

**DATED: 1<sup>st</sup> October 2008**

**STM FIDECS PENSION TRUSTEES LIMITED**

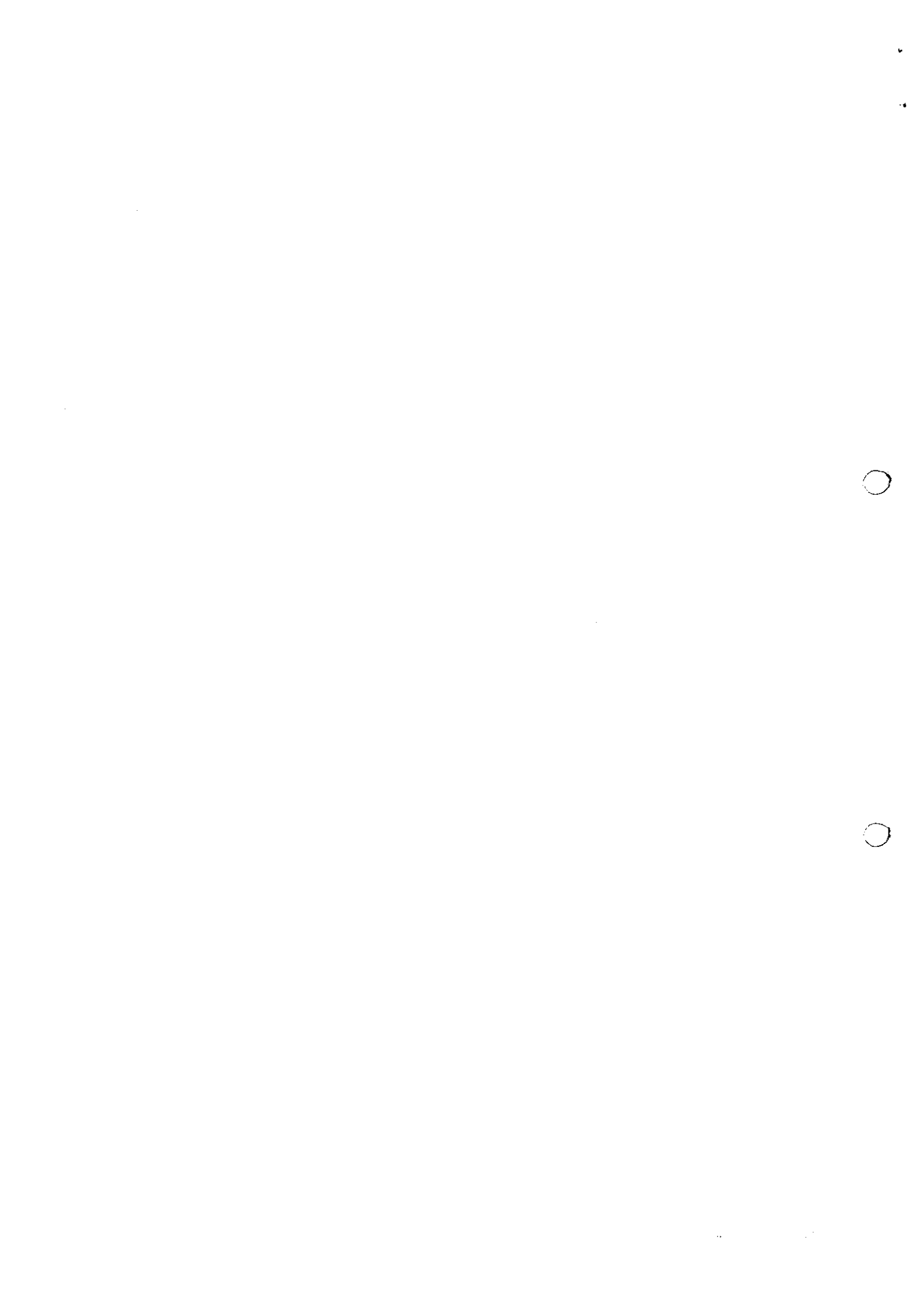
---

**DEFINITIVE TRUST DEED AND RULES**

**THE STM GIBRALTAR  
PENSION TRANSFER PLAN**

---

