

The Bailiwick's Regulatory Framework for the Provision of Pensions Products

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Overview

In October 2016, as a result of a request from the States of Guernsey, the Commission published a discussion paper on the supervision and regulation of pension schemes and providers. The discussion paper outlined a suggestion to revise and modernise the Bailiwick's regulatory and supervisory framework of pension schemes and their providers. As a result, in April 2017, the Commission published proposed Pension Licensee and Scheme Conduct of Business Rules for consultation.

Related

[!\[\]\(faf942dc3e59ce8eb64b4ac481eca7e0_img.jpg\) Discussion Paper](#)

[!\[\]\(cf531ed27e91483460120fcc057b3901_img.jpg\) Feedback Paper](#)

Modernisation of Pensions Supervision

**FEEDBACK ON THE
DISCUSSION PAPER ISSUED BY THE
GUERNSEY FINANCIAL SERVICES
COMMISSION OCTOBER 2016**

&

**CONSULTATION ON
THE PENSION LICENSEES (CONDUCT OF
BUSINESS) & DOMESTIC AND
INTERNATIONAL SCHEME RULES 2017**

&

**(ON BEHALF OF THE POLICY & RESOURCES
COMMITTEE)**

**CONSULTATION ON THE REGULATION OF
FIDUCIARIES, ADMINISTRATION BUSINESSES
AND COMPANY DIRECTORS, ETC.**

**(BAILIWICK OF GUERNSEY)
(PENSIONS AMENDMENT) REGULATIONS, 2017**

This feedback paper reports on input received by the Guernsey Financial Services Commission on the Discussion Paper entitled “Proposals to Revise and Modernise the Bailiwick’s Regulatory and Supervisory Framework for the Provision of Pensions Products” issued in October 2016 and a consequent consultation on proposed Pension Licensees (Conduct of Business) and Domestic and International Scheme Rules, which can be found via this [link](#), and other related changes. This paper also includes, for consultation on its behalf, Policy & Resources’ proposed associated amendments to The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (“the Fiduciaries Law”) making the formation, management or administration of pension schemes regulated activities, as referred to in the Policy & Resources Committee Policy Letter ‘A Regulatory Framework for Pension Schemes and Their Providers’ lodged with the Greffe on 27th April, 2017.

Further enquiries regarding this feedback paper may be directed to:

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1: Executive Summary

1.1 Background

This paper details and responds to the feedback received on the Discussion Paper (“DP”).

Following initial engagement between representatives of the pension sector and the Guernsey Financial Services Commission (GFSC) during 2015 and early 2016, the Committee for Economic Development requested the GFSC to lead a review with the objective of modernising the regulatory framework for private pensions.

In October 2016, as a result of a request from the States, the Commission published a DP on the supervision and regulation of pension schemes and providers. This DP outlined a suggestion to revise and modernise the Bailiwick’s regulatory and supervisory framework of pension schemes and their providers.

The goals set out were threefold:

- to better protect the interests of beneficial owners of pension schemes;
- to future proof the supervisory framework ahead of the introduction of the States secondary pension scheme; and
- to improve the competitive position of the Bailiwick.

Whilst, the Bailiwick has a deserved reputation for excellence in the regulation and supervision of financial service firms, the scope of that regulation and supervision does not presently extend to the regulation and supervision of firms expressly for the purposes of providing services to pensions’ schemes nor specifically to the schemes themselves. The proposal in the DP was to introduce such a regime to rectify this issue.

It is imperative to the Bailiwick’s reputation that consistent standards coupled with appropriate preventative and precautionary measures are in place which protect the consumer, prevent exploitation by firms or sponsors including employers and enable consumers to receive financial services and products that are suitable to their needs and that regulatory standards meet International Organisation of Pension Supervisors (“IOPS”), requirements and restrictions are consistent, and in accordance with modern expectations and standards.

1.2 Feedback received

The DP was issued publicly. There was overwhelming support for the goals and proposal above and significantly for rapid movement in order for the Bailiwick to meet relevant international reporting requirements. Further detail is in section 2.

The Commission is grateful to the respondents for taking the time to consider and comment on the DP. Responses to the DP were received from the Guernsey Association of Pension Providers, numerous licensed fiduciary firms and other stakeholders including the States of Guernsey.

1.3 Proposals

As a result of the feedback and following subsequent dialogue with the States of Guernsey and further industry engagement, the GFSC is making immediate moves to enhance its current approach and expand the scope of its supervisory activity to pension schemes through rules, issued under powers reserved to it under the Fiduciaries Law, encompassing the proposed new regulated activities of formation, administration and management of pensions schemes.

These proposals take the form of a set of conduct of business rules applying to pension providers and schemes and importantly requiring scheme notification and reporting. These will, amongst other things, enable Guernsey firms to apply an exemption to Common Reporting Standard (“CRS”) reporting to pensions schemes conforming to criteria set out by Income Tax, but more importantly will in the eyes of the Commission create a regime that more closely conforms to international supervisory practice.

The extent of the applicable scope of the regulated activity and by construction, the rules, is determined by the proposed Policy & Resources Committee amendment to the Fiduciaries Law. This sets out the definition of pensions schemes to which the new law will apply. The amendment is also attached to this document for consultation and comments are invited on behalf of the Policy & Resources Committee on this proposed definition and scope.

1.4 Next steps

The proposed Pension Licensee and Scheme Conduct of Business Rules are published today for consultation. In light of the requirement for the scheme to be in force prior the CRS reporting deadline, the consultation period, with the prior notification to industry associations, has been truncated and ends 9.00am, 5th June 2017.

It is intended that the regime will come into force on the 30th June 2017. Transitional arrangements will apply, please see section 4 for further details.

