



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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**PROPOSALS TO ENHANCE THE  
REGULATORY FRAMEWORK FOR  
PENSION SCHEMES AND PENSION  
PROVIDERS**

**DISCUSSION PAPER**

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## DISCUSSION PAPER

This Discussion Paper is issued by the Isle of Man Financial Services Authority ('the Authority'), the regulatory body for the financial sector in the Isle of Man.

The purpose of this Discussion Paper is to set out the Authority's policy intention to enhance the Island's regulatory framework for private pensions and their providers<sup>1</sup>. It also considers, at a high-level, how this could be achieved in practice, and seeks views from all interested parties in respect of these matters in order to help the Authority determine the best legislative route to achieve its policy objectives.

This Discussion Paper will be of particular interest to persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes registered under the Retirement Benefits Schemes Act 2000.

The closing date for comments is **27 April 2018**.

Please send comments in writing and preferably by email to:

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### **Confidentiality**

*The information you send may be published in full or in a summary of responses.*

*All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2002). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.*

If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at Policy@iomfsa.im or by telephone on +44 (0) 1624 646000.

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<sup>1</sup> Please note that these proposals are not related to the new pension freedoms announced in the recent Budget. Pension freedoms is a separate initiative being taken forward by the Isle of Man Treasury.

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## GLOSSARY OF TERMS

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<b>Authority</b>	Isle of Man Financial Services Authority
<b>CISA08</b>	Collective Investment Schemes Act 2008
<b>Consumers</b>	Members and beneficiaries of retirement benefits schemes
<b>DB</b>	Defined benefit (pension scheme benefits based on a formula linked to years of service for an employer and the member's earnings)
<b>DC</b>	Defined contribution (pension scheme benefits based on how much is paid in and how the investments have performed)
<b>Domestic Regulations</b>	Retirement Benefits Schemes (Domestic Schemes) (General Administration) Regulations 2004
<b>FSA08</b>	Financial Services Act 2008
<b>International Regulations</b>	Retirement Benefits Schemes (International Schemes) Regulations 2001
<b>Pension Providers</b>	Persons who provide certain services in relation to retirement benefits schemes registered under the RBSA, mainly persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes registered under that Act
<b>Pension scheme</b>	Used in this paper interchangeably with the term "retirement benefits scheme" within the meaning of the RBSA
<b>RBSA</b>	Retirement Benefits Schemes Act 2000
<b>Rule Book</b>	Financial Services Rule Book 2016
<b>SIPP</b>	Self-invested personal pension (broadly, a personal pension scheme under which the member has more freedom than usual to choose and manage investments)

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# 1 EXECUTIVE SUMMARY

## Overview

### *Background and purpose*

- 1.1 The Authority is the Island's regulator in respect of private pension arrangements which fall within the scope of the RBSA (also referred to in this paper as "retirement benefits schemes"). The Authority's regulatory objectives include the protection of members of retirement benefits schemes<sup>2</sup> and the maintenance of confidence in the Island's pensions industry through effective regulation of that sector<sup>3</sup>.
- 1.2 Following initial engagement between representatives of the pensions sector<sup>4</sup> and the Authority in January 2018, the Authority is publishing this Discussion Paper to communicate its policy intention to enhance the Island's regulatory framework for private pension schemes and Pension Providers and discuss how this could be achieved in practice; it also seeks views from all interested parties in respect of those implementation approaches in order to help the Authority to determine the best legislative route to achieve its policy objectives.
- 1.3 The overriding policy objective of the proposals outlined in this Discussion Paper is to enhance the regulatory framework in order to increase consumer protection. Enhancing the regulatory framework will also help the Island to continue to meet international standards and safeguard the Island's reputation as a well-regulated financial services jurisdiction.
- 1.4 In carrying out its functions, the Authority is mindful of the need to operate in a manner which is consistent with the principles of good regulation, including maintaining competitiveness and minimising any adverse effects of regulation. Therefore, the Authority invites persons who provide services in relation to pension schemes and other interested parties to work in conjunction with the Authority to ensure that the regulatory framework remains effective and proportionate and, as far as possible, does not detract from the competitiveness of the Island.
- 1.5 This Discussion Paper is a working document and the identification of a particular possibility should not be taken as an indication that it will be adopted.

