



Guernsey Financial  
Services Commission

**THE PENSION LICENSEES  
(CONDUCT OF BUSINESS)  
&  
DOMESTIC AND INTERNATIONAL  
PENSION SCHEME AND GRATUITY  
SCHEME RULES (No. 2) 2017**

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# THE PENSION LICENSEES (CONDUCT OF BUSINESS) & DOMESTIC AND INTERNATIONAL PENSION SCHEME AND GRATUITY SCHEME RULES (No. 2) 2017

The Guernsey Financial Services Commission (“*the Commission*”), in exercise of the powers conferred on it by Sections 29 and 31A of the Regulation of Fiduciaries Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended (“*the Law*”), Section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and Section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 hereby makes the following rules:

## 1. Introduction

### 1.1. Citation, Commencement and Application

- 1.1.1. The formation, management or administration of *Pension Schemes* or *Gratuity Schemes* and the provision of advice in relation to the formation, management or administration is a regulated activity in accordance with Section 2(1)(e) of *the Law*.
- 1.1.2. These rules may be cited as the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017 (“*the Rules*”) and shall come into operation on 29 August 2017 (the “*Commencement Date*”).
- 1.1.3. *The Rules* apply to all *licensees* and apply in respect of *Pension Schemes* and *Gratuity Schemes* unless specifically agreed otherwise by *the Commission*.
- 1.1.4. *The Commission* may in its absolute discretion by notice in writing to a *licensee* exclude or modify the application of any provision of *the Rules* if *the Commission* is satisfied that any such variation will not be prejudicial to the interests of *Members*.

### 1.2. Background

- 1.2.1. These rules, together with the *Other Applicable Requirements* constitute

a regulatory and supervisory framework for the supervision of *Pension Schemes* and *Gratuity Schemes* and the regulation of *licensees* for the purposes of formation, management or administration of *Pension Schemes* and *Gratuity Schemes* and the provision of advice in relation to the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme*.

- 1.2.2. *The Commission* may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework applicable to the formation, management or administration of *Pension Schemes* and *Gratuity Schemes*. Such guidance will not constitute rules of *the Commission*.
- 1.2.3. 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; and
  - (c) Rules of *the Commission* applicable to licensed fiduciaries under the provisions of Sections 29 and 31A of *the Law*.
- 1.2.4. The formation of a retirement annuity trust scheme is a regulated activity, irrespective of the exemption for the requirement for a fiduciary licence for insurance intermediaries under 3 (1) (x) of *the Law*.
- 1.2.5. The text contained in shaded boxes contains guidance from *the Commission* and does not form part of *the Rules*.

### 1.3. Interpretation

- 1.3.1. Subject to the terms defined below and unless the context otherwise requires, in *the Rules* expressions defined in *the Law* have the same meaning as they have in *the Law*, and the following expressions have the meanings assigned to them:

“**accounting reference date**” means the date to which a *licensee’s* accounts are prepared;

“**advertisement**” means every form of advertising (excluding the provision of information to *Members* such as member statements),

whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound, broadcasting, television or any other electronic media including social media, and *advertising* shall be construed accordingly;

**“Appropriate Financial Adviser”** means:

- (a) in the context of a personal or group *Pension Scheme* or *Gratuity Scheme* with solely Guernsey resident members a *Financial Adviser*;
- (b) in the context of a personal or group *Pension Scheme* or *Gratuity Scheme* marketed to international residents a:
  - (i) *Financial Adviser*; or
  - (ii) a financial adviser regulated to provide financial advice on pensions in Jersey, Isle of Man or an EU member state; or
  - (iii) a financial adviser in another jurisdiction where the *licensee* has assessed on appointment and periodically thereafter reviews the suitability and competence of the financial adviser appointed by it in relation to the pension scheme or gratuity scheme is, to ensure that it is qualified and competent to carry out the applicable services in relation to the respective scheme;

**“audited financial statements”** means the financial statements of a *licensee* that have been prepared in accordance with *generally accepted accounting principles*;

**“Beneficiary”** means the *Member* or any other person actually entitled to benefits under the applicable *Pension Scheme* or *Gratuity Scheme*;

**“Board”** has the meaning given to it by Section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

**“client”** means any person with or for whom a *licensee* under an agreement carries on, or intends to carry on the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme* or the provision of advice in relation to the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme*;

**“the CIFO”** means the Channel Islands Financial Ombudsman,

established in law in Guernsey by the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014;

“**Code of Corporate Governance**” means the Finance Sector Code of Corporate Governance.

“**Commencement Date**” means the date on which *the Rules* come into force in accordance with rule 1.1.2;

“**the Commission**” means the Guernsey Financial Services Commission, established under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;

“**Compliance Officer**” has the meaning given at rule 3.2;

“**complaint**” means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of a person about the provision of, or failure to provide a financial service in respect of *pension scheme business* or *gratuity scheme business* which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience;

“**The Conduct Principles**” mean the Principles of Conduct of Finance Business issued by the Commission, as set out as they apply to *licensees* at Appendix 1;

“**Contribution Schedule**” has the meaning given at rule 10.11;

“**DB**” means defined benefit;

“**DB Contribution Schedule**” has the meaning given at rule 10.11.4;

“**DC**” means defined contribution;

“**DC Contribution Schedule**” has the meaning given at rule 10.11.3;

“**defined benefit basis**” means a basis on which a *Member’s* rights to benefits (actual or contingent) from a *Pension Scheme* or *Gratuity Scheme* are accrued on:

- (a) the years of service in the *Pension Scheme* or *Gratuity Scheme* of the *Member*;
- (b) the *Member’s* final pensionable salary (or some derivation of this); and
- (c) the accrued rate of the *Pension Scheme* or *Gratuity Scheme*;

**“defined contribution basis”** means a basis on which a *Member’s* rights to benefits (whether actual or contingent) from a *Pension Scheme* or *Gratuity Scheme* are accrued where such rights are calculated by reference only to the value of:

- (a) any contributions paid in respect of a *Member* (whether such contributions are paid by the *Member*, *employer* or any other person and whether or not they are required to be paid under the *Governing Documentation* or are paid for voluntarily by the *Member*, *employer* or any other person in addition to such required contributions); and
- (b) any fund or funds transferred in from another pension, retirement benefits or other arrangement, or any other fund or funds notionally allocated or separately identifiable and referable to the *Member* for any other reason,

as adjusted by an investment return or loss in relation to the sums referred to at (a) and (b) above, where the value of such assets must (because of the nature of the calculation of the *Member’s* rights to benefits) necessarily suffice for the provision of such benefits for those purposes, where such assets are to be used to provide a pension from the scheme, the possibility of there being over time a difference between the amount of the pension, including increases, initially held at retirement and the amount available to fund such benefits, in light of investment return on the assets and *Member Borne Charges* are disregarded;

**“employee”** means any individual who has entered into or who works under (or where the employment has ceased, who worked under) a contract of employment, and cognate expressions shall be construed accordingly;

**“employer”** means all persons, firms or entities identified as “employer” for the purposes of Section 150 of the *Tax Law*;

**“Employer-Related Investments”** means:

- (a) Shares or other securities issued by the *employer* or by any person who is connected with (meaning the person held a significant direct or indirect proprietary, financial or other interest in or connection with the *employer* (other than as a creditor, surety or guarantor) or another person had any such interest in or connection with both that person and the *employer*), or an associate of, the *employer*;
- (b) Land which is occupied or used by, or subject to a lease in favour



of, the *employer* or any such person;

- (c) Property (other than land) which is used for the purposes of any business carried on by the *employer* or any such person;
- (d) Loans to the *employer* or any such person, and
- (e) Any other investment which *the Commission* may specify from time to time;

“**finance business**” has the same meaning given in the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended;

“**Financial Adviser**” means a financial adviser as defined in the Licensees (Conduct of Business) Rules 2016 or the Insurance Intermediaries (Conduct of Business) Rules 2014 or the Insurance Managers (Conduct of Business) Rules 2014;

“**General Principles**” are the general principles set out at rule 10.1;

“**generally accepted accounting principles**” refers to financial statements prepared in accordance with International Financial Reporting Standards, UK generally accepted accounting principles or US generally accepted accounting principles;

“**Governance Committee**” means the person or persons responsible for overseeing the establishment, governance and operation of *Internal Controls* in relation to a *Pension Scheme* or a *Gratuity Scheme*;

“**Governing Documentation**” has the meaning given at rule 10.3.1;

“**gratuity scheme business**” means any activity carried out in relation to the formation, management or administration of a *Gratuity Scheme* or the provision of advice in relation to the formation, management or administration of a *Gratuity Scheme*;