Comments on this consultation paper may be directed to:

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2: Summary of Feedback and Commission Response

Responses to the DP were received from the Guernsey Association of Pension Providers, numerous licensed fiduciary firms and other stakeholders including the States of Guernsey.

There was overwhelming support for the goals and proposal as outlined in section 1 above. No specific proposals were included in the discussion paper. This section attempts to provide a summary of certain areas or points suggested by the Commission where the consensus provided in response differed and the Commissions' response to that.

Suggestion:

“A new regulatory and supervisory framework would apply to all defined contribution pension arrangements ('DC schemes') administered in Guernsey and/or marketed as pensions by firms licensed by the Commission. All types of schemes would be included: employer; group and personal; trust-based or contract-based, although requirements would differ across each”.

The consensus response was of clear support for the scope of regulation and supervision to be cast across all types of schemes. However, respondents in general suggested that limitation to DC schemes was not preferred and argued in favour of inclusion of defined benefit (“DB”) schemes but with a caveat that the specifics of any (scheme) solvency would need to be subject to separate discussion. The Commission has taken this view on board and the DB will be in the scope of the general rules but not include any specific rules to solvency issues.

Suggestion:

“The introduction of any new framework would be forward looking. It would ideally apply to newly introduced or marketed schemes.”

The Commissions' suggestion had been motivated by a desire to minimise the impact of regulatory change. However, the clear, unanimous view of respondents was that universal application of the new regime was preferred due to a combination of significant concerns with the need to meet impending CRS requirements; better and more consistent consumer protection and safeguarding the reputation of the Bailiwick. The Commission has taken this view on board.

Suggestion:

“The requirements to be outlined for each activity would be developed in line with Principle Five of the IOPS principles. Principle 5: pension supervisory authorities should adopt a risk based approach; and to ensure as a minimum that while new rules may be prescriptive they will be effective and proportionate.”

Whilst there was broad agreement with this principle, concerns were expressed (albeit not surprisingly) with the degree of prescription, with firms registering concerns with the potential compliance costs associated with overly prescriptive rules. Indeed a general lobby from industry was to go no further than a principles based approach. The Commission does not

believe this is appropriate. Neither is it consistent with credible with previous regulation which offers proportionate protection to previous schemes. That said, we propose to keep prescriptive requirements proportionate.

Suggestion:

“The proposed philosophical approach would be to outline clear requirements to define the ‘Guernsey regulated product’ applying in the international context - the basis of which would be the requirement for a Guernsey licensee to ‘own’ the regulated product and to have some degree of overall responsibility for all its aspects, including marketing and investment advice.”

The general theme of responses was that in the international context in particular it would be unreasonable for regulation to determine from whom investment advice is taken and/or unreasonable for advice to be reviewed by a Guernsey regulated adviser. There was a sizeable number who expressed a preference to be able to opt to issue a disclaimer with respect to responsibility for investment advice.

The Commission’s view remains that in the domestic context, where investment advice must be provided by a Guernsey regulated licensee, investment advice is straightforwardly within the regulated perimeter. It is proposed that unless in specific instances where advice standards of a local advisor are clearly equivalent to Guernsey’s standards, and where it might be possible to provide a list of equivalent jurisdictions such as in the UK, it is the responsibility of the licensee to have undertaken its own assessment of providers of advice and be able to vouch for their standards of conduct if required.

Finally, the Commission had sought views on the most appropriate legislative route forward.

All considered opinion suggested that for various reasons most notably the requirement for transparency and clarity of purpose, new primary legislation would provide the best foundation for a modernised regime. However, the overwhelming and forceful lobby from the pension’s administration sector was in favour of more rapid movement.¹

¹ Citation of relevant section of OECD CRS Guidance.

3: Proposals

The principles and guidance of the relevant international standards (the IOPS Principles of Private Pension Supervision) states that: *“the objectives of private pension supervision focus on protecting the interests of pension fund members and beneficiaries, by promoting the stability, security and good governance of pension funds. Pension supervision involves the oversight of pension institutions and the enforcement of and promotion of adherence to compliance with regulation relating to the structure and operation of pension funds and plans, with the goal of promoting a well-functioning pensions sector.”*

Recognised international practice² is that the scope of pension supervision includes regulation and supervision of both the provider of pension schemes and the scheme.

The States of Guernsey considers that the introduction of primary legislation, supported by rules and guidance, would allow Guernsey to have a clear and transparent framework which can meet international standards. It would be anticipated that the Commission would be appointed as the supervisory authority under the framework.

In the meantime, in light of the time required for all the necessary steps to be taken for the introduction of primary legislation; the importance which both the States and the Commission attach to the regulation of the provision of services in relation to pension schemes; the benefits of conforming to the criteria set out in the OECD CRS on the reporting of information in relation to pension schemes: the Policy and Resources committee has enhanced the scope of the current regulatory regime administered by the Commission. In order to achieve this enhancement, the Policy and Resources Committee has made regulations under section 2(2) of the Fiduciaries Law, which has added the formation, management or administration of pension schemes to the list of regulated activities set out in that section.

The States has stated that this is intended to be a preliminary step towards the introduction of a more comprehensive framework under primary legislation.

The Commission is now issuing for consultation limited, scheme rules; reporting requirements and business conduct rules relating to licenses undertaking regulated pension activity. All schemes included as defined in the proposed new section 2(2)(e) of the Fiduciaries Law will be in scope of the rules and all licensees providing regulated activities to such schemes will be subject to the conduct rules.

