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Statutory Document No. 593/04

RETIREMENT BENEFITS SCHEMES ACT 2000

THE RETIREMENT BENEFITS SCHEMES (PERMITTED SCHEMES) REGULATIONS 2004

Approved by Tynwald

21st October 2004

Coming into operation

1st November 2004

In exercise of the powers conferred on the Treasury by sections 1(6), 1(7) and 51 of the Retirement Benefits Schemes Act 2000¹, and of all other enabling powers, and after consulting the Insurance and Pensions Authority and such other organisations and persons as appear to it to be likely to be affected, the following Regulations are hereby made:—

¹ 2000 c.14

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Permitted Schemes) Regulations 2004 and, subject to section 51(5) of the Act, shall come into operation on the 1st November 2004.

Definitions

2. In these Regulations –

“**the Act**” means the Retirement Benefits Schemes Act 2000;

“**authorised person**” has the meaning assigned to it by regulation 8(1);

“**active member**”, “**Authority**”, “**controller**”, “**member**”, “**occupational scheme**”, “**professional adviser**”, “**retirement benefits scheme**” and “**trustee**” have the same meanings as given to them by section 54 of the Act;

“**permitted scheme**” means a retirement benefits scheme which has been registered as a permitted scheme under the provisions of these regulations;

“**permitted scheme certificate**” means a certificate issued by the Authority in accordance with regulation 4(3);

“**resident member**” has the meaning assigned to it by regulation 6.

Register of permitted scheme

3. The information registered with the Authority under these regulations shall be in writing.

Registration as a permitted scheme

4. (1) Subject to the following provisions of this regulation, a retirement benefits scheme that satisfies the qualifying conditions set out in Regulation 6 may be registered by the Authority as a permitted scheme.

(2) A retirement benefits scheme shall not be registered as a permitted scheme unless the trustee of the scheme makes an application, in such manner as the Authority may direct, for the scheme to be registered as a permitted scheme.

(3) Upon registering a retirement benefits scheme as a permitted scheme, the Authority may issue to the trustee of the scheme a permitted scheme certificate.

Exclusion from promotion restrictions

5. A retirement benefits scheme that is registered as a permitted scheme shall, for the purpose of section 1(6) of the Act (restrictions on promotion), be exempt from the provisions of section 1(1), (2) and (3) of the Act.

Conditions for Registration

6. A retirement benefits scheme is not qualified to be registered as a permitted scheme under these regulations unless –

- (a) the scheme is an occupational scheme;

- (b) at least one of the members of the scheme is resident, for the purpose of the Income Tax Act 1970², in the Isle of Man;
- (c) subject to regulation 7, not more than either 10% or 5 of the active members of the scheme, whichever is the lower, are resident for the purpose of the Income Tax Act 1970 in the Isle of Man (referred to in these Regulations as the ‘resident members’);
- (d) no employer of any resident member of the scheme is resident, for the purpose of the Income Tax Act 1970, in the Isle of Man; and
- (e) the trustee, or at least one of the trustees, is in the Isle of Man or an authorised person has been appointed in accordance with the provisions of regulation 8.

Alterations in scheme membership

7. In the event of the number of resident members of a permitted scheme exceeding the limits set out in regulation 6(c), the scheme may continue to be registered as a permitted scheme, provided that –

- (a) the period during which the limits are exceeded does not exceed one year; and
- (b) the trustee of the scheme is able to demonstrate to the Authority that there is a reasonable and realistic expectation that the number of resident members shall within this period again fall within these limits.

Authorised Person

8. (1) The trustee of a retirement benefits scheme for which an application is being made under regulation 4 must, where the trustee or any one of the trustees is not in the Island, give notice to the Authority of the name and address of a person (referred to in these Regulations as the ‘authorised person’) in the Island who is authorised to accept on behalf of the trustee any process or any notices or other documents required or authorised to be served on the trustee under the Act or these regulations.

(2) The appointment of an authorised person to a permitted scheme shall be made in writing and shall –

- (a) specify the date the appointment is due to take effect; and
- (b) outline the requirements set out in paragraphs (3) to (5).

