Recent Changes to Regulations Governing Retirement Benefits Schemes

Introduction

On April 04, 2022, the Cabinet Secretary for the National Treasury and Planning introduced changes to the Regulations governing pensions. The changes that are highlighted below were introduced through Legal Notices Numbers 71, 73 and 74 of 2022 and affect Individual Pension Plan Schemes (**IPPS**), Occupational Retirement Benefits Schemes (**ORBS**), and Umbrella Retirement Benefits Schemes (**URBS**).

Net Rate of Return

During their annual general meetings, all schemes are now required to report the net rate of return credited to their members' accounts. This is a welcome change which will standardize the rate of return reported to members and will ensure there is transparency in reporting of investment returns.

Submission of Audited Accounts

Trustees of a scheme are now required to conspicuously display in the scheme's registered office a notice of the availability of the audited accounts, the trustees' and investments reports for inspection within 30 days from the end of each financial year. This timeline has been revised from 6 months for IPPS and ORBS, and 3 months for URBS.

This change is not in line with requirements under the Retirement Benefits Act (**the Act**). The Act requires the trustees to prepare and submit copies of the scheme's financial statements to the Retirement Benefits Authority (**RBA**), within 3 months after the end of each financial year. It is an accepted legal principle that where main legislation (the Act) conflicts with subsidiary legislation (regulations), the main legislation prevails. This change is also not aligned to reporting practices in the financial services industry where normal practice is to report 90 days after the end of the financial year. Additionally, the shortened timeline is likely to be a compliance burden for most schemes.

The other change clarifies that trustees of an URBS are not limited to sending copies of scheme financial statements to the sponsor and employer and benefit statements to members through electronic means only. This removes the previous ambiguity that could be misinterpreted as limiting trustees to purely electronic means of transmission.

Investment Policy

IPPS while preparing their investment policy statement may use the services of a certified investment and financial analyst registered under the Investment and Financial Analysts Act (the **IFA Act**). Previously, the rule only allowed the use of the services of professional investment advisers. This change allows IPPS to select persons licensed under either the IFA Act or the Capital Markets Act as an investment adviser. The Capital Markets Act licenses corporate entities while the IFA Act deals with natural persons.

However, we note the wording in the IPPS regulations is not the same as in ORBS and URBS regulations. We recommend the change be synchronised across the board.

Division of Amalgamated ORBS

In addition to amalgamation of schemes and transfer of scheme funds from one scheme to another, the ORBS Regulations now recognize division of amalgamated schemes.

Division occurs when an amalgamated scheme splits into two or more schemes into which the assets and liabilities of the amalgamated scheme are distributed, depending on the structural arrangement. The compliance requirements for division are similar to those for transfer and amalgamation of schemes. We recommend updating the regulations governing IPPS and URBS schemes to mirror these options.

Conclusion

We encourage industry players to note the changes to regulations and take necessary steps to align to the changes.

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