These rules are attached for consultation and, as described, provide for conduct of business rules on licensees together with notification, reporting and other requirement on domestic and international; personal; group and occupational schemes. They should ensure that Guernsey

² ‘The IOPS Principles for Private Pension Supervision are designed to cover occupational and personal pension plans and/or pension funds. “Pension supervision includes the monitoring of the activities of pension plans and funds to ensure that they remain within the requirements of the regulatory framework, essentially enforcing compliance with the rules.... The scope of supervision can encompass any supervisory activity that is primarily concerned with ensuring the requirements and limitations imposed on pension funds or plans are adhered to.” The IOPS (International Organisation of Pension Supervisors) Principles for Private Pension Supervision.

schemes are subject to the required regulatory requirement to be able to apply an exemption for CRS reporting³.

4: Practical matters

As the attached consultation makes clear, the proposed rules require providers to notify the Commission of various details of schemes on formation, together with an annual reporting requirement on schemes. The specifics of the reporting is now included in the rules but is prescribed to be in a manner and format determined by the Commission. For the purposes of the consultation, the likely required details are included as annexes to this paper. Details on the process of reporting will be provided in due course.

The Commission intends to apply a supplemental pension licence fee to relevant licensees to recover additional costs arising from the new supervisory arrangements only. This matter will be included in the annual fee consultation process.

5: Implementation Timeline

The consultation period is open until 5th June 2017. It is proposed that the revised regime will come into effect on 30 June 2017, which will allow for revisions to the rules to be made following feedback.

Preliminary notification requirement and forms will be forwarded to all licensees once the rules are in effect, together with an explanation of the electronic procedures for annual reporting.

A transitional period, the exact period to be confirmed, will be in effect until mid to late 2018 to enable firms to fully comply with the new rules, after which it is expected firms or schemes that cannot comply will not be afforded regulated pension status.

³ Subject to pensions schemes conforming to criteria set out by Income Tax in time to meet the June 30th, 2017 deadline.

Appendix 1: Notification requirements

Illustration

- 1 Date of establishment of the Pension Scheme;
- 2 Full name and address of each entity comprising the Provider of the Pension Scheme, including where any such entity is a corporate entity, details of its directors, or where the entity is a limited partnership, details of its partners;
- 3 The full name and address of each Service Provider appointed in relation to the Pension Scheme and confirmation of whom they are appointed by and the date of appointment;

Appendix 2: Annual reporting requirements

1. any changes to information provided in accordance with Appendix 1 which have not been notified to the Commission;
2. the total numbers of any active, deferred or pensioner members of the scheme during the Relevant Scheme Year;
3. a statement of whether the scheme is open to new members and whether it is open to future contributions;
4. where the investment approach in relation to the whole or any part of the scheme has changed, details of the change including the parties involved;
5. where the investment approach is Third Party Directed where the relevant Third Party has changed, details of the new third party;
6. total contributions of active members over the twelve month period; total value of scheme assets; investment shares by asset class; total value of scheme assets as of 12 months previous.

DRAFT FOR CONSULTATION: Amendment of Regulation of Fiduciaries Law

GUERNSEY STATUTORY INSTRUMENT

2017 No.

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Pensions Amendment) Regulations, 2017

Made

*****, 2017*

Coming into operation

30th June, 2017

THE POLICY AND RESOURCES COMMITTEE, in exercise of the powers conferred upon it by sections 2(2), 3(2) and 61 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended⁴, and all other powers enabling it in that behalf, and after consultation with the Guernsey Financial Services Commission and with the agreement of the Policy and Finance Committee of the States of Alderney and the Policy and Performance Committee of the Chief Pleas of Sark, hereby makes the following Regulations:-

Amendment of Regulation of Fiduciaries Law.

1. After section 2(1)(d) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended,

⁴ 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; No. XIII of 2010; No. XVIII of 2010; Ordinance No. XXXIII of 2003; G.S.I. No. 3 of 2008; and G.S.I. No. 83 of 2010.

insert the following paragraph -

- "(e) the formation, management or administration of pension schemes, and the provision of advice in relation to the formation, management or administration of pension schemes.

In this paragraph -

"Income Tax Law" means the Income Tax (Guernsey) Law, 1975,

"pension scheme" means any fund, contract, scheme or trust -

- (A) approved by the Director of Income Tax under section 150, 154A, 157A or 157E of the Income Tax Law,
- (B) established in Guernsey and recognised by the Director of Income Tax as being exempt from tax under section 40(o) of the Income Tax Law,
- (C) any annuity or lump sum payable pursuant to which is recognised by the Director of Income Tax as being exempt from tax under section 40(ee) of the Income Tax Law."

2. In section 3(1)(x)(ii) of that Law for the words "a pension scheme" substitute "a pension scheme (within the meaning of section 2(1)(e))".

3. In section 58(1) of that Law the definition of "pension scheme" is repealed.

Citation.

4. These Regulations may be cited as the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) (Pensions Amendment) Regulations, 2017.

Commencement.

5. These Regulations shall come into force on the 30th June, 2017.

Dated this day of , 2017

DEPUTY G. A. ST PIER

President

For and on behalf of the Policy and Resources Committee

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations add activities relating to the formation, management or administration of pension schemes to the regulated activities referred to in section 2(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, thus rendering them subject to regulation by the Guernsey Financial Services Commission under that Law.

Guernsey Financial Services Commission

**Discussion Paper on Proposals to Revise and Modernise
the Bailiwick's Regulatory and Supervisory Framework
for the Provision of Pensions Products**

Issued October 2016

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Responding to the Discussion Paper

Responses to this Discussion Paper are sought by Monday, 12th December, 2016.

We welcome and strongly encourage respondents to provide feedback or comment on any section and question.

