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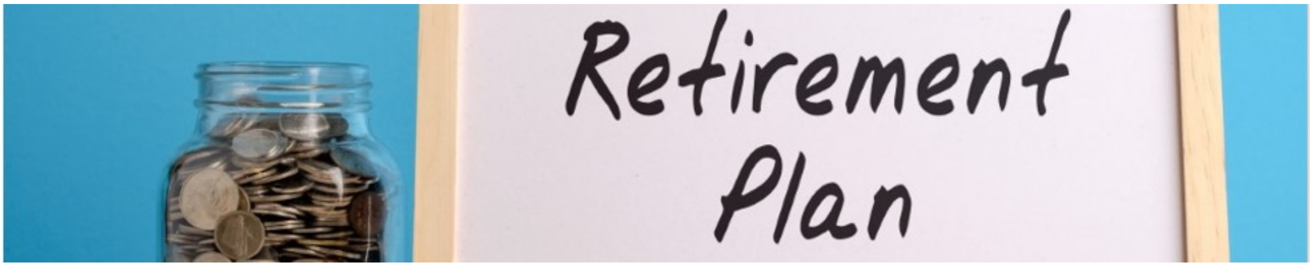

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Recent Changes to Regulations Governing Retirement Benefits Schemes

Introduction

The Cabinet Secretary for National Treasury and Planning has through Legal Notices Numbers 163, 164, and 165 of 2021 made changes to the regulations in respect of Individual Pension Plan Schemes (“IPPS”), Occupational Retirement Benefits Schemes (“ORBS”), and Umbrella Retirement Benefits Schemes (“URBS”). We analyse the changes below.

Common Changes

Where a retirement benefit scheme has appointed a trust corporation, the trust corporation is now forbidden from appointing service providers related to it to provide services to the scheme. Trust corporations may no longer appoint an administrator, fund manager, custodian or approved issuer related to the trust corporations either by way of ownership, directorship or employment. The main objective of this change is to deal with issues of conflict of interest in the running of pension schemes. However, the roles of the trustee and custodian, fund manager and administrator complement each other. Therefore, efficiencies that can be gained by allowing a related party or the same entity to provide complimenting functions are not achieved. Consequently, it increases a scheme’s administrative costs which reduce the distributable investment income and ultimately derogating from the main objective of giving retirees a sizeable pension pot.

Upon early retirement, scheme members are now restricted to only withdrawing half of their total retirement benefits and investment income from their scheme contributions. The government indicated in its policy statement, that this is meant to cushion employees by ensuring they have a retirement fund to fall back on upon retirement. However, where a member paid their own contributions to an individual pension plan scheme, if the member retires early, they may still access their total retirement benefits and investment income.

Specific Changes

Individual Pension Plan Schemes are now required to provide immediate vesting of contributions. This is in line with the provisions of the Retirement Benefits (Treating Customers Fairly) Guidelines, 2019. Additionally, this change aligns IPPS with ORBS and URBS, which already provide for immediate vesting of benefits. Occupational Retirement Benefit Schemes may be established as defined benefits schemes or defined contribution schemes. Defined benefits schemes guarantee their members a specified pension payment upon retirement, usually pegged on salary and length of employment. Defined contribution schemes do not provide guarantee on pension payment. Defined contribution schemes pool employer and employee contributions to invest and use the proceeds to provide benefits on retirement.

Defined benefits schemes are required to be valued by an actuary every three (3) years, to ensure that they can meet their promise of a specified pension. The recent changes have increased the period within which the actuarial valuation report should be submitted to the Retirement Benefits Authority and the scheme’s sponsor. Defined benefits schemes will now have six (6) months after the end of the financial year to submit the report rather than five (5) months.

Lastly, changes have been made to prevent misinterpretation of the rules on where members may withdraw their benefits while still in employment. The previous rule governing URBS seemed to imply that if an employer joins another URBS or establishes an ORBS for the benefit of its employees, the employees would be allowed to withdraw their benefits from the earlier scheme.

Conclusion

Schemes need to review and align their trust deeds and scheme rules to the new Regulations. We will keep you updated on any new developments affecting Retirement Benefits Schemes.

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