**SEPTEMBER 2008**



**THIS DECLARATION OF TRUST** is made the 1<sup>st</sup> day of October 2008

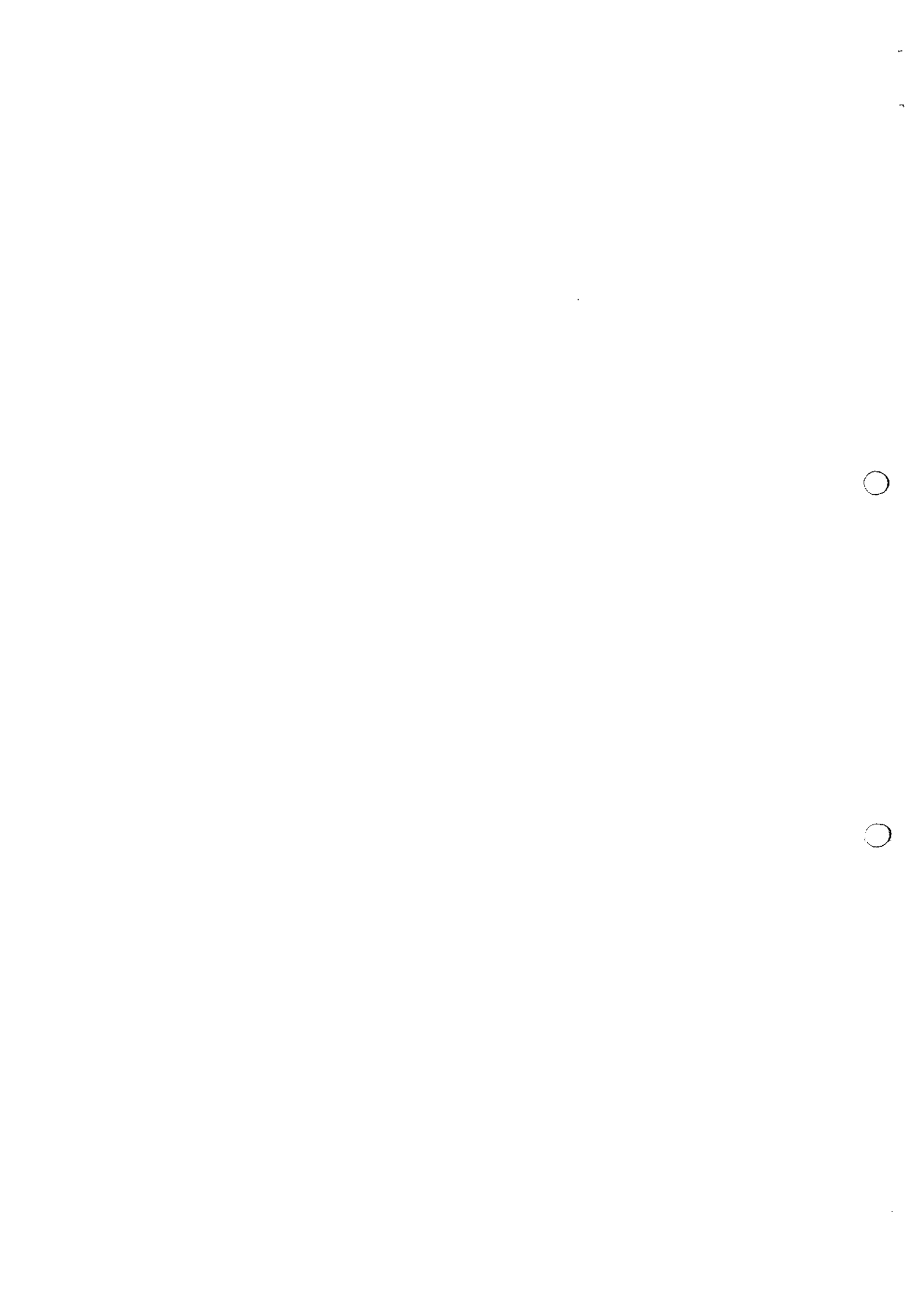
By **STM FIDECS PENSION TRUSTEES LIMITED** whose registered office is situate at Montagu Pavilion, 8 – 10 Queensway, Gibraltar (“the Trustees”).