Or in writing to:

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Introduction

Purpose of the Discussion Paper

The Commission's primary objective is to regulate and supervise financial services in the Bailiwick of Guernsey, with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

Consistent with the Commission's objectives, the proposals in this Discussion Paper are designed to enhance the levels of confidence and security in the Bailiwick's regulatory and supervisory framework for private pension provision thereby further augmenting its development as a financial centre.

The purpose of this Discussion Paper is to seek feedback from all interested parties on potential approaches to revising or modernising the Bailiwick's approach to the supervision and regulation of pensions or retirement savings.

It is an invitation to work in conjunction with the Commission to ensure that the Bailiwick's regulatory regime is as user-friendly as possible, while at all times complying with the relevant international standards¹.

The intention is that responses will be considered by the Commission in dialogue with the States, leading to the publication of a Consultation Paper. This in turn will provide feedback on the key outcomes arising from this Discussion Paper and propose a potential approach most likely with detail of a framework for further consideration.

This Discussion Paper is a working document and does not prejudice any final decision to be made by the Commission or the States of Guernsey.

¹ For example, the International Organisation of Pensions Supervision 'Principles of Private Pension Supervision' <http://www.iopsweb.org/principlesandguidelines/IOPS-principles-private-pension-supervision.pdf>

Proposed scope of the new framework

A new regulatory and supervisory framework would apply to all defined contribution pension arrangements ('DC schemes') administered in Guernsey and/or marketed as pensions by firms licensed by the Commission. All types of schemes would be included: employer; group and personal; trust-based or contract-based, although requirements would differ across each.

1. Do you agree with this approach?

Agree		Disagree	
What type of schemes do you think should be in scope?			

Defined benefit ('DB') schemes would not be considered to be included in this framework. It is envisaged few new large scale DB schemes are likely to be introduced in the Bailiwick. The Commission considers that it is for government to determine if solvency rules or requirements on existing schemes are appropriate and/or necessary.

2. Do you agree with this approach?

Agree		Disagree	
Please comment on the reasoning for your reply.			

The introduction of any new framework would be forward looking. It would ideally apply to newly introduced or marketed schemes. It is a possibility to consider more immediately applying certain components of a new framework – for example prudential requirements on firms safeguarding assets of pensions – to existing providers and/or plans and also to transition some of the other requirements – such as fund or scheme reporting requirements.

3. Do you agree with this approach?

Agree		Disagree	
4. Do you have views of requirements for existing plans and schemes that may be considered to be immediately changed and that could be included in the transition process?			
Comment			

Who should read this paper?

The Discussion Paper is relevant and is likely to be of interest to a number of parties including those listed in the box below:

Please tick the box or boxes which best describe(s) your interest in this Discussion Paper.	
Consumers/scheme members.	
Financial Advisors.	
Insurance intermediaries.	
Representatives of a consumer body, industry association or business organisation.	
Fiduciary or other firms providing RATS or QROPS business.	
Prescribed Businesses, (legal professionals, accountants, estate agents).	
Employers.	
Trustees.	
Pensions administrators.	
Other. <i>(Please provide a description).</i>	

Proposed approach:

Distinguishing and defining discrete activities

The proposed approach would be to determine and separately define all aspects of the provision of services to pension plans or schemes; sponsorship; custody; administration; portfolio management; investment advice; and marketing and lay out specific rules for each activity according to the type of scheme that exists. In this manner it would be evident what is required of those providing each aspect of the service across each type of scheme.

Above such requirements would be rules laying out required plan or scheme governance rules². The framework would in any event be underpinned by orthodox prudential or other generic rules such as client monies rules on licensed providers.

5. Do you agree with this approach?

Agree

Disagree

Please comment on the reasoning for your reply.

The requirements to be outlined for each activity would be developed in line with the Principle Five of the IOPS principles:

Principle 5: pension supervisory authorities should adopt a risk based approach.

to ensure as a minimum that while new rules may be prescriptive they will be effective and proportionate.