“**Gratuity Scheme**” means a scheme as defined in Section 2(1)(e) of *the Law*;

“**Internal Controls**” means in relation to a *Pension Scheme* or a *Gratuity Scheme*:

- (a) arrangements and procedures to be followed in the formation, management or administration of the scheme; and
- (b) systems and arrangements for monitoring that formation, management or administration;

“**the Law**” means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended;

“**licensee**” means the holder of a full fiduciary licence, licensed to carry on the formation, management or administration of *Pension Schemes* or *Gratuity Schemes*, and/or the provision of advice in relation to the formation, management or administration of *Pension Schemes* or *Gratuity Schemes* under *the Law*;

“**Licensee Directed**” means the investment approach described in rule 10.16.2(b);

“**material records**” means such records that would be necessary for the purpose of establishing a complete and accurate record of all aspects of a *licensee’s* conduct of business conducted in relation to the *Pension Scheme* or *Gratuity Scheme*. These include (without limitation and where applicable) records of instructions, transactions, valuations, contract notes and advice;

“**Member**” means the person by or in respect of whom contributions are paid to the applicable *Pension Scheme* or *Gratuity Scheme* who in respect of such contributions has a right to benefits from the scheme in accordance with the *Governing Documentation* on retirement;

“**Member’s Account**” means for each *Member* of a *Pension Scheme* or *Gratuity Scheme*, such assets as are referable to that *Member*;

“**Member Borne Charges**” means the amount of any charges or anticipated charges which are or may be deducted from a *Member’s Account*;

“**Member Directed**” means the investment approach referred to in rule 10.16.2(a);

“**occupational pension scheme**” means a scheme established under an irrevocable trust and sponsored by one or more participating *employers* who contribute to it, which has, or is capable of having, effect so as to provide only relevant benefits to or in respect of *employees* or former *employees* of the participating *employers*, or previously participating *employers*;

“**Other Applicable Requirements**” means any legal, tax or regulatory requirements applicable in relation to a *Pension Scheme* or *Gratuity Scheme* or applicable to any *licensee* or other person, firm or entity involved in the provision of services in relation to a *Pension Scheme* or

*Gratuity Scheme*, including without limitation relevant conduct of business rules, codes of conduct or codes of practice relevant to entities licensed by *the Commission*, so far as they relate to the activities of such an entity in relation to a *Pension Scheme* or *Gratuity Scheme*;

“**Other Beneficiary**” means any person other than a *Member* entitled (whether absolutely, contingently or otherwise) to benefit from the applicable *Pension Scheme* or *Gratuity Scheme*;

“**other relevant legislation or standards**” means any legislation or enactment devised to enable *the Commission* to supervise the carrying on of *pension scheme business* or *gratuity scheme business*. Other standards include codes or standards (however described) of professional bodies that *Financial Advisers* may belong to, for example, the Chartered Institute for Securities and Investment;

“**pension scheme business**” means any activity carried out in relation to the formation, management or administration of a *Pension Scheme*, or the provision of advice in relation to the formation, management or administration of a *Pension Scheme*;

“**Pension Scheme**” means a scheme as defined in Section 2(1)(e) of *the Law*;

“**permanent data**” means such records, documents or data as are considered material for the establishment and ongoing proper conduct of *pension scheme business* or *gratuity scheme business* by a *licensee*. These include (without limitation) mandates and other agreements, *client* take-on documentation, *client* profiles, records relating to due diligence and other checks made and the findings of such checks;

“**qualified auditor**” means a person who has a place of business in Guernsey and is a member of:

- (a) The Institute of Chartered Accountants in England and Wales; or
- (b) The Institute of Chartered Accountants of Scotland; or
- (c) The Institute of Chartered Accountants in Ireland; or
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as any of the bodies specified in paragraphs (a) to (d);

“**the RATS Rules**” means the Retirement Annuity Trust Scheme Rules, 2015;

“**Regulatory Laws**” means:

- (a) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;
- (b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
- (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
- (d) *the Law*;
- (e) the Insurance Business (Bailiwick of Guernsey) Law, 2002;
- (f) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002; and
- (g) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,

as amended from time to time and including any successor replacement legislation should such laws be revoked and replaced with new laws;

“**Relevant Scheme Year**” means the *Scheme Year* ending immediately preceding the date on which for the purposes of these rules the Relevant Scheme Year is to be identified;

“**the Rules**” means the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017;

“**Scheme Year**” means the annual period by reference to which accounts are drawn up in relation to the *Pension Scheme* or *Gratuity Scheme*;

“**Segregated Section**” means a scheme in relation to which there is one or more *employers* and which is divided into two or more sections where:

- (a) any contributions payable to the scheme by an *employer* in relation to the scheme or by a *Member* are allocated to that *employer's* section and if more than one section applies to an *employer*, to the section to which the employment relates; and
- (b) specified assets of the scheme are attributable to each section of the scheme and cannot be used for the purposes of any other section.

“**Service Provider**” has the meaning given to it in rule 10.9.1;

“**significant complaint**” means a *complaint* alleging a breach of *the Law*, an act or admission made in bad faith, malpractice or impropriety, or repetition or recurrence of a matter previously complained of (whether significant or otherwise);

“**Tax Law**” means the Income Tax (Guernsey) Law, 1975, as amended from time to time, including where that law is revoked, any successor provisions;

“**Third Party**” means a person other than the *employer, licensee, Service Provider* or the *Member*, who holds under the *Governing Documentation* the power to make, select and direct investments (and for these purposes a Third Party does not include a *Financial Adviser* to whom a *licensee* or Third Party has delegated its investment powers under the *Governing Documentation*); and

“**Third Party Directed**” means the investment approach described in rule 10.16.2(c).

1.3.2. In construing *the Rules*, unless otherwise specified:

- (a) References to any enactment and Code shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified or re-enacted.
- (b) References to rules and appendices are to rules of, and appendices to, *the Rules*.
- (c) Headings and titles are for convenience only and do not affect the interpretation of *the Rules*.
- (d) The Appendices to *the Rules* form part of and are incorporated in *the Rules*.
- (e) References to the singular shall include the plural and vice versa and references to the masculine shall include the feminine or neuter and vice versa.

1.3.3. The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these rules.

## **2. Corporate Governance and Senior Management Responsibility in respect of pension scheme business and gratuity scheme business**

### **2.1. Corporate Governance**

2.1.1. The *Board* of a *licensee* must ensure that there are effective and appropriate policies, procedures and controls, as described under rule 3, in place which enable the *licensee* to meet its obligations under *the Law* and *the Rules*.

2.1.2. The *Board* of the *licensee* must evaluate its compliance with the *Code of Corporate Governance*.

2.1.3. The *Board* of a *licensee* retains responsibility for the outsourcing of any of its functions.

For the avoidance of doubt, the *Board* of an administered *licensee* remains responsible for the conduct of the administered entity.

2.1.4. A *licensee's Board* and senior management shall take all reasonable steps to ensure that all *employees* of the *licensee* act so as to avoid serious damage to the *licensee's* reputation or to its financial position.

## **3. Compliance Arrangements**

### **3.1. General**

3.1.1. The *Board* of a *licensee* shall establish such policies, procedures and controls necessary for the purpose of ensuring compliance with *the Rules, the Law* and any other rules, regulations, codes or guidance made or issued under *the Law* or *Regulatory Laws*.

3.1.2. The *Board* of the *licensee* has responsibility for compliance with *the Law, the Rules* and any rules or guidance made under *the Law* or *Regulatory Laws*. In particular the *Board* is responsible for the policy on review of compliance and must discuss a review of compliance at appropriate intervals.

3.1.3. The *Board* of a *licensee* shall establish and maintain policies, procedures and controls to ensure that its officers and *employees* act, in conformity with:

(a) their own and their *employer's* relevant responsibilities under *the Law* and the rules made thereunder;

- (b) the *Regulatory Laws* and all relevant ordinances, regulations and rules issued under the *Regulatory Laws*;
  - (c) any other relevant enactment prescribed for the purposes hereof by regulation of *the Commission*;
  - (d) appropriate arrangements on propriety in personal dealings;
  - (e) codes and guidelines issued by *the Commission* from time to time relevant to the carrying on of *finance business*; and
  - (f) the requirements of any professional body of which the *licensee* is a member or subject to its regulation.
- 3.1.4. A *licensee* must keep a breaches register to log all instances of non-compliance with legislation, regulations and rules as listed at rule 3.1.3 above.
- 3.1.5. A *licensee* must ensure that compliance procedures in respect of its *pension scheme business* or *gratuity scheme business* are set out in writing (which includes electronic copies) and that a copy of these written procedures is kept at the offices of the *licensee*, and made available to *the Commission* on demand.
- 3.1.6. *The Commission* may require changes to the arrangements and the *licensee* shall implement and comply with any such requirements.
- 3.1.7. A *licensee* must review its written compliance procedures at least annually.

