

Private Pension Schemes (Auditor and Actuary) Rules 2015

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THE PRIVATE PENSION SCHEMES ACT 2012

FSC Rules made by the Financial Services Commission under section 93 of the Financial Services Act 2007 and sections 17(2)(c) and 37 of the Private Pension Schemes Act 2012.

PART I - PRELIMINARY

1. Citation

These Rules may be cited as the **Private Pension Schemes (Auditor and Actuary) Rules 2015**.

2. Interpretation

In these Rules —

“Act” means the Private Pension Schemes Act 2012;

“audit firm” has the same meaning as in the Financial Reporting Act 2004;

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

“Financial Reporting Council” means the Financial Reporting Council established under section 3 of the Financial Reporting Act 2004;

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

“service provider” means —

- (i) any person licensed, authorised, approved or registered under the relevant Acts to provide financial services; or
- (ii) any bank licensed under the Banking Act 2004;

“supervisory body” means any regulatory or supervisory body, in any jurisdiction responsible for the regulation and supervision of private pension schemes or other financial services.

3. Application of the Rules

- (1) These Rules shall apply to any private pension scheme licensed under sections 9 or 12 of the Act.
- (2) 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-AUDITOR

4. Approval of appointment of auditor

- (1) Subject to section 35(2) of the Act, a private pension scheme shall appoint an auditor within 90 days from the date on which it is licensed by the Commission.
- (2) Subject to section 35(2) of the Act, a private pension scheme shall appoint an auditor within 30 days after the termination of office of the previous auditor.
- (3) Subject to paragraph (6), an appointment made under paragraphs (1) and (2) shall not be effective except where it is approved by the Commission.
- (4) When appointing an auditor under paragraphs (1) and (2), the governing body of a private pension scheme shall consider and confirm in a resolution making the

appointment that the auditor —

- (a) holds the required qualifications, professional memberships and competence, has proven experience and has adequate resources to perform the functions of an auditor;
 - (b) is independent of the scheme in that he, or in the case of an audit firm, any of its signing partner, has no interest in the scheme, its sponsoring employer or entities related to its sponsoring employer, nor has any connection with any member of the governing body, which could reasonably be perceived to materially affect the exercise by him of an independent mind and judgment in the performance of his duties; and
 - (c) is fit and proper.
- (5) An application for the approval of the appointment of an auditor shall be made in writing to the Commission and shall be accompanied by —
 - (a) a certified copy of the resolution referred to in paragraph (4);
 - (b) full particulars of the person to be appointed; and
 - (c) such other information or document as may be required by the Commission.
- (6) An application for the Commission's approval in terms of paragraph (3), shall be deemed to be approved where the Commission has not objected to the proposal within 15 days of having received the application or any information required under paragraph (5), whichever is later.
- (7) The Commission may, in determining an application under paragraph (4), take into consideration —
 - (a) any report from the Financial Reporting Council, any professional body of auditors of which the proposed auditor is a member or any other supervisory

body; and

(b) any other matter or information relevant to determine whether the proposed appointee is a fit and proper person.

(8) Where the auditor appointed pursuant to section 35 of the Act is an audit firm, the firm shall designate a licensed auditor as a signing partner.

(9) The signing partner shall, for the purposes of these Rules, without any limitation to the obligations and liabilities of the other partners, have all the duties, responsibilities and obligations of an auditor as if appointed in an individual capacity.

(10) A private pension scheme shall notify the Commission of any material change in respect of the appointment of an auditor within 15 days from the date of the change.

5. Notice of resignation or termination

(1) A private pension scheme shall, in writing, notify the Commission of the termination of appointment or resignation of its auditor within 15 days of the termination or resignation.

(2) The notification referred to in paragraph (1) shall specify the reasons for and circumstances of the termination or resignation of the auditor.

(3) The commission may require an auditor to provide any information and explanation on the circumstances of his termination or resignation as the auditor of a private pension scheme.

6. Termination of appointment by Commission

(1) Subject to paragraph (2), the Commission may require a private pension scheme to terminate the appointment of an auditor of the scheme where it has reason to believe that the person or the audit firm concerned is not or no longer fit and proper to hold the office for which he was appointed.

- (2) The Commission shall not make a determination under paragraph (1) without giving prior notice of its intention to act in accordance with paragraph (1) and the reasons for so doing, and give the private pension scheme and the auditor concerned reasonable opportunity to make representations.