6. Do you agree with this approach?

Agree

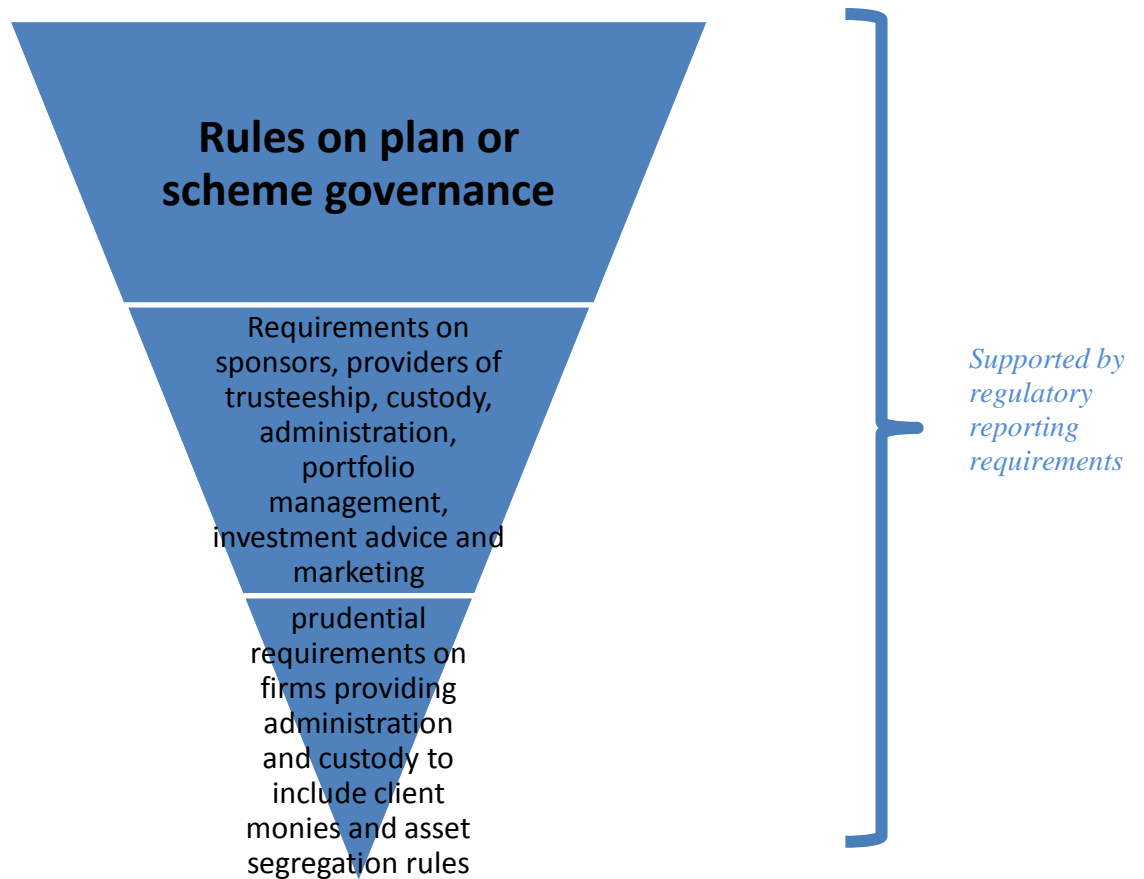
Disagree

Please comment on the reasoning for your reply.

² Setting explicit requirements in different circumstances; general group, personal and employee, with expanded scope to include company sponsored schemes and duties of trustees in such instances.

Proposed framework:

The following figure provides a visual illustration of the approach.



7. Please provide any comments you may have on this approach.

Different types of scheme would potentially have different requirements by discrete activity, in effect potentially creating a matrix of requirements. For example, specific requirements on providers servicing occupational employer sponsored group schemes to those providing services to self-directed individual personal plans would most likely differ in practice and thus the emphasis and prescription would not be the same. A single set of rules would need to be flexible to account for the varying circumstance. A key question is to what extent separate considerations would apply for differing types of scheme and prior to resolving this issue, determining separate categories of scheme whether they are:

occupational, group or personal;

trust or contract based;

local or international or both.

8. To what extent do you think it would be necessary to adapt the regulatory requirements for each type of scheme in this manner? Do you have any comments or suggestions on this approach?

9. What discreet types or categories of scheme would rules need to accommodate?

Why do we want to make changes?

The rationale for change is to reform the current regulatory framework in favour of one that enhances both the interests of the consumer and the competitiveness of the Bailiwick.

It is imperative to the Bailiwick's reputation that consistent standards coupled with appropriate preventative and precautionary measures are in place which protect the consumer, prevent exploitation by firms or sponsors including employers and enable consumers to receive financial services and products that are suitable to their needs.

The impending introduction of the States secondary pension scheme also makes it sensible for a regulatory framework to be put in place to be able to set certifying criteria for qualifying secondary pensions provided by the private sector.

The proposed framework would make it a formal requirement for firms providing regulated retirement savings or pensions products to retail clients either directly or indirectly (including Bailiwick of Guernsey individuals) to apply rules, requirements and restrictions that are consistent, and in accordance with modern expectations and standards.

Such modern standards would not only improve the degree of investor protection but would also enable Guernsey based providers to market a regulated product internationally. This is something hitherto not possible and industry bodies have suggested has been the source of much competitive disadvantage in recent years. The inclusion of modern reporting requirements would for example enable Guernsey firms to apply exemptions under the OECD common reporting standard.

Development of this paper

The Commission, as the financial services regulator for the Bailiwick, appreciates that the development of an efficient regulatory regime requires the input of a range of stakeholders and entities. The Commission also recognises its role in meeting international standards and protecting the Bailiwick's reputation as an accessible, high-quality international finance centre.

The proposals in this Discussion Paper have been developed with assistance of a working group that includes representatives of industry, professional associations and the States of Guernsey. We are grateful for all the contributions, support and input provided.

This Discussion Paper has arisen as a result of a request from the States of Guernsey to propose a modern approach to retirement savings or pensions product supervision and regulation. It follows the Commission's revision of its RATS rules in 2015 following a consultation in 2014 that set out three objectives: finding out how the cost of providing for a pension could be reduced; how a self-invest pension option could be established; and giving consideration to restrictions on pension investments.

The 2014 consultation was specific to the constraint of looking at the impact of the rules which are *de facto* limited conduct rules. Introduction of a modern framework is a more comprehensive issue and broader than a revision of these rules. It is thus necessary to undertake a more general discussion before the details of any specific approach can be consulted upon.

Objectives of this paper

The objectives of this Discussion Paper are to propose the introduction of measures that provide:

- An appropriate regulatory and supervisory framework for retirement savings or pensions products for consumers using Guernsey based products and services;
- proportionate conduct and reputational measures;
- an environment which can help to foster and support business growth; and
- a framework that supports the reputation of the Bailiwick as a sound financial services jurisdiction and a good place to do business.

10. What do you think of the objectives?

Comment

Proposed approach

Background to current regulation

While practice notes providing guidance to the tax laws exist³, the current extent of the perimeter for supervision and regulation of pensions products is limited to *de facto* conduct rules applied by the Commission on licensees selling, advising on or administering Guernsey resident RATS (The RATS Rules (2015))(see appendix)⁴. Such rules apply to licensed providers through the force of regulatory rules but are *de facto* applied by way of a condition applied by the Director of Income Tax.

