

THE PENSION SCHEME AND GRATUITY SCHEME

RULES, 2019

Made:

Coming into Operation:

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by sections 29, 31A, 31B and 31C of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000¹ (“the Law”).

¹ Ordres en Conseil No. I of 2001, as amended.

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PART 1 - INTRODUCTION

1.1 Commencement

- (1) The Pension Scheme and Gratuity Scheme Rules 20** (“Rules”) shall come into operation on ***.

1.2 Application

- (1) The formation, management or administration of pension schemes or gratuity schemes (“Schemes”) and the provision of advice in relation to their formation, management or administration is a regulated activity in accordance with section 2(1)(e) of the Law.
- (2) Except where otherwise provided, the Rules shall apply to all licensees and in respect of all Schemes.
- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of the Rules if the Commission is satisfied that any such derogation will not prejudice the interests of the Clients.
- (4) 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 Schemes. Such guidance will not constitute rules of the Commission.

- (5) The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

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PART 2 – PENSION SCHEMES AND GRATUITY SCHEMES

2.1 Fair treatment of Scheme Members

- (1) Licensees must pay due regard to the interests of Scheme Members and beneficiaries and treat them fairly.

2.2 Governing Documentation

- (1) Subject to rule 2.2(3), the licensee when acting as a trustee must ensure that the Scheme is established and is, at all times, constituted by the “Governing Documentation”. The Governing Documentation –
 - (a) may include supplementary or ancillary instruments and;
 - (b) must set out, in full –
 - (i) the terms of the Scheme;
 - (ii) the obligations and powers of –
 - (aa) the licensee; and
 - (bb) any other person, including any Service Provider, in relation to the Scheme; and
 - (iii) details of the benefits provided for Scheme Members including –

(aa) their nature;

(bb) method of calculation; and

(cc) the circumstances in which they are paid.

(2) Subject to rule 2.2(3), the licensee when acting as administrator should retain copies of the documentation necessary to fulfil their contracted functions. They must be satisfied that the Scheme is established and is, at all times, constituted by the Governing Documentation.

(3) Where a Scheme is established by an interim instrument, on terms that it is to adopt either full or definitive Governing Documentation at a future date, the requirement under rule 2.2(1), above, shall apply from that date.

(4) A licensee must ensure that any interim instrument referred to in rule 2.2(3), above, or any other documentation to which the interim instrument refers, contains sufficient detail to enable the members to ascertain the nature of the benefits and when they will become payable.

Guidance Note:

Where, as described in Rule 2.2(3), a Scheme is established by an interim instrument the licensee should take steps to ensure that full or definitive Governing Documentation is adopted as soon as is reasonably possible.

2.3 Governance procedures

- (1) The licensee shall ensure it has appropriate internal controls in place in relation to each Scheme.
- (2) Where appropriate, and taking into consideration the Scheme's size, complexity and the number of Scheme Members, the licensee should appoint a Governance Committee.
- (3) Where a Governance Committee is not required the licensee must be satisfied that their own policies, procedures and controls are sufficient to provide oversight and ensure good governance.
- (4) Where a Governance Committee is appointed it must –
 - (a) provide oversight of the –
 - (i) formation;
 - (ii) management;
 - (iii) administration; and
 - (iv) internal controls of the Scheme;

and report significant concerns, to the licensee, with regards to any of the processes above; and

(b) report to the Commission, licensee, administrator or employer, as appropriate, where major and significant risks arise which have not been communicated to the Scheme Members.

(5) Where a Governance Committee has reported significant concerns in accordance with rule 2.3(4)(a) the licensee must report the matter to the Commission.

Guidance Note:

Good Governance of Schemes should enable the licensee, where appropriate, to oversee:

- safe keeping of assets;
- the making of timely and accurate notifications to the Commission;
- timely and accurate reporting to the Commission;
- administration;
- appropriate record keeping;
- funding in relation to defined benefit schemes;
- payment of contributions;
- investment of assets;
- communication with members.

2.4 Notification of Schemes to the Commission

(1) Within two months of the –

(a) establishment or approval of a Scheme, whichever is later; or

(b) completion of the transfer of a Scheme from a provider not licensed by the Commission;

the licensee must provide notification to the Commission in such form as the Commission may from time to time specify.

- (2) Within two months of the completion of the transfer of a Scheme to another licensee, the retiring licensee must provide notification to the Commission in such form as the Commission may from time to time specify.
- (3) Within two months of the completion of the termination of a Scheme or of the transfer of the Scheme to a provider not licensed by the Commission, the licensee must provide notification to the Commission in such form as the Commission may from time to time specify.
- (4) Where more than one licensee undertakes regulated activity for the same Scheme one licensee, with the agreement of the other relevant licensees, may give written notice to the Commission that it shall be the licensee for the purposes of this rule.

2.5 Reporting to the Commission

- (1) The licensee, in relation to each Scheme, must submit to the Commission –
 - (a) notification of any material changes to the information previously provided to the Commission under rule 2.4, as soon as is reasonably practicable;
 - (b) an annual return, within six months of the Scheme Year End; and
 - (c) a quarterly return, within two months of the end of each quarter within a calendar year

in such form and manner as is specified by the Commission.

- (2) Where more than one licensee undertakes regulated activities for the same Scheme one licensee, with the agreement of the other relevant licensees, may give written notice, to the Commission, that it shall be the licensee for the purpose of this rule.

