

**The text below is an internet version of the Rules made by the FSC under section 93 of the Financial Services Act 2007 and sections 17(2)(a), 17(2)(d), 18(c), 18(d) and 23(2) of the Private Pension Schemes Act 2012 and is for information purposes only. Whilst reasonable care has been taken to ensure its accuracy, the authoritative version is the one published in the *Government Gazette* of Mauritius. (GN No. 296 of 2013)**

## **PRIVATE PENSION SCHEMES (INVESTMENT) RULES 2013**

**FSC Rules made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and sections 17(2)(a), 17(2)(d), 18(c), 18(d) and 23(2) of the Private Pension Schemes Act 2012.**

### **PART I- PRELIMINARY**

#### **1. Citation**

These Rules may be cited as the Private Pension Schemes (Investment) Rules 2013.

#### **2. Interpretation**

In these Rules -

“Act” means the Private Pension Schemes Act 2012;

“CIS manager” has the same meaning as in the Securities Act 2005;

“collective investment scheme” means a scheme authorised as a collective investment scheme or closed-end fund by the Commission and any other similar investment vehicle regulated in a foreign jurisdiction;

“Commission” has the same meaning as in the Financial Services Act 2007;

“entity” includes a company, corporation, société, partnership, trust, and foundation;

“foreign investment manager” means a financial institution which is licensed, regulated, approved, recognised or otherwise authorised to manage or invest assets in a foreign jurisdiction;

“immoveable property” means real estate investment involving direct ownership, by the private pension scheme, of land or buildings;

“insurance policy” means a long term insurance policy as defined in the Insurance Act 2005;

“investment decision” means a decision made, in respect of the investment of the assets of a private pension scheme by the governing body or the pension investment manager;

“investment management agreement” means a written agreement between a private pension scheme and a pension investment manager, setting the terms and conditions for investment of assets, and includes –

- (a) an insurance policy issued by a long term insurer; and
- (b) a prospectus issued by a collective investment scheme to a private pension scheme for that purpose;

“investment policy” means a policy providing for the investment principles, goals, guidelines and objectives of a private pension scheme;

“long term insurer” has the same meaning as in the Insurance Act 2005;

“pension investment manager” means a person eligible to conduct the management or investment of the assets of a private pension scheme in accordance with section 24(4) of the Act;

“pension scheme assets” means the assets of a private pension scheme;

“prudent person standard” means the standard of care, skill and diligence that can reasonably be expected from an expert in investment;

“related company” has the same meaning as in the Companies Act 2001;

“related entity” includes a related company and any other entity having a similar relationship as provided in section 2(2) of the Companies Act 2001;

“relevant Acts” has the same meaning as in the Financial Services Act 2007;

“securities” has the same meaning as in the Securities Act 2005.

### **3. Application of the Rules**

- (1) Except as otherwise expressly provided, these Rules shall apply to the investment of the assets of a private pension scheme licensed under sections 9 and 12 of the Act.

- (2) Rules 9(1) and 11 shall not apply to a private pension scheme referred to in section 24(8) of the Act.
- (3) These Rules are not exhaustive and should be read in conjunction with the Act, other relevant Acts, regulations and FSC Rules made under those Acts and Codes or guidelines which the Commission may issue from time to time.

## **PART II – INVESTMENT POLICY OF A PRIVATE PENSION SCHEME**

### **4. Investment policy**

- (1) A private pension scheme shall have a prudent written investment policy that shall be-
  - (a) approved by the governing body;
  - (b) signed by the Chairperson or any appointed representative of the governing body; and
  - (c) forthwith filed with the Commission.
- (2) The investment policy of a private pension scheme shall include all applicable items specified in the First Schedule.
- (3) The investment policy of a private pension scheme shall contain an asset allocation strategy determined by an actuary.
- (4) When determining an investment policy, the governing body or the professional adviser of a private pension scheme shall have regard to-
  - (a) the nature of the private pension scheme's liabilities;
  - (b) the technical funding requirement and technical provisions as specified in FSC Rules, where applicable;
  - (c) the need for the scheme to remain in a financially sound condition at all times in accordance with section 19(1) of the Act;
  - (d) the basic retirement income objectives of the scheme;
  - (e) the liquidity needs of the scheme; and
  - (f) the risk factors relevant to the scheme including risks related to categories of assets, geographic areas and market sectors.

- (5) The investment policy of a private pension scheme shall provide for-
  - (a) a risk management process that identifies, measures and mitigates investment risks;
  - (b) a mechanism for ensuring that assets and liabilities are managed in a manner consistent with provisions of the relevant Acts, investment policy and investment management agreement;
  - (c) the processes relating to investment decisions; and
  - (d) subject to section 24 of the Act, the procedure for the appointment of a pension investment manager.
- (6) The Act, other relevant Acts and the investment policy shall be the principal instruments by which the governing body or pension investment manager shall invest the assets of a private pension scheme.
- (7) The investment policy of a private pension scheme shall be consistent with these Rules, the Act and other relevant Acts.
- (8) A private pension scheme shall notify the Commission of any alteration of its investment policy within 15 days from the approval of such alteration by the governing body.