Guernsey Income Tax authorise and register domestic pensions schemes (Section 157A schemes) for tax purposes, setting minimal requirements around scheme governance, number of trustee etc, and require submission of annual accounts. Other than through the submission of individual tax returns no further reporting is required from schemes.

Rules apply under Section 150 of the Income Tax Law for domestic group schemes⁵ but non-resident and international group schemes, while exempt from tax under Section 40 of the Income Tax Law, are subject to no reporting requirements, regulatory rules or oversight.

³ Published on the Income Tax website this are in fact jointly drafted and published with private practice.

⁴ Introduced in 2008, the rules were revised in 2015 in an attempt to streamline requirements, whilst maintaining investor protection, and provide a clear route demarcation between a self-investment approach, a traditional full trust approach and a more constrained investment and regulated advice retail market approach.

⁵ Although such schemes are not themselves subject to regulation or supervisory oversight.

Proposed philosophical approach

It is proposed to extend the regulatory perimeter around the ***‘Guernsey pensions sector’*** to:

1. go beyond conduct rules of the RATS rules by developing regulations or rules setting out specific requirements around discrete regulated activities; trusteeship; custody; administration; portfolio management; investment advice; and marketing and covering issues as diverse as prudential and lifecycle rules around assets and investments; commissions; transparency and disclosure requirements; reporting conditions and requirements and rules on transfers; and
2. encompass all pensions products administered and/or marketed by Guernsey based firms and setting clear requirements to define a ***‘Guernsey regulated product’***⁶ – the basis of which would be the requirement for a Guernsey licensee to ‘own’ the regulated product and to have some degree of overall responsibility for all its aspects, including marketing and investment advice.

⁶ It is presently possible to establish and administer domestic RATS schemes outside the scope of supervision if the trustees to the scheme are not acting ‘by way of business’. It is suggested that the States might wish to consider whether to restrict tax benefits to regulated schemes only in the interest of consumer protection and safeguarding the reputation of the Bailiwick.

Distinguishing and defining discrete activities

The proposed approach would be to determine and separately define all aspects of the service provision; sponsorship; custody, administration, portfolio management and investment advice and marketing and detailing specific rules for each activity according to the type of scheme that exists. In this manner what the regulated service requirements of each activity and for each discrete pension type would be clear.

Above such requirements would be rules laying out required plan or scheme governance rules⁷ and the framework would be underpinned by prudential or other generic rules such as client monies rules.

11. Do you agree with this approach?

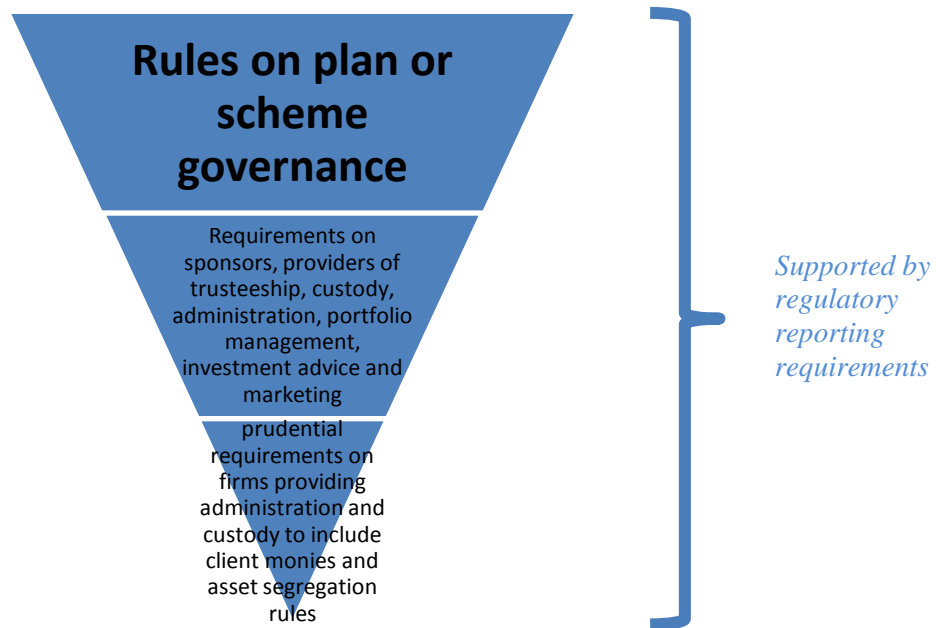
Agree

Disagree

Please comment on the reasoning for your reply.

⁷ Setting explicit requirements in different circumstances for example general group, personal and employee potentially to include company sponsored schemes and duties of trustees in such instances.

Proposed framework:



12. What do you think of this approach?

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Regulatory reporting

It is proposed that underpinning all of the above, parameters for regulatory reporting requirements distinct for group, personal and occupational schemes would be set out. It is viewed that some reporting would be required at the scheme or plan and fund level, providing as a *de minimis* reconciliation of inflows and outflows and returns on an annual basis. It is envisaged that it would be possible to outsource reporting and valuation activities but not the responsibility for them being undertaken.

The reporting requirements would be developed in line with Principle Five of the IOPS Principles that pension supervisory authorities should adopt a risk based approach.

Responsibility for ensuring reporting takes place would be placed on both the plan sponsor and scheme administrator.

13. Do you agree with this approach?

Agree

Disagree

Please comment on the reasoning for your reply.

Approaches to investment rules

The RATS Rules were revised in 2015⁸ primarily in an attempt to streamline requirements while maintaining investor protection. More significantly perhaps, this revision was also intended to provide a clear route to demarcation between a self-investment approach; a more *constrained choice* regulated investment advice approach; and the traditional full fiduciary duties approach.

Such a demarcation enabled the Commission to set out requirements in the alternative cases to the traditional full fiduciary duty approach: ‘self-direction’ and ‘investments advised’ which it was hoped would facilitate lower cost provision alongside the traditional approach.

