



Draft Guideline

Issue:	Trustees acting as Investment Managers of Self-Administered Funds
Legislative Reference:	<p>The Pensions (Superannuation Funds and Retirement Schemes) (Act), 2004 Sections 2, 5(3), 8, 10 and 13;</p> <p>Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations Regulation 10</p> <p>Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations Regulations 7, 20</p>
Date:	11 February 2010

Introduction

Trustees of Superannuation Funds (“Funds”) are required to designate a licensed Investment Manager, as a condition for the registration of the Fund pursuant to the Pensions (Superannuation Funds and Retirement Schemes) Act (“the Act”).

Background

The Financial Services Commission (“FSC”) is aware that some Funds are self-administered thereby allowing Trustees to also serve in the capacity of Investment Manager. For the purposes of this guideline, a self-administered fund is a Fund, where the trustees carry out the investment management or administration of the Fund through a corporate trustee or a company owned by (i) the Trustees or (ii) the Trustees and the sponsor of the Fund. Pending the enactment of legislative amendments to the Act, Trustees of self-administered funds have sought clarification on the need to appoint a licensed Investment Manager in instances where Trustees also seek to continue to act as Investment Manager.

This issue was raised during the FSC’s consultation with stakeholders in 2006 on the proposed amendments to the Act and Regulations.

Legislative Requirements

Section 5(3) of the Act provides that the only persons who may invest or manage the pension fund assets of an approved Fund are (a) a licensed Investment Manager; or (b) a registered Trustee.

Section 10 of the Act requires the Trustees of a Fund to designate an Investment Manager within 30 days after the appointed day of the Act or within 14 days of the termination of employment or resignation of an Investment Manager.

Section 2 of the Act therefore defines the term “Investment Manager” as:

“a company which, pursuant to section 8 (1) (a), is licensed to invest and manage pension fund assets of an approved superannuation fund or approved retirement scheme.”

Section 8 of the Act, prescribes the requirements for the licensing of the Investment Manager by the FSC. Subsection 2 (f) of the Act was amended to remove the requirement for a securities’ dealer’s licence where:

- (i) the Investment Manager is a company owned and controlled by the Sponsor or the Trustees of the fund; and
- (ii) any other fund established by the Sponsor or by a company affiliated with the Sponsor.

Regulation 7 of the Pensions (Superannuation Funds and Retirement Schemes) (Registration, Licensing and Reporting) Regulations (“RLR Regulations”), specifies the requirements for a company to be licensed as an Investment Manager. These include obtaining fidelity guarantee insurance and professional indemnity insurance.

Pursuant to section 13 (1) (a) of the Act, one of the conditions for the FSC’s approval of a Fund for registration under the Act is the appointment of a licensed Investment Manager. This Investment Manager must be licensed under section 8 (1) (a) of the Act.

In addition, section 13 (2) (f) of the Act requires that members’ contributions must be paid over to the Investment Manager within one week of the end of the month in which the contributions were deducted. It should also be noted that Governance Regulations 10(h) of the Pensions (Superannuation Funds and Retirement Schemes) (Governance) Regulations, requires that the Sponsor remit their contributions to an Investment Manager within a time-period to be specified in the constitutive documents of the Fund.

Regulation 20 of the RLR Regulations requires as a condition of registration that funds which have applied to be registered must comply with the reporting requirements of the RLR Regulations as if they had been registered.

The Responsibilities of Trustees of Self-Administered Funds when Investing Pension Fund Assets

Trustees of self-administered funds have an inherent power to invest the assets of the fund for the benefit of members of the fund. Nevertheless, sections 10 and 13 of the Act impose a requirement to have a licensed Investment Manager for the Fund to which Sponsor and member contributions must be paid. The Trustees must take reasonable steps to ensure that the fund's Investment Manager submits the required statutory returns.

In order to facilitate the statutory requirements of sections 10 and 13, the Trustees may therefore designate an Investment Manager which is either a Corporate Trustee or a company. Such company may be owned and controlled by the Trustees or the Sponsor of the Fund. This is consistent with the requirement pursuant to section 13 of the Act regarding conditions for registration of the Fund.

In addition, a Corporate Trustee or a company established by the Trustees to act as the Investment Manager must satisfy the licensing requirements specified in section 8 of the Act and RLR Regulation 7. In addition the licensed Investment Manager is required to comply with the reporting requirements as stipulated in the RLR Regulations.

The Trustees must therefore take reasonable steps to ensure that the Fund's Investment Manager submits the required statutory returns.

Comments regarding this bulletin may be directed by 2010 June 30 to:

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