

English

Les Livrets
Thématiques

Divorce

United Nations
Joint Staff Pension Fund

New York & Geneva
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UNITED NATIONS

Introduction

The United Nations Joint Staff Pension Fund (UNJSPF) Regulations and Rules govern the conditions of participation and the determination of entitlements derived from such participation.

The Regulations and Rules are numerous and complex, therefore, the purpose of this booklet is to explain aspects of the Regulations dealing with divorce and the administrative formalities required in the preparation of divorce settlement agreements.

This booklet does not, however, attempt to deal with all aspects of any one benefit for it is impossible to foresee the circumstances of every individual case that may arise. Participants, retirees and family members facing circumstances not covered by this booklet are therefore encouraged to consult the Fund Secretariat or the secretary of the Staff Pension Committee (SPC) of the organization of which the participant is currently, or had previously been employed. It should also be read in conjunction with the Fund's Regulations and other booklets produced by the Fund, in particular the booklet on Survivor's Benefits, all of which provide additional information on other aspects of UNJSPF benefits.

All the benefit amounts quoted in this booklet reflect their estimated value as of 1 April 2009 and are therefore subject to change. Furthermore, benefits are adjusted periodically for cost of living increases in accordance with the UNJSPF Pension Adjustment System (PAS). Information on the PAS can be found on the Fund's website (www.unjspf.org). Adjustments are normally undertaken once a year, in April, provided that the relevant consumer price index has moved at least 2% since the date of the last adjustment.

The information in this booklet is made available for the convenience of the UNJSPF beneficiaries. If there is an ambiguity, inconsistency or conflict between the information provided and the UNJSPF Regulations and Rules, decisions will be based on the Regulations and Rules, and not on the information contained in this booklet. The information is divided into the following sections:

- Terms and acronyms used in the booklet;
- UNJSPF Benefits and Divorce, which provides general information on how UNJSPF benefits are considered in the context of divorce;
- The Application of Article 45 of UNJSPF Regulations, which sets out the conditions and process for deduction of alimony or child support payments from a retiree's monthly pension benefits;
- Divorced surviving spouse's benefit (Article 35 bis of the Regulations), which describes who is eligible to receive the benefit and the conditions for payment;
- A summary guide for the preparation of divorce settlement agreements as a quick reference for issues relevant to divorce settlement agreements; and
- The text of Articles 35 (bis) and 45 of the UNJSPF Regulations.

All the forms referred to in this booklet are available on the Fund's website.

Terms and Acronyms used in this Booklet

Alimony: financial provision made by a spouse for his/her spouse or former spouse in cases of separation or divorce.

Beneficiary: refers to a person entitled to a survivor's benefit (widow/widower, child, divorced surviving spouse, secondary dependant) or to a one-time payment from the Fund (e.g. a residual settlement).

Divorce: refers to the legal termination of a marriage. Since a legal separation does not terminate the marriage, a participant or retiree who is legally separated from his/her spouse would continue to have the status of «married» for pension purposes in his/her pension record.

Divorced surviving spouse: refers to the former spouse of a participant or retiree, who requests a divorced spouse's benefit and meets the requirements set forth in Article 35 bis (b) of the UNJSPF Regulations.

Participant: refers to an active staff member contributing to the Fund in accordance with articles 21 and 25 of the Regulations of the Fund.

Retiree: refers to a participant who has officially separated from the service of his/her employing organization and is entitled to a periodic benefit from the Fund.

Separation from service: refers to the act by which a participant ceases to be employed by a member organization of the UNJSPF otherwise than by death.

Surviving spouse: refers to a widow or widower who, under article 34 or 35 of the UNJSPF Regulations, would be entitled to a spousal benefit.

SPC: Staff Pension Committee of a member organization of the Fund.

UNJSPB: United Nations Joint Staff Pension Board.

UNJSPF: United Nations Joint Staff Pension Fund also referred to as "the Fund".

UNJSPF Benefits and Divorce

Why are UNJSPF retirement benefits of significance in a divorce?

Some national legislations and courts treat retirement benefits as marital assets that are subject to equitable distribution in the event of a participant or retiree's divorce. Accordingly, when a participant or retiree is divorced, a court may determine that his/her spouse is entitled to a share of the participant or retiree's UNJSPF benefits.

