



STATUTORY INSTRUMENTS.

**S.I. No. 185 of 2007**



TRUST RACS (INVESTMENT) REGULATIONS 2007

**(Prn. A7/0849)**

## TRUST RACS (INVESTMENT) REGULATIONS 2007

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by sections 5, 59(1), 59(1A) (all as amended by section 37 of the Social Welfare and Pensions Act 2007(No. 8 of 2007)), 59(1C) (inserted by section 33 of the Social Welfare and Pensions Act 2005) and section 61B (as amended by section 37 of the Social Welfare and Pensions Act 2007) of the Pensions Act 1990 (No. 25 of 1990), hereby makes the following Regulations—

*Citation and Commencement.*

1. (1) These Regulations may be cited as the Trust RACs (Investment) Regulations 2007.

(2) These Regulations come into operation on 27 April 2007.

*Definitions.*

2. In these regulations—

“the Act” means the Pensions Act 1990 (No. 25 of 1990);

“collective investment undertaking” means—

- (a) an investment undertaking within the meaning assigned to it in section 739B of the Taxes Consolidation Act 1997 (No. 39 of 1997),
- (b) a unit trust which neither is, nor is deemed to be, an authorised unit trust scheme (within the meaning of the Unit Trusts Act 1990 (No. 37 of 1990)),
- (c) an undertaking for collective investment in transferable securities (within the meaning assigned to it by Council Directive 85/611/EEC of 20 December 1985)<sup>1</sup> situate in another Member State,
- (d) a common contractual fund within the meaning of section 739I(1)(a)(i) of the Taxes Consolidation Act 1997 (No.39 of 1997) (inserted by section 44 of the Finance Act 2005) (No. 5 of 2005));

“insurance policy” means an insurance policy or contract of assurance issued by any person who is the holder of an authorisation—

- (a) granted by the Minister for Enterprise, Trade and Employment under the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) or under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984) and still in force, or

<sup>1</sup>O.J. L375, 31.12.1985, p.3

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 4th May, 2007.*

- (b) granted by the authority charged with the duty of supervising the activities of insurance undertakings in a Member State other than the State in accordance with Article 6 of Council Directive 79/267/EEC<sup>2</sup> (as inserted by Article 3 of the Council Directive 92/96/EEC<sup>3</sup>);

“one member arrangement” means a trust RAC which has only one member and that member has discretion as to how the resources of the trust RAC are invested, unless the trust RAC is made the subject of a Pension Adjustment Order, in which case it may also include the person or persons referred to in the Pension Adjustment Order;

“regulated market” means—

- (a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1(13) of Council Directive 93/22/EEC<sup>4</sup>
- (b) transferable securities and money market instruments dealt in on another regulated market in a Member State which operates regularly and is recognised and open to the public; or
- (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State or dealt in on another regulated market in a non-Member State which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the local competent authorities.

*Borrowing rules.*

3. For the purposes of section 61B of the Act—

- (a) the trustees of a trust RAC may borrow money but only for liquidity purposes and only on a temporary basis, and
- (b) the trustees of a one member arrangement may borrow money.

*Statement of investment policy principles.*

4. The statement of investment policy principles required under section 59(1B) of the Act shall be in writing and shall include the following matters—

- (a) the investment objective of the trustees,
- (b) the investment risk measurement methods,
- (c) the risk management processes to be used, and
- (d) the strategic asset allocation implemented with respect to the nature and duration of pension liabilities.

<sup>2</sup>O.J. L63, 13.3.79, p.1

<sup>3</sup>O.J. L360, 9.12.92, p.1

<sup>4</sup>O.J. L141, 11.6.1993, p.27

*Investment rules.*

5. (1) This Article applies to any trust RAC other than a one member arrangement.

(2) In providing for the proper investment of the resources of a trust RAC under section 59(1)(b) of the Act, trustees shall comply with the rules set out in this article.

(3) The assets of the trust RAC must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole so far as is appropriate having regard to the nature and duration of the expected liabilities of the trust RAC.

