

**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(1)(b), 27 and 50(1) 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.**

## **PRIVATE PENSION SCHEMES (GOVERNANCE) RULES 2012**

**FSC Rules made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and sections 17(1)(b), 27 and 50(1) of the Private Pension Schemes Act 2012.**

### **PART I- PRELIMINARY**

#### **1. Citation**

These Rules may be cited as the Private Pension Schemes (Governance) Rules 2012.

#### **2. Interpretation**

In these Rules –

“Act” means the Private Pension Schemes Act 2012;

“beneficiary” has the same meaning as in the Act;

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

“constitutive documents” has the same meaning as in the Act;

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

“Foundation” has the same meaning as in the Foundations Act 2012;

“governing body” means -

- (i) in the case of a trust, its Board of Trustees;
- (ii) in the case of a fund registered under the repealed Employees Superannuation Fund Act, its managing committee; and
- (iii) in the case of a Foundation, its Council;

“independent professional” means a member of a relevant professional body recognised by law and includes a law practitioner, public accountant and actuary;

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

“member of a governing body” means any person appointed or elected to act as or become a member of a governing body;

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

“pension benefit” has the same meaning as in the Act;

“private pension scheme” has same meaning as in the Act;

“trust” has the same meaning as in the Act.

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

- (1) These Rules shall apply to the governance of a private pension scheme licensed under the Act.
- (2) Unless otherwise specified, these Rules shall apply to a governing body of a private pension scheme.
- (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.

### **4. Governance of a private pension scheme**

- (1) A private pension scheme must at all times be governed by a governing body whose members are suitably qualified to be appointed or elected.
- (2) The governing body of a private pension scheme shall be ultimately responsible for –
  - (a) the administration of the scheme;
  - (b) the management or investment of the assets of the scheme;
  - (c) ensuring adherence to the terms of the constitutive documents;
  - (d) the protection of the best interests of beneficiaries; and

- (e) ensuring that the private pension scheme fulfils its overriding objective to provide for pension benefits.
- (3) When delegating functions, the governing body of a private pension scheme shall exercise due care and diligence both in selecting delegates and in monitoring and overseeing the activities of the delegates.

## **PART II – GOVERNING BODY**

### **5. Composition**

- (1) A member of a governing body shall be deemed to be an officer of a licensee under the Financial Services Act 2007.
- (2) The governing body of a private pension scheme licensed under section 9 of the Act shall consist of at least 3 persons, who shall be resident in Mauritius or incorporated in Mauritius.
- (3) The governing body of a private pension scheme licensed under section 12 of the Act shall consist of at least 3 persons, of whom at least 2, shall be resident in Mauritius.
- (4) Subject to section 24 of the Financial Services Act 2007, where a private pension scheme licensed under section 9 of the Act is sponsored by an employer, at least one-third of the members of the governing body shall be elected or appointed by the members of the scheme.
- (5) The members of a governing body shall annually appoint from amongst themselves a Chairperson, a Vice-chairperson and a contact person.
- (6) The contact person of an external pension scheme shall be a management company licensed under section 77 of the Financial Services Act 2007.
- (7) The constitutive documents of a private pension scheme shall provide for -
  - (a) the appointment or election of the members of its governing body;
  - (b) the tenure of the members of its governing body;
  - (c) the remuneration of the members of its governing body, where applicable; and
  - (d) any other related matters as the Commission deems necessary.

- (8) The governing body of a private pension scheme shall maintain a list of its members as set out in the First Schedule and communicate this list to the Commission on an annual basis.
- (9) The Commission shall be forthwith informed in writing of the removal or resignation of any member of the governing body of a private pension scheme.

## **6. Suitability of members of governing body**

- (1) The members of a governing body shall be appointed or elected having regard to –
  - (a) the criteria of fitness and propriety as set out in section 20 of the Financial Services Act 2007 and in any other enactment governing the private pension schemes; and
  - (b) their collective experience and knowledge of private pension schemes.
- (2) Without prejudice to the generality of paragraph (1), no person shall be appointed or elected as a member of the governing body of a private pension scheme where such person –
  - (a) is not of full age or has no capacity to contract;
  - (b) has been convicted of a financial crime;
  - (c) is an undischarged bankrupt;
  - (d) is an officer of any person appointed -
    - (i) as professional adviser to the scheme;
    - (ii) as pension scheme administrator of the scheme;
    - (iii) as custodian of the scheme;
    - (iv) as long-term insurer to administer the scheme;
    - (v) for managing or investing the assets of the scheme;
  - (e) is disqualified from being a director under the Companies Act or any relevant Act.

- (3) Notwithstanding paragraph (2), an officer of a service provider listed in subparagraph (2)(d) may be appointed or elected as a member of the governing body of the private pension scheme provided that –
  - (a) the service provider is the promoter of the private pension scheme; and
  - (b) the appointment or election does not result in a situation where the service provider controls the governing body.
- (4) Nothing contained in these Rules shall prevent a private pension scheme from appointing or electing independent professionals to a governing body, provided that they do not provide any other services to the private pension scheme.
- (5) Without prejudice to any other enactment, where the Commission considers that a member of a governing body is not fit and proper, the Commission may direct the private pension scheme to remove that person as a member.
- (6) The Commission shall not give a direction under paragraph (5) without giving the private pension scheme and the person concerned an opportunity to make representations.