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<sup>2</sup> Section 2(2)(a) of the Financial Services Act 2008.

<sup>3</sup> Section 2(2)(c) of the Financial Services Act 2008.

<sup>4</sup> The Isle of Man Association of Pension Scheme Providers (APSP)

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## **Summary of proposals**

- 1.6 It is considered to be important to the reputation of the Island that the regulatory regime be amended such that Pension Providers are subject to appropriate business conduct and prudential regulatory requirements which protect pension scheme members, prevent exploitation by firms, and enable pension consumers to receive financial services and products that are suitable for their needs. The framework also needs to provide for adequate enforcement tools.
- 1.7 There are two possible options for implementing the relevant changes, both of which are summarised in the table below:

<b>Option</b>	<b>Details</b>
<b>Option 1</b>	Bring Pension Providers under the scope of the FSA08 by creating a new class of regulated activity under that Act and applying appropriate business conduct and prudential rules in the Rule Book to such persons and/or inserting new rules in the Rule Book for the purposes of the new class of regulated activity, as appropriate.
<b>Option 2</b>	Enacting new business conduct and prudential regulatory requirements, as well as new enforcement provisions, in/under the RBSA.

- 1.8 This Discussion Paper is intended to introduce some of the proposed changes to the regulatory framework, as well as the possible options for implementing those changes. At this point in time, preliminary views are being sought on the general policy direction and the two possible implementation approaches, and this Discussion Paper will be followed up with more detailed proposals for consultation at a future date.

## **Responding to the paper**

- 1.9 The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the potential approaches set out in this Discussion Paper. Please note that comments may not necessarily result in a change to the proposals.
- 1.10 The Authority wishes to encourage submission of views and confirms that **respondents will not be publicly identified**. However, please do not submit comments anonymously, as they will not be considered or included in the response to this Paper.

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- 1.11 This Discussion Paper will be publicly available and sent to all scheme administrators registered under the RBSA. This paper has also been sent to the representative groups listed in Appendix A.
- 1.12 Representative groups are asked when responding to provide a summary of those they represent and the methodology used to gain their members' input.

### ***Rationale for the proposals***

#### ***Legal and regulatory gaps***

- 1.13 The RBSA imposes duties on certain persons in connection with individual retirement benefits schemes which are subject to registration under that Act (product regulation). However, the RBSA does not impose duties on Pension Providers in relation to the way that they manage and conduct their businesses as a whole (regulation of *providers* of financial products and services).
- 1.14 Consequently, Pension Providers are not currently subject to any regulatory requirements at firm-level under the RBSA, for example, in relation to –
- corporate governance;
  - internal controls;
  - risk management;
  - conflicts of interest;
  - outsourcing;
  - client money; or
  - own solvency.
- 1.15 In addition, there is a narrower range of enforcement powers under the RBSA as compared to those under other regulatory Acts, such as the IA08 and FSA08.

#### ***Cross-jurisdictional comparison***

- 1.16 Pension scheme providers<sup>5</sup> operating in other jurisdictions, such as Guernsey, Gibraltar and Malta, are typically subject to business conduct and prudential regulatory requirements (in addition to provisions in relation to pension schemes).

#### ***Cross-sectoral comparison***

- 1.17 Similarly, other financial service providers who are supervised and regulated by the Authority, including, for example, trust and corporate service providers and insurance

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<sup>5</sup> With particular reference to firms operating in other jurisdictions as a pension scheme trustee by way of business.

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managers, are subject to business conduct and prudential regulatory requirements under the FSA08 or the Insurance Act 2008 (as applicable).