**WHEREAS:-**

The Trustees have decided to establish a pension scheme to be known as The STM Gibraltar Pension Transfer Plan (“the Transfer Plan”) for individuals requiring pension provision (“the Members”).

**NOW THIS DEED WITNESSETH** as follows:-

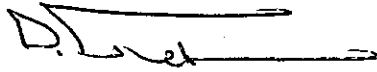
1. The Trustees **HEREBY DECLARE** the existence of the STM Gibraltar Pension Transfer Plan and of the Trust Fund.
2. The Trustees hereby transfer the sum of £100 to the Trust Fund.
3. The Trustees **HEREBY IRREVOCABLY DECLARE** that they shall henceforth hold the assets of the Trust Fund comprising all Members’ contributions and other moneys including accruals to be paid to the Trust Fund on trust for the purpose of providing relevant benefits to the Members of the STM Gibraltar Pension Transfer Plan in accordance with the Rules annexed hereto in the First Schedule as amended from time to time but as modified by the provisions contained in the specimen deeds of adherence which are annexed hereto as the Second Schedule.
4. The Trustees **HEREBY DECLARE** that the provisions of this Deed, the Rules and the Schedule shall comprise the entire provisions of the STM Gibraltar Pension Transfer Plan.
5. This Deed and the Rules shall be interpreted and construed in accordance with the laws of Gibraltar.



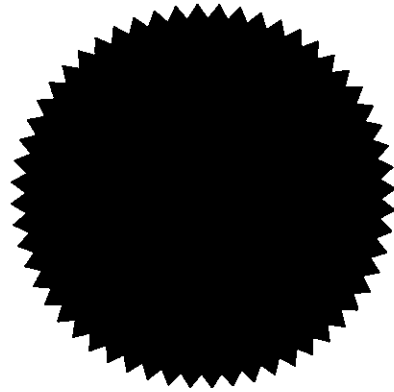
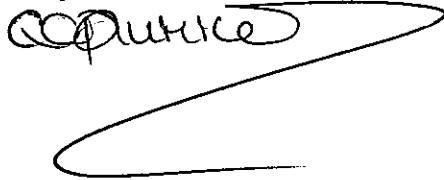
**IN WITNESS** whereof these presents have been executed the day and year first before written.

**THE COMMON SEAL of STM  
FIDECS PENSION TRUSTEES  
LIMITED** was hereunto affixed in the presence of:-

Director



Director/Secretary





**FIRST SCHEDULE**  
**The RULES**  
of  
**THE STM GIBRALTAR PENSION TRANSFER PLAN**

**TABLE OF CONTENTS**

<b>SECTION 1 - GENERAL PROVISIONS OF THE SCHEME.....</b>	<b>8</b>
1.1 INTRODUCTION .....	8
1.2 COMMENCEMENT AND DURATION.....	8
1.3 DEFINITIONS.....	9
1.4 INTERPRETATION - GENERAL PROVISIONS.....	12
1.5 EFFECT OF HEADINGS AND MARGINAL NOTES .....	12
 <b>SECTION 2 - CONSTITUTION/PROVIDER.....</b>	 <b>12</b>
2.1 CONSTITUTION OF THE FUND .....	12
2.2 DECLARATION OF TRUST.....	12
2.3 ADMINISTRATOR.....	12
 <b>SECTION 3 - ADMINISTRATION .....</b>	 <b>13</b>
3.1 APPOINTMENT AND REMOVAL OF TRUSTEES.....	13
3.2 RETIREMENT OF TRUSTEES.....	13
3.3 TRUSTEES TO HAVE CONTROL OF FUND .....	13
3.4 TRUSTEES MAY APPOINT NOMINEE TO HOLD INVESTMENTS.....	13
3.5 REMUNERATION OF TRUSTEES .....	14
3.6 HOW TRUSTEES MAY ACT.....	14
3.7 MEMBERS AS DIRECTORS OF CORPORATE TRUSTEES .....	14
3.8 SECRETARY .....	15
3.9 ADMINISTRATOR.....	15
3.10 EXPENSES OF ADMINISTRATION .....	15
3.11 BOOKS OF ACCOUNT .....	15
3.12 RECORD OF MEMBERS AND RELEVANT MATTERS.....	15
3.13 INVESTMENT .....	15
3.14 POWER TO DELEGATE INVESTMENT FUNCTIONS.....	16
3.15 POWER TO OPEN BANK ACCOUNTS .....	17
3.16 POWER TO EMPLOY AGENTS AND RELY ON ADVISERS.....	17
3.17 NOTICES.....	17
3.18 MEMBERS TO GIVE NOTICE OF ADDRESSES .....	17

