assets together with the income and profits derived there-from, in such investments as they may think fit, including and without prejudice to the generality of the foregoing, securities, common and preferred stocks, units, unit trust or mutual funds or other common investment funds or securitized issues, real estate and mortgages. The Trustees may underwrite or sub-underwrite and enter into any agreement or agreements for underwriting or sub-underwriting any investments or securities whether on issue or sale and whether jointly with other persons or not, and do all things incidental thereto. The Trustees shall have power to open and operate or to authorize such person or persons or body as they think fit to open and operate such bank accounts in the name of the Scheme as they think appropriate with at least two (2) signatures to operate the account.

Borrow or Raise Money

The Trustees may borrow or raise money for the purposes of the Fund, or such of them as are willing to lend, or from others, subject to the consent of the Authority, upon such terms and conditions as the Trustees in their discretion may deem desirable or proper.

All monies borrowed as aforesaid shall be treated in all respects as monies forming part of the Fund, and it is hereby declared that the Trustees may from time to time if they consider it to the advantage of the Fund, exercise the power of borrowing hereby conferred by raising monies for the purpose of engaging in transactions or making investments on the part of the Fund.

Retain Cash

Subject to Clause 11 the Trustees shall retain in cash and keep unproductive of income such amount of the Fund as they may in their discretion determine PROVIDED that at no time will the Trustees keep unproductive of income for a period in excess of one month any contributions or other cash received hereunder. The Trustees shall not be liable for interest on any uninvested cash deposited with them during the period the Trustees determine to hold such cash uninvested and unproductive of income.

Appointment of a Trust Administrator and/or Investment Manager

The Trustees may delegate and authorize the sub-delegation to any Trust Company and/or Investment Manager or other suitable Administrator, all of any of the powers, duties or discretion vested in them hereunder except for duties regarding distribution of the assets in the event that the Scheme is wound up. Any such delegation may be on such terms and conditions as the Trustees shall deem fit and as shall be mutually agreed in a contract made between them and the Trust Company or other Administrator appointed by the Trustees and the Trustees shall not be responsible for any loss thereby arising.

Other Duties

The duties of the Trustees shall include the duties stated in the Regulations.

The Trustees shall have the power to employ and to remunerate such manager or agent as they may think fit in the transaction of any business of the Scheme including the payment of pensions and other benefits and any such payment duly made by such manager or agent shall be a good and sufficient discharge of the Trustees.

Payments shall be made from the Fund as the Trustees may from time to time in writing direct and certify are for the payment of pensions or other benefits arising under the Fund or for the payment of expenses of administering the Scheme or for the repayment of borrowed monies and interest thereon.

All costs, charges and expenses incurred in carrying out the provisions of this Statutory Trust or for the benefit of or connected with the management of the scheme shall be paid out of the Fund, unless otherwise paid.

The Trustees shall keep or cause to be kept proper records and accounts of the Fund and shall submit those accounts to an annual audit within nine months after the end of each Scheme Year. The auditor or auditors shall be afforded access to all relevant records and documents and a copy of every audited report shall be given to the Authority and shall be accessible to the Members.

The Trustees shall, from time to time, appoint on such terms as they think fit, an Actuary, and auditor or auditors; each such auditor shall be a person qualified for appointment as an auditor of a company under the Companies Act (or any modification or re-enactment thereof for the time being in force).

The Trustees may consult with legal counsel or the Actuary or any other professional appointed by the Trustees, with the approval of the Authority, concerning any question which may arise with reference to their duties under the Statutory Trust and the written opinion or advice of such counsel or Actuary or other professional, as the case may be, shall be full and complete protection in respect of any action taken or suffered by the Trustees hereunder in good faith and in accordance with the opinion or advice of such counsel or actuary or other professional.

- 4. Honouring Indebtedness.
- 5. Expenses of the Fund.
- 6. Annual Audited Accounts of the Fund.
- 7. Appointment of Professional Persons.
- 8. Consulting with Professionals.

