

GUERNSEY STATUTORY INSTRUMENT NO. 142

GREFFE
ROYAL COURT

- 2 NOV 2021

GUERNSEY

THE PENSION SCHEME AND GRATUITY SCHEME RULES, 2021

Made: 1st November 2021

Coming into Operation: 1st November 2021

The Guernsey Financial Services Commission ("the Commission"), in exercise of the powers conferred on it by sections 30, 34 and 35 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020¹ ("the Law"), makes the following Rules.

¹ Order In Council No. XIX of 2020.

CONTENTS

PART 1 - INTRODUCTION	3
1.1 Application.....	3
PART 2 – PENSION SCHEMES AND GRATUITY SCHEMES	4
2.1 Fair treatment of Scheme Members	4
2.2 Scheme Governance.....	4
2.3 Notification of Schemes to the Commission.....	6
2.4 Reporting to the Commission.....	7
2.5 Self assessment	7
2.6 Documentation relating to the Scheme	8
2.7 Service Providers.....	10
2.8 Information for new joiners to Schemes	12
2.9 Contributions	14
2.10 Charges	16
2.11 Provision of information about benefits	16
2.12 Transfers	20
2.13 Statement of Investment Principles	21
2.14 Investment Direction	23
PART 3 – GENERAL PROVISIONS	29
3.1 Interpretation	29
PART 4 – SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT	34
4.1 Savings.....	34
4.2 Revocations	34
4.3 Citation and commencement.....	34

PART 1 - INTRODUCTION

1.1 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 formed, managed, or administered by them.

- (3) The Commission may in its absolute discretion, by written notice to a licensee, exclude or modify the application of any provision of these Rules.

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 Scheme Governance

- (1) Every Scheme must have governance arrangements in place, appropriate to the objectives of the Scheme, to ensure adherence to the terms of the Scheme and to protect the interests of the Scheme Members.

2.2.1 Governance Procedures

- (1) The licensee must ensure that the persons responsible for the governance of a Scheme are clearly identified.
- (2) The licensee must ensure that it has appropriate internal controls in place in relation to each Scheme.
- (3) Subject to rule 2.7 the licensee, when acting as trustee, must undertake appropriate monitoring and oversight of any person it appoints to provide governance for each Scheme.

2.2.2 Governing Documentation

(1) Subject to (3), the licensee, when acting as 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 detail –

(i) the terms of the Scheme;

(ii) the obligations and powers of the licensee or any other person responsible for the governance of the Scheme; and

(iii) 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 (3), the licensee, when acting as administrator, must retain copies of the documentation necessary to fulfil its contracted functions. It 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 (1), shall apply from that date.

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

2.3 Notification of Schemes to the Commission

- (1) Within two months of –

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

- (b) completion of the transfer of a Scheme from a person 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 person 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.

2.4 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 2.3, as soon as is reasonably practicable;
 - (b) an annual return, within six months of the Scheme Year End; and
 - (c) an annual statistical return as at 30 June, within two months of this date (the “reporting date”),

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

- (2) 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 purpose of this rule.

2.5 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 more frequent basis if appropriate, to ensure that it is fully compliant in respect of its obligations under these Rules.

2.6 Documentation relating to the Scheme

- (1) A licensee must ensure that adequate records, relating to each Scheme in respect of which they undertake regulated activities, are kept and preserved. These records must include, but are not limited to -
- (a) the current and any previous Governing Documentation for the Scheme, including any amendments and ancillary or supplemental documentation;
 - (b) any interim documents in accordance with rule 2.2.2(3);
 - (c) records of any meetings relating to the Scheme;
 - (d) financial statements relating to the Scheme and, in the context of a Scheme operated on a defined contribution basis, these should identify the assets referable to each Scheme Member;
 - (e) when acting as trustee of a Scheme operated on a defined benefit basis, actuarial valuations which must be prepared at least every three years;
 - (f) the latest statements of investment principles, prepared in accordance with rule 2.13;
 - (g) any Contribution Schedule, prepared in accordance with rule 2.9, in relation to the Scheme;
 - (h) correspondence to, or in respect of, any Scheme Member or beneficiary with either an absolute, prospective, or contingent entitlement to benefits, in relation to the Scheme;

- (i) any other information the Commission may, from time to time, specify by way of licence conditions;
- (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; and
- (k) the obligations and powers of any other person, including any Service Provider, in relation to the Scheme.

(2) Governing Documentation and other Scheme documents must be –

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

(3) The licensee must, 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 2.13, 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 2.2.2(3);

(iii) financial statements, where appropriate, relating to the Scheme and to assets referable to the Scheme Member making the request;

(iv) in relation to a defined benefit basis scheme only; the latest statement of investment principles prepared in accordance with rule 2.13; and

(v) in relation to a defined contribution basis scheme only; the latest statement of investment principles prepared in accordance with rule 2.13 which apply to the Scheme Member making the request;

(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 2.6(4)(a), which is only relevant to specific Scheme Members, need only be released to those Scheme Members.

(5) 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.