In this latter ‘investments advised’ case, the Commission eased various fiduciary requirements on the trustee by specifically setting out a scenario where the choice of investment was constrained to standard assets as defined and where it was compulsory for investment advice to be provided by an advisor specifically regulated for the provision of such advice by the Commission.

For the mainstream pension provision, rules would follow the requirements of the Guernsey Financial Advice Standards. It is proposed to follow through this bifurcation into the modern framework in order to retain the flexibility of the self-advised product.

14. Do you agree with this approach?

Agree			
Please comment on the reasoning for your reply.			

⁸ The previous rules themselves were historically seen in some quarters as burdensome, particularly given the small scale of the Guernsey market where a full governance based approach for schemes as small as one member might not be deemed cost effective for the retail market: thus the consultation and review of the rules in 2014 and 2015 respectively.

Defining the perimeter of the international regulated product.

The proposed philosophical approach is to outline clear requirements to define the **‘Guernsey regulated product’** applying in the international context - the basis of which would be the requirement for a Guernsey licensee to ‘own’ the regulated product and to have some degree of overall responsibility for all its aspects, including marketing and investment advice.

Reconciling this with a self-directed approach retains a degree of reputational risk but we believe can be accommodated as is the case with the UK’s SIPP regime existing alongside other products⁹. Clearly this risk requires mitigation and the rules and disclosure requirements around self-directed investment in the international context will need to be sufficiently robust.

The scenario where investment advice is provided by a Guernsey regulated licensee is straightforwardly within the regulated perimeter – a situation analogous to the investment advised approach in the RATS Rules 2015. The problematic scenario is where investment advice has been provided to an international client in their local market and the Guernsey licensee has had no oversight of this.

It is proposed that unless in specific instances where advice standards of a local advisor are clearly equivalent to Guernsey's standards, and where it might be possible to provide a list of equivalent jurisdictions such as in the UK, the responsibility for the investment advice cannot be provided by an off island advisor if the scheme is considered to be a Guernsey regulated product.

There are three options to resolve this:

- 1) allow for a specific disclaimer to recognise that investment advice has been provided from outside the regulated perimeter;
- 2) require the local administrator or fiduciary firm to have the investment advice assessed by a regulated advisor; or
- 3) not allow the product to be recognised as a regulated pension.

15. What would be your preferred approach?

Approach	1 disclaimer	2 advice assessed locally	3 not allow recognition
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Please comment on the reasoning for your reply.

⁹ For example in a scenario where members or beneficiaries attempt to pursue actions against other parties for inappropriate investments despite a self-directed investment status.

Exclusion of non-regulated provision

The principal determination of a certain *de minimis* of regulated activities in order to be considered to be ‘Guernsey regulated pension products’ would be incorporated into the framework.

It is recognised that many Guernsey firms service sophisticated international clients and may wish to retain the flexibility to provide non-standard products that may fall outside the scope of a regulatory product. An alternative to precluding firms ability to offer such products would be disclosure rules that require the non-regulated product status to be declared by the provider, documented and clearly acknowledged by the client.

16. What do you think of this approach?

It is presently possible to establish and administer domestic RATS schemes outside the scope of regulatory supervision if the trustees to the scheme are not acting ‘*by way of business*’. It is suggested that the States might wish to consider whether to restrict tax benefits to regulated schemes only in the interest of consumer protection and safeguarding the reputation of the Bailiwick.

17. Do you agree with this approach?

Agree

Disagree

Please comment on the reasoning for your reply.

Other discussion points: capital adequacy¹⁰.

It is not intended to incorporate Defined Benefit schemes into the framework and thus there is no intention to incorporate solvency rules for such schemes in the framework. In DC schemes there is in principle no need for capital adequacy rules given the investor or member bears all of the investment risk. There may be a case for having certain rules apply to employer sponsored schemes where there may be implied guaranteed employee benefits.

18. Do you agree with this statement?

Agree

Disagree

Please comment on the reasoning for your reply.

The issue of maintenance of sufficient capital during drawdown in retirement is a separate and slightly more complicated issue. In principle, one would look to ensure sufficient funds to provide for a smooth consumption over the lifetime of the member. In principle limits to drawdown are in effect set by the States in the local context. One could set strict parameters for the review, one might require reviews of sufficiency on a regular period, or an approach could be to be totally non-prescriptive on this issue.

As this issue is primarily the focus of social policy that may, and can, change over time¹¹, it is difficult to be too prescriptive on regulatory rules as these need to be sufficiently flexible to follow changing policy circumstance. This may make a principles only approach more suitable in this instance.

19. What do you think would be the right approach to take on this issue?

¹⁰ For the avoidance of doubt, capital adequacy here is used in the pensions context and not to be confused with capital adequacy for providers where minimal capital requirements are set on firms to ensure an orderly wind down or transfer of undertakings in the event for example of a firm insolvency

¹¹ In the international environment the matter is complicated by different and, particularly in the UK, changing rules of drawdown.

Supervisory costs and fees

The Commission would seek to cover its costs of implementing the proposed framework. The exact method and manner of calculation and levy of such fees would be subject to separate future consultation. However, it is envisaged that it would be possible for distinct and separate fees to be levied for the provision of pensions services, potentially by discrete licensed activity.

Properly designed, this could be applied to firms only involved in the provision of pensions services replacing their current fees and licence.

20. Do you think this is the right approach?

Yes

No

Please comment on the reasoning for your reply.

Conclusion: vires and legal approach.

Currently the only legislative foundation for different types of schemes is the Income Tax Law¹². Both the commercially drafted practice notes and the Commissions RATS rules apply by direction of a decision of the Director of Income Tax.