## **5. Investment choices**

Where a private pension scheme provides for investment choices to its members, the governing body of the scheme shall ensure that-

- (a) there are at least three investment options, including a default option;
- (b) the investment options are ranked according to their inherent risks; and
- (c) members are provided with the necessary information in order to make informed investment decisions.

## **PART III – PENSION INVESTMENT MANAGER AND INVESTMENT DECISIONS**

### **6. Appointment of a pension investment manager**

- (1) Any appointment of a pension investment manager by a private pension scheme shall be made in accordance with section 24(4) of the Act and shall be governed by an investment management agreement.
- (2) The governing body of a private pension scheme shall notify the Commission of the appointment of any pension investment manager within 15 days from the date of the appointment.
- (3) The notification referred to in paragraph (2) shall include the name and address of the pension investment manager and shall be accompanied by a copy of the investment management agreement.

## **7. Investment decision**

The governing body or pension investment manager, as the case may be, of a private pension scheme shall, when making an investment decision, have regard to-

- (a) the relevant Acts;
- (b) any other regulatory obligation;
- (c) the investment policy and investment management agreement;
- (d) the necessity of diversifying investments in order to mitigate risks;
- (e) the prevailing local and international macroeconomic and market conditions;
- (f) whether information about securities are publicly available;
- (g) the liabilities of the scheme;
- (h) any limit on investment provided in the constitutive documents; and
- (i) any other matter that may impact the investment of the assets of the scheme.

## **8. Effect of investment decisions**

Any investment decision shall be made and be implemented in compliance with these Rules, the Act, other relevant Acts, investment policy and investment management agreement and shall be binding on the private pension scheme, the governing body of the scheme and the pension investment manager appointed by the scheme.

## **9. Implementation of investment decisions**

- (1) The governing body of a private pension scheme shall be responsible for establishing an investment decision making process, including the procedures and timelines for the implementation of investment decisions.
- (2) The governing body or the pension investment manager of a private pension scheme, as the case may be, shall in the implementation of investment decisions, seek the best possible result for the private pension scheme by having regard to-
  - (a) any investment risk including risks associated to the implementation of specific decisions, operational risks, legal risks and risks associated with external factors;
  - (b) the market mechanism through which investment execution and implementation are effected; and
  - (c) the price, costs, speed, likelihood of execution and settlement, size and nature of the investment and any other consideration that is relevant to the investment of the assets.
- (3) Without prejudice to the powers of the Commission under section 48 of the Act and to the rights and interests of any bona fide person, any investment transaction that is not consistent with these Rules, the Act, investment policy or investment management agreement shall be null and void.

## **10. General**

- (1) The governing body and pension investment manager of a private pension scheme shall at all times act honestly and in good faith and shall exercise care, skill, prudence and diligence in the performance of their duties under these Rules.
- (2) Where the governing body of a private pension scheme lacks sufficient expertise to make fully informed decisions in order to fulfil its duties under these Rules, it shall seek the assistance of a person suitably qualified in investment.
- (3) The governing body of a private pension scheme shall record the identity of all the persons that are part of the investment process of the scheme, including the persons' activities and authority.
- (4) The governing body of a private pension scheme shall put in place procedures and criteria for the regular review of the effectiveness of the investment policy and decision-making process.

- (5) The governing body and pension investment manager of a private pension scheme shall have regard to appropriate matching of assets to liabilities when investing the assets of the scheme.

#### **PART IV – ADMISSIBLE ASSETS AND CONCENTRATION LIMITS**

##### **11. Concentration limits**

- (1) Subject to paragraphs (2) and (3), a private pension scheme shall not invest more than 70 per cent of the total value of its assets outside Mauritius.
- (2) Paragraph (1) of this Rule shall not apply to an external pension scheme.
- (3) Upon application, the Chief Executive may on good cause allow a private pension scheme to invest more than 70% of the total value of its assets outside Mauritius subject to any term and condition.
- (4) Subject to paragraph (9), the aggregate value of investments of a private pension scheme in any single entity or group of related entities or in any type of commodity whose securities are listed-
  - (a) on a securities exchange falling under item 1 of the Second Schedule shall not exceed 20 per cent of the total value of assets of a private pension scheme;
  - (b) on a foreign securities exchange falling under item 2 of the Second Schedule shall not exceed 10 per cent of the total value of assets of a private pension scheme.
- (5) No private pension scheme shall invest more than 20% per cent of its total value of assets in fixed income securities issued by any single foreign government.
- (6) The aggregate value of investments of a private pension scheme in any single entity or a group of related entities or in any type of commodity whose securities do not fall in the category of those referred to in paragraph (4) shall not exceed 5 per cent of the total value of assets of a private pension scheme.
- (7) No private pension scheme shall invest more than 10 per cent of the total value of its assets in any specific immovable property.
- (8) Upon application, the Commission may allow a private pension scheme to invest in loans to its members provided that –