(4) The assets of the trust RAC must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must in any event be kept to a prudent level.

(5) The assets of the trust RAC must be properly diversified in such a way as to avoid excess reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the trust RAC to excessive risk concentration.

(6) Investment in derivative instruments may be made only in so far as they—

(a) contribute to a reduction of investment risks, or

(b) facilitate efficient portfolio management,

and any such investment must be made so as to avoid excessive risk exposure to a single counter-party and to other derivative operations.

(7) For the purposes of this article—

(a) investment in a collective investment undertaking shall be treated as being invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5) to the extent that the investments held by that undertaking are themselves so invested,

(b) investment in an insurance policy falling within the class of insurance specified at paragraph III of Annex 1 of Council Directive 2002/83<sup>5</sup> shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5) to the extent that the selection by trustees of the investments by which the return on the insurance policy will be determined complies with those sub-articles,

(c) investment in an insurance policy, the terms of which provide that the proceeds of the insurance policy at maturity will be equal to or greater than the amount of the investment over the term of the insurance

<sup>5</sup>O.J. L345,19.12.2002, p.1

policy, shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5),

- (d) investment in an insurance policy of a type to which Article 2(1)(b) of Council Directive 2002/83 relates shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5), and
- (e) investment in bonds issued by the Government of any Member State shall be treated as diversified in accordance with sub-article (5).

*Application of art 5(4) rule on a member basis.*

6. (1) The provisions of Article 5(4) apply in respect of that proportion of the assets of the trust RAC attributable to each individual member of the trust RAC, other than a one member arrangement, in the same manner as they apply to the assets of the trust RAC as a whole.



GIVEN under my Official Seal,  
25 April 2007

SÉAMUS BRENNAN  
Minister for Social and Family Affairs

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

Article 18 of Directive 2003/41/EC on the activities and supervision of Institutions for Occupational Retirement Provision (IORPs) requires that the resources of a trust RAC or an occupational pension scheme must be invested in accordance with the prudent person rule and in particular in accordance with certain investment rules.

Article 18(2) of the Directive also prohibits trust RACs and occupational pension schemes from borrowing for investment purposes other than in certain prescribed circumstances. Section 61B of the Pensions Act 1990 (inserted by section 36 of the Social Welfare and Pensions Act 2005 and amended by section 37 of the Social Welfare and Pensions Act 2007) prohibits such borrowing other than in circumstances which may be provided for by way of regulations.

Article 3 of these regulations provides that the trustees of a trust RAC may borrow money for liquidity purposes and only on a temporary basis.

Article 3 also provides that the trustees of a trust RAC which is a one member arrangement may borrow money.

Article 12 of the Directive provides that every IORP should have and keep up to date a statement of investment policy principles. Section 59(1B) of the Pensions Act (inserted by section 33 of the Social Welfare and Pensions Act 2005 and amended by section 37 of the Social Welfare and Pensions Act 2007) provides that trustees of a trust RAC, other than a small trust RAC, shall prepare and maintain the statement and that it shall include such matters as may be prescribed. Article 4 of these regulations sets out those matters.

Article 18(1) of the Directive sets out the rules which comprise the prudent person principle with regard to the investment of the resources of a trust RAC. Section 59(1A) of the Pensions Act (inserted by section 33 of the Social Welfare and Pensions Act 2005 and amended by section 37 of the Social Welfare and Pensions Act 2007) provides that these rules will be set out in regulations. Article 5 of these regulations sets out those rules.

Article 5(7) provides that in relation to a collective investment undertaking and a unit linked insurance policy the rules will be applied on “look through” basis. Article 5(7)(c) and (d) provide that investment in an insurance policy which guarantees at maturity a return at least equal to the investment over the term of the policy, or in an annuity, shall be regarded as an investment on a regulated market and as diversified. Article 5(7)(e) provides that investment in Government Bonds will be regarded as diversified.

These regulations apply only to trust RACs. Similar regulations have already been made in relation to occupational pension schemes.

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