### **3.2. The Compliance Officer**

- 3.2.1. A *licensee* must appoint a *Compliance Officer* in Guernsey to be responsible for compliance and must appoint a replacement to fill this position if it becomes vacant.
- 3.2.2. The *Board* must ensure that the *Compliance Officer* appointed:
- (a) is a natural person; or
  - (b) if a legal person, that the Commission is informed of the natural person who takes responsibility for compliance within the organisation as the *Compliance Officer*;
  - (c) is resident in the Bailiwick of Guernsey;
  - (d) has sufficient resources to perform his duties;

- (e) has timely access to all records required under rule 6.1;
- (f) receives full co-operation from all staff;
- (g) reports directly to the *Board*;
- (h) has regular contact with the *Board* to ensure that the *Board* is able to satisfy itself that all the requirements of *the Law* and *the Rules* are being met; and
- (i) is fully aware of both his obligations and those of the *licensee* under *the Law* and *the Rules*.

3.2.3. Where a *licensee* is considering the outsourcing of compliance functions and/or providing the *Compliance Officer* with additional support from third parties, from elsewhere within the group or externally, then the *licensee* must:

- (a) ensure that roles and responsibilities are clearly defined and documented; and
- (b) ensure that the *Compliance Officer*, other third parties and all *employees* understand their respective roles, responsibilities and duties.

3.2.4. Where the compliance function itself is outsourced to a third party the *licensee* should advise *the Commission* of the name(s) of the natural person(s) employed by the *licensee* (or its administrator / manager where applicable) responsible for oversight of the outsourcee.

Guidance Note:

Where the compliance function itself is outsourced to a third party, the *licensee* should be aware that the *licensee* remains responsible for compliance with *the Law* and the rules and regulations made thereunder. A *licensee* cannot contract out of its statutory and regulatory responsibilities.

### 3.3. Compliance Monitoring Programme

3.3.1. The *Board* of a *licensee* shall:

- (a) establish and maintain an effective policy, for which responsibility must be taken by the *Board*, for the review of its compliance including consideration of any outsourced arrangements with the requirements of *the Rules*, *the Law* and any other rules made under *the Law* and such policy shall include provision as to the extent and frequency of such



reviews;

- (b) ensure that a review of its compliance with *the Rules* including where such compliance is outsourced, is discussed and minuted at a meeting of the *Board* at appropriate intervals, and in considering what is appropriate a *licensee* must have regard to the risk, taking into account:
  - (i) the size, nature and complexity of the *licensee's pension scheme business* or *gratuity scheme business*;
  - (ii) its *clients*, products and services; and
  - (iii) the ways in which it provides those products and services.
- (c) The *Board* is responsible for compliance with *the Rules*, *the Law* and any other rules made under *the Law*;
- (d) The *Board* is responsible for implementing a policy on review of compliance requirements and discussing a review of its compliance at appropriate intervals;
- (e) A *licensee* must also ensure that there are effective and appropriate policies, procedures and controls in place which provide for the *Board* to meet its obligations relating to compliance review, in particular the *Board* must:
  - (i) ensure that the compliance review policy takes into account the size, nature and complexity of the business and includes a requirement for sample testing of the effectiveness and appropriateness of the policies, procedures and controls;
  - (ii) consider whether it would be appropriate to maintain a separate internal audit function to assess the adequacy and effectiveness of the area of compliance;
  - (iii) ensure that when a review of compliance is discussed by the *Board* at appropriate intervals the necessary action is taken to remedy any identified deficiencies; and
  - (iv) provide adequate resources either from within the *licensee*, within the group, or externally to ensure that the compliance policies, procedures and controls of the *licensee* are subject to regular monitoring and testing as required by *the Rules*.

- (f) The *Board* may delegate certain duties but must retain responsibility as per rule 3.1.1.

### **3.4. Employee Screening**

- 3.4.1. A *licensee* shall maintain effective and appropriate procedures, when hiring *employees*, for the purpose of ensuring high standards of *employee* probity and competence.
- 3.4.2. The *Board* of a *licensee* is responsible for *employee* screening.
- 3.4.3. In order for a *licensee* to ensure that *employees* are of the required standard of competence and probity, which will depend on the role of the *employee*, the *licensee* must:
  - (a) obtain and confirm appropriate references at the time of recruitment;
  - (b) require information from the *employee* with regard to any regulatory action taken against him;
  - (c) require information from the *employee* with regard to any criminal convictions and the provision of a check of his criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002); and
  - (d) confirm his educational and professional qualifications.

### **3.5. Employee Training**

- 3.5.1. The *Board* of the *licensee* is responsible for *employee* training.
- 3.5.2. Every *licensee* shall create and implement a training and competency scheme for all *employees* appropriate to the nature and scale of the *licensee's* business.
- 3.5.3. A *licensee* shall ensure that relevant *employees* receive comprehensive ongoing training to ensure competence for duties including but not limited to:
  - (a) *the Law* and *the Rules*;
  - (b) the obligations of *employees* and their potential liability in failing to meet those obligations;
  - (c) the implications of non-compliance by *employees* with any relevant legislation, rules or guidance; and

- (d) its policies, procedures and controls for ensuring compliance with *the Law* and *the Rules* and any other relevant legislation, rules or guidance.

3.5.4. The *licensee* shall maintain a training log to record the training that directors and *employees* of a *licensee* receive.

## **4. Accounting Records and Financial Statements**

### **4.1. Accounting Records**

4.1.1. Every *licensee* must keep accounting records in English which are sufficient to show and explain its transactions, and which:

- (a) disclose with reasonable accuracy, at any time, the financial position of the *licensee* at that time; and
- (b) enable the *licensee* to demonstrate its continuing compliance with capital and liquidity requirements.

### **4.2. Audited Financial Statements**

4.2.1. Every *licensee* (with the exception of those forming part of a larger group structure wherein consolidated accounts may be prepared) must prepare *audited financial statements* covering the period from the immediately preceding *accounting reference date* (or, in the case of a new business, from the date of incorporation) to the next following *accounting reference date* which shall as a minimum include accounts complying with *generally accepted accounting principles*.

4.2.2. Unless the *licensee* is preparing *audited financial statements* from the period of incorporation to the *accounting reference date*, *audited financial statements* shall be prepared in respect of a period no longer than 12 months from the previous *accounting reference date*.

4.2.3. Where the *licensee* is preparing *audited financial statements* from the period of incorporation to the *accounting reference date*, *audited financial statements* should be prepared to the date notified to *the Commission* at the time of making an application for a licence.

4.2.4. Any change in the *accounting reference date* of a *licensee* must immediately be notified to *the Commission* together with a statement of reasons for the change.

### 4.3. Auditor

- 4.3.1. Every *licensee* must appoint a *qualified auditor* and notify the *Commission* of their details.
- 4.3.2. A *licensee* shall give the *Commission* written notice of a change of its *qualified auditor* forthwith, including a statement of all reasons for the change.

## 5. Conduct of Business

### 5.1. Fitness and Propriety

- 5.1.1. A *licensee* must observe *The Conduct Principles* in carrying on its *pension scheme business* or *gratuity scheme business*.

#### Guidance Note:

The *Commission* has a continuing duty to determine whether a *licensee* remains a fit and proper person to carry on *pension scheme business* or *gratuity scheme business*, and every person who is, or is to be, a director, controller, partner or manager of the *licensee* is a fit and proper person to hold that position. In so doing, the *Commission* shall take account of whether the *licensee* has observed *The Conduct Principles*.

*The Conduct Principles* are a statement of the standards expected of a *licensee*.

Breach of a principle will be taken into account for the purposes of discipline and intervention.

*The Conduct Principles* are not exhaustive and conformity with them does not excuse a failure to observe other regulatory requirements.

In considering whether a *licensee* remains a fit and proper person, the *Commission* will also have regard to Schedule 1 of *the Law*.

- 5.1.2. A *licensee* must have adequate and effective systems of control in place to ensure that any *Service Providers* appointed by it are assessed on appointment and periodically reviewed thereafter by them to ensure their suitability and competence.
- 5.1.3. A *licensee* shall obtain the prior written consent of the *Commission* in respect of any transfer of a block of business (meaning any business that increases the receiving *licensee's* or reduces the transferring *licensee's* fee income by 15% or more, such figure being calculated using the last

audited accounts of that licensee) to or from the *licensee*, where such transfer will occur at the *licensee's* instigation or with their agreement.