2.6 Self assessment

- (1) The licensee should regularly ensure its compliance against these Rules.
- (2) The licensee should perform an assessment of the effectiveness of its policies, procedures and controls, at least annually and on a periodic basis, to ensure that it is fully compliant in respect of its obligations under these Rules.

Guidance Note:

The frequency of a periodic self-assessment should take into account the size, nature and complexity of the business including risks identified in any business risk assessment in respect of the Schemes for which it is acting as Pension Service Provider.

The periodic self-assessment might, for example, form part of testing carried out under a compliance monitoring programme or be as a result of a trigger event such as a number of breaches of the Rules or of the Scheme's Governing Documentation.

2.7 Documentation relating to the Scheme

(1) Documentation must be maintained by the licensee for each Scheme, in respect of which they undertake regulated activities, and must contain the following information

-

- (a) the current and previous Governing Documentation for the Scheme, including any amendments and ancillary or supplemental documentation;
- (b) any interim documents in accordance with rule 2.2(3);
- (c) records of any meetings relating to the Scheme;
- (d) financial statements relating to the Scheme and to assets referable to each Scheme Member;
- (e) actuarial valuations relating to a Scheme operated on a defined benefit basis, which must be prepared at least every three years;
- (f) the latest statements of investment principles prepared in accordance with rule 2.14;
- (g) any Contribution Schedule prepared in accordance with rule 2.10 in relation to the Scheme;
- (h) correspondence to, or in respect of, any Scheme Member or beneficiary with either actual or contingent rights to benefits in relation to the Scheme;
- (i) any other information the Commission may from time to time specify by way of license condition; and

- (j) where the Scheme is an occupational pension scheme, the licensee should keep an up to date record (whether directly or via a third party) of the date and terms on which an employee commenced participation in the scheme and the date on which participation ceased.

(2) Scheme documentation must –

- (a) be maintained securely;
- (b) be readily available; and
- (c) available in English.

(3) The licensee should, in relation to each Scheme, ensure anyone responsible for managing or administering the benefits of that Scheme are conversant with the Governing Documentation, the statements of investment principles prepared in accordance with rule 2.14 and other scheme documents and policies.

(4) Where a Scheme Member requests sight of documentation –

- (a) the licensee must make the following documents available within a reasonable time –
 - (i) the current and previous Governing Documentation for the Scheme, including any amendments and ancillary or supplemental documentation;
 - (ii) any interim documents in accordance with rule 2.2(3);
 - (iii) records of any meetings relating to the Scheme;

- (iv) financial statements, where appropriate, relating to the Scheme and to assets referable to each Scheme Member; and
 - (v) the latest statements of investment principles prepared in accordance with rule 2.14;
 - (b) and where the documents are requested to be provided in hard copy, the licensee may require that the requestor first pays the reasonable costs associated with copying and delivery; and
 - (c) any document referred to in rule 2.7(4)(a), which comprises only of bespoke rules or provisions with relevance to specific Scheme Members, need only be released to those Scheme Members to whom they apply.
- (5) Where more than one licensee undertakes regulated activities for the same Scheme one licensee, with the agreement of the other relevant licensees, may give written notice to the Commission that it shall be the licensee for the purposes of this rule.

Guidance Note:

The Commission would expect a licensee to be able to justify any restriction of the rights of a Scheme Member to receive information.

Where information requested by a Scheme Member under Rule 2.7 (4) regarding a Scheme is deemed to be commercially sensitive the Commission would expect that a licensee consider redaction or partial disclosure as an alternative to rejecting the request.

2.8 Service Providers

(1) A “Service Provider” is any external person, firm or other entity who, in relation to each of the licensee’s Schemes provides any one or more of the following services -

- (a) administration of benefits;
- (b) custodian of Scheme assets;
- (c) acting as a Financial Adviser;
- (d) actuarial; or
- (e) audit.

(2) Where the Service Provider is appointed by the licensee, the licensee in respect of each Scheme, shall –

- (a) keep an up to date record of any Service Providers for that Scheme, stating–
 - (i) the terms under which the Service Provider is appointed;
 - (ii) whether it is regulated in respect of the services it provides; and
 - (iii) if regulated, where it is regulated;

- (b) review the Service Provider’s appointment periodically, assessing its ongoing –
 - (i) suitability;

(ii) competence; and

(iii) performance;

in relation to each Scheme to which it provides services;

(c) where the Service Provider is no longer assessed to be competent, take such steps as necessary to address the situation.

(3) Where, under powers contained in the Governing Documentation, the Service Provider is appointed by a person, firm or entity other than the licensee, the licensee should –

(a) seek to maintain a record holding information about the Service Provider which includes the date and details of their appointment;

(b) notify the Commission when it becomes aware of the appointment of such a Service Provider but has not been provided with the information set out at rule 2.8(3)(a);

(c) take all reasonable steps to ensure that the Service Provider's performance is periodically reviewed; and

(d) make suitable recommendations, to those with power over the appointment, in relation to appropriate actions to take when the licensee has assessed that the Service Provider is no longer competent to perform the functions they were appointed to carry out.

