This note should not be taken as constituting legal advice – it is a general summary of the key issues flowing from the legislation cited below.

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Guernsey: international personal pension schemes

International personal pension schemes in Guernsey – section 40(ee) of The Income Tax (Guernsey) Law, 1975

Section 40(ee) exempts from Guernsey income tax "any annuity or lump sum paid pursuant to ... (ii) a retirement annuity trust scheme established under irrevocable trusts under the law of Guernsey ...".

The requirements of section 40(ee) that must be met for a pension scheme to qualify for the above exemptions from Guernsey income tax are that:

- it must be established under irrevocable trusts;
- it must be administered in Guernsey; and
- the annuity or lump sum must be payable to:
  - a person who was not when he joined the scheme (or at any time after, including a complete Guernsey tax year after leaving the scheme) resident in Guernsey or Jersey; or
  - a spouse or dependant of, or an individual beneficiary under the Will of such a person, with the same (non)-residency requirements as above applying to the member and other payee (i.e. the spouse etc).

There is no informal approval code that directly applies to section 40(ee) schemes, except that it is commonly accepted that paragraph M25 of the "Statements of Practice (including interpretations of law) and Extra Statutory Concessions" published by States of Guernsey Income Tax (which applies to section 40(o) of the Income Tax (Guernsey) Law, 1975) applies by analogy, mutatis mutandis, to 40(ee), and in particular the age 50 retirement criteria.

The appeal of section 40(ee) schemes is that they offer members:

- the ability to save pension benefits within an internationally recognised pensions vehicle, where the current jurisdiction of the individual's residence either offers no such 'legal vehicle' or offers one but at disadvantageous tax rates or with undue restrictions as to benefits or their payment;
- certain jurisdictions do not 'lend themselves' to individual pension provisions for reasons which may be tax driven, legal and regulatory or just practical eg. integration of private pension arrangements with state pension arrangements, lack of or too great a degree of regulation, tax issues surrounding either or both contributions and benefits;
- no cap on contribution levels;
- no cap on level of emerging benefits;
- no investment restrictions (but subject to trustee fiduciary 'prudence'; and
- no Guernsey tax payable on contributions, investment growth or emerging benefits.

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Section 40(ee) schemes are generally established by the Guernsey trust company which will administer the scheme. Typically the documentation will comprise a trust deed setting out provisions relating to, for example, investment powers, appointment and retirement of trustees, trustees general powers, internal accounting provisions, expenses and employer obligations. The documentation will also typically include a set of 'rules' (either incorporated into the trust deed or otherwise) setting out general provisions relating to scheme benefits.

Such schemes are designed for individuals who may have input into the design of all features of the scheme.

However, it is possible for a multi-member section 40(ee) to be established which will assist in containing fees for members. Under a multi-member scheme each member's benefits are 'ringfenced' from the benefits accrued to any and all other members. It is possible to design a set of generic benefit rules to give a considerable degree of flexibility to members joining this type of arrangement.

It should be noted that (prospective) members are advised to take into account tax and other relevant factors in their jurisdictions of domicile and residence in deciding to establish or join, or continue their membership of, an international Guernsey Section 40(ee) personal pension scheme.

Between them, Nicholas Donnithorne and Anna Gray at Babbé have over 25 years' experience advising the pensions industry on trusts and pensions law. They have advised government and industry bodies, private individuals and commercial trustees. If you have any questions in relation to the above, please contact:

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