

**PENSION COMMISSION
GUIDANCE FOR PROSPECTIVE APPLICANTS
FOR APPROVAL AS A PENSION PLAN
ADMINISTRATOR**

Guidance
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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 pension plan administrator under the National Pension Scheme (Occupational Pensions) Act 1998. (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 understanding of the legal provisions affecting administrators and explains the Commission’s regulatory approach. However, interpretation of the statutes is ultimately a matter for the Bermuda courts and the Commission cannot provide definitive views.

2.0 Regulatory Scope

The National Pension Scheme (Occupational Pensions) Act 1998 and the National Pension Scheme (General) Regulations are the statutory basis for the establishment and administration of private, occupational pension schemes in Bermuda. The Act provides for the Commission to approve any person as an administrator for pension plans in Bermuda.

3.0 Applications

An application for approval as an administrator under the Act may be made by a local company incorporated under the Bermuda Companies Act 1981 (the “Companies Act”). The applicant must have the objects and powers in its Memorandum of Association and bye-laws that enable it to carry on pension plan administration

An application for approval must be made in the form provided by the Commission.

The Commission also requires that an applicant submit completed Personal Questionnaires (or Institutional Questionnaires) as applicable. Questionnaires are required from each significant shareholder, director and officer responsible for the applicant’s business.

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) visit the applicant to review the proposed premises and files pertaining to the business that it is proposed to conduct in the approved entity;
- e) request any information furnished by the applicant to be verified in such manner as the Commission may specify; and
- f) 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 - notably if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that for any reason there might be significant threats to the interests of clients or potential clients.

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 6 weeks; and in most cases the timetable will be appreciably less.

4.0 Supervisory Process

Supervision enables and requires judgments to be made about the nature of an applicant's business, the quality of its management, the effectiveness of its controls and compliance, the fairness of its treatment of customers and about its financial viability. In order for the Commission to make these judgments, it needs to receive and keep under review information from various sources.

The Commission's regulation of pension plans involves regular meetings with the senior management of approved companies, together with scrutiny of any information on the administrator's performance, and regular compliance visits to its premises. While the Act provides certain regulatory powers for the Commission to require information from administrators, the Commission expects administrators to co-operate and provide voluntarily and routinely any information required by the Commission. Where necessary information is not forthcoming or when concerns arise about the completeness or timeliness of

information provided, the Commission may decide to utilise its formal powers to require information.

4.1 Reporting Requirements

The Act requires that administrators provide the Commission with a variety of reports and financial information related to the pension plans under their administration. All administrators must submit the relevant information within the required timelines specified under the Act or Regulations. If an administrator is unable to submit the required information, the Commission expects to be notified immediately and may, if there are reasonable grounds for doing so, extend the time limit for submission.

The Commission also expects, as a courtesy, to be advised immediately of the following:

- (i) substantial reductions in authorized and issued share capital of the company;
- (ii) instances of legal action against the administrator involving the risk of material financial cost or reputational damage;
- (iii) requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body; and
- (iv) material changes in the business undertaken, including any proposal to undertake non-pension administration business.

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

4.2 Off – Site Compliance Reviews

Regular meetings provide an opportunity for the Commission to discuss with senior management the development of the administrator's business, including past performance and future strategies for the business. Meetings are normally scheduled annually, but may be more frequent when the Commission judges it necessary. Ad hoc meetings will also take place to discuss important interim developments or concerns.

Topics discussed at such meetings may include:-

- a) Financial reporting and financial statements (audited, where applicable);
- b) Any planned changes to business strategies;

- c) Material operational changes, changes in managers, custodians, key staff members, etc;
- e) Adequacy of capital;
- f) Internal controls issues;
- h) Adequacy of procedures manuals;
- i) Staff training;
- j) Anti-money laundering procedures and compliance;
- k) Adequacy of insurance coverage;
- l) Disaster recovery planning; and
- m) Scheduling of the Commission's on-site compliance reviews.

Meetings can take place at the Commission or at the administrator's own premises.

4.3 On – Site Compliance Reviews

The purpose of on-site reviews is to enable the Commission to review compliance with policies and procedures (e.g. record keeping, segregation of assets etc.), as well as the processes that management has put into place to monitor and control key risks in the business. On-site reviews involves structured visits to an administrator's offices when, typically, the Commission interviews a range of management and staff and reviews a selection of documentation and files. A review of compliance with "know your customer" and record keeping requirements, in relation to the Proceeds of Crime Act, forms part of all of the Commission's visits. On-site reviews may be frequent or infrequent depending on the Commission's assessment of the degree of risk in the business and the effectiveness of the administrator's personnel, systems and controls for monitoring risk. Administrators 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 clients) the Commission may conduct a visit at short or even no notice.

The Commission will normally write to the administrator 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. The pre-visit information requested may include:

- i) A staff chart for the administrator with brief job descriptions for key personnel;
- ii) A completed response to the Commission's questionnaire on the administrator's anti-money laundering policies and practices;
- iii) Copies of procedures manuals;
- iv) Copies of staff training plans; and

- v) Copies of disaster recovery plans (e.g. off-site, back up record management systems)

4.4 Disclosure of Information

While the Act does not generally prevent the Commission from sharing any information which it has in its possession, it will respect the confidentiality of the information it receives.

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