2.9 Information for new joiners to Schemes

- (1) When a new Scheme Member joins a Scheme the licensee must ensure, or in the case of an occupational pension scheme request that the employer ensure, that the new joiner receive the following information –
- (a) a summary of the key features, benefits and provisions of the Scheme and how these relate to the Scheme Members or beneficiaries who may be entitled to them;
 - (b) an explanation of their rights and responsibilities;
 - (c) an explanation of the rights and responsibilities of the licensee, any Service Provider, any other Scheme Member or any other persons with regards to the Scheme, which are relevant to them;
 - (d) where the rights to benefits from an occupational pension scheme are subject to vesting rules; details of the requirements of these rules and their entitlements at each stage;
 - (e) details of each and every Member Borne Charge, or anticipated Member Borne Charge including –
 - (i) details of who the charge is payable to;
 - (ii) the basis of the calculation of this charge;
 - (iii) a description of what they are; and
 - (iv) details of any commission, or other inducement or incentive, that may be received by the licensee, or that the licensee is aware may be received by any

Service Provider or any other Third Party, in relation to any services that they provide to the Scheme;

(f) details of rights to opt out, or otherwise withdraw, from the Scheme and the procedure to be followed; and

(g) details of the licensee's procedure for resolving complaints including, where applicable, contact details for the Channel Islands Financial Ombudsman ("CIFO") and a statement that the CIFO may be available to consider complaints which are not resolved through the licensee's complaints resolution procedure.

(2) Where it is not practical, for any reason, to disclose the information required in rule 2.9(1)(e), the Scheme Member must, as soon as reasonably practicable, be provided with a description of what these charges, deductions, commissions or other inducements or incentives are and the reasons why it is not possible to provide further information.

(3) The provision of any information under this rule is without prejudice to any other rights to information or documents under these Rules.

Guidance Note:

Scheme Members should be provided with clear information regarding the Scheme to enable them to understand what to expect and to assess that the associated service is of an acceptable standard.

2.10 Contributions

(1) Where regular contributions are made to a Scheme, either on the Scheme Member's own account or on their behalf, the licensee shall establish the following -

(a) the due date of contributions; and

(b) the contribution amounts and how these have been calculated;

and keep this information in a written schedule called a "Contribution Schedule".

(2) Where this rule applies to an occupational pension scheme, which provides benefits accumulated on a defined contribution basis, the licensee should ensure that each employer provides the following information for the Contribution Schedule –

(a) the due date of contributions;

(b) contribution amounts and how these have been calculated;

(c) details of any contributions which remain outstanding, at the commencement date, in respect to any Scheme Member to whom it has agreed to pay contributions either on behalf of them or on its own account; and

where they are unable to provide such information, inform the Commission as soon as is reasonably practicable.

(3) Where any contributions set out in a Contribution Schedule made under rule 2.10(1) are not paid within 60 days of their due date, the licensee shall notify the contribution payer, the Scheme Member and the Commission as soon as is reasonably practicable.

(4) Where any contributions set out in a Contribution Schedule made under section 2.10(2) are not paid within 30 days of their due date, the licensee shall –

- (a) notify the relevant participating employer and principal employer that such contributions have not been received;
- (b) take such steps as are deemed reasonable and are within its power, either under the Governing Documentation or under any relevant legislation, to recover the contributions;
- (c) notify any affected Scheme Member that the contributions are outstanding; and
- (d) notify the Commission that contributions are outstanding and of any steps that have been taken in order to remedy the situation;

as soon as is reasonably practicable.

Guidance Note:

Notifications to the Commission, under rule 2.10 (3), do not need to be made where the member has stopped making regular contributions and has notified the Licensee accordingly.

2.11 Charges

- (1) The licensee, in relation to Member Borne Charges –
 - (a) must consider the basis of calculation; and
 - (b) must ensure that they are reasonable.
- (2) Where charges are unusual, outside, or potentially outside current market practice, either as to the amount or the basis of the calculation of the amount, the licensee shall make this known immediately to the Scheme Member.

- (3) Steps must be taken to notify Scheme Members when there is not a reasonable likelihood that, after Member Borne Charges are applied, their account will be sufficient to achieve capital growth in current or future market conditions.

2.12 Provision of information about benefits

- (1) A licensee is required to provide information about benefits, to a Scheme Member, in relation to a Scheme of which they are a part.
- (2) Scheme Members should be presented with clear and accurate information and be kept appropriately apprised with regards to the Scheme.
- (3) In relation to a Scheme that does not meet the definition of defined benefit basis or defined contribution basis the licensee shall, at least annually, make available appropriate pre-retirement information regarding the Member's Account to the Scheme Member.

Guidance Note:

Information provided, in accordance with rule 2.12, should be sufficient to allow Scheme Members to make informed decisions about the Scheme and to allow them to assess how it has performed in relation to their expectations.

2.12.1 Defined contribution schemes pre-retirement

(1) In relation to the part of a Member's Account ("Account") which has not been applied to provide benefits, the licensee shall make available to the Scheme Member –

- (a) information on the gross amount of contributions received and credited to the Account during the year²;
- (b) information on the amount of any investment return or loss applied to the Account during the year; including any loss or gains associated with the revaluation of assets during the year³;
- (c) a statement of all Member Borne Charges deducted and yet to be deducted during the year from the Account. Where it is not possible to identify and detail such charges the Scheme Member must 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;
- (d) information on the current value of the assets comprising the Account;
- (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 them, information on such a feature and how it impacts the benefits that may be payable;

² Where this amount is a nil amount it must be included in cases where the last contribution was received within three years of the end of the relevant Year.

³ For these purposes the revaluation of assets should occur where it is reasonable and appropriate to do so and in accordance with generally accepted accounting principles.

