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GAPFA

GIBRALTAR ASSOCIATION OF PENSION FUND ADMINISTRATORS

Gibraltar QROPS code reinforces compliance measures to protect clients

Gibraltar professionals are to be on alert for potential pension busting schemes being transferred in from other jurisdictions that exceed limits of cash distribution set by the Government and UK Inland Revenue.

The alert forms part of an approved Code of Conduct being launched for administration of imported pension schemes – UK Qualifying Recognised Overseas Pension Schemes (QROPS) to ensure the business is handled "in a fully compliant way and upholds the reputation of Gibraltar as a key Financial Centre".

The trail blazing Code commits Gibraltar providers to maintain best practice and standards to help guarantee continued adherence to UK Inland Revenue QROPS rules and also sets out policies on "fair" charging and foreshadows the introduction of an industry Ombudsman.

Gibraltar's Government amended its pension law last summer to introduce limits on imported pension provisions in line with UK policy – lump sum cash distributions to over 55 year olds limited to 30 per cent payment of a 2.5 per cent tax on distributions and restriction on transfers out to jurisdictions having equal or greater provisions.

Concerned at money laundering implications – a facet little spoken of within the industry – the mandatory Code developed by the Gibraltar Association of Pension Fund Administrators (GAPFA) states: "Members should be particularly aware of "layering" arrangements often which involve funds being transferred from another jurisdiction.

"The use of investment processes, sometimes in the form of private limited companies, EIFs, or bond wrappers permitting private loans in excess of 50 per cent are all possible areas where abuse can occur.

Members accepting funds, even in a limited investment capacity, should be most wary and ensure they know the original source of funds and any subsequent on-going transfer so they have complete knowledge of the entire transaction chain", it says.

The Code has been produced after consultation with GAPFA members and liaison with the Financial Services Commission (FSC) acting as Pensions Regulator and the Government and has been unveiled today (Monday 15 October) to coincide with Gibraltar Day events for financial services, politicians and other influential parties in London.

All QROPS derived business, whether carried out via a Trust, or corporate structure, is regulated under Gibraltar's Trust & Company Management regulations. As the Code points out: "It is the operating entity that is licensed and not the QROPS itself" and no business can be carried out without the appropriate licence.

The new document is at pains to emphasise that members must ensure they have adequate resources to manage, control, direct and organise the business, including having sufficient appropriately trained staff, as well as operational manuals to ensure proper compliance" to satisfy FSC requirements on procedures and methodology.

"Effectively this means the FSC will expect adherence to the Code to be best industry practice", GAPFA chairman Steven Knight, suggests.

"A number of operators will utilise a Life Company Bond to simplify the investment and UK compliance process and typically an IFA will work with the client to suggest appropriate investment funds offered via such a wrapper, often via an investment platform," Knight explains.

The Code makes the point: "GAPFA have agreed with the FSC that no further regulatory application will apply where the bond is issued by a UK or EU regulated life company provider and is recommended by a UK regulated IFA." Any other bond structure requires pre-agreed approval by the FSC.

Referring to the risks of money laundering or other potential pension busting arrangements, the Code establishes the required process: "In any circumstance where the member is unable to identify both the ultimate originator and source of funds, and all subsequent investment steps of the assets under management, that business should be rejected.

“Members need to be acutely aware a small number of operators in other jurisdictions have more pressure to continue to operate schemes which are non-compliant, and may seek to use conduits operated in other jurisdictions, including Gibraltar. “

Knight, who is chairman of Castle Trust Group, emphasizing Gibraltar’s determination to protect its reputation in financial services, emphasises: “All such activity should be rejected immediately, and notification sent to the GAPFA on a private and confidential basis, so we can build a database of non-compliant schemes originating from outside of Gibraltar.”

A contentious area of the Code concerns fees, which the Association recognises should be set at an economic level to include overheads, compliance and reporting obligations and agreed in writing in advance, but maintains that particular care is required for QROPS clients having low value portfolios of less than £100,000.

These compliance procedures combined with “severely discounted fees to attract new business are unlikely to prove economically worthwhile and, more importantly, likely to place additional pressure on control and administration systems”, Knight reports.

No firm decisions have yet been made, but GAPFA is keen to see established an independent QROPS Ombudsman accessible by clients and findings binding on members and discussions are taking place with Government.

The Code follows the delisting earlier this year by HMRC of 360 QROPS in other jurisdictions - mostly in Guernsey, but also in Jersey and the Isle of Man -for having “non-compliant strategies”, but none of Gibraltar’s existing schemes were removed.

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