What type of pension plan is the UNJSPF?

UNJSPF is a defined-benefit type pension plan. In a defined-benefit pension plan the employer promises the employee on retirement a periodic benefit that is predetermined or "defined" by a formula which considers the employee's earnings history, years of service and age, rather than resulting from what the employee and employer contributed and the investment returns.

Can a retiree receive a pension while working for a UNJSPF member organization or borrow from his/her pension entitlements?

It should be noted that no participant or his/her spouse or former spouse can receive any payments from the Fund while the staff member is still in active service; neither can a participant or a retiree borrow any money against his or her pension entitlements. The plan description and beneficiaries listed under the plan can be found in the document "Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund" available for download at the Fund's website (www.unjspf.org).

What is the status of the UNJSPF in regard to national court orders?

- As a subsidiary organ established by the United Nations General Assembly, the UNJSPF enjoys the same privileges and immunities as the United Nations organization.
- Therefore, the Fund is not subject to the jurisdiction of any national courts or to the service of process under the authority of such courts.
- Hence, the Fund will not routinely endorse or give effect to the terms of divorce settlement agreements and, more particularly, to the terms of any court order related thereto.

If I obtain a divorce from my spouse would he/she be entitled to a portion of my pension benefits?

UNJSPF Regulations do not give an absolute right in the participant or retiree's pension benefits to the divorced spouse of a present or former UNJSPF participant.

Can I assign my spouse's, or former spouse's, potential survivor's benefit to my estate, to my children, or to a trust?

UNJSPF Regulations do not permit the assignment of a surviving spouse's or divorced surviving spouse's benefit to any third party.

What survivor's benefits are payable to a former spouse in the event of a divorce?

Article 35 bis of the UNJSPF Regulations provides for a survivor's benefit for the divorced surviving spouse of a participant or former participant who meets the requirements set forth in Article 35 bis (b).

Can a former spouse garnish a retiree's pension to enforce alimony and/or child support payments?

No, as stated above, rights under the UNJSPF Regulations are non-assignable and the Fund is not subject to the jurisdiction of national courts and does not, therefore, routinely give effect to the terms of the divorce settlement agreement or other court orders. However, under Article 45 of the UNJSPF Regulations, and at the discretion of the Chief Executive Officer (CEO), the Fund may assist in satisfying a legal obligation on the part of a UNJSPF beneficiary arising from a marital or parental relationship and evidenced by a court order or court approved settlement.

Who should contact the Fund in the event of a participant or retiree's divorce?

The participant or retiree, his/her former spouse and/or their respective legal representatives may contact the Fund's New York or Geneva Client Services Units (contact information can be found on the back of this Booklet) in regard to divorce proceedings and any issues concerning the disposition of UNJSPF pension benefits as part of the divorce settlement.

Once the divorce is finalized, the relevant signed court order, including the divorce settlement agreement addressing UNJSPF benefits, should be submitted to the Fund as soon as possible in order to update the Fund's records in regard to survivor's benefits, and also with respect to action, if any, to be taken by the Fund in relation to the divorce.



Does a divorce automatically nullify a participant or retiree's designation of the former spouse as the recipient of a residual settlement on Form Pens.A/2?

Since spouses are eligible to receive UNJSPF survivors' benefits, the Fund normally advises against participants and retirees designating them as beneficiaries on the Pens.A/2 form. However, in cases where a former spouse is designated as a beneficiary, a divorce does not automatically nullify the designation by a participant or retiree of the former spouse as the recipient of a residual settlement under Article 38 of the UNJSPF Regulations. The participant or retiree would have to complete and submit a new Pens.A/2 form to the Fund naming a new beneficiary.

Does the Fund provide information on a participant or retiree's benefits in order to assist in the preparation of a divorce settlement agreement or court order?

Under a strict rule of confidentiality contained in the Regulations and Rules, the Fund cannot provide any particular pension information to third parties, including former or estranged spouses or their lawyers except upon prior written authorization of the participant or retiree concerned, or if a third party obtains a court order to request such information. In cases where information is provided pursuant to a court order, only the following information can be provided in accordance with Section B.4 of the UNJSPF Administrative Rules:

- i) The amount of benefits received and in payment for a beneficiary;
- ii) The accrued entitlements for an active participant; and
- iii) The address of the beneficiary.