(f) where any Service Provider has provided a statement relating to the performance of assets that are referable to the Account only, a copy of the statement;

(g) to the extent that the licensee has knowledge, following 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 them in the Year or, where such a figure cannot necessarily be determined, the basis of the calculation of the same; or

(h) details of any changes to the licensee's complaints resolution procedure which occurred during the Year;

within six months of the end of each relevant Scheme Year ("Year"), or such other date as may be mutually agreed.

- (2) The Commission may at any time specify any other information to be provided to Scheme Members or beneficiaries, whether by request or by way of licence condition.

Guidance Note:

The Commission expects that where the assets are easily valued the requirements of rule 2.12.1 will be met earlier than 6 months from the end of the relevant Year.

In the context of a defined contribution scheme there is a risk that the Scheme Member, as a result of inadequate contribution levels or poor investment returns, will retire with too small a balance to fund retirement.

When providing the information required in rule 2.12.1(1) licensees should consider whether the inclusion of information pertaining to the projected benefits the Scheme Member can expect to receive upon retirement is appropriate.

Nil returns, for deferred members of occupational pension schemes, do not need to be reported.

Any benefit projection provided to Scheme Members could be expressed in real terms to provide clarity regarding the level of the income expected in retirement.

2.12.2 Defined benefit pre-retirement

- (1) In relation to any rights to benefits, of the Scheme Member, that are accumulated on a defined benefit basis the licensee shall provide, at the request of the Scheme Member and no more than annually –
- (a) a summary of the methods for calculating those benefits or the benefits of any person claiming through the Scheme Member;
 - (b) the date on which the Scheme Member's 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) benefit illustrations to explain the benefits that may be payable on retirement under various assumptions; with a view to assisting understanding of their entitlement to potential benefits from the Scheme or providing information which might be helpful in the context of any decision they may reasonably be seeking to make.
- (2) The Scheme Member may request this information at any time. In order to provide the information the licensee may require the requestor first pays the reasonable cost of its delivery.
- (3) The Commission may at any time specify any other information to be provided to Scheme Members or beneficiaries, whether by request or by way of license condition.

2.12.3 Post-retirement

- (1) Where all or part of an Account has been applied to provide benefits from a Scheme but continues to hold assets to be applied for the purpose of subsequent pension instalments; the licensee must make available to each Scheme Member, to whom that part of the Account relates, information on –
- (a) the total payments made to them during the 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 relevant terms;

- (c) the current value of the assets to be applied for the purposes of any subsequent pension instalments at a later date, as specified in the valuation;
- (d) all Member Borne Charges deducted during the Year from the Account so far as it relates to them. This information should be clearly identified and sufficiently detailed and in circumstances where it is not possible to provide it reasons must be provided as to why this information is not available. A description of what these charges or deductions are and the basis of their calculation must be provided as an alternative; and
- (e) where the licensee has, under certain conditions, the power to increase or decrease benefits payable; when such change has been implemented and its impact on the level of benefits payable in relation to them

and the information must be provided within six months of the end of each Year.

Guidance Note:

Scheme Members of defined contribution schemes not only bear risks during the phase when their assets are being accumulated but are also exposed to risk when in transition to and sometimes within the decumulation phase.

Licensees should consider the level of information provided to Scheme Members approaching the decumulation phase and whether this enables them to take appropriate, informed choices – taking into account the different phases of retirement and the varying levels of income requirements associated with these.

Where a licensee decides that it is not possible to identify and detail Member Borne Charges the Commission, as part of its ongoing supervision, may request a detailed explanation and evidence in support.

2.13 Transfers

- (1) Transfer requests and information about transfer values should be processed promptly and accurately and should not be unreasonably delayed.
- (2) Licensees must not impose unreasonable conditions on Scheme Members who request a transfer.
- (3) When in receipt of a valid transfer request from a Scheme Member ("the transferor") the existing licensee must–
 - (a) provide a valuation of the current assets available, either in respect of all or a specified part of the transferor's rights, as soon as is reasonably practicable on receipt of a request for this information. The licensee may deduct reasonable fees from funds held in respect of the transferor, or require payment directly from them, for the purpose of providing such information;
 - (b) process any valid transfer request within a reasonable time following the date on which the licensee has received all the information and documentation it reasonably requires to do so;
 - (c) having received all the information and any fees, in order to process the request, may only delay or refuse the request with reasonable cause; and
 - (d) provide the Scheme Member with an explanation regarding the reasons for the delay where the requested transfer is not completed within 60 days.
- (4) Where it is proposed that 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") –

- (a) the licensee of Scheme B must obtain a report from a suitably qualified person independent of the licensee -
- (i) which must be provided to the licensee of Scheme A and the Scheme Member as soon as is reasonably practicable; and
 - (ii) which must contain, as a minimum, a comparison of the actual benefits being given up in Scheme A with the projected returns from Scheme B on a range of realistic assumptions;
- (b) where there is no recognised licensee acting on behalf of Scheme B the licensee of Scheme A must ensure that the requirements set out in rule 2.13(4)(a) are followed;
- (c) the requirement, to provide the report set out in rule 2.13(4)(a), is subject to a *de minimis* exception where the value of the funds to be transferred does not exceed £50,000.

Guidance Note:*Risk associated with transfers*

There are a number of potentially significant risks to Scheme Members that should be considered when a transfer request is received. Licensees should consider these risks and raise these with the transferors where relevant.