3.19 INDEMNITY .....	17
3.20 PAYMENT OF PENSIONS .....	18
3.21 CLAIMS ONLY IN ACCORDANCE WITH RULES .....	18
3.22 ANNUITY IN SATISFACTION OF MEMBER'S RIGHTS .....	18
3.23 EFFECT OF MISSTATEMENTS .....	19
3.24 INFORMATION TO BE AVAILABLE .....	19
3.25 ARBITRATION .....	19
3.26 RESTRICTIONS .....	19
<b>SECTION 4 - ALTERATIONS IN AND ADDITIONS TO RULES .....</b>	<b>19</b>
4.1 POWER OF ALTERATION .....	19
4.2 EFFECT ON EXISTING BENEFITS .....	19
4.3 ALTERATIONS NOT TO AFFECT PURPOSE OF THE SCHEME .....	20
4.4 ALTERATIONS NOT TO CONTRAVENE ANY LAWS OR REGULATIONS .....	20
4.5 CONSENT OF TRUSTEES .....	20
<b>SECTION 5 - ELIGIBILITY AND MEMBERSHIP .....</b>	<b>21</b>
5.1 ELIGIBILITY .....	21
5.2 APPLICATION FOR MEMBERSHIP .....	21
5.3 MEMBERSHIP LETTER .....	21
5.4 VOLUNTARY ELECTION TO WITHDRAW .....	22
<b>SECTION 6 - TRANSFERS AND REFUND OF CONTRIBUTIONS .....</b>	<b>22</b>
6.1 TRANSFERS .....	22
6.2 REFUND OF CONTRIBUTIONS .....	22
<b>SECTION 7 - MEMBER'S CONTRIBUTIONS .....</b>	<b>22</b>
7.1 ORDINARY CONTRIBUTIONS .....	22
7.2 DURATION OF CONTRIBUTIONS .....	22
<b>SECTION 8 - BENEFITS ON RETIREMENT .....</b>	<b>23</b>
8.1 ENTITLEMENT TO BENEFIT .....	23
8.2 CALCULATION OF PENSION .....	23
8.3 DEFERMENT OF PENSION .....	23
8.4 EARLY RETIREMENT ON THE GROUNDS OF ILL HEALTH .....	23
8.5 EARLY RETIREMENT IN OTHER CASES .....	23
8.6 LUMP SUM BENEFITS ON RETIREMENT .....	23
8.7 PAYMENT OF LUMP SUM BENEFITS .....	23
8.8 PAYMENT OF PENSION .....	24



<b>SECTION 9 - BENEFITS ON DEATH</b> .....	<b>24</b>
9.1 LUMP SUM BENEFITS ON DEATH.....	24
9.2 SPOUSES AND DEPENDANTS' PENSION ON DEATH .....	25
9.3 DEATH AFTER RETIREMENT .....	25
9.4 BENEFIT AFTER LEAVING NON PENSIONABLE EMPLOYMENT .....	25
<b>SECTION 10 - ALLOCATION</b> .....	<b>25</b>
10.1 RIGHT TO MAKE AN ALLOCATION.....	25
10.2 RESTRICTION ON RIGHT TO ALLOCATE .....	25
10.3 TYPE OF PENSION.....	26
10.4 AMOUNT OF ALLOCATION AND PENSION.....	26
10.5 RESTRICTIONS ON AMOUNT OF ALLOCATION.....	26
10.6 NUMBER OF ALLOCATIONS .....	26
10.7 DEATH OF BENEFICIARY BEFORE PENSIONER.....	26
10.8 MEDICAL REPORT .....	26
10.9 ADMINISTRATIVE ARRANGEMENTS .....	26
<b>SECTION 11 - APPROVED LIMITS</b> .....	<b>27</b>
11.1 DEFINITIONS .....	27
11.2 MEMBER'S LUMP SUM RETIREMENT BENEFIT - LIMITS .....	27
11.3 LUMP SUM DEATH BENEFITS - LIMITS.....	27
11.4 DEPENDANT'S PENSIONS - LIMITS .....	27
<b>SECTION 12 - PENSIONS INCREASES</b> .....	<b>28</b>
12.1 INCREASES IN CURRENT PENSIONS .....	28
<b>SECTION 13 - STATUS OF THE SCHEME AND TAXATION</b> .....	<b>28</b>
13.1 STATUS OF THE SCHEME .....	28
13.2 UNDERTAKINGS TO THE COMMISSIONER.....	28
13.3 EFFECT OF UNDERTAKINGS .....	28
13.4 TAXATION DEDUCTIONS .....	28
13.5 TAX RELIEF .....	28

