COLLAS CRILL

Pensions and employee benefit schemes in Guernsey

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Are you an employer? Or are you a trustee which administers pensions or employee benefit schemes?

When did you last review your pension and employee benefit arrangements?

Both employers and trustees have a duty to ensure that any pension or employee benefit scheme (set up by them for their employees or administered by them, as the case may be) is set up and run properly.

The nature of your duties will depend on whether you are an employer or a trustee, but the consequences for a breach of those duties could be serious in either case. The good news is that the risks are avoidable with the right attention to detail, an idea of issues to watch out for and by seeking appropriate legal advice where needed.

The work of our Pensions and Employee Benefits Practice Group over the last couple of years has seen a number of matters involving common problem areas which have needed to be dealt with, on behalf of trustees or employers, or both. These have ranged from simply updating trust documentation to take into account the changes in the tax regime applicable to pensions in Guernsey in 2015, for example, to some potentially serious breaches of the terms of the scheme documents, or even other applicable legislation.

We also regularly give more 'day to day' advice to trustees on their duties where they have been required to make a particular decision concerning a scheme, and also to employers and trustees setting up new schemes or restructuring existing ones.

Examples of our recent work include:

Pensions

- Preparing trust instruments and scheme rules for new pension schemes (including occupational pension schemes, international pension schemes, RATS and QNUPS) for a number of trustees, employers and individuals
- Consolidating and updating existing pension scheme documentation for various trustees and employers
- Preparing a simple guide to pension scheme documentation for the trustees of a pension scheme and an easy to follow flow charts explaining pensioners', deferred pensioners' and transferred staff members' entitlement to benefits under the pension scheme documentation
- Preparing documentation to retire and appoint trustees of various pension schemes

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- Winding up defined benefit schemes and setting up new defined contribution schemes for various employers
- Advising a Guernsey employer on changing the trustee and administrator of its pension scheme
- Ongoing assistance with amendments to the pension scheme documentation of a pan-island (Guernsey, Jersey and Isle of Man) approved pension scheme and preparing documentation to substitute the participating employer
- Advising an employer on a potential mistake in its pan-island (Guernsey and Jersey) pension scheme documentation
- Advising a Guernsey employer on updating its pension scheme documentation in line with the Guernsey sex discrimination legislation introduced in 2006
- Advising a trustee of a Guernsey pension scheme on civil-partners' (rather than spouses') entitlement to benefits under the pension scheme documentation
- Advising the trustee of an international pension scheme, set up in Guernsey for the benefit of overseas employees, on the transfer out of a member to a Hong Kong pension scheme
- Advising a trustee on the transfer to it of a number of RATS and its duties as trustee of the RATS
- Preparing QNUPS documentation for trustees and individuals
- Establishing end of service gratuity schemes for employers in the Middle East

Employee benefit trusts

- Preparing trust instruments and scheme rules for new employee benefit trusts for a number of trustees and employers
- Consolidating and updating existing scheme documentation for various trustees and employers
- Preparing documentation to retire and appoint trustees of various EBTs
- Preparing documentation to add a number of additional participating employers to a share plan
- Advising a Middle Eastern business on the establishment of a number of EBT structures
- Providing Guernsey legal and regulatory advice to the trustee of a number of EBTs on the introduction of real-time dealing into its procedures
- Advising a Guernsey trustee in respect of the consolidation of a number of EBTs for one employer
- Advising a Guernsey trustee of an EBT in respect of its duties in connection with a proposed merger by the employer company and updating the trust documents to take into account the merger

For further details on the issues you may face and how we can assist you with new or existing pension and employee benefit arrangements, click here if you are an employer or here if you are a trustee.

For any further information on pensions or employee benefit arrangements, please contact Kerrie Le Tissier or Angela Calnan.

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