Risks which exist globally and within the Bailiwick include, but are not limited to:

- that the transfer may make the transferor liable for an increased level of fees and may result in a lock-in for a period of time during which any subsequent withdrawal or transfer may trigger additional fees, which may or may not have been clearly disclosed;
- that the transfer may have tax implications and may trigger or increase the risk of potential enforcement action by the relevant tax authority, all of which may not have been clearly disclosed;
- any plan, by the transferor, to liberate pensions assets may be illegal or may trigger or increase the risk of potential enforcement action by the relevant tax authority against the transferor;
- that the pension plan provider receiving the transferred pension assets may not be suitable;
- that the proposed pension plan may not be suitable for the transferor's circumstances or risk appetite;
- that the proposed underlying investments to be held within the proposed pension plan may not be suitable;
- the jurisdiction to which the proposed transfer is to be made may not have comparable regulatory or legal pension or investment protections or might otherwise be unsuitable;
- unscrupulous advisors or introducers may persuade Scheme Members to invest their encashed scheme savings into inappropriate investment schemes for the benefit of their own personal remuneration.

In dealing with a transfer request licensees should consider conducting due diligence on the receiving scheme and connected provider. Where they suspect that the receiving scheme or provider may be involved in a scam licensees should carefully consider whether the transfer should proceed.

2.14 Statement of Investment Principles

- (1) Rule 2.14 applies to any Scheme that is not Member Directed.
- (2) A written statement of the principles governing decisions about investments must be produced by the licensee when acting as a trustee and -
 - (a) must cover policy on –
 - (i) the kinds of investment to be held;
 - (ii) the balance between different kinds of investments;
 - (iii) levels of risk;
 - (iv) expected return on investments; and
 - (v) the liquidity and realisation of investments;
 - (b) remains their responsibility including in cases where the preparation is undertaken by a Service Provider or Third Party;
 - (c) must be maintained and revised at regular intervals which must not exceed three years.
- (3) Where the licensee has reason to believe that Rule 2.14 has not been adhered to, and it is unable to take steps to address this, it should notify the Commission, any relevant Third Party or nominated employer representative.

2.15 Investment Direction

- (1) Licensees must ensure that Scheme Members and all parties involved in the administration, operation or management of Schemes have clarity on who is responsible for reviewing and making investment decisions and the possible scope of those decisions in relation to any part of a Scheme.
- (2) Scheme Members must be presented with clear information and be kept appropriately appraised with regards to the Scheme in order to be able to make informed decisions.
- (3) The responsible person should aim to ensure that, as far as is practicable, the Scheme performs as the Scheme Member expects.
- (4) The Governing Documentation of a Scheme may provide that the power to direct, select and make investments can be operated, in relation to the whole or part of the Scheme, in accordance with one of the following investment approaches –
 - (a) the Scheme Member has the power to make, select and direct investment decisions in relation to the Account (“Member Directed”);
 - (b) the licensee has the power to make, select and direct investment decisions (“Licensee Directed”); or
 - (c) a third party has the power to make, select and direct investment decisions, subject to rule 2.15.4 (6) (“Third Party Directed”).

2.15.1 Information regarding the Investment Direction approach for new Scheme Members

- (1) The licensee must, in relation to any person wishing to join a Scheme and prior to them joining the Scheme –
 - (a) provide either an explanation as to which of the investment approaches, set out in this rule, apply in respect to each Scheme Member;
 - (b) where the Governing Documentation makes provision for an investment approach that is not set out under this rule, explain what this means and how it operates;
 - (c) explain the implications of the approach and who is said to be liable, under the Governing Documentation, for any loss or depreciation in value of the investments;
 - (d) inform them of cases where the Governing Documentation provides that the basis for investment may, or must, be changed; either with immediate effect or with immediate effect in relation to new investment decisions only; and the circumstances under which this situation would arise, and
 - (e) inform them where the Governing Documentation provides that, in relation to the investment approach, that the investments must be restricted to relevant investments in financial products as listed in Appendix 1 to these Rules.

2.15.2 Provisions relating to a Member Directed investment approach

- (1) Rule 2.15.2 does not apply to occupational pension schemes where the Member Directed investment approach applies. For such schemes see rule 2.15.5(1).
- (2) Where the Member Directed investment approach applies the licensee must ensure that the explanation of the implications of this approach, provided to new joiners, takes into account that persons background and ability to understand the implications of the approach and their associated obligations and responsibilities.
- (3) Information provided by the licensee must include, but is not limited to, the following⁴ -
 - (a) that the Scheme Member is responsible for making, changing or reviewing any of the investments and that the licensee is not responsible for the Scheme Member's decisions in this regard;
 - (b) that it is the Scheme Member's responsibility to confirm that the investments made in respect to them are appropriate in their circumstances;
 - (c) that the Scheme Member shall exercise the investment powers at its own risk, including the risk that the value of investments may fall or may be found or considered inappropriate in their circumstances;
 - (d) any circumstances in which the licensee will be unable to exercise the investment power;

⁴ To the extent to which they apply in each case.

