Retirement Annuity Trust Schemes (RATS)

Code of Practice

1. **Introduction**

The following code of practice should be regarded as mandatory for Trustees (where appropriate) and thus a condition of approval under Section 157A of the Income Tax (Guernsey) Law, 1975.

As far as the external advisors are concerned, the code of practice will be regarded as voluntary as it is assumed that the advice will be regulated by one of the departments of the Guernsey Financial Services Commission, or will be given by a member of a professional body subject to an appropriate professional code of conduct. Where this is not the case, clarification should be sought from the GFSC.

2. **The Trustees' Role**

(a) **Independent Trustee**

Neither members of Retirement Annuity Trust Schemes, nor their relatives, may be Trustees of the Scheme, unless the Instrument establishing the Trust specifically enables the Trustees to act by majority and the majority of those Trustees are neither members of the Scheme nor relatives. For these purposes "relative" includes any individual whatsoever related to the member, either by blood or marriage.

(b) **Number of Trustees**

At all times, provision should be made for a minimum of two Guernsey resident trustees. The purpose of this is to avoid the situation where there is a sole Guernsey resident trustee who is also the annuitant. As and when this person dies, if his heirs are situated overseas, there might be difficulties for the Income Tax Office in collecting the appropriate tax due of 20% of the residual funds.

(c) **General Duties**

The trustees should ensure that they have read the relevant sections of The Trusts (Guernsey) Law, 1989 and appreciate their responsibilities thereunder. For example, they may wish to take independent professional advice as to the implication of their investment strategy on future cash flow for making annuity payments and, indeed, for the continuing security of such annuity payments. Also, accounts should be prepared and lodged with the Income Tax Office, as and when required.

(d) **Annuity Quotation**

If the annuity to be provided is not to be purchased from an insurance company, then the following rules should be adhered to.

As close as possible to the date of establishment of the annuity, a quotation should be obtained either from an actuary or by taking an annuity quotation from a recognised insurance company. In obtaining such a quotation, the annuity may allow for no increases or for annual increases of a fixed rate of up to 5% per annum, or in line with the Guernsey Retail Price Index. Guarantees of a minimum period of payment should not be allowed for in the calculation but a contingent spouse's annuity not greater than the annuity may be provided for.

The annuity must then be paid in accordance with the appropriate quotation selected. The terms and conditions of such annuity payments may be reviewed at intervals of not less than three years.

At the outset, and whenever a review is executed, details must be lodged with the Income Tax Office.

(e) **Annuity Payment - Deduction of Tax**

When the annuity commences the trustees will be responsible for operating the ETI Scheme on the payments. This means that tax must be deducted as payments are made and the relevant documentation must be submitted to the Income Tax Office on a quarterly basis. There are penalties for failure to do so.

3. **<u>External Advisors</u>**

Personal Circumstances

In acting as an advisor, practitioners should have regard to the following points:

(1) If the retirement annuity trust scheme is set up as a result of a transfer value being paid out of an occupational pension scheme or a personal pension, then the annuitant must sign an undertaking to be lodged with the Income Tax Office, to indicate that he understands what is given up, including the nature of guarantees and bonuses given up, annuity protection and, where appropriate, loss of future service accrual under an occupational pension scheme.

(2) If an annuity is not being purchased from an insurance company then the annuitant (and contingent annuitant, where appropriate) should be known to have other means of subsistence and thus not specifically dependent upon the retirement annuity trust for a significant part of their normal living expenses in retirement. The danger is that in basing an annuity on a quotation, which in turn utilises an "average expectation of life" assumption, there will be a substantial proportion of annuitants (and contingent annuitants) who outlive the available funds in a retirement annuity trust scheme. Thus the external advisors must warn the parties concerned of this danger.

(3) The retirement annuity trust scheme established must be of an appropriate size to be cost effective in relation to administration costs, intermediary costs, investment management costs and any other advisory costs.

(4) The investment(s) selected for the retirement annuity trust scheme should have regard to the cashflow requirements needed to make the annuity payments and to the conditions imposed by the Director of Income Tax.

(5) Where the advisor will receive remuneration from the provider of investment services in connection with the retirement annuity trust scheme, this should be disclosed to the trustees.

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Scheme Name: ______________________________ **Income Tax Reference:** ____________________

I/we confirm that I/we have received a copy of the code of practice relating to retirement annuity trust schemes and have read and noted its contents and agree to act in accordance therewith.

I/we also confirm that I/we have read the relevant sections of The Trusts (Guernsey) Law, 1989 and appreciate our responsibilities thereunder.

Signed ______________________ ***Name*** ______________________

Signed ______________________ ***Name*** ______________________

Signed ______________________ ***Name*** ______________________

Date ______________________