2.7 Service Providers

(1) A "Service Provider" is any external person, firm, or other entity who, in relation to any one or more 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 an Appropriate Financial Adviser;
- (d) actuarial; or
- (e) audit.

(2) Where the Service Provider is appointed by the licensee, the licensee must –

(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 (3)(a);

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

(d) notify those with power over the appointment if the licensee becomes aware that the Service Provider is no longer suitable to perform the functions they were appointed to carry out.

2.8 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 receives 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 every Member Borne Charge, or anticipated Member Borne Charge, applicable to the Scheme Member including –
 - (i) details of who the charge is payable to;

 - (ii) the basis of the calculation of this charge;

 - (iii) a description of what the charges are; and

 - (iv) details of any deductions, commissions, or other inducements or incentives, 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, either directly or indirectly, 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 (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 practical 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.

2.9 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 for payment of those 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 for payment of those contributions;
 - (b) the contribution amounts;

- (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 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 are not paid on their due date, the licensee shall –

- (a) within 30 days of the due date -

- (i) notify the relevant participating employer and principal employer that such contributions have not been received;

- (ii) 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;

- (b) within 60 days of the due date –

- (i) notify any affected Scheme Member that the contributions are outstanding;
and

- (ii) notify the Commission that contributions are outstanding and of any steps that have been taken to remedy the situation.

2.10 Charges

- (1) The licensee, in relation to Member Borne Charges –
 - (a) must consider the basis of their 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 of a Scheme in which their benefits accrue on a defined contribution basis where, without further contributions by or on behalf of the member, there is a reasonable likelihood that the value of the Member's Account is insufficient to avoid exhaustion by Member Borne Charges before the Scheme Member reaches retirement age.

2.11 Provision of information about benefits

- (1) A licensee is required to provide information about benefits, to a Scheme Member of a defined benefit basis scheme, in relation to a Scheme of which they are a member.
- (2) A licensee is required to provide information about the value of a Member's Account, to a Scheme Member, in relation to a defined contribution scheme of which they are a member.

- (3) Scheme Members must be presented with clear and accurate information and be kept appropriately apprised with regards to the Scheme.
- (4) In relation to a Scheme that does not meet the definition of defined benefit basis or defined contribution basis, the licensee must, at least annually, make available appropriate pre-retirement information regarding the Member's Account ("Account") to the Scheme Member.

2.11.1 Defined contribution schemes pre-retirement

- (1) In relation to the part of an Account which has not been applied to provide benefits, the licensee must make available to the Scheme Member –
 - (a) information on the gross amount of contributions received and credited to the Account during the year to the Scheme Year End ("Year")²;
 - (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 practical 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 practical to provide information on these;
 - (d) information on the value of the assets comprising the Account at the date of the benefit statement;

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.

- (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;
- (f) a statement relating to the performance, during the year, of assets that are referable to the Account only;
- (g) to the extent that the licensee has knowledge or information, following reasonable enquiry, details of any charges, deductions, commissions, or other inducements that have been, or are to be, 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; and
- (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 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.

2.11.2 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 must provide the Scheme Member, on an annual basis –
 - (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 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.

2.11.3 Post-retirement

- (1) Where all or part of a Member's 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 Member's 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 practical 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.

2.12 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 following the date on which the licensee received all the information and documentation it reasonably required to do so.
- (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, at a minimum, a comparison of the actual benefits being given up in Scheme A with the benefits to be provided under Scheme B, on a range of realistic assumptions, where benefits under Scheme B are calculated on a defined contribution basis;
 - (b) where no recognised licensee acts as trustee or administrator of Scheme B the licensee of Scheme A must ensure that the requirements set out in (4)(a) are followed;
 - (c) the requirement, to provide the report set out in (4)(a), is subject to a *de minimis* exception where the value of the funds to be transferred does not exceed £50,000.

2.13 Statement of Investment Principles

- (1) Rule 2.13 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 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 its 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 this rule has not been adhered to, and it is unable to take steps to address this, it must notify the Commission, any relevant Third Party, or nominated employer representative.

2.14 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 (“Responsible Person”) 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 apprised with regard 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 invests consistently with the statement of investment principles set out in rule 2.13.

2.14.1 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, or enable the provision of, an explanation as to the investment approach applicable in respect to each Scheme Member and, where the Governing Documentation makes provision for an investment approach that is not set out under these Rules, explain this approach;
 - (b) explain, or enable the provision of an explanation of, the implications of the investment approach applicable to that Scheme Member and who is said to be responsible, under the Governing Documentation, for reviewing and making investment decisions; and
 - (c) inform them of, or enable the provision of information on, 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.

2.14.2 Provisions relating to a Member Directed investment approach

(1) This rule does not apply to occupational pension schemes where the Member Directed investment approach applies.

(2) A licensee acting as trustee for a Scheme where the Member Directed investment approach applies must ensure that the explanation provided in accordance with rule 2.14.1 –

(a) takes into account that person's background and ability to understand the implications of the approach; and

(b) the obligations and responsibilities of the licensee and the prospective Scheme Member.