## 5.2. Promotion and Advertising

### 5.2.1. Issue of Materials

The *licensee*, if responsible for promotion and *advertising*, must ensure that any materials issued:

- (a) are clear, fair and not misleading;
- (b) do not contain any statement, promise or forecast which is untrue;
- (c) are not designed in such a way as to distort or conceal any relevant subject material;
- (d) are clearly recognisable as an *advertisement*;
- (e) are not likely to be misunderstood;
- (f) where appropriate state that the investment value is not guaranteed or that the value may fluctuate;
- (g) do not employ phrases such as “tax-free” or “tax-paid” without making clear which taxes are being referred to; and
- (h) do not contain information about past performance unless it contains a warning that past performance is not necessarily a guide to future performance and may not be repeated.

5.2.2. Any brochure, key facts or explanatory information in relation to *Pension Schemes* and *Gratuity Schemes* shall give a fair and balanced account.

### 5.2.3. Regulatory Status

- (a) The regulatory status of the *licensee* is to be included on all communications.

### 5.2.4. Overseas Promotion and *Advertising*

- (a) A *licensee* shall take all reasonable steps with a view to ensuring that any form of promotion or *advertising* in a country or territory outside of the Bailiwick of Guernsey is in accordance with the laws and regulations in force in that country or territory.

- 5.2.5. Any *advertisement* or promotion issued by a *licensee* shall very clearly specify the extent to which any aspect of the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme* or the provision of advice in relation to the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme*, or any other person providing services in respect of same is provided by firms other than those licensed by *the Commission*.

## 6. Record Keeping

### 6.1. Records

- 6.1.1. All records prepared in order to comply with *the Rules* shall be retained for a period of at least six years from their occurrence.
- 6.1.2. A *licensee* shall keep, for a period of six years from their occurrence, a record of occurrences which may have involved an alleged breach of *the Law* or the rules and regulations made under it and of the steps taken with a view to ensuring that such occurrences do not recur.
- 6.1.3. Unless otherwise stated, all *material records* and *permanent data* prepared in order to comply with *the Rules* shall be retained for the duration of the relevant relationship and also for a period of at least six years starting from the date that the relevant relationship ceased. For the purposes of this rule, the term “relationship” includes any direct relationship a *licensee* has with a *client* in respect of *pension scheme business* or *gratuity scheme business* and any relationship a *licensee* has either directly with a *Pension Scheme* or a *Gratuity Scheme*, or with another party, in respect of services it provides to that scheme.
- 6.1.4. A *licensee* shall keep, and properly maintain, records relating to its *pension scheme business* or *gratuity scheme business* and any other activities affecting its *pension scheme business* or *gratuity scheme business*, in a form capable of prompt reproduction in English and capable of being checked or audited, so as to demonstrate compliance with *the Law* and the regulations and rules made under it.
- 6.1.5. A *licensee* shall make such records available at any time to *the Commission* and any persons authorised by *the Commission* for any purpose whatsoever.
- 6.1.6. A *licensee* must review, at least annually, the ease of retrieval of, and condition of paper and electronically retrievable records including any telephone records and recordings.

## 6.2. Destruction of Records or Files

- 6.2.1. Without limiting any other obligation under *the Law* or the rules and regulations made under it or under the laws of Guernsey, a *licensee* shall ensure that it and its directors and *employees* and other persons to the extent that they are under its power and control shall not, without the express consent in writing of *the Commission*, amend, destroy, make further entries in, or erase, any record or file (whether in documentary or electronic form) which is, or may be, relevant to any matter which is the subject of any kind of investigation, disciplinary or other process, or appeal under *the Law* or the rules and regulations made under it.

## 7. Complaints

### 7.1. Complaints Procedure

- 7.1.1. Every *licensee* must have a written procedure for the effective consideration and fair and proper handling of any *complaints* relating to the *licensee's pension scheme business* and *gratuity scheme business*.
- 7.1.2. The *licensee* shall ensure that each of its officers and *employees* responsible for dealing with *clients* is at all times aware of, and complies with, the complaints procedure and their obligation to follow it.

#### Guidance Note:

It is expected that all complaints are reviewed in the first instance by a suitably qualified officer of the licensee who is independent of the circumstances giving rise to the complaint.

### 7.2. Notifications

- 7.2.1. If a *complaint* remains unresolved for longer than three months from the date of the *licensee* becoming aware of it, the *licensee* shall within fourteen days inform *the Commission* and notify the complainant of the referral.
- 7.2.2. Wherever a *licensee* receives a *complaint* or *serious complaint* it shall inform the complainant that he can contact *the Commission* directly.
- 7.2.3. The *licensee* shall inform *the Commission* within fourteen days of it becoming aware of a *significant complaint* and shall also advise the complainant that he may inform *the Commission* directly of his *complaint*.

7.2.4. The *licensee* shall inform *the Commission* within fourteen days of it becoming aware of a series of *complaints* regarding any one *employee*, whether a current *employee* or not.

7.2.5. For the purposes of rule 7.2.1, where a *licensee* has given a substantive response in relation to a *complaint* or *significant complaint* unless and until the *licensee* has received an indication from the complainant that the response is unsatisfactory, the *licensee* shall be entitled to treat the *complaint* as settled and resolved after the expiry of four weeks from the date of its response.

### **7.3. Record Keeping**

7.3.1. Every *licensee* shall maintain a register in which it records any *complaints* received, along with sufficient details to allow it to be able to demonstrate that it has dealt (or is dealing) with such *complaints* in accordance with *the Rules*.

## **8. Conflicts of Interest**

### **8.1. Conflicts of Interest Policy**

8.1.1. *Licensees* shall establish, implement and maintain an effective conflicts of interest policy, set out in writing and appropriate to the size and organisation of the *licensee* and the nature, scale and complexity of its business.

8.1.2. Where the *licensee* is a member of a group, the policy must also take into account any circumstances, of which the *licensee* is or should be aware, which may give rise to a conflict of interest arising as a result of other members of the group.

## **9. Notifications**

### **9.1. Notifications under the Law**

9.1.1. Where a person shall become –

(a) a director or controller of a *licensee* which is a company; or

(b) a partner in a *licensee* which is a partnership,

the *licensee* should refer to the requirements of Sections 16 and 21 of *the Law*.



## 9.2. Name and Address

- 9.2.1. A *licensee* shall give written notice within fourteen days to *the Commission* of:
- (a) a change in the registered or equivalent name of the *licensee*;
  - (b) a change in any business name under which the *licensee* carries on *pension scheme business* or *gratuity scheme business* in Guernsey;
  - (c) a change in the address of the head office or principal place of business of the *licensee*;
  - (d) a change in the address of the registered office of the *licensee*; or
  - (e) a change in the address for the service of notices or documents.

## 9.3. Information Regarding Employees

- 9.3.1. A licensee shall give written notice to *the Commission* within fourteen days of it becoming aware of the occurrence of any of the following in relation to any of its *employees*:
- (a) a conviction of any offence involving fraud or other dishonesty;
  - (b) a conviction of any offence under legislation relating to *finance business*; or
  - (c) the institution of *saisie, désastre, bankruptcy, sequestration* or similar proceedings.
- 9.3.2. A *licensee* shall give written notice to *the Commission* within fourteen days of the summary dismissal of any *employee* in Guernsey and the reasons for this dismissal, which shall include *employees* under probation.
- 9.3.3. A record shall be maintained of the names of any *employees* disciplined by a *licensee* in connection with any breach of *the Law* or rules made thereunder or with any other conduct which may reasonably be expected to affect the conduct of the *licensee's finance business*, including particulars of:
- (a) the offence for which the *employee* was disciplined; and
  - (b) steps taken to discipline the *employee*.
- 9.3.4. Details of the particulars required to be recorded under rule 9.3.3 above

shall be submitted to the Commission within seven days of the *employee* being so disciplined. Any record made for the purposes of this rule shall be kept until six years have expired from the date on which disciplinary steps were taken.