Does the Fund provide actuarial values for accrued UNJSPF pension rights?

No, the Fund does not provide actuarial values for accrued UNJSPF pension rights. The participant can request an estimate of his/her pension benefit(s), including the amount of a one-time withdrawal settlement, reflecting the amount he/she would become entitled to as at the time of a specific hypothetical separation date.

Will the amount of a retiree's pension benefits change due to divorce from his/her spouse?

No, since the potential survivorship element is not taken into account in the calculation of a pension benefit, the amount of the retiree's pension will not be different due to the fact that he/she is no longer married.

Does the remarriage of the former spouse make him/her ineligible to receive a divorce surviving spouse's benefit?

No, as of 1 January 2009 the previous condition that no benefit would be payable if the former spouse had remarried has been removed. Where a divorced surviving spouse's benefit is already in payment, remarriage will not result in the termination of the benefit.

In case of divorce, can the Fund pay child benefits to a custodial parent who is not the UNJSPF retiree?

Yes, the custodial parent should submit a request together with proof that he/she is the custodial parent and provide payment instructions on Form PF.23/B (10/06) for payment of a child benefit under Article 36 of the UNJSPF Regulations.

The Application of Article 45 of UNJSPF Regulations

Article 45 states that a participant or retiree cannot assign his or her rights under the UNJSPF Regulations, however, it allows the Fund to pay a portion of a retiree's monthly periodic benefit to a former or estranged spouse in order to fulfil a legal obligation (e.g. alimony or child support payment) arising from a marital or parental relationship.

What are the requirements for the application of Article 45?

The Fund requires a court order in a final form stating the amount or percentage of the benefits due to the former spouse. However, the actual determination of the possible application of this article in a particular case would be done only after the participant is separated from the service of his/her employing organization.

Does the Fund require the court order to be in a specific form?

The Fund does not require the completion of any specific form, nor are there any formal requirements concerning the language of the relevant national court order (including a Qualified Domestic Relations Order (QDRO) in the United States), to consider the possible application of Article 45 in a particular case.

Does the UNJSPF secretariat provide samples or advice in regard to the drafting of court orders?

No, the UNJSPF secretariat has no samples to provide to legal representatives. Equally, the Fund does not normally review specific (draft) agreements or offer individual legal advice on the drafting of agreements, except when queries relate to the UNJSPF Regulations and their application.

Who should submit the request for the application of Article 45 and what documentation is required?

The former participant may, at the time of his/her retirement, formally request that a portion of his/her benefit be remitted directly to his/her former or estranged spouse. Alternatively, the former or estranged spouse may submit the request at that time. The request should be accompanied by a copy of the signed court order(s) as well as any divorce settlement agreement or other relevant documentation to support the request. The decision as to whether or not to apply Article 45 in a particular case is at the discretion of the CEO of the Fund.

Is the UNJSPF retiree notified in the event that the request for the application of Article 45 is made by the former or estranged spouse?

Yes, before the exercise of the above-mentioned discretion by the CEO, the UNJSPF retiree will be notified in order to obtain his/her comments.

Does the Fund assign the exact amount or percentage ordered by a court?

No, given that the application of article 45 is at the discretionary authority of the CEO and due to the fact that the Fund is not subject to the jurisdiction of national courts, it is not obliged to assign the exact amount or percentage ordered by a national court. In cases where the deduction is stated as a specific amount rather than a percentage, the amount is normally converted to a percentage of the monthly pension benefit payable to the retiree. This allows for cost of living adjustments to be applied in respect of the assigned amount.

Is there a ceiling on the amount of the monthly deduction that can be assigned to a former or estranged spouse?

The Fund does not normally assign more than 50% of the gross monthly pension benefit of the retiree in relation to court orders for alimony or child support.

How is the deduction implemented?

The deduction is implemented on a prospective basis. Both the retiree and the former or estranged spouse, or their respective legal representatives will be advised of the decision of the CEO and a request will be made for the submission of signed original payment instructions (Form PF.23 (02/03)) from the former or estranged spouse, if they have not already been submitted.

Will the Fund implement court orders for arrears in alimony or child support payments?

No, UNJSPF benefits are protected from attachment to pay off debts. The Fund will only assist in satisfying current legal obligations for payment of alimony or child support, on a prospective basis, following the decision of the CEO. It is the responsibility of the former or

estranged spouse and the UNJSPF beneficiary to negotiate and agree between them as to how they will settle such private debts.