(3) Upon appointment to a permitted scheme, an authorised person shall –

- (a) acknowledge receipt of the written notice of appointment;
- (b) confirm in writing that he will notify the trustee of any conflict of interest to which he is subject, in relation to the scheme, immediately he becomes aware of its existence; and
- (c) confirm in writing that he will notify the trustee of the scheme and the Authority of any change in his address or, where the authorised person is a business, in the contact details of the person responsible for the

² XXI p.260

management of the business in the Isle of Man, immediately he becomes aware of the change.

(4) Where an authorised person resigns, he shall notify the Authority in writing of the reason for his resigning.

(5) In the event of an authorised person ceasing to carry on business, or to carry on business in or from within the Island, he shall thereupon notify both the Authority and the trustee of a permitted scheme of his change in circumstances and of any new correspondence address.

(6) The trustee of a permitted scheme shall, as soon as reasonably practicable, give written notice to the Authority of the –

- (a) resignation of an authorised person;
- (b) appointment of a new authorised person;
- (c) removal of an authorised person;
- (d) the cessation of the trustee being in the Island.

(7) Any notice given under sub-paragraphs (6)(b) or (c) shall be accompanied by a statement giving the reasons for the appointment or removal.

(8) In the event of the trustee of a permitted scheme ceasing to be in the Island the trustee shall thereupon arrange for the appointment of an authorised person, in accordance with the requirements of this regulation.

Provision of information to permitted scheme members

9. (1) The trustee of a permitted scheme shall issue –

- (a) on receipt of a permitted scheme certificate, to all resident members; and
- (b) subsequently, to each person on their becoming a resident member, a written notice, in compliance with the provisions of paragraph (2).

(2) The notice issued under paragraph (1) shall include –

- (a) a statement that the scheme has applied for and has been registered with the Isle of Man Financial Services Authority as a permitted scheme;
- (b) that the scheme has less than 10% (and not more than 5) of its members resident in the Isle of Man;
- (c) that the scheme is not registered as an authorised scheme under Part 2 of the Retirement Benefits Schemes Act 2000 and is exempt from the authorisation requirements of that Act;
- (d) advice as to the name and address of the scheme trustee from whom further information can be obtained and the address of the Isle of Man Financial Services Authority; and
- (e) where the preservation requirement of Chapter 1 of Part IV of the Pension Schemes Act 1993³, as it has effect in the Island, apply in relation to any resident member, confirmation that their benefits are subject to these requirements.

³ SD531/95 (as amended by GC494/92)

Revocation of registration as a permitted scheme

10. (1) The Authority may at any time direct that a retirement benefits scheme shall cease to be a permitted scheme, or shall not be a permitted scheme for a specified period or until the occurrence of a specified event or until specified conditions are complied with, if it appears to the Authority –

- (a) that it is desirable in the interests of the resident members, or potential resident members, of the scheme;
- (b) without prejudice to paragraph (a), that the trustee of the scheme has contravened any provision of –
 - (i) the Act;
 - (ii) the Insurance Act 2008;
 - (iii) the Financial Services Act 2008;
 - (iv) [*Revoked*]
 - (v) the Collective Investment Schemes Act 2008; or
 - (vi) any rules, regulations or code made under any of those Acts or, in purported compliance with any such provision, has furnished the Authority with false, inaccurate or misleading information;
- (c) that the trustee of the scheme has contravened any condition, prohibition or requirement imposed under the Acts specified in paragraph (b)(i) to (v); or
- (d) that any provisions of regulations 8, 9 or 12 are not being complied with.

(2) For the purposes of paragraph (1)(a) the Authority may take into account any matter relating to the scheme, the trustee, a director or controller of the trustee, or any person employed by or associated with the trustee in connection with the scheme.

(3) Where the Authority proposes to give such a direction as is mentioned in paragraph (1), the Authority shall give the trustee (either directly or through the authorised person) written notice of its intention to do so, stating the reasons for which the Authority proposes to act and giving particulars of the rights conferred by paragraph (6).