## 9.4. General

9.4.1. In addition to any requirements set out elsewhere under any relevant law, a *licensee* shall give written notice to *the Commission* within fourteen days of the occurrence of any of the following:

- (a) the presentation of an application for the winding-up (other than a petition for a voluntary winding-up for the purposes of reconstruction or amalgamation) of, or administration order on, the *licensee* or a company which is a subsidiary or holding company (excluding such companies held as part of trust assets) of the *licensee*;
- (b) the appointment of a receiver, administrator, administrative receiver or trustee of the *licensee*;
- (c) the making of a composition or voluntary arrangement with creditors of the *licensee*;
- (d) the granting, withdrawal, or refusal of an application for, or revocation of, any licence, authorisation or registration to carry on *finance business* under any legislation relating to *finance business* whether in Guernsey or elsewhere;
- (e) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the *licensee*;
- (f) the imposition of disciplinary measures or sanctions on the *licensee* or its directors in relation to its *finance business* by any regulatory authority;
- (g) the bringing against any *licensee* or its directors of any material legal action or proceedings, or any arbitration to which the *licensee* is a party, relating to *finance business*; and
- (h) the conviction of the *licensee* of any offence under legislation relating to *finance business*, companies or bankruptcy or of any offence involving fraud or dishonesty.

## 9.5. Written Notice

9.5.1. A *licensee* shall give written notice and details to *the Commission*

within fourteen days where it has reason to believe that:

- (a) it will be unable to comply with, or be unable to demonstrate compliance with, the requirements of *the Rules*;
- (b) a director or *employee* has been engaged in activities involving fraud or other dishonesty in relation to the *licensee's finance business* in Guernsey;
- (c) the *licensee's* auditor may qualify the accounts; or
- (d) the liabilities of a subsidiary or holding company (excluding such companies held as part of trust assets) of the *licensee* exceed its assets.

## 10. Pension Schemes and Gratuity Schemes

### 10.1. General Principles

The *licensee* must ensure that the *Pension Scheme* or *Gratuity Scheme* adheres to the following *General Principles*:

#### 1. Governance procedures:

Adequate governance and *Internal Controls* should be operated in relation to each *Pension Scheme* or *Gratuity Scheme*.

#### 2. Notification to *the Commission*:

The *Commission* must be notified of the establishment or approval of a *Pension Scheme* or a *Gratuity Scheme*, or its recognition by the tax authorities.

#### 3. Reporting to *the Commission*:

*The licensee* should ensure that it communicates material scheme information to *the Commission* to enable supervision to be effective.

#### 4. Self assurance:

*The licensee* should regularly ensure its compliance against *the Rules*.

#### 5. Documentation:

*Governing Documentation* and other key documentation should be stored safely and be readily available to *Members*.

## **6. Responsibilities:**

*Licensees* should have clear information of who the *Service Providers* are in relation to the *Pension Scheme* or *Gratuity Scheme*.

## **7. Treatment of *Members* and *Other Beneficiaries*:**

*Members* and *Other Beneficiaries* should be treated fairly; *Members* should be provided with clear and transparent information on the *Pension Scheme* or *Gratuity Scheme*.

## **8. Charges:**

Any charges deducted from funds held in respect of *Beneficiaries* must be reasonable and transparent.

## **9. Benefits:**

*Members* should be provided with regular clear and accurate information about their benefits.

## **10. Contributions:**

Reasonable safeguards should be implemented to monitor the payment of contributions due from third parties.

## **11. Transfers:**

Transfer requests and information about transfer values should be processed promptly and accurately and should not be unreasonably delayed.

## **12. Investment:**

Schemes should make a clear statement of investment principles to be applied to the *Pension Scheme* or *Gratuity Scheme*. *Beneficiaries* and all parties involved in the formation, management or administration of *Pension Schemes* or *Gratuity Schemes* or the provision of advice in relation to the formation, management or administration of *Pension Schemes* or *Gratuity Schemes* should have clarity on who is responsible for reviewing and making investment decisions.

## **13. Advertising:**

*Advertisements* issued by regulated financial services businesses in relation to *Pension Schemes* or *Gratuity Schemes* should be fair and not misleading.

## 10.2. General Definitions

- 10.2.1. The formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme* and the provision of advice in relation to the formation, management or administration of a *Pension Scheme* or a *Gratuity Scheme* is a regulated activity in accordance with Section 2(1)(e) of the *Law*.
- 10.2.2. “**Pension Scheme**” means a scheme as defined in Section 2(1)(e) of the *Law*.
- 10.2.3. “**Gratuity Scheme**” means a scheme as defined in Section 2(1)(e) of the *Law*.

## 10.3. Governing Documentation

- 10.3.1. The *licensee* undertaking regulated activity in relation to the establishment of a *Pension Scheme* or *Gratuity Scheme* must ensure that the scheme is established by an instrument or instruments (the “*Governing Documentation*”) which sets out:
- (a) the terms on which the scheme is established;
  - (b) the identity, and respective obligations and powers of:
    - (i) the *licensee*; and
    - (ii) any other party in relation to the scheme.
  - (c) the benefits to be provided for *Members* and *Other Beneficiaries*.

## 10.4. Governance Procedures

- 10.4.1. The *licensee* shall ensure it has appropriate *Internal Controls* in place in relation to each *Pension Scheme* or *Gratuity Scheme*.
- 10.4.2. Where appropriate due to scale of the scheme or numbers of *Members*, the *licensee* shall ensure that there is a *Governance Committee* in place.
- 10.4.3. Any *Governance Committee* appointed in relation to a *Pension Scheme* or *Gratuity Scheme* should be empowered:
- (a) to provide oversight to any aspect of the formation, management or administration of the scheme including *Internal Controls*; and
  - (b) to report concerns to *the Commission* in relation to same and also to report to *the Commission, licensee* or administrator or

*employer* as appropriate where it is of the opinion that major and significant risks exist which have not been communicated to *Members*.

- 10.4.4. For the avoidance of doubt, where a *licensee* is satisfied that a *Pension Scheme* or a *Gratuity Scheme* has in place appropriate governance arrangements by reference to, inter alia, scheme size and complexity then it can dispense with the need to establish a *Governance Committee*.

## **10.5. Notification to Commission of Pension Schemes or Gratuity Schemes**

- 10.5.1. Within two months of the establishment of a *Pension Scheme* or a *Gratuity Scheme*, the *licensee* must provide to *the Commission* key details regarding the scheme, in such form as *the Commission* may from time to time specify.

## **10.6. Reporting to the Commission**

- 10.6.1. The *licensee* in relation to each *Pension Scheme* or *Gratuity Scheme* of which it is carrying on *pension scheme business* or *gratuity scheme business* must notify *the Commission* as soon as reasonably practicable of any material changes to the information previously provided to *the Commission* regarding that scheme, including any changes to the information submitted on notification under rule 10.5.
- 10.6.2. Within three months of the *Scheme Year* end, a *licensee* must in relation to each *Pension Scheme* or *Gratuity Scheme* of which it is carrying on *pension scheme business* or *gratuity scheme business* submit to *the Commission* a compliance return in such form and manner as specified by *the Commission*.

## **10.7. Self Assessment**

- 10.7.1. The *licensee* should perform an assessment on a periodic basis to ensure that it is fully compliant in respect of its obligations under *the Rules*.

## **10.8. Documentation**

- 10.8.1. The *licensee* shall maintain securely and have readily available for each *Pension Scheme* or *Gratuity Scheme* of which it is carrying on *pension scheme business* or *gratuity scheme business* the following, which shall be written in English:
- (a) the *Governing Documentation* of the scheme, any amendments thereto and any other ancillary or supplemental documentation;

- (b) records of any meetings relating to the scheme;
- (c) financial statements relating to the scheme and to assets referable to each *Member*;
- (d) the latest statement or statements of investment principles prepared in accordance with rule 10.15;
- (e) the *Contribution Schedule* or schedules in relation to, where applicable, each *Member* of the scheme;
- (f) correspondence to or in respect of any individual *Member* or *Other Beneficiary* with rights (actual or contingent) to benefits in relation to the scheme; and
- (g) any other information *the Commission* may from time to time specify.

10.8.2. The *licensee* should, in relation to each *Pension Scheme* or *Gratuity Scheme* of which it is carrying on *pension scheme business* or *gratuity scheme business*, ensure that it and any *employees* or contractors (including, without limitation, any *Service Providers*) responsible for managing or administering the benefits of the *Pension Scheme* or *Gratuity Scheme* are conversant with the *Governing Documentation*, the statement or statements of investment principles prepared in accordance with rule 10.15 and other core scheme documents and policies in relation to the *Pension Scheme* or *Gratuity Scheme* relevant to that *employee* or contractor.

10.8.3. The *licensee* must make a copy of the *Governing Documentation* available within a reasonable time at the request of the *Member* or *Beneficiary*, save that where hard copy documents are requested, the *licensee* may require that the recipient first pays the *licensee's* reasonable costs of copying and delivering such documentation.