Does the Fund issue statements of amounts paid to former or estranged spouses?

Yes, upon request the Fund can issue a benefit statement of amounts paid to a former or estranged spouse.

What happens if the divorce settlement agreement provides for the former spouse to receive a lump sum from the retiree?

Pursuant to Article 45, the Fund will only assist in implementing court orders for deductions to be made from amounts paid monthly to the retiree. If the divorce settlement agreement provides for payment of a lump sum, the retiree is responsible for discharging the obligation to make such payment.

What if the retiree elects to commute part of his/her benefit into a lump sum?

In cases where the retiree elects to receive part of his/her benefits as a lump sum, the Fund does not make any deduction of amounts due under a court order to a former spouse. It remains the obligation of the retiree to make the payment.

What happens to the deductions to a former or estranged spouse in the event of a retiree's death?

Deductions from the monthly benefit will cease, as there is no longer a pension benefit payable to the retiree. The Fund will determine what, if any, survivor's benefits are payable, including a divorced surviving spouse's benefit.

What happens if the former or estranged spouse dies?

Should the former or estranged spouse pre-decease the retiree, the deductions will cease and the full retirement benefit will become payable to the retiree with effect from the next month following the death of the former or estranged spouse.

Can the amount of the deduction be changed?

Only in the event that a new court order is issued altering the amount payable by the retiree to his/her former or estranged spouse or in respect of child support; the CEO will review the request to amend the amount and determine the extent to which the Fund can implement the change.

Divorced surviving spouse's benefit

(Article 35 bis of the Regulations)

This benefit is payable to the divorced surviving spouse of a participant or retiree provided the requirements set forth in Article 35 bis (b)(i) to (iii) of the Regulations are met and the divorce settlement agreement/judgment does not expressly state that the former spouse renounced UNJSPF pension benefit entitlements in accordance with Article 35 bis (b)(iv).

Who can apply for a divorced surviving spouse's benefit?

The former spouse of a participant or of a retiree, who survives the said participant or retiree, can request a divorced surviving spouse's benefit.

What conditions have to be met for the payment of a divorced surviving spouse's benefit?

The following four conditions have to be met, which are set out in Article 35 bis (b) of the UNJSPF Regulations:

- i) The former spouse must have been married to the participant or retiree for a minimum continuous period of 10 years during which contributions were paid to the UNJSPF in respect of the participant or retiree;
- ii) The participant's death must have occurred within 15 years of the date when the divorce became final, unless at the time of death the participant or retiree was under a legal obligation to pay maintenance to the former spouse;
- iii) The former spouse must have reached the age of 40, otherwise payment will commence upon his or her 40th birthday;
- iv) The divorce settlement does not contain an express renouncement of UNJSPF pension benefit entitlements by the former spouse.

How much is the divorced surviving spouse's benefit?

If the participant or retiree separated from the service of a UNJSPF member organization before 1 April 1999, the divorced surviving spouse's benefit is a fixed amount. As of 1 April 2009 this amount is estimated at US\$ 9,337.00 per year (US\$ 778.00 per month). However, the amount payable cannot exceed the amount payable to a surviving spouse of the former participant.

If the participant or retiree separated from the service of a UNJSPF member organization on or after 1 April 1999 and there is one or more surviving spouse(s) entitled to a widow's/widower's benefit, the survivor's benefit is divided between the surviving spouse(s) and the former spouse(s) in proportion to the duration of their marriages to the participant/retiree.

If the participant or retiree separated from the service of a UNJSPF member organization on or after 1 April 1999, and there is no widow/widower entitled to a survivor's benefit, the divorced surviving spouse's benefit is equivalent to half of the full benefit payable to the participant or to the retiree.

When does payment of a divorced surviving spouse's benefit start?

If the participant or retiree separated from the service of a UNJSPF member organization before 1 April 1999, payment of the divorced surviving spouse's benefit is due as of the first day of the month following the date of the participant's/retiree's death or as of 1 April 1999, whichever is later.

If the participant or retiree separated from the service of a UNJSPF member organization on or after 1 April 1999, payment of the divorced surviving spouse's benefit is due as of the first day of the month following the date of the UNJSPF CEO's decision authorizing the entitlement to the benefit.