<b>SECTION 14 - TERMINATION AND WINDING-UP .....</b>	<b>29</b>
14.1 POWER OF DETERMINATION .....	29
14.2 TOTAL WINDING-UP OF THE SCHEME.....	29
14.3 ENTITLEMENT TO BENEFIT.....	29
14.4 APPLICATION OF FUND ON A WINDING-UP .....	29
14.5 TRANSFER PAYMENTS ON A WINDING-UP.....	30
14.6 SECURING OF BENEFITS ON A WINDING-UP .....	30
14.7 PAYMENT OF BENEFITS ON A WINDING-UP .....	30

# FIRST SCHEDULE

## THE RULES

### SECTION 1 - GENERAL PROVISIONS OF THE SCHEME

#### 1.1 Introduction

Section 1 contains the general provisions of The STM Gibraltar Pension Transfer Plan. The remaining sections contain the detailed Rules and regulations of the Scheme.

It is intended that the Scheme will:-

- (a) be capable of treatment as an approved Scheme for the purposes of the Income Tax Act, its subsidiary regulations and statutory modification or re-enactment thereof for the time being in force;
- (b) comply with any preservation requirements as may be required by any Act enactment or resolution of the Gibraltar Parliament in respect of Members who leave employment or the Scheme prior to becoming entitled to immediate benefits;
- (c) comply with any requirements as to equal access for men and women as may be required by any Act enactment or resolution of the Gibraltar Parliament.

Insofar as the provisions of succeeding sections of these Rules lay down the details to give effect to paragraphs (a), (b) and (c) above they will have overriding effect.

The Scheme is not to be considered as contracted-out of any State Earnings Related Pension Scheme existing at the date of these presents or introduced at any later date.

The Scheme is established under a single irrevocable trust. Each member must enter into a binding agreement by deed with the Administrator not to require withdrawal of trust funds or income of those trust funds otherwise than for the payment of benefits under the Plan at the time and in the form and in the circumstances provided by the Rules.

#### 1.2 Commencement and duration

The Scheme commenced on the commencement date as specified in Section 1.3

### 1.3 Definitions

In these Rules the words and expressions following will unless inconsistent with the subject or context have the following meanings:-

**ACCOUNTING DATE** means 30th June in each year (or such other date as the Trustees with the consent of the Administrator may from time to time decide).

**ADMINISTRATOR** means the person or company appointed to act as Administrator of the Scheme under the provisions of Rule 3.1.

**ARRANGEMENT** means an arrangement made by a Member with the Administrator to providing benefits under these rules.

**CHILDREN** means the lawful, adopted, legitimate, illegitimate or stepchild or child or children of a Member.

**COMMENCEMENT DATE** means 1<sup>st</sup> October 2008

**COMMISSIONER OF INCOME TAX** means the Commissioner charged with the administration of the Income Tax Act and its subsidiary regulations and statutory modification or re-enactment thereof for the time being in force (hereinafter referred to as the "CIT").

**DEED OF ADHERENCE** means a deed of adherence to be executed by a Member in the case of a Transfer Plan in the style and form contained in the Second Schedule and as annexed hereto.