## **7. Duties of the Governing Body**

- (1) The governing body of a private pension scheme shall –
  - (a) be responsible for the appointment of the professional advisers and service providers of the scheme;
  - (b) establish policies and procedures for appointing professional advisers, pension scheme administrators or long term insurers, custodians and asset managers, CIS managers or investment advisers or any person appointed for managing or investing the assets of the scheme;
  - (c) formulate the investment policy and risk management framework of the scheme;
  - (d) monitor the investments of the scheme's assets;
  - (e) ensure the timely payment of pension benefits to the beneficiaries of the scheme; and
  - (f) communicate with members, beneficiaries and the Commission in a timely, accurate and transparent manner.

- (2) In performing its functions, a governing body shall at all times –
- (a) ensure that the private pension scheme under its governance complies with the requirements of the Act and other relevant Acts and its activities are carried out in accordance with the constitutive documents of the scheme;
  - (b) act in good faith and in the best interests of the members and beneficiaries of the private pension scheme;
  - (c) act with prudence and reasonable care when running the affairs of the private pension scheme;
  - (d) act with skill, competence and diligence;
  - (e) abide by all applicable laws;
  - (f) deal fairly, objectively and impartially;
  - (g) avoid or manage conflicts of interest; and
  - (h) assess the performance and actions of the scheme's service providers and professional advisers and take appropriate action.

## **8. Meetings**

- (1) A governing body must conduct regular meetings which shall be properly minuted.
- (2) Notice of meetings to members of a governing body must be given in accordance with the constitutive documents.
- (3) The minutes of the proceedings shall be kept for at least 7 years, in a manner and in a location which would be reasonably accessible to the Commission.

## **9. Accountability**

A governing body shall establish and adhere to written policies and procedures for –

- (a) regular reporting and disclosure of information to members, beneficiaries, the Commission and the sponsoring employer, where applicable; and
- (b) recording and handling of complaints from members and beneficiaries.

### **PART III- ADMINISTRATION BY GOVERNING BODY**

#### **10. Authorisation to administer**

- (1) A governing body shall not administer a private pension scheme without the prior authorisation of the Commission.
- (2) An application for the authorisation of a governing body to administer a private pension scheme shall be made by the governing body in such form and manner as may be determined by the Commission and shall be accompanied by the information and documents mentioned in the Second Schedule.
- (3) Where the Commission is satisfied that a governing body has the capacity to administer its private pension scheme, the Commission may grant an authorisation under section 27 of the Act on such terms and conditions as it deems fit.
- (4) In authorising a governing body, the Commission shall have regard to –
  - (a) the nature, objects and size of the private pension scheme;
  - (b) the administrative capacity, including staff, systems, processes and funding of the scheme; and
  - (c) the best interests of beneficiaries and sponsoring employers, where applicable.
- (5) The Commission may revoke an authorisation mentioned in paragraph (4) where it is satisfied that the governing body is failing to administer the private pension scheme in the best interests of beneficiaries or in accordance with its constitutive documents, the Act and other relevant Acts.
- (6) The Commission shall not revoke an authorisation unless it has notified the governing body of the grounds for revocation and has given the governing body an opportunity to make representations.
- (7) Where the Commission revokes the authorisation of a governing body, the Commission shall direct the governing body to appoint a pension scheme administrator subject to section 26 of the Act.

#### **11. Administrative Functions**

In addition to the responsibilities mentioned in section 28 of the Act, the functions of a governing body when administering a private pension scheme shall include –

- (a) establishing the governance structure, internal controls and operational capacity of the scheme;
- (b) ensuring the collection of contributions, preparation and maintenance of a schedule of contributions;
- (c) maintaining membership records with monthly updates of fund values, salaries and membership movements;
- (d) verifying the authenticity of information received from a sponsoring employer;
- (e) arranging for contributions to be transferred to the scheme's custodian and to the persons appointed for managing or investing the assets of the scheme;
- (f) arranging for payment of insurance premiums, where applicable;
- (g) issuing annual individual benefit statements to members of the scheme;
- (h) issuing statements to early leavers of the scheme;
- (i) calculating and arranging for payment of contribution refunds, deferred pensions and transfer values, as the case may be;
- (j) calculating and arranging for payment of death or disability benefits, where applicable;
- (k) calculating and arranging for payment of pension benefits;
- (l) ensuring that beneficiaries are still alive before effecting payment of their pension benefits;
- (m) preparing annual accounts for the scheme;
- (n) providing necessary facilities and information to the scheme's auditor for carrying out the annual audit of the scheme, including internal controls and systems;
- (o) supplying of membership data and information to the professional advisers of the scheme, as may be required;
- (p) preparing and issuing of individual pension increase letters to pensioners, if applicable; and
- (q) any other related function as the Commission may deem necessary.



## **PART V – MISCELLANEOUS**

### **12. Commencement**

These Rules shall come into operation on 1<sup>st</sup> November 2012.

Made by the Financial Services Commission on 31<sup>st</sup> October 2012.

### **FIRST SCHEDULE**

[Rule 5(8)]

#### **LIST OF MEMBERS OF THE GOVERNING BODY**

<b>Name of member</b>	<b>Appointed/ Elected as *</b>	<b>Date appointed/elected</b>	<b>Terms served</b>	<b>Qualifications</b>	<b>Experience/ skills</b>

## **SECOND SCHEDULE**

[Rule 10(2)]

### **APPLICATION FOR AUTHORISATION**

Information and documents to be submitted to the Commission –

1. details of the arrangements in place or to be put in place with respect to the day-to-day administration of the private pension scheme;
2. details of the IT system in place with respect to the day-to-day administration of the private pension scheme;
3. a copy of a manual of internal control procedures for the administration of the private pension scheme;
4. details of professional indemnity insurance cover as may be required by the Commission;
5. details of measures taken to ensure confidentiality, security and reliability of members' information; and
6. any other information and documents as the Commission may deem necessary.