

# The Retirement Annuity Trust Schemes Rules, 2015

*Made*

*Coming into operation*

THE GUERNSEY FINANCIAL SERVICES COMMISSION, in exercise of the powers conferred on it by section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>1</sup>, section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>2</sup> and section 31A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>3</sup>, and all other powers enabling them in that behalf, hereby makes the following rules:-

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<sup>1</sup> Ordres en Conseil Vol. XXX, p. 281, amended by Vol. XXX, p. 243, Vol. XXXI, p. 278, Vol. XXXII, p. 324, No. XIII of 1994, No. XII of 1995, No. II of 1997, No. XVII of 2002, and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>2</sup> No. XXII of 2002 amended by Ordinance No. XXXIII of 2003 (Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003); Ordinance No. XIII of 2008 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008) and G.S.I. No. 2 of 2008 (Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

<sup>3</sup> Order in Council No. I of 2001; amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; the Order in Council approved by the States of Deliberation on the 24th February, 2010 and registered on the Records of the Island of Guernsey on the 8th November, 2010; Ordinance No. XXXIII of 2003 (Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) and G.S.I. No. 3 of 2008 (Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

## **1. Citation, commencement, status and application.**

- (1) These rules may be cited as the Retirement Annuity Trust Schemes Rules, 2015.
- (2) They shall come into force on the XXX.
- (3) They apply in relation to a "Retirement Annuity Trust Scheme" ("RATS") within the meaning of, and approved by the Director of Income Tax under, section 157A of the Income Tax (Guernsey) Law, 1975, and to both single member and multi-member RATS. They apply only to members of the RATS who are resident in Guernsey or who have made Guernsey-tax relieved contributions.
- (4) These rules have the status of:
  - (a) rules of the Commission under the provisions of section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
  - (b) Conduct of Business Rules applicable to licensed insurance intermediaries (and licensed insurers and licensed insurance managers when acting as insurance intermediaries) made by the Commission under the provisions of section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
  - (c) rules of the Commission applicable to licensed fiduciaries under the provisions of section 31A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.
- (5) Irrespective of the exemption for the requirement for a fiduciary licence for insurance intermediaries in section 3 (x) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, the formation of a RATS is a regulated activity. Licensees are still subject to the relevant conduct of business rules, code of conduct and code of practice when undertaking such functions.

## **2. Advertising and promotion.**

No financial services business licensed by the Commission under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey)

Law, 2002 or the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 shall falsely, misleadingly, deceptively or inaccurately advertise or promote RATS, or investments or investment strategies (including gearing) for use as part of retirement provision involving RATS.

### **3. Suitability of investments.**

In addition to the requirements in the relevant regulatory laws, the following rules and code of conduct requiring advice to retail clients on controlled investments or long term insurance products to be given by a Financial Adviser apply: the Licensees (Conduct of Business) Rules 2014; the Insurance Intermediaries (Conduct of Business Rules) 2014; the Insurance Managers (Conduct of Business) Rules 2014; and the Code of Conduct for Financial Advisers.

A trustee when accepting trusteeship of a RATS (and, in the case of a multi-member RATS, when admitting a member) must either:

#### **3.1. self-invested approach**

obtain a signed certification by the member to register the status of the RATS as ‘self-invested’ confirming that all investments within the RAT will be self-directed and disclaiming the Trustee of any responsibility for the suitability of its investments and investment strategy; and ensure that the terms of the trust are worded accordingly; or

#### **3.2. investments-advised approach**

ensure that the RATS is invested only in the relevant investments in financial products as listed in schedule A and that these investments are made with the advice of an appropriate financial adviser as defined in The Licensees (Conduct of Business) Rules 2014 (POI Law) or The Insurance Intermediaries (Conduct of Business Rules) 2014 or The Insurance Managers (Conduct of Business) Rules 2014; or

#### **3.3. traditional approach**

satisfy itself, having regard to the member’s circumstances, the requirements imposed by the Income Tax (Guernsey) Law, 1975, statements of practice published by the Director of Income Tax, and the fees which will apply (as disclosed under 7 below), that the RATS and the proposed investments and investment strategy are suitable for a retirement savings plan.

The trustee’s must document the analysis of the member’s circumstances, the approach taken above, and the reasons why the proposed RATS is considered suitable.

#### **4. Gearing**

Before a trustee of a RATS borrows money, it must make the member aware of the potential effect of borrowing by providing the disclosure in Annex B to the member, ensuring the member understands the consequences of the gearing and asking the member to sign a copy to indicate his or her understanding of the risks.

#### **5. Reporting.**

A trustee and any administrator of a RATS must ensure that its member is sent, at least annually, either from the trustee or from another party:

**5.1.** a statement (which may be in the form of financial statements) showing the financial position of the RATS and the performance and current value of its investments, and

**5.2.** statements prepared by other parties such as advisers or fund managers relating to the performance of the RATS' investments.