7. Whistleblowing obligations of auditor

- (1) The auditor of a private pension scheme shall —
 - (a) where a report or return is made to the governing body or to any public authority, provide a copy of such report or return to the Commission within 15 days from the date the report or return is submitted to the governing body or relevant public authority; and
 - (b) where, but for the termination of an appointment or upon resignation, there would have been reason to submit to the governing body a report or return containing unfavourable or critical remarks, submit such a report or return to the Commission.
- (2) The auditor of a private pension scheme shall forthwith inform and submit a report to the Commission where in performing his functions he becomes aware or has reason to believe that —
 - (a) the financial soundness of the scheme is seriously prejudiced, or the ability of the scheme to comply with the Act, regulations and FSC Rules made under the Act is otherwise impaired;
 - (b) there is any material change in the operations of the scheme which may jeopardise its ability to continue as a going concern;
 - (c) there has been or there is a breach of any of the provisions of the Act, regulations and FSC Rules made under the Act, or any other enactment relating to the keeping of accounting records and to audit;

(d) other relevant Acts or FSC Rules, codes and guidelines made by the commission have not been or are not being properly complied with; or

(e) a financial crime or any serious irregularity has been, is being, or is likely to be committed.

(3) In respect of any act performed or communication made in good faith, whether spontaneously or in response to a request by the Commission pursuant to the discharge of his duties under this section —

(a) the auditor shall not be deemed to be in contravention of any enactment or to commit a breach of —

(i) any code of professional conduct to which he is subject whether in Mauritius or abroad;

(ii) any contractual provision binding him to any requirement of confidentiality whether in respect of the private pension scheme or any other party;

(b) no civil, criminal or disciplinary proceedings shall lie against the auditor.

8. Auditor's report

(1) The financial statements and returns of a private pension scheme, shall be audited by the auditor appointed in accordance with these Rules.

(2) The auditor shall include in the statement referred to in section 37(2) of the Act, a report containing —

(a) an opinion on whether the accounts and returns are in accordance with the requirements of 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 and particulars of any matter that is not in accordance with those requirements;

- (b) an opinion on whether the accounting records of the scheme in respect of that period have been properly kept, recording and explaining correctly the transactions and financial position of the scheme, and particulars of accounting records that have not been so kept and of transactions that have not been so recorded;
 - (c) in respect of the accounting period, a statement on whether he has obtained the information and explanations that he requested for;
 - (d) a statement on whether he has been denied any requested information under paragraph (c), setting out the particulars of information and explanations that he requested but did not obtain; and
 - (e) an opinion on whether he is satisfied that the accounts and returns referred to in subparagraph (a) reflect the accounting records of the scheme and show a true and fair view of the transactions and financial position of the scheme in respect of the accounting period to which they relate and, where any of them fail to represent the transactions and financial position, give particulars of such failure.
- (3) A private pension scheme shall provide the Commission with a certified copy of the auditor's report, referred to in paragraph (2), together with the audited financial statements and the corresponding notes within 6 months after the close of the financial year of the scheme.

9. Additional duties of auditor

The Commission may require the auditor of a private pension scheme, at the cost of the scheme, in addition to any other duties to —

- (a) carry out an extended scope audit or other auditable examination of the scheme and make such relevant and necessary recommendations;
- (b) submit to the Commission such additional information in relation to the extended

scope audit or other examination as the Commission may deem necessary;

- (c) submit to the Commission a report on any matter specified in paragraphs (a) and (b); and
- (d) submit to the Commission a report on the financial and accounting systems and internal controls of the private pension scheme or a pension scheme administrator of the scheme, where applicable.

PART III - ACTUARY

10. Approval of appointment of actuary

- (1) Subject to section 35(2) of the Act and FSC Rules, a private pension scheme shall appoint an actuary within 90 days from the date on which it is licensed by the Commission.
- (2) Subject to paragraph (6), an appointment made under paragraph (1) shall not be effective except where it is approved by the Commission.
- (3) For the purposes of the Act, an actuary appointed by a private pension scheme shall be a Fellow of one of the following professional bodies —
 - (a) the Actuarial Society of South Africa;
 - (b) the Canadian Institute of Actuaries;
 - (c) the Institute and Faculty of Actuaries (United Kingdom);
 - (d) the Institute of Actuaries of Australia;
 - (e) the Institute of Actuaries of India;
 - (f) the Society of Actuaries (United States); or
 - (g) such other professional body of actuaries acceptable to the Commission.
- (4) When appointing an actuary under paragraph (1), the governing body of a private pension scheme shall consider and confirm in a resolution making the appointment that the actuary —