10.8.4. Where the *Governing Documentation* comprises bespoke rules or provisions which are only relevant to a specific *Member* or *Members* or any specific *Other Beneficiaries*, and have no impact or relevance on the rights of other persons whether or not a *Member* or *Other Beneficiary*, the *licensee* shall not be obliged to provide copies of such rules and provisions to any such unrelated persons.

## 10.9. Service Providers

10.9.1. The *licensee* in relation to a *Pension Scheme* or a *Gratuity Scheme* shall keep an up to date record of any person, firm or other entity other than

themselves providing any one or more of the following services in respect of the *Pension Scheme or Gratuity Scheme*:

- (a) Administration of benefits;
- (b) Custodian of scheme assets;
- (c) Acting as a *Financial Adviser*;
- (d) Actuarial; and
- (e) Audit,

(whom shall each be referred to as a “*Service Provider*”).

- 10.9.2. *The licensee* should keep an up to date record of the *employees* in relation to an *occupational pension scheme* and the date and terms on which an *employee* commenced participation in the scheme and the date on which participation ceased.
- 10.9.3. *The licensee* must, at the request of *the Commission*, or any *Member* or *Other Beneficiary* to whom the services of any such *Service Provider* relate, make available such records (detailed at rule 10.9.1(a) to (e) above) to *the Commission* or such person as the case may be. Where a *Service Provider* is appointed by a person, firm or other entity other than the *licensee* with powers under the *Governing Documentation* to make such appointment, the *licensee* should to the extent possible seek to hold information of the person appointed, together with the date and details of appointment and shall notify *the Commission* where it is aware of the appointment of such a *Service Provider* but has not been provided with such information.
- 10.9.4. *The licensee* shall assess on appointment and periodically review the suitability and competence of any *Service Provider* appointed by it in relation to a *Pension Scheme* or a *Gratuity Scheme*, to ensure that the *Service Provider* is suitably competent to carry out the applicable services in relation to the scheme.
- 10.9.5. Where the *Beneficiary* entitled to information under rules 10.8 to 10.9 has expressly consented in writing to electronic provision of such information, the *licensee* shall be deemed to have met those requirements by providing electronic access to such information, which may include access to a website showing up to date information, as at the date of viewing, provided the information listed in rules 10.8 to 10.9 as the case may be is covered.



## 10.10. Treatment of Members and Other Beneficiaries

- 10.10.1. On the occasion that a new *Member* joins a *Pension Scheme* or a *Gratuity Scheme*, the *licensee* or *employer* (as the case may be in respect of *occupational pension schemes*) should ensure that such *Member* receives:
- (a) A summary describing the key features, benefits and provisions of the scheme relating to the *Member* or any *Other Beneficiaries* who may be entitled to benefits (actually or contingently) in respect of the *Member*, including the rights and responsibilities of the *licensee*, any *Service Provider*, the *Member* and *Other Beneficiaries* and any other person in relation to the scheme so far as such rights and responsibilities are relevant in any way to such *Member* or *Other Beneficiaries*;
  - (b) Where a *Member's* right to benefits from an *occupational pension scheme* are subject to vesting rules, such as, without limitation, where the length of service with an *employer* or length of membership impacts the type, form and amount of benefit that might be payable, details of such vesting requirements and the *Member's* entitlements at each stage; and
  - (c) Details of the *licensee's complaints* resolution procedure, including, where applicable, contact details for *the CIFO* and a statement that *the CIFO* may be available to consider *complaints* which are not resolved through the *licensee's complaints* resolution procedure.

## 10.11. Contributions

- 10.11.1. Where the *Member* of a *Pension Scheme* or a *Gratuity Scheme* has notified the *licensee* that his *employer* or any other third party has agreed with the *Member* to pay regular contributions in respect of the *Member* on its own account or on behalf of such *Member* to a *Pension Scheme* or a *Gratuity Scheme*, the *licensee* shall ask the *Member* to confirm the amounts and timings of such contributions which shall constitute a "*Contribution Schedule*".
- 10.11.2. Where contributions under *the Contribution Schedule* are not received by the *licensee* within 60 days of their due date under *the Contribution Schedule*, the *licensee* shall notify the contribution payer of this as soon as reasonably practicable thereafter. If following the expiry of the 60 days from the due date the contributions remain outstanding the *licensee* shall also notify *the Commission* and *Members* as soon as is reasonably

practicable thereafter of this fact.

- 10.11.3. In relation to any rights to benefits (whether actual or contingent) accumulated on a *defined contribution basis* under an *occupational pension scheme*, the *licensee* if carrying on *pension scheme business* or *gratuity scheme business* should ensure that each relevant *employer* informs it of the amount and timings of any contributions due from it on its own account or on behalf of each *Member*. Where in relation to a scheme which was established prior to this rule coming into force, the *licensee* does not have such information, the *licensee* should request that the *employer* supplies this, and where it is not forthcoming, the *licensee* should inform *the Commission* and affected *Members*. This information shall constitute a “*DC Contribution Schedule*”.
- 10.11.4. In relation to any rights to benefits (whether actual or contingent) accumulated on a *defined benefit basis* under an *occupational pension scheme*, the *licensee* should maintain a schedule showing the contributions due from an *employer* in relation to such benefits, which information shall constitute a “*DB Contribution Schedule*”. *The Commission* may specify any requirements it sees fit as to the compilation and format of the *DB Contribution Schedule*.
- 10.11.5. Where contributions under any *DC Contribution Schedule* or *DB Contribution Schedule* are not received by the *licensee* within 60 days of their due date under such schedule, the *licensee* shall as soon as reasonably practicable following the expiry of the 60 days that the contributions are outstanding:
- (a) notify the relevant *employer* that such contributions have not been received;
  - (b) take such reasonable steps as it is able, under the *Governing Documentation*, to take to recover the contributions;
  - (c) notify any affected *Member* that the contributions are outstanding; and
  - (d) notify *the Commission* that contributions are outstanding and what steps it is taking in accordance with rule 10.11.5.

## **10.12. Charges**

10.12.1. Fees, Charges and Remuneration:

- (a) The *licensee* must consider all *Member Borne Charges* and the basis of calculation of any *Member Borne Charges* with the

objective that all such charges levied are reasonable in the circumstances. Where the *licensee* considers such charges are in the circumstances unusual, outside or potentially outside current market practice as to either amount or the basis of its calculation, it shall make this known immediately to the *Member*.

- (b) On a *Member* joining a *Pension Scheme* or a *Gratuity Scheme*, the *licensee* of that scheme will provide the *Member* with a statement of:
  - (i) each and every *Member Borne Charge* or anticipated *Member Borne Charges* and to whom these are payable, or where these are not known, the basis of their calculation. Where this is not possible for any reason, the *Member* should be provided with a description of what these charges or deductions are, and the reasons why it is not possible to provide information on these; and
  - (ii) any commission or other inducement/incentive that may be received by the *licensee*, or to the extent the *licensee* has knowledge of it, having made reasonable enquiry, any *Service Provider* or other *Third Party* in relation to any services that may be provided in respect of the scheme in relation to the *Member* or *Other Beneficiary*.

## 10.13. Benefits

### *Defined contribution pre-retirement*

- 10.13.1. In relation to all or part of a *Member's Account* which has not been applied to provide benefits from the *Pension Scheme* or *Gratuity Scheme*, the *licensee* shall make available to the *Member*, within six months of the end of each *Relevant Scheme Year*:
- (a) Information on the gross amount of contributions (including a nil amount) received and credited to the *Member's Account* under the scheme during the *Relevant Scheme Year*;
  - (b) Information on the amount of any investment return or loss during the *Relevant Scheme Year* in relation to the assets comprising the *Member's Account* including any loss or gains associated with revaluation of assets during the *Relevant Scheme Year*, and for these purposes revaluation of assets should occur where it is reasonable and appropriate to do so in accordance with *generally accepted accounting principles*;

- (c) A statement of all *Member Borne Charges* deducted and yet to be deducted during the *Relevant Scheme Year* from the *Member's Account*. Where it is not possible for any reason to identify and detail such charges, the *Member* should be provided with a description of what these charges or deductions are, the basis for calculation of such charges or deductions and the reasons why it is not possible to provide information on these;
- (d) Information on the current value of the assets comprising the *Member's Account* as at the end of the *Scheme Year*;
- (e) Where any benefits are accumulated on the basis that the amount payable is not solely calculated by reference to the assets allocated or referable to the *Member*, for example where the amount payable is underpinned by a guarantee or target as to the level of benefits payable or otherwise, information on such a feature and how it impacts the benefits that may be payable to the *Member*;
- (f) Where any *Service Provider* has provided a statement relating to the performance of assets that are referable to the *Member's Account* only, a copy of such statement;
- (g) To the extent the *licensee* has knowledge of it, having made reasonable enquiry, information on any commission that has been received by any *Service Provider* or other *Third Party* in relation to any services that have been provided to the scheme in relation to the *Member* in the *Relevant Scheme Year*, or where such a figure cannot necessarily be determined the basis of calculation for same; and
- (h) Details of the *licensee's complaints* resolution procedure, including, where applicable, contact details for *the CIFO* and a statement that *the CIFO* may be available to consider *complaints* which are not resolved through the *licensee's complaints* resolution procedure.