### **International standards**

- 1.18 The International Organisation of Pension Supervisors<sup>6</sup> Principles of Private Pension Supervision<sup>7</sup> provide that: “the objectives of private pension supervision focus on protecting the interests of pension fund members and beneficiaries” and “the effective supervision of pensions, and of the ***institutions that provide pension products and services***, is required to ensure the protection of consumers” (emphasis added).
- 1.19 Similarly, the Organisation for Economic Co-operation and Development’s Core Principles of Private Pension Regulation<sup>8</sup> provide that legal provisions should be in place requiring the ***registration and/or licensing of pension entities***<sup>9</sup>, as well as the registration and/or licensing of pension funds or plans, and those procedures should contribute to ensuring that pension plans, funds and entities have appropriate governance structures and mechanisms in place (emphasis added).
- 1.20 Therefore, under recognised best international practice, the scope of pension supervision includes the regulation and supervision of both pension products and pension providers.

### **Consumer protection**

- 1.21 The Authority’s regulatory objectives include protection for members of retirement benefits schemes<sup>10</sup>, and there is an increasing focus internationally on consumer protection in the field of private pensions.
- 1.22 In recognition of the importance of protecting the interests of pension consumers, the International Organisation of Pension Supervisors<sup>11</sup> has recently undertaken a public consultation on Draft IOPS Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to Private Pension Systems<sup>12</sup>. Appendix B

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<sup>6</sup> The International Organisation of Pension Supervisors acts as a standard-setting body on pension supervisory matters and regulatory issues. As at January 2018, it has 87 members and observers representing 76 countries and territories worldwide, and the Isle of Man Financial Services Authority is currently a member thereof.

<sup>7</sup> <http://www.iopsweb.org/principlesguidelines/IOPS-principles-private-pension-supervision.pdf>

<sup>8</sup> <http://www.oecd.org/daf/fin/private-pensions/Core-Principles-Private-Pension-Regulation.pdf>

<sup>9</sup> Including a corporate trustee in the case of pension funds established as a trust.

<sup>10</sup> Section 2(2)(a) of the Financial Services Act 2008.

<sup>11</sup> The International Organisation of Pension Supervisors acts as a standard-setting body on pension supervisory matters and regulatory issues. As at January 2018, it has 87 members and observers representing 76 countries and territories worldwide, and the Isle of Man Financial Services Authority is currently a member thereof.

<sup>12</sup> [http://www.iopsweb.org/GP\\_Consumer-Protection\\_public\\_consultation.pdf](http://www.iopsweb.org/GP_Consumer-Protection_public_consultation.pdf)



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sets out some of the draft Good Practices identified by the International Organisation of Pension Supervisors.

### ***Sector risk profile***

1.23 In addition, the risks associated with pensions can be particularly problematic due to the characteristics of these financial products, for example –

- the long-term nature of the pension arrangements;
- their coverage of a wide social and economic range of the population;
- the low risk tolerance of pension scheme members and beneficiaries, as the pension arrangements are typically established for the purpose of providing subsistence rather than discretionary savings;
- the complexity of the products, involving tax issues, assumptions over future salaries/income, longevity, difficulty in the valuation of assets and liabilities etc.;
- asymmetrical information<sup>13</sup> between pension providers or financial intermediaries and consumers.

1.24 Consequently, such risks increase the need to ensure that the regulatory framework for pensions and Pension Providers is fit for purpose and suitably protects the interests of pension consumers.

### ***Safeguarding the Island's reputation***

1.25 The Authority's regulatory objectives also include the maintenance of confidence in the Island's pensions industry through effective regulation of that sector<sup>14</sup>, and it is important for the reputation of the Island's finance sector, particularly given the nature of the risks associated with pensions, that the supervisory and regulatory framework for pensions and Pension Providers continues to meet international standards and includes appropriate measures to suitably protect the interests of pension consumers.

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<sup>13</sup> Asymmetrical information occurs when somebody knows more than somebody else in a market. Pension consumers may not have adequate knowledge and understanding about pension products to fully understand those products and their risks, particularly given the complexity of pensions, which may lead to Pension Providers or financial intermediaries (sellers) knowing more about the products than pension consumers (buyers).