- (e) any arrangements for commission, or any other fee, payable to the licensee or any other person connected to the Scheme by a person holding or advising on the investments; and
 - (f) the circumstances in which the Scheme Member or another person may change the investment basis, or where the investment basis will automatically change.
- (4) When providing the information set out in this rule, the licensee must obtain, from the person in receipt of the information, a signed certificate confirming that they have –
- (a) received the information set out in this rule;
 - (b) either taken professional advice on the information received or declaring that they have decided against seeking such advice;
 - (c) acknowledged and agreed to the investment approach that is to apply in respect of their membership and agreed to join on that basis; and
 - (d) understood and acknowledged whose responsibility it is, in accordance with the Governing Documents, should the value of the investments fall.
- (5) The licensee must not permit a person to join a Scheme without the production of a certificate as set out in this rule unless the Governing Documentation of the Scheme contains an express provision allowing this. Where a person becomes a Scheme Member under such provisions the licensee must inform the Commission immediately.

2.15.3 Provisions relating to a Licensee Directed investment approach

- (1) Rule 2.15.3 does not apply to occupational pension schemes where the Licensed Directed investment approach applies. For such schemes see rule 2.15.5(2).
- (2) Where the Licensee Directed investment approach applies the licensee must ensure that the explanation of the implications of this approach, provided to new joiners, takes into account that persons background and ability to understand the implications of the approach and their associated obligations and responsibilities.
- (3) Information provided by the licensee must include, but is not limited to, the following⁵ -
 - (a) that the licensee is responsible for making, changing or reviewing any of the investments;
 - (b) any circumstances in which the licensee will be unable to exercise the investment power;
 - (c) any arrangements for commission, or any other fee, payable to the licensee or any other person connected with the Scheme by a person holding or advising on the investments; and
 - (d) the circumstances in which the Scheme Member or any other person may change the investment basis, or where the investment basis will automatically change.

⁵ To the extent to which they apply in each case.

- (4) When providing the information set out in this rule, the licensee must obtain, from the person in receipt of the information, a signed certificate confirming that they have –
- (a) received the information set out in this rule;
 - (b) either taken professional advice on the information received or declaring that they have decided against seeking such advice;
 - (c) acknowledged and agreed to the investment approach that is to apply in respect of their membership and agreed to join on that basis; and
 - (d) understood and acknowledged whose responsibility it is, in accordance with the Governing Documents, should the value of the investments fall.
- (5) The licensee must not permit a person to join a Scheme without the production of a certificate as set out in this rule unless the Governing Documentation of the Scheme contains an express provision allowing this. Where a person becomes a Scheme Member under such provisions the licensee must inform the Commission immediately.

2.15.4 Provisions relating to a Third Party Directed investment approach

- (1) Rule 2.15.4 does not apply to occupational pension schemes where the Third Party Directed investment approach applies. For such schemes see rule 2.15.5(3).
- (2) Where the Third Party Directed investment approach applies, the licensee must ensure that the explanation of the implications of this approach, provided to new joiners, takes into account that persons background and ability to understand the implications of this approach and their associated obligations and responsibilities.

(3) Information provided by the licensee must include, but is not limited to, the following⁶ -

(a) that the third party is responsible for making, changing or reviewing any of the investments and that the licensee is not responsible for the third party's decisions in this regard;

(b) any arrangements for commission, or any other fee, payable to the licensee or any other person connected with the Scheme by a person holding or advising on the investments; and

(c) the circumstances in which the Scheme Member or another person may change the investment basis, or where the investment basis will automatically change.

(4) When providing the information set out in this rule, the licensee must obtain, from the person in receipt of the information, a signed certificate confirming that they have –

(a) received the information set out in this rule;

(b) either taken professional advice on the information received or declaring that they have decided against seeking such advice;

(c) acknowledged and agreed to the investment approach that is to apply in respect of their membership and agreed to join on that basis; and

(d) understood and acknowledged whose responsibility it is, in accordance with the Governing Documents, should the value of the investments fall.

⁶ To the extent to which they apply in each case.

- (5) The licensee must not permit a person to join a Scheme without the production of a certificate as set out in this rule unless the Governing Documentation of the Scheme contains an express provision allowing this. Where a person becomes a Scheme Member under such provisions the licensee must inform the Commission immediately.
- (6) The licensee must also ensure –
- (a) that the Third Party is an Appropriate Financial Adviser; and
 - (b) for pension schemes within the meaning of and approved by the Director of Income Tax under section 157A of the Income Tax (Guernsey) Law, 1975⁷ (“the Tax Law”), with Guernsey resident members who have made Guernsey tax relieved contributions, that the investments are restricted to investments listed in Appendix 1 to these Rules.

2.15.5 Provisions relating to occupational pension schemes

- (1) Where the scheme is an occupational pension scheme and the Member Directed investment approach applies, the licensee must inform the new joiner, or ensure that they are informed, of at least the following matters⁸ -
- (a) that the Scheme Member is responsible for making, changing or reviewing any of the investments and that the licensee is not responsible for the Scheme Member’s decision in this regard;
 - (b) that it is the Scheme Member’s responsibility to confirm that the investments made in respect to them are appropriate in their circumstances;

⁷ Ordres en Conseil Vol.XXV, p. 124, as amended.

⁸ To the extent to which they apply in each case.