### ***Defined benefit pre-retirement***

10.13.2. In relation to any rights to benefits (whether actual or contingent) of the *Member* under the *Pension Scheme* or *Gratuity Scheme* that are accumulated on a *defined benefit basis*, the *licensee* shall, at the request of the *Member* (provided no request by the *Member* has been received in the previous twelve months) provide:

- (a) a summary of the method for calculating the *Member's* and any

survivor's benefits;

- (b) the date on which the service with any relevant *employers* by reference to which any benefits are calculated started and, if applicable, ended;
- (c) details of how any deduction from benefits is calculated; and
- (d) illustrative estimates to explain to the *Member* the benefits that might be payable on retirement under various assumptions, as applicable with a view to assisting the *Member* in understanding their entitlement to potential benefits from the scheme or information which might reasonably be helpful in the context of any decision the *Member* may reasonably be seeking to make.

10.13.3. *The Commission* may specify where it sees fit, any other information to be provided to *Members* or *Other Beneficiaries*, whether at such person's request or as a mandatory obligation on the *licensee* at such intervals as *the Commission* may specify.

### ***Post-retirement***

10.13.4. In relation to all or part of a *Member's Account* which has been designated to provide benefits from a *Pension Scheme* or *Gratuity Scheme*, but where following the payment of any lump sum or pension instalment in relation to such *Member's Account* or part thereof the *licensee*, *Service Provider* or *Third Party* continues to hold assets to be applied for the purposes of a subsequent pension instalment at a later date, the *licensee* shall within six months of the end of each *Relevant Scheme Year* make available to each *Beneficiary* to whom that part of the *Member's Account* relates, information on:

- (a) The total payments made to the *Beneficiary* during the *Relevant Scheme Year*;
- (b) Where the benefits payable are subject to automatic annual increases, details of the rate of such increase, when it will take effect and any particular terms relevant to the increase;
- (c) The current value of the assets to be applied for the purposes of a subsequent pension instalment at a later date, as at a date specified in the valuation which must be within three months of the date of the correspondence;
- (d) All *Member Borne Charges* deducted during the *Relevant Scheme Year* from the *Member's Account* so far as it relates to

that *Beneficiary*. Where it is not possible for any reason to identify and detail such charges, the *Member* should be provided with a description of what these charges or deductions are, the basis of calculation for such charges or deductions and the reasons why it is not possible to provide information on these; and

- (e) Where the *licensee* has the power to increase or decrease benefits payable, whether the conditions for such increase or decrease to be implemented have been applied and if so, the impact on the level of benefits payable in relation to the *Beneficiary*.

10.13.5. The *licensee* shall be deemed to have met the requirements in rules 10.13.1, 10.13.2 and 10.13.4 by providing electronic access to such information, which may include, with the agreement of the person to whom the information is to be provided, in place of an annual statement, access to a website showing up to date information as at the date of viewing provided the information listed in the aforementioned rules is covered.

## **10.14. Transfers**

10.14.1. Transfer requests and information about transfer values should be processed promptly and accurately and should not be unreasonably delayed.

10.14.2. Where all or part of a *Member* or *Beneficiary's* rights to benefits (whether actual or contingent) are subject to a valid transfer request by a *Member* or *Other Beneficiary* (the transferor) from a *Pension Scheme* or a *Gratuity Scheme* to another *Pension Scheme* or *Gratuity Scheme* respectively, the existing *licensee* in relation to the scheme being transferred:

- (a) on receiving a request from such person as to the current value of assets that would be available as a transfer value in respect of all or a specified part of his or her rights to benefits (whether actual or contingent) under the scheme, shall, as soon as reasonably practicable, provide such valuation to the transferor, and in any event no later than 21 days from the date such information was requested by the transferor. Such requirement shall be without prejudice to the *licensee's* ability to deduct reasonable fees from funds held in respect of the transferor, or require payment direct from the transferor for the purposes of providing such information;
- (b) on receiving a valid transfer request in accordance with the

*Governing Documentation and Other Applicable Requirements* to pay a sum representing all or a specified part of a *Beneficiary's* rights to benefits (whether actual or contingent) under the scheme together with all such information and fees as the *licensee* reasonably requires to process the request, may only refuse or delay in transferring the applicable funds with reasonable cause, including (without limitation) the requirements of the *Governing Documentation or Other Applicable Requirements*; and

- (c) except where rule 10.14.2(b) applies, a *licensee* shall process any valid transfer request in accordance with the *Governing Documentation and Other Applicable Requirements* to pay a sum representing all or the specified part of the *Member or Other Beneficiary's* rights to benefits (whether actual or contingent) under the scheme specified in the transfer request within a reasonable time following the date on which the *licensee* has received all the information and documentation it reasonably requires to process the transfer request.

- 10.14.3. Before any funds held in a *Pension Scheme* calculated on a *defined benefit basis* are transferred from that *Pension Scheme* (Scheme A) into another *Pension Scheme* (Scheme B), the *licensee* of the Scheme B must obtain a report from a suitably qualified person independent of that *licensee* and any other adviser involved. The report must be provided to the licensee of Scheme A and the *Member* as soon as is reasonably practicable thereafter and must, as a minimum, compare the actual benefits being given up in Scheme A with the projected returns from Scheme B on a range of realistic assumptions. This requirement is subject to a de minimis exception where the value of the funds to be transferred does not exceed £30,000.

## **10.15. Statement of Investment Principles**

- 10.15.1. The *licensee, Service Provider or Third Party* as the case may be, must ensure that there is prepared and maintained and where appropriate (and in any event at least once every three years) revised a written statement of principles governing decisions about investments.
- 10.15.2. The written statement under rule 10.15.1 must take account of the investment principles to the extent they apply under rules 10.15.1 to 10.15.3 and cover (where applicable), the policy of the *licensee* or *Third Party* as the case may be about:
  - (a) the kinds of investments to be held;

- (b) the balance between different kinds of investments;
- (c) levels of risk;
- (d) expected return on investments; and
- (e) the liquidity and realisation of investments.

10.15.3. In the case of *occupational pension schemes* where the *licensee* is carrying on *pension scheme business* or *gratuity scheme business* but does not hold the investment power, or the exercise of the investment power by the *licensee* is subject to the consent of any other person or other restriction, the *licensee* should review whether these rules and the spirit of the *General Principles* have been adhered to. Where the *licensee* has reason to believe this is not the case and it is unable to procure that steps are taken to address this, it should notify any relevant nominated *employer* representatives or where there are none in relation to any *employers*, such *employers* that this is the case.

## 10.16. Investment Direction

10.16.1. *Beneficiaries* and all parties involved in the administration, operation or management of *Pension Schemes* or *Gratuity Schemes* should have clarity on who is responsible for reviewing and making investment decisions and the possible scope of those decisions in relation to any part or parts of a *Pension Scheme* or a *Gratuity Scheme*.

10.16.2. Subject to the provisions of the *Governing Documentation* of a *Pension Scheme* or a *Gratuity Scheme*, the power to select and make investments may in relation to the whole or any part of the scheme be operated in accordance with one of the following investment approaches:

- (a) *Member Directed* (self-invested approach, where in relation to the identifiable assets referable to a particular *Beneficiary*, the *Beneficiary* has the investment power to make, select and direct investment decisions);
- (b) *Licensee Directed* (traditional approach - where the *licensee* has the power to make, select and direct investment decisions). This may apply on a scheme-wide basis or in relation to particular portfolios or portfolios within the scheme, or in respect of the identifiable assets referable to a *Beneficiary* or *Beneficiaries*; or
- (c) *Third Party Directed* (investment advised approach - where a *Third Party* has the power to make, select and direct investment decisions), subject to the provisions of rule 10.16.3(d). This may



apply on a scheme-wide basis or in relation to particular section or sections of the *Pension Scheme* or *Gratuity Scheme* or in respect of the identifiable assets referable to a *Beneficiary* or *Beneficiaries*.