An approach to developing the framework could be to follow this approach and incorporate the requirement for supervision and regulation through direct amendment of the Income Tax Law.

The proposed framework set out in this paper includes in its scope all types of pensions, group, corporate, personal both domestic and international. The framework as proposed involves various permutations of requirements around different types of pension. As stated in parts of this paper, this could be viewed as quite complicated at first and may be difficult to graft onto the Income Tax Law.

It could be more obviously straightforward to start from first principles but to do so could be time consuming involving the requirement for new primary legislation. This approach would have the benefit of conforming to the first principle of the IOPS principles i.e. that national laws should assign clear and explicit objectives to pension supervisory authorities.

There is clearly a tradeoff involved in the two approaches: which approach proves to be better can only be determined after more investigation. It may well prove to be realistic to pursue a staged approach, initial implementation using current vires followed by a revised legislative foundation at a later date.

The pressure to deliver a more comprehensive framework more quickly is ironically perhaps industry driven and it is intended to adopt a practical approach to determining the best route.

21. What do you think would be the right approach to take?

¹² A full set of basic definitions are absent. It should be noted that many different arrangements can be used for retirement savings, trust based schemes or otherwise. What is implied by the statement is defined boundaries set around access and contributions.

Appendix: The Retirement Annuity Trust Schemes Rules, 2015

Made: 30 October 2015

Coming into operation: 31 December 2015

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, 1987¹³, section 18 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002¹⁴ and section 31A of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000¹⁵, and all other powers enabling them in that behalf, hereby makes the following rules:-

¹³ 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.

¹⁴ 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).

¹⁵ 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.

- 1.1. These rules may be cited as the Retirement Annuity Trust Schemes Rules, 2015.
- 1.2. They shall come into force on the 31 December, 2015.
- 1.3. They apply in relation to a "Retirement Annuity Trust Scheme" ("RATS") within the meaning of, and approved by the Director of Income Tax under, section 157A of the Income Tax (Guernsey) Law, 1975, and to both single member and multi-member RATS. They apply only to members of the RATS who are resident in Guernsey or who have made Guernsey-tax relieved contributions.
- 1.4. These rules have the status of:
 - 1.4.1. rules of the Commission under the provisions of section 12 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
 - 1.4.2. 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;
 - 1.4.3. 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.
- 1.5. Irrespective of the exemption for the requirement for a fiduciary licence for insurance intermediaries in section 3 (x) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, the formation of a RATS is a regulated activity. Licensees are still subject to the relevant conduct of business rules, code of conduct and code of practice when undertaking such functions.

2. Advertising and promotion.

- 2.1. No financial services business licensed by the Commission under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 or the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 shall falsely, misleadingly,

deceptively or inaccurately advertise or promote RATS, or investments or investment strategies (including gearing) for use as part of retirement provision involving RATS.

3. Suitability of investments.

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

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

3.2.1. Self-invested approach

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

3.3. Investments-advised approach

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

3.4. Traditional approach

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

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

4. Gearing

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

5. Reporting.

5.1. 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:

5.1.1. 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

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

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

6. RATS in payment.

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

6.2. This duty does not apply to funds transferred from UK schemes where the scheme allows for flexible drawdown of transfers from UK funds.

7. Fees, charges and remuneration disclosure.

7.1. A trustee must clearly disclose all fees, charges and remuneration charged by itself (and others) to the RATS over the lifetime of the RATS or any costs charged against the RATS assets. The

Trustee must also ensure that all investment advice and investment management fees, charges and remuneration are transparently disclosed to the member. If the amounts are not known, then the basis of calculation shall be provided.

8. Transfers from defined benefit schemes

8.1. 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 person¹⁶ independent from the trustee and any other adviser involved. The report must, as a minimum, compare the actual benefits being given up in the defined benefit scheme with the projected returns from the RATS on a range of realistic assumptions. The trustee must ensure that the member understands this report and the member must sign a declaration of their understanding of the consequences of the transfer decision. This requirement is subject to a de minimis exception where the value of the funds to be transferred does not exceed £30,000.

9. Compliance with income tax conditions.

9.1. 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.

10.1. In these Rules:

- (a) "Actuary" means a fellow of the Institute and Faculty of Actuaries or another equivalent professional body for actuaries.
- (b) "Financial Adviser" means a person authorised by a licensee as defined in The Licensees (Conduct of Business) Rules 2014 (POI Law) or The Insurance Intermediaries (Conduct of Business Rules) 2014 or The Insurance Managers (Conduct of Business) Rules 2014
- (c) "Member" includes a settlor or proposed settlor, and a beneficiary or proposed beneficiary, depending on the context and the activity being referred to,

¹⁶ For the purposes of this rule a suitably qualified person means an actuary or a person holding either the Chartered Insurance Institute's Pension Planning (AF3) Advanced Diploma in Financial Planning or its earlier G60 Pensions qualification or an equivalent qualification.

- (d) "RATS" means Retirement Annuity Trust Schemes within the meaning of section 157A of the Income Tax (Guernsey) Law, 1975.
- (e) 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.
- (f) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Rules.

11. Repeals

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

Cees Schrauwens, Chairman

Dated 26 November 2015

Annex A

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

Bank account deposits

Cash

Cash funds

Corporate bonds

Exchange traded commodities

Government & local authority bonds and other fixed interest stocks

Physical gold bullion

Investment notes (structured products)

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

Shares in Investment trusts

Managed pension funds

National Savings and Investment products

Permanent interest bearing shares (PIBs)

Real estate investment trusts (REITs)

Shares listed on:

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

Units in regulated collective investment schemes

Annex B
Gearing (rule 5)

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

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