<sup>14</sup> Section 2(2)(c) of the Financial Services Act 2008.

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## **2 THE CURRENT FRAMEWORK**

- 2.1 We have summarised some of the key features of the current regulatory framework in Appendix C.

## **3 THE PROPOSALS**

### **Conduct and prudential regulation**

- 3.1 The Authority is proposing to revise the Island's regulatory framework for pensions and Pension Providers such that persons who provide certain services in relation to certain private pension schemes (principally persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes which are registered under the RBSA) are subject to appropriate conduct and prudential regulatory requirements.

### **Enhanced enforcement powers**

- 3.2 It is also envisaged that the enforcement powers applicable to the Island's pension sector will be enhanced to put them on a par with the enforcement powers applicable to other sectors regulated by the Authority.

### **Streamlining reporting requirements etc.**

- 3.3 In recognition of the need to minimise the adverse effects of regulation and move towards a more risk-based approach to supervision, it is intended that the regulatory review will also encompass a review of the current reporting requirements under the RBSA, with particular reference to the requirement to submit annual scheme returns, including a copy of the annual accounts for the scheme. The review may also be extended to consider the requirements regarding the preparation and audit of scheme accounts.
- 3.4 This review may potentially result, for example, in the reporting requirements for certain types of scheme (for example, certain 1-2 member retirement benefits schemes) being reduced.

### **Other possible areas for reform**

- 3.5 As well as welcoming feedback in relation to the Authority's proposals set out in this Discussion Paper, the Authority would also like to invite the local pensions industry and other interested parties to advise the Authority of any other areas of the regulatory framework for pensions and Pension Providers which could benefit from further development, in line with the Authority's regulatory objectives.

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## Legal approaches

- 3.6 As mentioned at 1.7 above, there are two potential ways that the proposed changes to the framework for Pension Providers could be implemented.
- 3.7 Both of these options would involve the retention of the RBSA and the oversight of retirement benefits schemes under that Act would remain largely unchanged. Both options would also require the introduction of primary legislation to amend the RBSA and, in light of the time required for all the necessary steps to be taken for the introduction of primary legislation, the revised framework is unlikely to come into operation before 2020 irrespective of which option may be chosen.
- 3.8 It must also be emphasised that the enhanced regime will be broadly the same regardless of which option is used to effect any relevant changes to the framework.

### Option 1

- 3.9 The first option is to make the formation, management and administration of certain pension schemes regulated activities under the FSA08.
- 3.10 This would then enable the Authority to apply or make appropriate rules in the Rule Book made under the FSA08 in respect of Pension Providers falling within the new class of regulated activity, if and when appropriate, without the need for duplicate provisions to be enacted under the RBSA.
- 3.11 The RBSA would be retained, and the retirement benefits schemes would continue to be regulated under that Act.
- 3.12 Consequently, option 1 would effectively produce a regulatory framework for retirement benefits schemes which has a similar structure to the regulatory framework in place for collective investment schemes and their functionaries, whereby the framework is split such that retirement benefits schemes (the products) remain regulated under the RBSA, and the key functionaries who provide services in relation to retirement benefits schemes (the providers) are regulated under the FSA08.
- 3.13 Option 1 also has the added advantage that it should help to facilitate a more consistent approach to the supervision and regulation of financial services providers across the sectors that the Authority regulates and supervises.
- 3.14 Similarly, option 1 should enable groups which operate in more than one financial services sector in the Island (for example, trust and corporate service providers who have a sister company which is a Pension Provider) to apply the relevant regulatory requirements in a consistent manner across their entire business.

