



**PENSION COMMISSION
GUIDANCE FOR PROSPECTIVE APPLICANTS**

**FOR APPROVAL AS A TRUSTEE UNDER
THE NATIONAL PENSION SCHEME
(OCCUPATIONAL PENSIONS) ACT 1998**

28 July, 2020

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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 or local retirement product trustee under the National Pension Scheme (Occupational Pensions) Act 1998. (the “Act”) and Regulations made thereunder (the “Regulations”) 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 Act is the statutory basis for the establishment, administration and regulation of private, occupational pension schemes or local retirement products in Bermuda. Section 18 of the Act specifically requires all assets to be held by an approved trustee. The Third Schedule under the Act provides for the minimum criteria for a person to be approved as a trustee. For the avoidance of doubt, the reference to “person” includes any company or association or body of persons, whether corporate or unincorporate.

3.0 Applications

As of 2 March, 2020, a person who-

- (a) lawfully performs the duties of a trustee in relation to a registered pension plan or local retirement product; and
- (b) applies to be approved as a trustee, not later than six months from 2 March, 2020,

may continue to perform those duties until his application is determined by the Commission. Please note that due to the Covid-19 pandemic and subsequent shelter in place requirements, conduct of business restrictions and the resulting impact on a plan’s ability to submit an application for approval, the Commission has agreed to provide an extension of time for such applications to be made outside of the initial six-month period.

Section 17A of the Act and Regulation 4A provide for the application and related matters that a person wishing to be approved as a trustee must submit to the Commission. An applicant is required to submit a completed Application Form (Form 6) (see Appendix 1) and the non-refundable prescribed fee (currently \$100 per trustee).

The Commission requires that each proposed trustee also submit a completed Personal Questionnaire or Corporate Questionnaire, as applicable (see Appendices 2 and 3).

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 specified in the Third Schedule have been fulfilled with respect to the applicant.

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 an application 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 expect to reach a decision on an application not in excess of 6 weeks; and in most cases the timetable will be appreciably less.

If approved, the Commission shall, upon payment of the prescribed fee (currently \$100), issue a certificate of approval to the applicant.

If the Commission proposes to refuse to approve a person as a trustee, it will serve written notice of the proposal together with the reasons therefor, on the applicant.

4.0 Hearings and Appeals

A person receiving a notice from the Commission that it proposes to refuse to approve the applicant as a trustee, is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice, written notice accepting that a hearing should be held regarding the matter in which the Commission proposes to make a decision.

Following any such hearing, the Commission will serve on the party to the hearing written notice which must-

- (a) give its decision;
- (b) give reasons for the decision; and
- (c) inform the party of his right to appeal the Commission's decision to the Supreme Court under section 52 of the Act.

A decision notice shall be served within ninety days of the date of the hearing. If no decision notice is served within this period, it shall be deemed that the Commission has decided not to take the action proposed in the notice of the proposal originally served.