(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, and 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 select investments that are appropriate in their circumstances;

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

- (c) that the Scheme Member shall exercise the investment powers at their own risk, including the risk that the value of investments may fall or may be found or considered inappropriate in the circumstances;
 - (d) any circumstances in which the licensee will be unable to exercise the investment power;
 - (e) any arrangements relevant to the investments relating to the Scheme Member for charges, deductions, commissions, or other inducements or incentives, 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, when acting as trustee, 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.

2.14.3 Provisions relating to a Licensee Directed investment approach

- (1) This rule does not apply to occupational pension schemes where the Licensee Directed investment approach applies.

- (2) A licensee acting as a trustee for a Scheme where the Licensee Directed investment approach applies must ensure that the explanation provided in accordance with rule 2.14.1 -
 - (a) takes into account that person's background and ability to understand the implications of the approach; and

 - (b) the obligations and responsibilities of the licensee and the prospective Scheme Member.

2.14.4 Provisions relating to a Third Party Directed investment approach

- (1) This rule does not apply to occupational pension schemes where the Third Party Directed investment approach applies.

- (2) A licensee acting as trustee for a Scheme where the Third Party Directed investment approach applies must ensure that the explanation provided in accordance with rule 2.14.1 -
 - (a) takes into account that person's background and ability to understand the implications of the approach; and

 - (b) the obligations and responsibilities of the licensee and the prospective Scheme Member.

- (3) The licensee must ensure that the Third Party is an Appropriate Financial Adviser and that the requirements of rule 2.7 are adhered to.

2.14.5 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.

- (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 account⁵ with a deposit-taking institution which is licensed under the Banking Supervision (Bailiwick of Guernsey) Law, 2020⁶; or

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

⁵ Including a current, deposit or share account.

⁶ Order In Council No. XX of 2020.

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. Any assessment should include ascertaining whether the financial adviser is required to be regulated in that jurisdiction;

“benefits” includes actual, prospective, 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 the basis on which a Scheme Member’s rights to benefits under a Scheme are calculated by reference to one or more of the following –

- (a) the period of qualifying service within the Scheme credited to the Scheme Member;

- (b) the Scheme Member's final pensionable salary, or average salary, or some derivation of one of these;
- (c) the Scheme 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 the basis on which a Scheme Member's benefits, 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 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), 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 subsection 2(1)(e) of the Law, subsection 40(o) or 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, from or within the Bailiwick of Guernsey;

“Governance Committee” means the persons responsible for overseeing the establishment, governance, and operation of internal controls in relation to a Scheme;

“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;

“Licensee Directed” means the licensee has the power to make, select, and direct investment decisions;

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

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

“Member Directed” means the Scheme Member has the power to make, select, and direct investment decisions in relation to the 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 relevant 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 the person who contributes, or for whom contributions are paid to the Scheme, either directly or indirectly, and is 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 participating employers and –

(a) any contributions payable to the Scheme by an employer, or by a Scheme 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 or Scheme Member who holds the power to make, select, and direct investments under the Governing Documentation. It does not include a person to whom these powers have been delegated by the licensee or a Scheme Member;

“Third Party Directed” means a Third Party has the power to make, select, and direct investment decisions;

“transfer value” means the amount, calculated by reference to recognised actuarial practice, which is available to be transferred from another arrangement whether or not that other arrangement is also a defined-benefit basis Scheme.

PART 4 – SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT

4.1 Savings

- (1) Any exclusion or modification granted by the Commission, under the Pension Scheme and Gratuity Scheme Rules 2020, the Pension Licensees (Conduct of Business) and Domestic and International Pension and Gratuity Schemes Rules 2017 and the Pension Licensees (Conduct of Business) and Domestic and International Pension and Gratuity Schemes Rules (No.2) 2017, will continue to apply where the Law and these Rules provide scope for such exclusions and modifications.

4.2 Revocations

4.2.1 Revocation of the Pension Scheme and Gratuity Scheme Rules, 2020

- (1) The Pension Scheme and Gratuity Scheme Rules 2020 are revoked.

4.3 Citation and commencement

- (1) These rules may be cited as the Pension Scheme and Gratuity Scheme Rules 2021.
- (2) These rules shall come into force on the 1st November 2021.

Dated this 29th day of October 2021

A handwritten signature in black ink, appearing to read 'C.A. Schrauwers', with a horizontal line underneath the name.

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

EXPLANATORY NOTE

These Rules have been re-drafted in line with the Commission's Revision of Laws Implementation Project.

In 2020 the Protection of Investor (Bailiwick of Guernsey), 1987, Law was replaced with the 2020 Law and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020⁷. All Rules made, under the earlier enactment, have been checked for validity and legality.

The Rules have been re-drafted to bring them into line with the Commission's current legal drafting practice and to ensure that all out-of-date references have been replaced.

Although these Rules have been re-drafted and re-formatted the content and legal meaning remains the same as that under the previous Rules.

⁷ Order In Council No. XVII of 2020.