9. **Determination of questions.** The provisions of regulation 15 (2) shall have effect subject to the powers expressed to be exercisable by the Authority under this Statutory Trust and the Regulations and save insofar as set aside or varied by any court of competent jurisdiction.
- The Trustees shall have full power conclusively to determine whether or not any person is entitled to any of the benefits, from time to time, payable under the Scheme and the amount of any such benefit, and also conclusively to determine all questions and matters of doubt arising under, or in connection with, the Scheme and the Fund and whether relating to the construction thereof or otherwise. Any such determination shall be binding on all interested parties.
10. **Other powers and duties of the Trustees** The Trustees shall have the power from time to time:
- (i) to give written authority to a committee consisting of any two or more persons as they shall think fit and established for the purpose, to draw cheques on such bank accounts or to endorse any cheque or to give receipt and discharge in accordance with the authority laid down by the Trustees and every such endorsement, receipt and discharge shall be valid and effectual as if it was given by all the Trustees;
 - (ii) to authorize any one or more of the Trustees to sign any document on their behalf; and
 - (iii) to give any undertaking to the Commissioner of Taxpayer Audit and Assessment and to any other relevant Government department or agency, notwithstanding that fulfilment of such undertaking would mean breaking or going beyond or outside the existing provisions of the scheme and shall treat the existing provisions of the scheme as being amended so far, if at all, as may be appropriate in order to permit fulfilment of such undertaking.
11. **Trustee's liability.** No Trustees shall be personally liable for any loss, damage or costs or expenses that may happen or be incurred in consequence of any act or omission or default of such Trustee whilst purporting to act as such unless he or she is guilty of actual fraud or dishonesty whereby loss or damage is sustained by the scheme. Further without prejudice to the right of indemnity by law given to trustees the Trustees shall in the absence of fraud or dishonesty be indemnified in respect of all liabilities and expenses incurred in the execution or purported execution of their duties under this Statutory Trust or of any powers, authorities or discretions vested in the Trustees under the Scheme and against all actions, proceedings, costs, expenses, claims and demands in respect of any matter or thing made, done or omitted in any way relating to the scheme.
12. **Amendments of the Pension Scheme** The Minister, may at any time by regulations amend the Scheme including this Statutory Trust and the Regulations provided that no such amendment may:
- (a) Prior to the satisfaction of all liabilities with respect to Retired Members, Deferred Vested Pensioners and Members and their Spouses, Children and/or designated beneficiaries allow any part of the Fund to revert to or be recoverable by the Authority or to be used for or diverted to purposes other than for the exclusive benefit of Retired Members, Deferred Vested Pensioners, and Members and their Spouses,, Children and/or designated beneficiaries;
 - (b) Enlarge the duties or liabilities of the Trustees without their written consent;
- Prejudice or affect the accrued rights of any Member, in respect of benefits payable to him under the Scheme and to which such Member shall have become entitled by reason of contributions and Transferred Assets already paid to the Scheme or reduce the benefits of any Pensioner or Deferred Vested Pensioner at the date of amendment;
- Prevent the Scheme from securing or maintaining its tax exempt status under the Income Tax Act or other relevant statutes;
- Extend the operation of the Scheme beyond the Trust Period as defined in Section 21;
- Contravene any law or regulation for the time being applicable to the conduct of pension schemes in Jamaica.

If Port Authority of Jamaica shall be wound up for the purpose of reconstruction or amalgamation with any other institution, the Trustees may make arrangement and enter into agreements for the continuation of the Fund in conjunction with such reconstructed or amalgamated company as if such company were the Authority and the Statutory Trust and the Regulations shall thereafter take effect in all respects as if such company had been a party to the Scheme instead of the Authority.

13. Reconstruction or amalgamation.

(1) The Scheme hereby established shall determine upon the happening of whichever of the following events first occurs, provided that under no circumstance shall the trusts continue beyond the Trust Period hereinafter defined.

14. Termination of the Pension Scheme—Winding up.

(i) The expiry of six (6) months after the giving of notice in writing by the Authority to the Trustees that the Scheme is to be wound up.

(ii) The expiry of the period of twenty-one years after the date of the death of the last survivor of the issue now living of Her Britannic Majesty Queen Elizabeth II, and such further period, if any, as may be lawful, (the "Trust Period").

(2) On the termination of the Scheme as provided in Regulation 15, the affairs of the Scheme shall be wound up and the Trustees shall cause an actuarial valuation to be made of the assets and liabilities of the Fund and shall apply the assets of the Fund on the written advice of the Actuary, so far as they permit, after the payment of all sums which may then be owing and the costs, charges fees and expenses of the winding up, in the manner detailed in the Regulations.