How is the divorced surviving spouse's benefit paid and for how long is it payable?

This benefit is paid monthly to the bank account specified by the divorced surviving spouse in the original signed payment instructions submitted to the Fund, and for as long as he/she is alive, in accordance with article 35 bis of the Regulations of the Fund.

If I marry/remarry after retirement, would my new spouse be entitled to a benefit?

No, your spouse married after your separation from service would not be eligible for a survivor's benefit in the event of your death. However, under Article 35 ter of the UNJSPF Regulations, you may purchase a benefit (annuity) for a spouse married after separation from service through a reduction in your own monthly benefit by submitting an application to the UNSJPF within one year of the date of marriage/remarriage.

Summary guide for the preparation of divorce settlement agreements:

The UNJSPF is a defined benefit plan. The Fund does not provide actuarial values for accrued UNJSPF pension rights. However, a participant or retiree may request an estimate of his/her pension benefit(s), including the amount of a one-time withdrawal settlement, reflecting the amount he/she would have become entitled to as at the time of a specific hypothetical separation date. Participants can also obtain an estimate through the UNJSPF website “www.unjspf.org”.

a) Participants in the Fund receive an annual statement each year, which provides pension related details arising from their individual employment with a UNJSPF member organization. This can also be accessed through the UNJSPF website using the participant’s individual account.

b) Survivors’ benefits for a divorced surviving spouse are governed by Article 35 bis of the UNJSPF Regulations; a determination as to eligibility is only made at the time of death of the participant or retiree. The Fund cannot give any authoritative “pre-approvals” regarding eligibility.

c) If the divorce settlement has an express renouncement of UNJSPF pension benefit entitlements, there is no article 35 bis entitlement to a divorced spouse.

d) Pursuant to Article 45 of the UNJSPF Regulations, the Fund may, at the discretion of the CEO, assist in satisfying a legal obligation on the part of a UNJSPF beneficiary arising from a marital or parental relationship and evidenced by a court order or by a court-approved settlement agreement.

- (i) The Fund does not have, nor require, the completion of any specific form, or formal requirements on the language of the relevant national court order (including Qualified Domestic Relations Order (QDRO) in the United States), to consider the possible application of Article 45 or article 35 bis in a particular case. A QDRO can, however, serve as the underlying basis for applying Article 45 and Article 35 bis.
- (ii) The UNJSPF secretariat has no samples of court orders to provide to attorneys. Equally, the Fund does not normally review specific (draft) agreements or offer individual legal advice when drafting the agreements, except when queries relate to the UNJSPF Regulations and their application.
- (iii) A participant or retiree may him/herself request the application of Article 45 at the time of his/her retirement, or thereafter to have a portion of his/her benefit directly remitted to his/her former or estranged wife, in accordance with the relevant court order and signed, original payment instructions. Alternatively, the request can be submitted by the former or estranged spouse with the relevant documentation.
- (iv) The actual determination of the possible application of Article 45 in a particular case would be done only after the staff member is separated from the service of his/her employing organization.
- (v) Before the exercise of the above-mentioned discretion by the CEO, the UNJSPF retiree will be notified in order to obtain his/her comments.

e) Under a strict rule of confidentiality, the Pension Fund secretariat cannot provide any particular pension information to third parties, including former or estranged spouses or their lawyers. Only upon prior written authorization of the present or former UNJSPF participant concerned can such information be released. Alternatively, limited information may be provided pursuant to a court-order in accordance with Section B.4 of the UNJPSF Administrative Rules.

Relevant Provisions of UNJSPF

Article 35 bis.

Divorced surviving spouse's benefit:

(a) Any divorced spouse of a participant or former participant, separated on or after 1 April 1999, who was entitled to a retirement, early retirement, deferred retirement or disability benefit, or of a participant who died in service on or after that date, may, subject to the provisions of article 34(b) (applicable also to widowers), request a former spouse's benefit, if the conditions specified in paragraph (b) below are fulfilled.