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## Option 2

- 3.15 The second option is to enact new conduct and prudential provisions, and enhance the enforcement provisions, in/under the RBSA, and apply those provisions to Pension Providers (principally persons who act by way of business as a trustee and/or an administrator of retirement benefits schemes registered under the RBSA).
- 3.16 This option would require a large body of legislative provisions to be enacted in/under the RBSA to broadly replicate existing provisions in/under the FSA08.
- 3.17 However, the Authority appreciates that there may be various reasons why some interested parties would prefer both the regulatory provisions in relation to Pension Providers and the regulatory provisions in relation to pension schemes to be contained in/under the RBSA, for example because it may be considered to be advantageous from an international marketing perspective. If so, we would like to invite those parties to advise us of the reasons for their views and we will take the same into consideration in developing our policy proposals.

## 4 IMPACT ASSESSMENT

- 4.1 The proposed enhancement of the regulatory framework will –
- provide for clear and appropriate business conduct standards, resulting in a greater degree of regulatory transparency and consistency;
  - include effective enforcement tools to enable the Authority to take corrective actions in cases of non-compliance, which may also have a deterrent effect;
  - reduce the risk of poor consumer outcomes;
  - enhance levels of confidence and security in the Island’s regulatory and supervisory framework for private pension provision;
  - support the continued international reputation of the Island as a well-regulated financial services jurisdiction.
- 4.2 We believe that the compliance costs of the proposals are proportionate to the objective of protecting consumers, and any such costs might potentially be partially offset by reducing certain reporting requirements under the RBSA.

## 5 QUESTIONS

- 5.1 The Authority, at this time, wishes to focus primarily on *how* the proposed changes should be implemented. Therefore, most of the questions in the table below concern the two different options by which the proposed changes to the framework could be effected.

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5.2 Nevertheless, it is important that interested parties should not feel confined to addressing only the matters raised in this paper.

Number	Question
Question 1	Do you agree that the proposal to amend the regulatory framework for Pension Providers to include appropriate conduct and prudential requirements would achieve the policy objective of developing an effective legal framework which helps to ensure the fair treatment of pension consumers and helps to maintain and enhance the Island's reputation as a well-regulated offshore finance centre? Please provide the reasons for your response.
Question 2	Do you consider either option 1 or option 2 to be preferable? Please state which option you consider to be preferable and the reasons for your views.
Question 3	Are you aware of any unintended consequences which might occur as a result of using <b>option 1</b> to implement the proposed amendments? If so, please provide brief details regarding the unintended consequences that you believe might occur.
Question 4	Are you aware of any unintended consequences which might occur as a result of using <b>option 2</b> to implement the proposed amendments? If so, please provide brief details regarding the unintended consequences that you believe might occur.
Question 5	Are there any other issues related to the subject matter of this Discussion Paper that you feel should be considered?
Question 6	Do you have any other suggestions that you consider would improve the Island's regulatory framework for pensions and/or Pension Providers?

## 6 NEXT STEPS

6.1 The Authority will publish further documentation in due course, providing its assessment of the feedback received and setting out its proposals in more detail for further consideration and consultation.



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## **APPENDIX A – LIST OF REPRESENTATIVE GROUPS WHO HAVE BEEN SENT THIS DISCUSSION PAPER**

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certified Accountants
- Association of Corporate Service Providers
- Association of Pension Service Providers
- Chamber of Commerce
- Chartered Institute for Securities and Investment
- Financial Planning & Insurance Brokers Association
- Institute of Chartered Secretaries and Administrators
- Institute of Directors
- Isle of Man Wealth & Fund Services Association
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Insurance Institute
- Isle of Man Law Society
- Isle of Man Society of Chartered Accountants
- Isle of Man Trade Union Council
- London Institute of Banking & Finance
- Manx Insurance Association
- Society of Trust and Estate Practitioners
- Wealth Management Association.