**DEPENDANT** means any child of the Member or any person who was financially dependant on the Member at the date of his death.

**DISCRETIONARY TRUSTS** has the meaning of any sum or sums directed to be held on such trusts with regard to a deceased Member or Pensioner.

**EMPLOYER** means the current employer of a Member.

**EXEMPT APPROVED SCHEME** means a scheme which is approved under the Tax Code and is treated as an exempt scheme thereunder.

**FUND** means the pension fund constituted under the Rules.

**JOINING DATE** means the date the Scheme commences for each Member

**MEMBER** means an eligible individual who has made an arrangement under the Scheme for the provision of benefits.

**MEMBER'S ACCOUNT** means that part of the assets of the Fund, which is certified for the time being by the Trustees as being attributable to the Member and includes all contributions made by a Member and/or Employer; receipts in respect of a Member's transfer or any increases in the pension.

**MEMBERSHIP LETTER** has the meaning given to that expression in Rule 5.3.

**EARNINGS** means the amount of an individual's total earned income arising in respect of remuneration from an office or employment or from a trade, profession or vocation either alone or in partnership, but does not include unearned income or remuneration as director of an investment company.

**NOMINATED BENEFICIARY** means a person in whose favour an allocation under Section 10 is made, being either the spouse of the Member, some Dependant or other individual or body selected by the Member.

**NON-PENSIONABLE EMPLOYMENT** means an employment where the employee is not a member of an Occupational Pension Scheme.

**NORMAL RETIREMENT DATE** means the selected retirement age specified in the Membership Letter which can be no earlier than age 55 or later than 75 years. The CIT, may at his discretion, allow a Member to retire after reaching normal retirement date provided that the Member's age does not exceed seventy-five years.

**PENSIONER** means a person who is for the time being receiving a pension out of the fund.

**PENSIONS ACT** means the Social Insurance Act and where appropriate the regulations made thereunder and any amendment or re-enactment thereof.

**PERPETUITY PERIOD** means the period of 100 years from the Commencement Date plus such further period (if any) as may be lawful including any period during which the trusts of the Scheme may be exempt for whatever reason from the application of the Rule against perpetuities.

**TRANSFER PLAN** means an arrangement established by a Member who is either self-employed or an employee who is employed in non-pensionable employment (including Proprietary Directors).

**PROPRIETARY DIRECTOR** means a director of a Company who with his spouse or children is or becomes the beneficial owner of shares which when added together carry more than 20% of the voting rights in the Employer or a company which controls the Employer.

**RELATIVE** means and includes in relation to any deceased Member:-

- (a) the widow or widower of the Member or Pensioner;
- (b) the father or mother or grandparents (whether lawful or adoptive) of the Member or Pensioner and the widow or widower of such father or mother or grandparents;
- (c) any person (except such Member or Pensioner) who is the child or remoter issue (whether lawful or adoptive) of such father or mother or grandparents, and the spouse or widow or widower of any such person; or
- (d) any person who has been the wife or husband of the Member or Pensioner.

**RULES** means these Rules or other the Rules for time being in force, having regard to any alterations made therein, including any appendices hereto.

**RELEVANT BENEFITS** means any pension, lump sum or other similar benefits, gratuity or other like benefits given or to be given on retirement, injury or on death or in anticipation of retirement.

**SCHEME** means the Scheme governed by these Rules and known as The STM Gibraltar Pension Transfer Plan.

**TAX CODE** means the Income Tax Act as amended and where appropriate any regulations made thereunder or any conditions which the CIT lays down for the approval of Schemes thereunder.

**TRUSTEES** means the trustees or trustee for the time being of the Scheme having been duly appointed in accordance with the Rules.

**YEAR** means in relation to the calculation of benefits for a Member, a completed Scheme year as agreed by the Trustees and/or Member.

#### **1.4 Interpretation - General provisions**

All words importing the singular number will include the plural, and vice-versa, and words importing the masculine, the feminine or neuter genders will, unless the context otherwise requires include a reference to either or both of the other genders.

Words importing persons will include corporations.

All references to any enactment, other than a reference to any definition contained in any enactment, will be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force.

