

The Retirement Annuity Trust Schemes Rules, 2010

Made

5 November, 2010

Coming into operation

1 January, 2011

THE GUERNSEY FINANCIAL SERVICES COMMISSION, in exercise of the powers conferred on it by section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987¹, section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002² and section 31A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000³, and all other powers enabling them in that behalf, hereby makes the following rules:-

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

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

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

1. Citation, commencement, status and application.

- (1) These rules may be cited as the Retirement Annuity Trust Schemes Rules, 2010.
- (2) They shall come into force on the 1 January, 2011.
- (3) They have the status of -
 - (a) rules of the Commission under the provisions of section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
 - (b) Conduct of Business Rules applicable to licensed insurance intermediaries (and licensed insurers and licensed insurance managers when acting as insurance intermediaries) made by the Commission under the provisions of section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
 - (c) rules of the Commission applicable to licensed fiduciaries under the provisions of section 31A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.
- (4) They apply in relation to a "Retirement Annuity Trust Scheme" ("RATS") within the meaning of, and approved by the Director of Income Tax under, section 157A of the Income Tax (Guernsey) Law, 1975, and to both single member and multi-member RATS. They apply only to members of the RATS who are resident in Guernsey or who have made Guernsey-tax relieved contributions.

2. Advice at set-up stage.

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

- 2.1 satisfy itself, having regard to the member's circumstances, the requirements imposed by the Income Tax (Guernsey) Law, 1975, statements of practice published by the Director of Income Tax, and the fees which will apply (as disclosed under 7 below), that the RATS and the proposed investments and investment strategy will provide a suitable form of retirement annuity for the member and (where appropriate) his spouse and/or dependants, or
- 2.2 obtain a copy of advice provided to the member to this effect from a professional advisor (not necessarily in Guernsey but regulated for the provision of that type of advice) who the trustee is satisfied has the expertise to provide this advice.

In either case the trustee's file must contain a copy of this advice and must record the analysis of the member's circumstances and the reasons why the proposed RATS is considered suitable.

An intending trustee must also, before accepting trusteeship or admitting a member, make the member aware of the potential effect of investment and mortality risks by providing the following disclosure to the member and asking the member to sign a copy to indicate his or her understanding of these risks:

"The lifespan of a member of a RATS, and the investment performance of the assets held in a RATS, are impossible to predict. As a result, once a member has started to draw down benefits from the RATS and depending on the level of benefits paid, the assets may be exhausted before the death of the member."

3. Investments.

A trustee of a RATS is, subject to the terms of the trust, responsible for the suitability of its investments and investment strategy (including any gearing – see 4 below). It must consider whether it has the necessary investment expertise and, if not, appoint an investment advisor with suitable expertise (not necessarily in Guernsey but regulated for the provision of that type of advice).

Before funds are transferred from a defined benefit pension scheme into a RATS, the trustee of the RATS must obtain a report from a suitably qualified person (see note below) independent from the trustee and any other advisor involved. The report must, as a minimum, compare the benefits being given up in the defined benefit scheme with the projected returns from the RATS 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.

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

4. Gearing.

Before a trustee of a RATS borrows money, it must make the member aware of the potential effect of borrowing by providing the following disclosure to the member and asking the member to sign a copy to indicate his or her understanding of these risks:

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

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

5. Reporting.

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

- 5.1 a statement (which may be in the form of financial statements) showing the financial position of the RATS and the performance and current value of its investments, and
- 5.2 statements prepared by other parties such as advisors or fund managers relating to the performance of the RATS' investments.

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

6. RATS in payment.

A trustee of a RATS should ensure that once income starts to be drawn down and paid to the member in the form of an annuity, the trustee can demonstrate that:

- 6.1 the level of payments is at an appropriate level on realistic assumptions to secure satisfactory provision for the retirement of the member and (where appropriate) his spouse and/or dependants;
- 6.2 reviews are carried out at suitable intervals to confirm that the level of income remains appropriate given the market value of the remaining assets and the life expectancy of the member; and
- 6.3 actuarial or other professional advice is taken when necessary.

7. Fee/commission disclosure.

A trustee of a RATS must ensure that its member is aware of fees and commissions which will apply to the assets at any level, including but not limited to the trustee's

own fees and fees or commissions payable from the assets to the trustee, any independent financial advisor, other intermediary, investment or fund manager or adviser. The disclosure to the member must cover both the fact and the amount of the fee or commission. If the amount is not known at the time disclosure is required to be made (for example because it is calculated on a percentage basis), an illustration of how the amount will be calculated must be given, and disclosure must then be made when the amount of the fee or commission is known.

However, fees charged at arm's length for transactions (such as stockbrokers' share dealing fees) which are not shared with any other party need not be disclosed to the member unless the member so requests.

These requirements apply both when the RATS is formed and on a continuing basis, and whether the fee or commission is on a one-off or continuing/trail basis.

8. Advertising and promotion.

No financial services business licensed by the Commission under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 or the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 shall falsely, misleadingly, deceptively or inaccurately advertise or promote RATS, or investments or investment strategies (including gearing) for use as part of retirement provision involving RATS.

9. Compliance with income tax conditions.

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

10. Interpretation.

(1) In these Rules -

- (a) “**actuary**” means a fellow of the Institute and Faculty of Actuaries,
- (b) “**member**” includes a settlor or proposed settlor, and a beneficiary or proposed beneficiary, depending on the context and the activity being referred to,
- (c) “**RATS**” means Retirement Annuity Trust Schemes within the meaning of section 157A of the Income Tax (Guernsey) Law, 1975.

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

(3) The Interpretation (Guernsey) Law, 1948⁴ applies to the interpretation of these Rules.

Dated this 5th day of November, 2010.



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P. A. HARWOOD

Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission.

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Ordres en Conseil Vol. XIII, p. 355.