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## **APPENDIX B – EXTRACTS FROM THE DRAFT IOPS GOOD PRACTICES ON THE ROLE OF PENSION SUPERVISORY AUTHORITIES IN CONSUMER PROTECTION RELATED TO PRIVATE PENSION SYSTEMS**

- Legislators are encouraged to strengthen the roles and powers of Pension Supervisory Authorities in consumer protection where necessary and appropriate to achieve the objectives of these Good Practices.<sup>15</sup>
- Pension Supervisory Authorities should place a focus on the governance and risk management practices of trustees (board of trustees) and managing directors (board of directors) of pension funds or schemes as a part of broader efforts to foster a consumer culture ensuring responsible and accountable actions of the senior management of financial services providers and trustees and holding them accountable for failures. Pension Supervisory Authorities should endeavour to impact and influence the longer term behaviour of pension services providers, putting interests and the fair treatment of consumers in the focus of the entities' corporate culture.<sup>16</sup>
- Pension Supervisory Authorities should be involved in creating rules, monitoring and supervising business conduct and/or general compliance with consumer protection rules, general governance rules, fiduciary rules and legal requirements by pension services providers, trustees and authorised agents.<sup>17</sup>
- The monitoring should include whether pension services providers and trustees adhere to business conduct rules including fair treatment of consumers and whether they have in place measures to avoid or mitigate conflict of interest situations that could negatively impact the consumers' best interests.<sup>18</sup>
- Pension Supervisory Authorities should deploy effective enforcement tools to take corrective actions and/or actions with a deterrent effect in case of non-compliance of pension services providers and other entities with business conduct rules.<sup>19</sup>

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<sup>15</sup> Preamble, para 7, Draft IOPS Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to Private Pension Systems (2017)

<sup>16</sup> Part I, para 7, Draft IOPS Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to Private Pension Systems (2017)

<sup>17</sup> Part IV, para 27, Draft IOPS Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to Private Pension Systems (2017)

<sup>18</sup> Ibid.

<sup>19</sup> Part IV, para 31, Draft IOPS Good Practices on the Role of Pension Supervisory Authorities in Consumer Protection related to Private Pension Systems (2017)



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## **APPENDIX C – THE CURRENT FRAMEWORK**

### **Registration of schemes**

Private pension arrangements within the scope of section 1 of the RBSA are currently subject to registration under that Act, unless otherwise exempted or excluded.

As at the date of this Discussion Paper, there are 1,177 retirement benefits schemes registered under the RBSA.

### **Registration of scheme administrators**

Certain retirement benefits schemes that are subject to registration under the RBSA must have an administrator<sup>20</sup> that is registered under section 36 of that Act.

As at the date of this Discussion Paper, there are 50 registered scheme administrators.

### **Trust-based schemes**

Retirement benefits schemes subject to registration under the RBSA are currently required to hold all of their assets under irrevocable trust.

Consequently, retirement benefits schemes registered under the RBSA will have one or more trustees in addition to a scheme administrator. In some cases a single company will act as both the trustee and administrator of a scheme, in other cases the trustee and the administrator may be two separate companies (often within the same group of companies). Lay persons, for example pension scheme members, may also act as trustees of retirement benefits schemes.

However, persons who act as a trustee of retirement benefits schemes registered under the RBSA are not subject to registration under that Act and they are not usually subject to licensing under the FSA08 in respect of their functions under the RBSA.

### **Fitness and propriety**

Although retirement benefits scheme trustees may not be subject to registration under the RBSA or licencing under the FSA08, section 3(7)(b) of the RBSA provides that a scheme is not qualified to be registered under that section of the Act unless the Authority is satisfied that the trustee is a fit and proper person to undertake his functions.

Similarly, section 36(3)(a) RBSA provides that a person may not be registered as a schemes administrator unless the person concerned satisfies the Authority that he is a fit and proper

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<sup>20</sup> Section 54 RBSA defines the administrator as “the person responsible for the management of the scheme”.

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person. In addition, regulations made under the RBSA<sup>21</sup> provide that the scheme administrator must also have adequate knowledge and experience fitted for the management of the retirement benefits scheme for which an application for registration is being made.

### **Scheme record keeping**

Regulations made under the RBSA require the trustee and administrator of certain retirement benefits schemes to keep certain records in relation to a scheme for which they act.<sup>22</sup>

### **Scheme reporting requirements**

Regulations made under the RBSA also require the trustees and administrator of certain retirement benefits schemes to prepare and provide the Authority with an annual report about the scheme, which must include the latest annual accounts for the scheme.<sup>23</sup>

### **Disclosure of information**

The trustees or managers of most pension schemes must make certain information about the scheme available to eligible persons, including scheme members<sup>24</sup>.