(b) Subject to paragraph (d) below, the divorced spouse is entitled to the benefit set out in paragraph (c) below, payable prospectively following receipt of the request for a divorced surviving spouse's benefit, if, in the opinion of the Chief Executive Officer of the Fund, all of the following conditions are fulfilled:

- (i) The participant had been married to the former spouse for a continuous period of at least 10 years, during which contributions were paid to UNJSPF on account of the participant or the participant was awarded a disability benefit under article 33 of the Regulations of UNJSPF;
- (ii) The participant's death occurred within 15 years of the date when the divorce became final, unless the former spouse proves that at the time of death the participant was under a legal obligation to pay maintenance to the former spouse;
- (iii) the former spouse has reached the age of 40. Otherwise the benefit entitlement shall commence on the day immediately following the day that age is reached; and
- (iv) Evidence is provided that a divorce settlement does not have an express renunciation of UNJSPF pension benefit entitlements.

(c) A former spouse who, in the opinion of the Chief Executive Officer, has met the conditions set out in paragraph (b) above shall be entitled to the widow's or widower's benefit under article 34

Article 35 bis
Divorced surviving spouse's benefit

Article 45
Non-assignability of rights

or 35 as the case may be; however, if the participant is survived by both one or more such former spouses and/or by a spouse entitled to a benefit under article 34 or 35, the benefit payable under article 34 or 35 shall be divided between the spouse and former spouse(s) in proportion to the duration of their marriages to the participant.

(d) Article 34 (f) and (g) shall apply mutatis mutandis.

(e) The divorced spouse of a former participant who separated before 1 April 1999 and, in the opinion of the Chief Executive Officer, met all the other eligibility conditions in paragraphs (a) and (b) above shall be entitled as from 1 April 1999 to a benefit equal to twice the minimum surviving spouse's benefit under article 34 (c), payable from the first day of the month succeeding the death of the former participant, subject to the proviso that the amount of such benefit cannot exceed the amount payable to a surviving spouse of the former participant.

Article 45 Non-assignability of rights

(a) A participant or beneficiary may not assign his or her rights under these Regulations. Notwithstanding the foregoing, the Fund may, to satisfy a legal obligation on the part of a participant or former participant arising from a marital or parental relationship and evidenced by an order of a court or by a settlement agreement incorporated into a divorce or other court order, remit a portion of a benefit payable by the Fund to such participant for life to one or more former spouses and/or a current spouse from whom the participant or former participant is living apart. Such payment shall not convey to any person a benefit entitlement from the Fund or (except as provided herein) provide any rights under the Regulations of the Fund to such person or increase the total benefits otherwise payable by the Fund.

(b) To be acted upon, the requirement under the court order must be consistent with the Regulations of the Fund, as determined by the Chief Executive Officer of the Fund to be beyond any reasonable doubt, and on the basis of the available evidence. Once implemented, the assignment shall normally be irrevocable; however, a participant or former participant may request, upon satisfactory evidence based on a court order or a provision of a settlement agreement incorporated into a court decree, a new decision by the Chief Executive Officer that would alter or discontinue the payment or payments. Furthermore, such payment or payments shall cease following the death of the participant or former participant. If a designee predeceases the participant or former participant, the payments shall not commence, or if they have commenced, shall cease upon the designee's death. In the event that the payment or payments have been diminished, discontinued, or have failed to commence or have ceased, the amount of the benefit payable to the participant or former participant shall be duly adjusted.



Contacting the UN Pension FUND

New York

By telephone: +1 (212) 963 69 31

By fax: +1 (212) 963 31 46

By e-mail: unjspf@un.org

In person: *37th floor, 1DHP

By mail: UNJSPF
United Nations
P.O. Box 5036
New York, NY 10017
USA

*For in person visits, please note the Fund's New York office is located at 1, Dag Hammarskjold Plaza (DHP), at the corner of 48th Street and Second Avenue.

Geneva

By telephone: +41 (0) 22 928 88 00

By fax: +41 (0) 22 928 90 99

By e-mail: unjspf.gva@unjspf.org

In person: *Du Pont de Nemours
Chemin du Pavillon 2
1218 Grand Saconnex
Switzerland

By mail: UNJSPF
c/o Palais des Nations
CH-1211 Geneva 10

*In person visits daily (except Thursdays) from 08.30 hrs till 17.00 hrs (30 minutes per appointment).
Please call +41 22 928 88 00 or send an email for appointment.

Obtain more information on the Pension Fund Web Site

www.unjspf.org

***The secretariat of the
Staff Pension Committee will assist participants from member
organisations.***