- 10.16.3. The *Member* must, on joining the scheme be told by the *licensee*:
- (a) Which investment approach or approaches are to apply in respect of the *Member* and the implications of each particular approach;
  - (b) Where the *Member* can select from investment options identified by the *licensee*, *Service Provider* or *Third Party*, the *licensee*, *Service Provider* or *Third Party* still retain responsibility for the professional conduct of the investment management activity;
  - (c) Where the *Governing Documentation* provides that the basis of investment detailed above must or may (in specified circumstances) in relation to any particular *Beneficiary* on the occurrence of specified events be changed to a different basis with immediate effect or with immediate effect in relation to new investment decisions only, that this is the case and the applicable circumstances; and
  - (d) Where the *Governing Documentation* provides that in relation to any of the investment approaches permissible, the investments must be restricted to relevant investments in financial products listed in Appendix 2 and/or that they are only made with the advice of an *Appropriate Financial Adviser*, that this is the case.
- 10.16.4. The *licensee* must obtain from the *Member* a certificate signed by the *Member* confirming that he or she:
- (a) has received the information listed in rules 10.10.1 and 10.16.3;
  - (b) acknowledges the investment approach that is to apply in respect of his or her membership of the *Pension Scheme* or *Gratuity Scheme*; and
  - (c) where the *Member Directed* investment approach is to apply, that certificate must also state that the *Member* has received the information listed in rules 10.16.3(a) to 10.16.3(c) and disclaims the *licensee* from any responsibility for the suitability of the investments of assets held in relation to that *Member*.
- 10.16.5. Rules 10.16.1 to 10.16.4 do not apply to *occupational pension schemes*.

### ***Provisions relating to Third Party Directed investment approach***

10.16.6. Where the *Third Party Directed* investment approach applies, the *licensee* must ensure:

- (a) that the *Third Party* is an *Appropriate Financial Adviser*; which means:
  - (i) in the context of a *Pension Scheme* within the meaning of, and approved by the Director of Income Tax under, Section 157A of the Tax Law with Guernsey resident members who have made Guernsey-tax relieved contributions, a *Financial Adviser*;
  - (ii) in the context of a personal or group pension scheme marketed to international residents:
    - A a *Financial Adviser*; or
    - B a financial adviser regulated to provide financial advice in Jersey, Isle of Man or an EU member state; or
    - C a financial adviser in another jurisdiction where the *licensee* has assessed on appointment and periodically reviews the suitability and competence of the financial adviser appointed by it in relation to the pension scheme is, to ensure that it is qualified and competent to carry out the applicable services in relation to the scheme.
- (b) for *Pension Schemes* within the meaning of, and approved by the Director of Income Tax under Section 157A of the Tax Law with Guernsey resident members who have made Guernsey-tax relieved contributions, that the investments are restricted to investments listed in Appendix 2.

### ***Additional requirements relating to Member Directed investment approach***

10.16.7. Where the *Member Directed* investment approach applies, the *licensee* must, where authorised under the *Governing Documentation* to do so, take reasonable steps to satisfy itself in advance of that approach first applying, taking account of the *Beneficiary's* experience, background and such other information as might reasonably be expected to be available or is actually available to the *licensee*, that the *Beneficiary* is

reasonably likely to be able to understand and exercise his or her investment powers and the obligations and responsibilities in relation to such exercise, and must inform the *Beneficiary*:

- (a) that the *licensee* is not responsible for making, changing or reviewing any of the investments and is not obliged to take any steps to monitor the investments on behalf of the *Beneficiary*;
- (b) it is the *Beneficiary's* responsibility to confirm that the investments made in respect of the *Beneficiary* are appropriate in the *Beneficiary's* circumstances;
- (c) the *licensee* will have no liability to the *Beneficiary* to the extent that investments fall or might be considered inappropriate in the *Beneficiary's* circumstances;
- (d) if there are circumstances in which the *licensee* will be unable to exercise the investment power (such as where an investment proposed is illegal or could prejudice the scheme's approval), those circumstances; and
- (e) the circumstances in which the *Member* or another person may change the investment basis, or where the investment basis will automatically change.

### ***Employer-related investments***

- 10.16.8. Not more than 5% of an *occupational pension scheme's* resources should be invested in *Employer-Related Investments*.
- 10.16.9. Where an *occupational pension scheme* has *Segregated Sections*, rule 10.16.8 should apply to each *Segregated Section* as if it were a separate scheme so that it is not necessary to have regard to the investments of other sections in applying the test under that rule.
- 10.16.10. In relation to investments held which, because they were made prior to rule 10.16.8 coming into effect or because of a change in the values of investments held, cause an *occupational pension scheme* or *Segregated Section* to be in breach of rules 10.16.8 and 10.16.9, the *licensee* shall take steps to change the investments as soon as reasonably practicable to remedy such a breach, save that where:
  - (a) the *licensee* is unable to change such investments; and
  - (b) any change to the investments might cause material detriment to any *Beneficiary* of the scheme or *Segregated Section*,

the *licensee* should instead notify *the Commission* that this is the case.

10.16.11. Rule 10.15 does not apply:

- (a) to any *Employer-Related Investment* which is an investment in an account (including a current, deposit or share account) with a deposit-taking institution which is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
- (b) in relation to an *Employer-Related Investment* where the effecting of the policy of insurance constitutes the carrying on of long-term business, within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the policy of insurance is issued by an insurer authorised under the aforementioned law; or
- (c) to any other type of *Employer-Related Investment* investment that *the Commission* may specify.

## 11. Transitional Period

11.1 Licensees carrying on *pension scheme business* or *gratuity scheme business* must, by 30 September 2017, have conducted an assessment of their *Internal Controls* in order to identify and plan for any amendments required to ensure compliance with *the Rules* by 30 September 2018.

## 12. Derogations

12.1 Any exclusion or modification of a *licensee's* liability or obligation in relation to the Licensees (Conduct of Business) Rules 2016 made or given under rule 1.1.3 of those rules shall, unless previously amended or withdrawn, be deemed (in respect of the *licensee* to whom the derogation was granted) to have become an exclusion or modification for the purposes of *the Rules* upon *the Rules* coming into operation.

## 13. Revocation and Amendments

### 13.1. Amendment of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017

13.1.1. In rule 13 of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017 for the words from the number 6 to the end of the paragraph, substitute “8, which shall only apply to Retirement Annuity Trust Schemes formed prior to 30 June 2017”.

13.1.2. This amendment shall have effect from 30 June 2017.

## **13.2. Revocation of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017**

13.2.1. The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017 are revoked, save for rule 13.

**Guidance Note:**

*The RATS Rules* were revoked from 30 June 2017 except for rules 4 (Gearing) and 8 (Transfers from defined benefit schemes) of those rules, which continue to apply to Retirement Annuity Trust Schemes formed prior to 30 June 2017.

Any outstanding obligations of any person under *the RATS Rules* as at 30 June 2017 survive revocation of *the RATS Rules*.

All Retirement Annuity Trust Schemes formed after 30 June 2017 are subject to *the Rules*.

## **Appendix 1: Principles of Conduct of Finance Business**

### **1. Integrity**

A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

### **2. Skill, Care and Diligence**

A licensee should act with due skill, care and diligence towards its customers and counterparties.

### **3. Conflicts of Interest**

A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the licensee would place his interests above its own, the licensee should live up to that expectation.

### **4. Information about Customers**

A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

### **5. Information for Customers**

A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

### **6. Customer Assets**

Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

### **7. Market Practice**

A licensee should observe high standards of market conduct, and should also comply with any code of (sic) standard as is in force from time to time and issued or approved by the Commission.

## **8. Financial Resources**

A licensee should ensure that it maintains adequate financial resources to meet its finance business commitments and to withstand the risks to which its business is subject.

## **9. Internal Organisation**

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the licensee employs staff or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

## **10. Relations with the Guernsey Financial Services Commission**

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the licensee which might reasonably be expected to be disclosed to it.

## **Appendix 2: Permissible Investments for Third Party Directed Investment Approach**

Bank account deposits

Cash

Cash funds

Corporate bonds

Exchange-traded funds

Government and local authority bonds and other fixed interest stocks

Physical gold bullion

Investments notes (structured products)

Long-term insurance contracts (where underlying investment is in other assets listed in this Appendix)

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 International Stock Exchange;
- the London Stock Exchange; or
- a recognised exchange (as listed in The Companies (Recognised Stock Exchange) Regulations, 2009 (as amended)).

Units in regulated collective investment schemes.

Dated this 25<sup>th</sup> day of August, 2017



**C.A. SCHRAUWERS**  
Chairman of the Guernsey Financial Services Commission  
For and on behalf of the Commission