- (c) that the Scheme Member shall conduct the investment powers at its own risk, including that the value of the investments may fall or may be found or considered inappropriate in the Scheme Member's circumstances;
 - (d) any circumstances in which the licensee will be unable to exercise the investment power;
 - (e) any arrangements for commission, or any other fee, payable to the licensee or any other person connected with the Scheme by a person holding or advising on the investments; and
 - (f) the circumstances in which the Scheme Member or another person may change the investment basis or where the investment basis will automatically change.
- (2) Where the scheme is an occupational pension scheme and the Licensee Directed investment approach applies, the licensee must inform the new joiner, or ensure that they are informed, of at least the following matters⁹ -
- (a) that the licensee is responsible for making, changing or reviewing any of the investments;
 - (b) any circumstances in which the licensee will be unable to exercise the investment power;
 - (c) any arrangements for commission, or any other fee, payable to the licensee or any other person connected with the Scheme by a person holding or advising on the investments; and

⁹ To the extent to which they apply in each case.

(d) the circumstances in which the Scheme Member or another person may change the investment basis, or where the investment basis will automatically change.

(3) Where the scheme is an occupational pension scheme and the Third Party Directed investment approach applies, the licensee must inform the new joiner, or ensure that they are informed of, at least the following matters¹⁰ -

(a) that the Third Party is responsible for making, changing or reviewing any of the investments and that the licensee is not responsible for their decision in this regard;

(b) any arrangements for commission, or any other fee, payable to the licensee or any other person connected with the Scheme by a person holding or advising on the investments; and

(c) the circumstances in which the Scheme Member or another person may change the investment basis, or where the investment basis will automatically change.

2.15.6 Employer related investments

(1) Not more than 5% of an occupational pension scheme's resources shall be invested in employer related investments unless the scheme has segregated sections in which case not more than 5% of each segregated section's resources shall be invested in employer related investments.

¹⁰ To the extent to which they apply in each case.

(2) In relation to investments held, which were made prior to this rule coming into effect and which breach this rule; or where there is a change in the values of investments held which cause a breach of this rule; the licensee shall take steps to change the investments as soon as reasonably practicable in order to remedy the breach unless –

(a) the licensee is unable to change such investments; or

(b) any change to the investments might cause material detriment to any Scheme Member or beneficiary of the Scheme or segregated section;

and the licensee should notify the Commission that this is the case.

(3) This rule does not apply –

(a) to any employer related investment which is an investment in an account¹¹ with a deposit-taking institution which is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 1994¹²; or

¹¹ Including a current, deposit or share account.

¹² Ordres en Conseil No. XIII of 1994, as amended.

(b) to any other type of employer related investment that the Commission may specify.

Guidance Note:

Examples of the Member Directed Investment approach (the examples provided in this guidance note are not exhaustive)

Scenario One – Single Member Scheme

A RATS Scheme with a licensee as a trustee and administrator for a Guernsey resident Scheme Member. The Trust Instrument reserves the investment power to the Scheme Member. The Scheme Member has selected an Investment Manager to provide discretionary portfolio management services; following the direction of the Scheme Member the licensee completes the appointment of the discretionary portfolio manager to the Scheme.

Scenario Two – Multi Member Scheme

A multi-member Scheme has been established permitting non-Guernsey resident Scheme Members with a licensee as trustee and administrator. The Trust Instrument reserves the investment power in the Scheme Members. Scheme Members are introduced to the Scheme by a Financial Adviser who also makes recommendations to the Scheme Member regarding suitable investments providers. The Scheme Member chooses to act on these recommendations and instructs the licensee to establish an account with the investment provider. Instructions regarding the investments are sent to the licensee by the Scheme Member for execution.

Scenario Three – Single Member Scheme

A RATS scheme with a licensee as trustee and administrator for a Guernsey resident Scheme Member. The Trust Instrument reserves the investment power in the Scheme Member. The Scheme Member directs the licensee to establish an execution only account and the Scheme Member is appointed to trade on the account.

Guidance Note:

Examples of the Licensee Directed Investment approach (the examples provided in this guidance note are not exhaustive)

Scenario One – Single Member Scheme

A RATS Scheme with a licensee as a trustee and administrator for a Guernsey resident Scheme Member. The licensee holds the investment power under the Trust Instrument. The licensee selects an Investment Manager to provide discretionary portfolio management services to the Scheme.

Scenario Two – Multi Member Scheme

A multi-member Scheme has been established permitting non-Guernsey resident Scheme Members with a licensee as trustee and administrator. The licensee holds the investment power under the Trust Instrument. The licensee appoints a Financial Advisor to provide advice in relation to investments. The licensee considers and where appropriate chooses to act on the investment advice provided by the Financial Advisor.

Scenario Three – Multi Member Scheme

A multi-member Scheme has been established for an employer permitting non-Guernsey resident Scheme Members with a licensee acting as trustee and administrator. The licensee holds the investment power under the Trust Instrument. The licensee appoints an Investment Manager to provide services in relation to investments. Scheme Members discuss their financial goal, financial position, risk appetite, knowledge of and experience with investments with the Investment Manager to identify the appropriate investment strategy. The licensee retains responsibility for monitoring the performance of the Investment Manager.

Guidance Note:

Examples of the Third Party Directed Investment approach (the examples provided in this guidance note are not exhaustive)

Scenario One – Single Member Scheme

A RATS Scheme with a licensee as a trustee and administrator for a Guernsey resident Scheme Member. The Trust Instrument reserves the investment power in a Third Party (e.g. an Investment Manager or Financial Adviser). The Third Party selects an investment provider and instructs the licensee to establish an investment account with the investment provider in relation to the Scheme investments.