Some of the information must be provided automatically, for example when a new member joins a scheme or a member retires.

In other cases information must be provided on request, for example if a scheme member requests a copy of the scheme's annual report and accounts, the trustee of the scheme must provide the member with the requested information within 2 months<sup>25</sup>.

### **Scheme investment governance**

The trustees of certain types of retirement benefits schemes registered under the RBSA (typically larger occupational pension schemes) are also subject to provisions governing the investment function under that Act. For example, the trustees of an applicable scheme must

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<sup>21</sup> Regulation 4 of the Retirement Benefits Schemes (Management and Miscellaneous Provisions) Regulations 2001.

<sup>22</sup> For example, regulation 10 of the Domestic Regulations and regulation 10 of the International Regulations.

<sup>23</sup> Section 15 RBSA, regulation 5 Domestic Regulations and regulation 5 International Regulations.

<sup>24</sup> Regulation 5(2) of the Domestic Regulations and the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 as applied to the Island by the Pension Schemes Legislation (Application) (No. 2) Order 1998 or the Personal Pension Schemes (Disclosure of Information) Regulations 1987 as applied to the Island by the Social Security Legislation (Application) (No. 6) Order 1988 of Part IX of the International Regulations (as applicable).

<sup>25</sup> Regulation 5(2) of the Domestic Regulations or regulation 22(1) of the International Regulations (as applicable).

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appoint a scheme investment manager, and the investment manager must be a person who is regulated to carry on investment business in that person's jurisdiction of residence<sup>26</sup>.

The trustees of certain retirement benefits schemes are also required to obtain and consider appropriate investment advice before making certain investment decisions, including whether to make or retain an investment, unless these decisions have been delegated to an investment manager<sup>27</sup>.

However, a significant proportion of schemes registered under the RBSA are not subject to the provisions under that Act in relation to the investment function due to the nature of those schemes, for example certain SIPP type arrangements which involve the member rather than a Pension Provider or a scheme investment manager making the investment decisions and certain small occupational pension schemes where every member acts as a trustee and the decisions regarding the scheme are made by unanimous agreement of the trustees who are members of it.

## **Regulation of pension providers**

As stated previously, the RBSA currently focuses primarily on the regulation of the pension schemes, rather than the regulation of Pension Providers.

Also, Pension Providers are typically excluded from the scope of the FSA08 in respect of functions carried on under the RBSA<sup>28</sup>. Therefore, the business conduct and prudential regulatory requirements under the FSA08 are not usually applicable to Pension Providers when they are acting in the capacity as a retirement benefits scheme trustee or administrator.

The scope of the Island's regime for financial services regulation does not, therefore, currently expressly extend to the regulation of firms in respect of services provided to retirement benefits schemes.

## **Conduct and prudential regulation**

Consequently, Pension Providers are not currently subject to any legal or regulatory requirements at firm-level under the RBSA or FSA08, for example, in relation to –

- corporate governance;
- internal controls;
- risk management;
- conflicts of interest;

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<sup>26</sup> Section 17(1)(c) RBSA and regulation 7(3)(b) of the Domestic Regulations and International Regulations.

<sup>27</sup> Regulation 15(9) of the Domestic Regulations or regulation 13(8) of the International Regulations (as applicable).

<sup>28</sup> Paragraphs 4(i)(e) and 5(d)(v) to (vi) of Schedule 1 to the Regulated Activities Order 2011.

- 
- outsourcing;
  - client money; or
  - own solvency.

Further, because many of the provisions in/under the RBSA were broadly based on UK provisions that were typically applicable only to occupational pension schemes, these gaps in the framework are more acute with reference to personal pension schemes<sup>29</sup>.

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<sup>29</sup> See also the paragraph above regarding scheme investment governance.