- (a) the rules and the investment policy of the scheme provide for granting of loans to members; and
  - (b) not more than 15% of the total value of assets of the scheme shall be invested in loans to its members.
- (9) The aggregate value of investment of a private pension scheme in its sponsoring employer and in one or more of the sponsoring employer's related entities shall not exceed-
  - (a) 15 percent of the total value of the assets of the scheme where the sponsoring employer has its securities listed on a securities exchange falling under item 1 of the Second Schedule;
  - (b) 5 percent of the total value of the assets of the scheme where the sponsoring employer has its securities not listed on a securities exchange falling under item 1 of the Second Schedule.
- (10) Notwithstanding paragraph (9), a private pension scheme may grant loans to its sponsoring employer or to one or more of the sponsoring employer's related entities provided that-
  - a) the repayment of any loan granted is fully guaranteed by the Government of Mauritius; and
  - b) the aggregate amount of loans granted does not exceed 40% of the total value of the assets of the scheme.
- (11) Paragraphs (4) to (10) of this Rule shall not apply to investments in the categories of assets that are listed in the Third Schedule .
- (12) Where the aggregate value of investments exceeds the limits prescribed under this Rule, and such excess is due to market movements, the private pension scheme-
  - (a) may retain such investment for a period of not more than one year unless the Commission determines otherwise; and
  - (b) shall not invest further in the investments that are in excess of the limits.
- (13) Where the aggregate value of investments of a private pension scheme referred in paragraph (12) exceeds the limits prescribed under this Rule for a period of more than one year, the private pension scheme shall forthwith notify the Commission.

## **12. Investment in collective investment schemes**



When investing in collective investment schemes, a private pension scheme shall-

- (a) have regard to the extent to which the investment strategy of the collective investment scheme is consistent with the investment policy of the private pension scheme; and
- (b) assess its compliance with the concentration limits in Rule 11 on an aggregate basis with due regard to the underlying assets of the collective investment scheme or schemes, as the case may be.

### **13. Investment in insurance policies**

Where a private pension scheme invests in insurance policies that provide no guaranteed amount in respect of pension benefits, the scheme shall, on advice of a professional adviser have regard to the extent to which the investment strategy of the investments underlying the insurance policies is consistent with the investment policy of the private pension scheme.

## **PART V – MISCELLANEOUS**

### **14. Governing body to invest and manage assets**

- (1) Pursuant to section 24(4)(c) of the Act, the governing body of a private pension scheme may, upon application, be authorised to manage or invest the assets of the scheme on such terms and conditions as the Commission may determine provided that the governing body appoints an investment adviser, licensed with the Commission, for professional advice on investment decisions.
- (2) The governing body shall notify the Commission of the appointment of an investment adviser within 15 days of such appointment referred to in paragraph (1).
- (3) The governing body shall keep and maintain a full and true written record, whether electronic or otherwise, in the English or French language of every investment advice from the appointed investment adviser referred to in paragraph (1) for a period of at least 7 years.

### **15. Authorization of foreign investment managers**

- (1) The Commission may under section 24(4)(c) of the Act authorize a foreign investment manager to invest and manage the assets of a private pension scheme if the Commission is satisfied that the foreign investment manager is exercising the functions of an investment manager in a jurisdiction where there is a regulatory or supervisory framework consistent with international best practice.
- (2) An application for authorization shall be accompanied by-
  - (a) a certified true copy of the business licence of the applicant if licensed;
  - (b) either a certificate of good standing from the relevant foreign regulatory body, if the applicant is licensed or a statement from a lawyer authorized to practise law in the foreign jurisdiction certifying that the applicant is legally entitled to carry out the functions of an investment manager in that jurisdiction, if the applicant is not licensed;
  - (c) a certified true copy of the certificate of incorporation of the applicant; and
  - (d) any other information that the Commission may deem necessary.

## **16. Transitional provision**

- (1) Where at the commencement of these Rules, a private pension scheme does not meet all the provisions of these Rules, the scheme shall take such measures as may be necessary to comply with the provisions thereof by-
  - (a) 1<sup>st</sup> July 2015, or
  - (b) by such other date or period as the Commission, on reasonable grounds, may determine.
- (2) The private pension scheme must notify the Commission of any measure referred to in paragraph (1) within 90 days from the date of commencement of these Rules.
- (3) Where a private pension scheme meets all the provisions of these Rules following implementation of measures referred to in paragraphs (1) and (2), the governing body of the scheme shall submit a report to this effect to the Commission no later than 90 days after the date on which all the provisions have been met.

**17. Commencement**

These Rules shall come into operation on 31<sup>st</sup> January 2014.

Made by the Financial Services Commission on 4<sup>th</sup> December 2013.

## **FIRST SCHEDULE**

[Rule 4(2)]

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[Rule 11]

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