



**GUIDANCE FOR PROSPECTIVE APPLICANTS
FOR APPROVAL AS A CORPORATE TRUSTEE
UNDER THE PENSION TRUST FUNDS ACT 1966**

Guidance
October, 2017

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1.0 Introduction

This Guidance has been issued by the Pension Commission (the “Commission”) to provide information for prospective applicants for approval as a corporate trustee under the Pension Trust Funds Act 1966 (the “Act”) and the supervisory process which the Commission will apply. It will be updated as necessary and revised versions published from time to time. The Guidance reflects the Commission’s requirements and explains the Commission’s regulatory approach.

2.0 Regulatory Scope

The Pension Trust Funds Act 1966 is the statutory basis for the registration and administration of private, pension trust funds in Bermuda. The Act provides for the Commission to approve any person as a trustee for such pension trust funds in Bermuda.

3.0 Applications

An application for approval as a trustee under the Act may be made by any Corporate entity whether resident in Bermuda or overseas.

The Commission requires that each proposed trustee of a pension plan submit a completed Questionnaire.

In considering an application, the Commission may: -

- a) carry out any enquiries which it considers appropriate (e.g. approaching other regulators);
- b) ask the applicant, or any specified representative of the applicant, to attend a meeting with the Commission to answer questions and explain any matter(s) the Commission considers relevant to the application;
- c) seek additional information from the applicant;
- d) request any information furnished by the applicant to be verified in such manner as the Commission may specify; and
- e) take into account any other information which the Commission considers relevant in relation to the application.

The Commission will not grant its approval unless it is satisfied that the minimum criteria are met or are capable of being met by the applicant. However, even when so satisfied, the Commission always retains discretion not to approve an application.

The Act imposes no time limit within which the Commission must reach a decision in respect of an application. In practice the Commission seeks to deal with applications as promptly as possible. The time required to complete its initial

enquiries may vary, however, depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary. Generally, the Commission would not expect an application to remain outstanding for a period in excess of 4 weeks; and in most cases the timetable will be appreciably less.

4.0 Reporting Requirements

Subsequent to an applicant being approved as a trustee, the Commission also expects to be advised immediately of the following:

- (i) instances of legal (criminal or civil) action against the trustee; or
- (ii) requests for information or assistance in relation to ongoing inquiries by a domestic or foreign regulatory body.

The Commission would stress that it expects communication to be open and proactive in ensuring that the Commission is kept informed of material developments when, or before, they occur.

4.1 Compliance Meetings/Reviews

The Commission may require that meetings be held with a trustee or trustees to discuss any aspect of their involvement in a pension trust fund or any particular concerns the Commission has relating to the pension trust fund. Meetings can take place at the Commission or at a trustee's premises.

The purpose of on-site reviews is to enable the Commission to review a plan's compliance with the Act as well as the processes that trustees have put into place to ensure that their fiduciary obligations are being satisfied. On-site reviews involve structured visits to trustee's offices when, typically, the Commission discusses a range of issues and/or reviews a selection of documentation and files. On-site reviews may be frequent or infrequent depending on the Commission's assessment of the degree of risk in the plan. Trustees can normally expect to be pre-notified well in advance of when a review will take place. In exceptional cases (e.g. where the Commission has material concerns for the interests of plan members) the Commission may conduct a visit at short or even no notice.

The Commission will normally write to the trustee approximately four to six weeks ahead of a review, requesting pre-visit information and providing more details regarding how the Commission intends to structure the review.

4.2 Disclosure of Information

The Commission will generally respect the confidentiality of the information it receives.

However, unless prohibited under the Act, the Commission will share such information as it deems appropriate for the purpose of enabling or assisting the Minister of Finance or another authority or regulatory body in Bermuda or overseas.