The serious business of pensions

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Why pensions are so important

You do not need to be a finance expert to appreciate the need for an individual to put in place some form of pension or savings plan to make financial provision for retirement. Most people will be aware that any available state or public pension is unlikely to provide sufficient income by itself to allow someone to have the lifestyle they want in retirement.

While many employers offer their staff membership of an occupational pension scheme, most individuals will be dependent on the savings they made during their working life following their retirement.

It is therefore essential that individuals and employers alike, wherever they may be based, have access to pension and retirement schemes which are fit for purpose and a safe place to put their savings.

The need for regulation

Most pension and retirement arrangements will have a 'pension pot' that will be looked after and invested by someone other than the employer or employee. That other person (the trustee or administrator) is responsible for protecting the retirement savings and increasing the value of the 'pot' so that there is enough value at the end of the employee's working life to provide them with a reasonable standard of living. Pensions are serious business - this is a huge responsibility and carries with it considerable risk, so it is important that those looking after our pensions know what they are doing.

It is also essential that there is public trust and confidence in any private pension system so that employers and employees do use it to supplement any state or public pension. A properly regulated and managed pension system should encourage the use of private pensions by employers and individuals alike to make savings for retirement as the savings will be well protected.

Until the end of June 2017, Guernsey did not have any legislation or regulations designed specifically for pensions (other than rules for certain retirement annuity trust schemes), although acting as a professional trustee or administrator of a pension scheme was already regulated under existing legislation that regulates fiduciaries generally. The law relating to Guernsey pensions was limited to the relevant provisions of the local income tax legislation which deals with the approval or recognition of certain schemes for Guernsey income tax purposes.

However, the existing statutory provisions did not (and were never intended to) deal with matters such as the conduct of business of pension providers or their relationship with members and beneficiaries, or the administration of pension schemes themselves.

Pension regulation in Guernsey

Guernsey introduced a new supervisory and regulatory framework for pension and gratuity schemes (a type of retirement scheme which provides for a lump sum payment) on 30 June 2017. The new regime covers all types of private pension and gratuity schemes set up and run in Guernsey, including both occupational schemes (set up by an employer) and personal schemes (set up by an individual for their own benefit), whether domestic or international.

Earlier in the year, the States of Guernsey gave in principle approval for the introduction of a new pension law in Guernsey. Such a significant piece of legislation will take some time to prepare – it is a highly technical area, research will no doubt be carried out on the pensions legislation of other jurisdictions (what works and what does not) and the needs of a number of interested parties will need to be taken into account (from the man on the street to employers, and from the pension industry to government) – so it is unlikely to be in force for another couple of years.

However, whilst the new legislation is being drafted, interim measures have been introduced. Forming, managing or administering a pension or gratuity scheme in Guernsey is now regulated by the Guernsey Financial Services Commission (GFSC) and pension and gratuity schemes themselves are regulated. In addition, rules and regulations specifically designed for the pensions industry have also been introduced. The Pensions Licensees (Conduct of Business) & Domestic and International Pension Scheme Rules 2017 came into force on 30 June 2017.

These measures mean that both pension providers (those that look after and invest pension funds) and pension schemes must now adhere to strict regulations about how business is carried out and how schemes are run, breach of which carries severe penalties.

The new rules apply to all holders of a full fiduciary licence in Guernsey and to all pension schemes (occupational and personal, domestic and international) administered by such licensees, unless specifically agreed otherwise by the GFSC.

Whilst the rules do not apply to "lay" persons providing services to pension schemes (i.e. those that are not licensed and do not need to be licensed) it is expected that they too will consider adhering to some aspects of the rules as best practice.

Who benefits from the new pension rules

Much has been made of the benefit to the Guernsey pension industry and Guernsey PLC in introducing the new regime. It is certainly true that the new regulations will be good for business. The reasons cited for introducing the new regime include meeting recognised best international practice and expectations, improving Guernsey's competitive position, protecting and enhancing Guernsey's reputation as an international finance centre and enabling pension schemes to take advantage of exemptions from the Common Reporting Standard (CRS), which provides for the automatic exchange of information between participating jurisdictions.

On the international front, the expectation is that Guernsey can now market a well-regulated product overseas which will be of interest to international organisations and internationally-mobile individuals wanting to supplement any local state or public pension. International schemes based in an international finance centre such as Guernsey are a cost-effective solution to making provision for the retirement of employees where one might not otherwise exist (for example, because no suitable product exists in the home jurisdiction of the employer or because its employees live and work in different places). Having these types of pensions regulated in a reputable jurisdiction such as Guernsey will make them more attractive overseas in places where there is an expectation that pensions are properly regulated.

The rules will also benefit individuals – members of pension schemes, whether set up by their employer or by them personally, will be better protected as their pension providers and pensions themselves will be subject to strict regulation. The interests of members are central to the new rules which deal with matters such as the information about the scheme which must be provided to members (both when a scheme is set up and during its lifetime), the fees and charges which may be paid out of their pension 'pot' and members' involvement in investment decisions

Individuals can take great comfort from the fact that if the people looking after their pension breach their obligations under the regulations, the consequences will be severe. In reality, pension business in Guernsey was already well-regulated indirectly and the risks to consumers were low but, nonetheless, hopefully the new regime will encourage employers and individuals (locally and internationally) to pay more attention to their pension arrangements, to use the Guernsey pension system to set up new schemes where none exist and to increase retirement savings.