Assets must be re-valued as appropriate to the type of asset.

#### **6. RATS in payment.**

A trustee of a RATS should ensure that once income starts to be drawn down and paid to the member that the level of payments is appropriate to ensure that assets fund an income over the course of the whole period of expected retirement of the member (and where appropriate) his spouse and/or dependants and actuarial or other professional advice is taken when necessary.

[This duty does not apply to funds transferred from UK schemes where the scheme allows for flexible drawdown of transfers from UK funds (following the agreed amendment to Section 157A of the Guernsey Income Tax Law, Billet D'Etat XXX, 2015).]

#### **7. Fees, charges and remuneration disclosure.**

A trustee must clearly disclose all fees, charges and remuneration charged by itself (and others) to the RATS over the lifetime of the RATS or any costs charged against the RATS assets. The Trustee must also ensure that all investment advice and investment management fees, charges and remuneration are

transparently disclosed to the member. If the amounts are not known, then the basis of calculation shall be provided.

## **8. Transfers from defined benefit schemes**

Before funds are transferred from a defined benefit pension scheme into a RATS, the trustee of the RATS must obtain a report from a suitably qualified person<sup>4</sup> independent from the trustee and any other adviser involved. The report must, as a minimum, compare the actual benefits being given up in the defined benefit scheme with the projected returns from the RATS on a range of realistic assumptions. The trustee must ensure that the member understands this report and the member must sign a declaration of their understanding of the consequences of the transfer decision. This requirement is subject to a de minimis exception where the value of the funds to be transferred does not exceed £30,000.

## **9. Compliance with income tax conditions.**

Any conditions imposed in respect of the approval of a RATS by the Director of Income Tax under section 157A of the Income Tax (Guernsey) Law, 1975 (including, without limitation any condition prohibiting or restricting gearing) shall be complied with, whether such condition applies to an existing or to a new RATS.

## **10. Interpretation.**

(1) In these Rules:

- (a) “**actuary**” means a fellow of the Institute and Faculty of Actuaries or another equivalent professional body for actuaries.
- (b) “**Financial Adviser**” means a person authorised by a licensee as defined in The Licensees (Conduct of Business) Rules 2014 (POI Law) or The Insurance Intermediaries (Conduct of Business Rules) 2014 or The Insurance Managers (Conduct of Business) Rules 2014

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<sup>4</sup> For the purposes of this rule a suitably qualified person means an actuary or a person holding either the Chartered Insurance Institute’s Pension Planning (AF3) Advanced Diploma in Financial Planning or its earlier G60 Pensions qualification or an equivalent qualification.

(c) "**member**" includes a settlor or proposed settlor, and a beneficiary or proposed beneficiary, depending on the context and the activity being referred to,

(d) "**RATS**" means Retirement Annuity Trust Schemes within the meaning of section 157A of the Income Tax (Guernsey) Law, 1975.

(2) Any reference in these Rules to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948<sup>5</sup> applies to the interpretation of these Rules.

## **11. Repeals**

The Retirement Annuity Trust Schemes Rules 2010 and The Retirement Annuity Trust Schemes (Amendment) Rules 2013 are repealed.

Dated this day of 2015

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<sup>5</sup> Ordres en Conseil Vol.XIII, p. 355.

## **Annex A**

### **Permissible assets for an investment-advised approach (rule 3.2)**

Bank account deposits

Cash

Cash funds

Corporate bonds

Exchange traded commodities

Government & local authority bonds and other fixed interest stocks

Physical gold bullion

Investment notes (structured products)

Shares in Investment trusts

Managed pension funds

National Savings and Investment products

Permanent interest bearing shares (PIBs)

Real estate investment trusts (REITs)

Shares listed on:

- the Alternative Investment Market;
- the Channel Islands Securities Exchange;
- the London Stock Exchange; or
- a recognised exchange (as listed in The Companies (Recognised Stock Exchanges) Regulations, 2009 (as amended))

Units in regulated collective investment schemes

**Annex B**  
**Gearing (rule 5)**

Borrowing to acquire additional assets ("gearing" or "leverage") may provide benefits provided the cost of borrowing is lower than the growth of capital or income generated by the assets so financed. Where assets financed in this way fail to deliver the expected returns, the result may be a loss. Members of RATS should keep in mind that the capital amount due on a loan may be fixed, while the value of assets acquired with loan proceeds may go down as well as up. Losses can therefore be significant, especially at times of volatile markets, and may exceed the total value of the assets held in the RATS.

If the assets purchased with the loan are not sufficient to repay or reduce it, or to maintain any margin the lender requires between asset values and the balance of the loan, other assets in the RATS may have to be sold. If those cannot readily be sold, or there are no other assets, the lender may force a sale of assets over which it holds security unless the member introduces additional assets to allow the trustee to meet the lender's requirements.