(4) The Authority may give such a direction as is mentioned in paragraph (1) at the request of the trustee of a permitted scheme; but may refuse to give such a direction if the Authority considers that any matter concerning the scheme should be investigated as a preliminary to a decision on the question whether the direction should be given.

(5) The Authority may, either on the Authority's own initiative or on the application of the trustee of, or a professional adviser to, the scheme concerned, withdraw or vary a direction given under paragraph (1) if it appears to the Authority that it is no longer necessary for the direction to continue in force or, as the case may be, that it should continue in force in a different form.

(6) A person on whom a notice is served under subsection (3) may, within 21 days of the date of service, make written representations to the Authority and, if desired, oral representations to the Authority.

(7) The Authority shall have regard to any representations made in accordance with paragraph (6) in determining whether to give a direction under paragraph (1).

(8) During the continuance of any period specified by the Authority under paragraph (1) the provisions of section 1(3) of the Act shall not apply in respect of the scheme.

Review of Authority's decision

11. Any person who is aggrieved by a decision of the Authority to register, revoke or not register a retirement benefits scheme as a permitted scheme may apply for a review of the decision in the same manner as a review under section 38 of the Act and that section and rules under it shall accordingly apply in respect of the review.

Annual return

12. The trustee of a permitted scheme must, in relation to and not later than 6 weeks after each anniversary of the scheme being registered as a permitted scheme, ensure that an annual report is prepared and submitted to the Authority, which shall contain a declaration of –

- (a) any change which may affect the registration of the scheme as a permitted scheme and which has not otherwise been submitted to the Authority during the scheme year;
- (b) the number of resident members of the permitted scheme on that anniversary date; and
- (c) the total number of members of the permitted scheme on that anniversary date.

Determination of a permitted scheme

13. In the event of a permitted scheme being wound up the trustee shall, when the scheme begins winding up, notify –

- (a) the Authority;
 - (b) the resident members; and
 - (c) the authorised person,
- of the commencement of the winding up of the scheme.

Made 15th September 2004

Hon A J Earnshaw MHK

Signed by authority of the Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations are made under sections 1 and 51 of the Retirement Benefits Schemes Act 2000 and make provision for exempting from the promotion restrictions of Part 1 of that Act, retirement benefits schemes with a de-minimis number of Isle of Man resident members. Such schemes would otherwise require registration under the Retirement Benefits Schemes Act 2000 as ‘authorised’ schemes. These provisions are similar to the recognised scheme provisions operating for schemes regulated in certain recognised foreign jurisdictions and which may include Isle of Man resident members (the Retirement Benefits Schemes (Recognised Schemes) Regulations 2004 [SD 590/04] q.v.

Regulations 1 and 2 provide the citation, commencement and definitions.

Regulation 3 provides for the registration of permitted schemes.

Regulation 4 sets out the requirements for registering a retirement benefits scheme as a permitted scheme.

Regulation 5 provides that a scheme registered as a permitted scheme shall be exempt from the promotional restrictions imposed by Part 1 of the Retirement Benefits Schemes Act 2000. These regulations, whilst providing exemption from the promotional provisions of that Act do not however exempt pension schemes from any other statutory provisions that may apply to retirement benefits schemes operating in the Island.

Regulation 6 sets out the de-minimis qualifying conditions that must be satisfied before a retirement benefits scheme may be registered as a permitted scheme.

Regulation 7 caters for short term increase in Isle of Man resident members where the de-minimis limit is temporarily exceeded.

Regulation 8 outlines the requirements for the appointment of a local authorised person, required by regulation 6 where the trustee is not resident in the Isle of Man, and sets out the duties of the authorised person and the conditions of appointment.

Regulation 9 provides for the issue of information to Isle of Man resident members concerning the registration status of the scheme. This requirement is additional to any requirements that may apply under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 [SD 192/98]q.v.

Regulation 10 caters for the Authority’s powers to revoke the registration of a scheme as a permitted scheme.

Regulation 11 establishes appeal provisions.

Regulation 12 introduces the requirement for an annual return to be made to the Authority outlining details of scheme membership and changes made during the year.

Regulation 13 sets out winding up notification requirements.