- (a) holds the required qualifications, professional memberships and competence, has proven experience and has adequate resources to perform the functions of an actuary; and
 - (b) is fit and proper.
- (5) An application for the approval of the appointment of an actuary shall be made in writing to the Commission and shall be accompanied by —
- (a) a certified copy of the resolution made under paragraph (4);
 - (b) full particulars of the person to be appointed; and
 - (e) such other information or document as may be required by the Commission.
- (6) An application for the Commission's approval in terms of paragraph (2), shall be deemed to be approved where the Commission has not objected to the proposal within 15 days of having received the application, or any information required under paragraph (5), whichever is later.
- (7) The Commission may, in determining an application under paragraph (5), take into consideration —
- (a) any report from the professional organisation of which the proposed appointee is a member or from any supervisory body, as the case may be; and
 - (b) any matter or information relevant to determine whether the proposed appointee is a fit and proper person.
- (8) The private pension scheme shall notify the Commission of any material change in respect of the appointment of an actuary within 15 days from the date of the change.
- (9) Nothing in these Rules shall prevent a service provider who is promoting a private pension scheme to appoint any of his employees as an actuary to the scheme

provided that —

- (a) the employee is qualified under paragraph (3); and
- (b) the appointment has been approved by the Commission.

11. Notice of resignation or termination

- (1) A private pension scheme shall in writing, notify the Commission of the termination of appointment or resignation, of its actuary within 15 days of the termination or resignation.
- (2) A notification referred to in paragraph (1) shall specify the reasons for and circumstances of the termination or resignation of the actuary.
- (3) The Commission may require an actuary to provide any information and explanation on the circumstances of his termination or resignation as the actuary of the private pension scheme.

12. Termination of appointment by Commission

- (1) Subject to paragraph (2), the Commission may require a private pension scheme to terminate the appointment of an actuary of the scheme where it has reason to believe that the actuary is not or no longer fit and proper to hold the office for which he was appointed.
- (2) The Commission shall not make a determination under paragraph (1) without giving prior notice of its intention to act in accordance with paragraph (1) and the reasons for so doing, and give the governing body and the actuary concerned the opportunity to make representations.

13. Whistleblowing obligations of actuary

- (1) The actuary of a private pension scheme shall —

- (a) where a report or return is made to the governing body or to any public authority, provide a copy of such report or return to the Commission within 15 days from the date on which the report or return is submitted to the governing body or relevant public authority; and
 - (b) where, but for the termination of an appointment or upon resignation, there would have been reason to submit to the governing body a report or return containing unfavourable or critical remarks, submit such a report or return to the Commission.
- (2) The actuary of a private pension scheme shall forthwith inform and, as soon as practicable, submit a report to the Commission where in the performance of his functions he becomes aware or has reason to believe that —
 - (a) the financial soundness of the scheme is seriously prejudiced, or the ability of the scheme to comply with the Act, regulations and FSC Rules made under the Act is otherwise impaired;
 - (b) there is any material change in the operations of the scheme which may jeopardise its ability to continue as a going concern;
 - (c) there has been or there is a breach of any of the provisions of the Act, regulations and FSC Rules made under the Act, or any other enactment relating to the keeping of records;
 - (d) other relevant Acts or FSC Rules, codes and guidelines made by the Commission have not been or are not being properly complied with; or
 - (e) a financial crime or any irregularity is being, has been committed, or is likely to be committed.
- (3) In respect of any act performed or communication made in good faith, whether spontaneously or in response to a request by the Commission pursuant to the

discharge of his duties under this section —

- (a) the actuary shall not be deemed to be in contravention of any enactment or to commit a breach of —
 - (i) any code of professional conduct to which he is subject whether in Mauritius or abroad;
 - (ii) any contractual provision binding him to any confidentiality whether to the private pension scheme or to any other party;
- (b) no civil, criminal or disciplinary proceedings shall lie against the actuary.

14. Duties of actuary

In addition to the duties of the actuary in accordance with sections 20 and 21 of the Act, the Commission may require the actuary of a private pension scheme, at the cost of the scheme, to —

- (a) carry out a valuation or other actuarial analysis of the scheme and make such relevant and necessary recommendations;
- (b) submit to the Commission such additional information in relation to the valuation or other actuarial analysis as the Commission may deem necessary; and
- (c) submit to the Commission a report on any matter specified in paragraphs (a) and (b).

15. Disclosure of interest

- (1) An actuary shall not allow any conflict of interest or the undue influence of any person to override his independent mind and professional judgment in the performance of his duties under the Act and these Rules.
- (2) An actuary of a private pension scheme shall immediately after being aware of any

conflict of interest or potential situation of conflict of interest in the performance of his duties under the Act and FSC Rules, disclose that interest to the governing body of the scheme.

PART IV - MISCELLANEOUS

16. Commencement

These Rules shall come into operation on 1 August 2015.

Made by the Financial Services Commission on 20 July 2015.