Scenario Two – Multi Member Scheme

A multi-member occupational pension scheme with a licensee as trustee and administrator for non-resident Guernsey resident Scheme Members. The Trust Instrument reserves the investment power in the Scheme Sponsor. The Scheme Sponsor selects an investment provider and instructs the licensee to establish an investment account with the investment provider. Upon joining the Scheme a fact find is conducted to identify which approach is most applicable for the Scheme Member. The Scheme Sponsor remains responsible for the ongoing oversight of the investment approach.

2.16 Electronic Communication

- (1) Where appropriate consent of the Scheme Member or beneficiary is provided, the licensee may deliver information to Scheme Members or beneficiaries, as required by these Rules, electronically.

PART 3 – GENERAL PROVISIONS

3.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined within these Rules or within the Law.
- (2) In these Rules the following definitions should be followed -

“Appropriate Financial Adviser” means –

- (a) a Financial Adviser;
- (b) a financial adviser regulated to provide financial advice on pensions in Jersey, Isle of Man, the United Kingdom or an EU member state; or
- (c) a financial adviser in another jurisdiction where the licensee has assessed them, both on appointment and through ongoing periodic reviews, as qualified, suitable and competent in relation to the Scheme;

“benefits” includes real and contingent benefits;

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

“defined benefit basis” means a basis on which a member’s rights to benefits, actual or contingent, under a Scheme are calculated by reference to one or more of the following –

- (a) the years of qualifying service within the Scheme credited to the member;
- (b) the member’s final pensionable salary, or some derivation of this;
- (c) the member’s pensionable salary or average pensionable salary, or some derivation of this, over a period of time; and
- (d) the accrual rate of the Scheme set out in the Governing Documentation;

“defined contribution basis” means a basis on which a member’s benefits, actual or contingent, under a Scheme are calculated by reference to the value of –

- (a) any contributions paid by or in respect of the Scheme Member; whether such contributions are paid by the Scheme 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 Scheme Member, employer or any other person; and
- (b) any funds transferred in from another pension, retirement benefits or other arrangement, or any other funds notionally allocated or separately identifiable and referable to the Scheme Member for any other reason

and as adjusted, from time to time, by the investment return or loss in relation to the sums referred to at (a) and (b) above, and less any deductions authorised by the Governing Documentation;

“defined contribution scheme” means a Scheme, or part of, which provides benefits on a defined contribution basis;

“employee” has the meaning given to it in the Law save where the reference is to an employee of the licensee where it shall extend to mean any self-employed contractor or any other person engaged, by the licensee, to perform or assist with the performance by the licensee of regulated activities in relation to a Scheme;

“employer” means all persons, firms or entities identified as employer for the purpose 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, 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;

“Financial Adviser” means a person, or authorised insurance representative, authorised to give advice to retail clients on controlled investment or long term insurance business;

“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;

“internal control” in relation to a scheme, means –

- (a) the 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;

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

“Member’s Account” means the part of the assets held, within a Scheme, which under the Governing Documentation, is available to provide benefits for each Scheme Member;

“Member Borne Charges” means any charge, or anticipated charge, which is or may be deducted from a Member’s Account;

“occupational pension scheme” means a scheme established under irrevocable trust, or under contract, 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

retirement benefits to or in respect of employees or former employees of the participating employers or previously participating employers;

“principal employer” means the employer which, under the Governing Documentation, is referred to as the principal employer or identified by reference to some other similar designation;

“Scheme Member” means any person who contributes, either directly or indirectly to the Scheme, and are entitled to benefits under the Scheme;

“Scheme Year” means the period over which the annual accounts, pertaining to the Scheme, are drawn up;

“Scheme Year End” means the last day of a Scheme Year or the Agreed Reporting Date in the case of a Scheme with no defined scheme year end;

“segregated section” refers to a portion of a scheme, where the scheme has been split into distinct portions with one or more employers participating and –

(a) any contributions payable to the scheme by an employer or by a member are allocated to that employer’s allocated portion and, if more than one portion applies to the employer, to the section to which the employment relates; and

(b) specified assets of the scheme are attributable to each portion and cannot be used for any other portion;

“Third Party” means a person other than the licensee, Service Provider or the Member who holds, under the Governing Documentation, the power to make, select and direct investments. It does not include a Financial Adviser to whom these powers have been delegated;

“transfer value” means the amount calculated by reference to recognised actuarial practice, which is available to be transferred from a defined-benefit scheme to another arrangement.

(3) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016¹³ applies to the interpretation of these Rules.

(4) A reference in these Rules to an enactment should be taken to include any amendments, re-enactments (with or without modification), extensions and applications.

3.2 Citation and commencement

(1) These rules shall come into operation on *** and may be cited as the Pension Scheme and Gratuity Scheme Rules, 20** (“The Pension Rules”).

¹³ Order in Council No. V of 2018, as amended.

PART 4 – TRANSITIONAL ARRANGEMENTS AND REVOCATIONS

4.1 Transitional Arrangements

- (1) Licensees must complete amendments to their Internal Controls to ensure compliance with the Rules by *****.

4.2 Revocations

4.2.1 Revocation of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017

The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules 2017 are revoked.

4.2.2 Revocation of the Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017

The Pension Licensees (Conduct of Business) & Domestic and International Pension Scheme and Gratuity Scheme Rules (No. 2) 2017 are revoked.

Dated this

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

APPENDIX 1: 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

Investment 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;
- a recognised exchange as listed in The Companies (Recognised Stock Exchange) Regulations, 2019¹⁴, as amended

Units in regulated collective investment schemes

¹⁴ 2019 No. 31.