#### **1.5 Effect of headings and marginal notes**

The arrangement of Rules, headings to rules and any marginal notes will not form part of the Rules and will not affect the interpretation of any one or more of the Rules.

### **SECTION 2 – CONSTITUTION / PROVIDER**

#### **2.1 Constitution of the fund**

The investments, cash and other assets held by the Trustees for the purposes of the Scheme constitute the Fund and will include:-

- (a) investments, cash and other assets transferred by the trustees of any fund pursuant to the Rules;
- (b) all contributions by Members and/or Employers pursuant to the Rules;
- (c) the interest, dividends and income of the fund and any donations, legacies or other exceptional receipt.

#### **2.2 Declaration of Trust**

The Trustees will hold the fund upon trust to provide benefits for Members and their Dependants and Relatives becoming eligible in accordance with the Rules as from time to time in force.

#### **2.3 Administrator**

The Trustees must appoint an administrator resident in Gibraltar through whom all benefits should be paid and who will be responsible to the CIT for the payment of tax on benefits.

## **SECTION 3 – ADMINISTRATION**

### **3.1 Appointment and removal of Trustees**

The fund is vested in the Trustees as trustees. Subject to as mentioned below the following powers of appointment and removal will be vested in the Trustees:-

- (i) the power at any time of appointing new trustees;
- (ii) the power at any time to remove the Trustees or any future or other trustees from office for any reason which it considers adequate;
- (iii) the power at any time to appoint an additional trustee or another corporate body as sole trustee (whether or not it is a trust corporation)

#### **PROVIDED THAT:-**

- (a) it is confirmed that a person is not prevented from being appointed or acting as a Trustee of the Scheme due to the fact that he is not resident nor domiciled in Gibraltar or is not of British nationality;
- (b) if all the Trustees are resident outside Gibraltar they will appoint a person resident in Gibraltar to act on their behalf as Administrator and to discharge all duties imposed upon the Administrator of the Scheme by statute or by the CIT and any such appointment will satisfy the necessary requirements of the CIT.

### **3.2 Retirement of Trustees**

The Trustees may retire at any time without assigning any reason and without being responsible for any costs occasioned by such retirement provided that prior notice is given to the Employers and Members.

### **3.3 Trustees to have control of fund**

The Trustees will, subject to these Rules, have sole and absolute control of the Fund and the administration thereof and determine (within the limits laid down by these Rules) the investments which it will hold from time to time.

### **3.4 Trustees may appoint nominee to hold investments**

All investments will be taken in the names of the Trustees or in the sole name of any nominee or nominees appointed by the Trustees to act as their nominee or nominees.



### **3.5 Remuneration of Trustees**

The Trustees will be entitled to such remuneration (if any) as may from time to time be agreed between the Trustees and the Members and/or the Employer. Such remuneration will be a charge on the fund except to the extent that the Employer or Members may from time to time agree to pay it.

Any associated company of the Trustees will, without being liable to account for any profit or fees thereby made, be entitled:-

- (a) to act as investment manager or adviser to the Trustees;
- (b) to carry out the administration of the Scheme on behalf of the Trustees;
- (c) perform any services on behalf of the Scheme or of the Trustees;

and make any charge commensurate with the services so provided.

### **3.6 How Trustees may act**

#### **(a) Corporate Trustees**

A Corporate Trustee may act by resolution of its board of directors, and any consent, decision, notice or other document or instrument of whatsoever nature will be deemed to be sufficient to comply with the Rules if signed on behalf of the Trustees by any two directors of the Trustees, or any one director and the secretary.

#### **(b) Trustees in general**

- (i) The Trustees may meet and regulate their meetings as they will think fit, or may conduct their business by agreement in correspondence. A quorum for a meeting will be two Trustees present in person, unless a corporate body is appointed sole Trustee hereof, or unless otherwise determined. In the event of the number of Trustees being reduced below two, the remaining Trustee will forthwith appoint a person or persons as new Trustees hereof to restore the number to not less than two.
- (ii) The decision of a majority of the Trustees who are present and vote at a duly convened meeting of the Trustees at which a quorum is present will be binding on all the Trustees.
- (iii) The Trustees will cause proper minutes to be kept and formally recorded together with any resolutions and proceedings.

### **3.7 Members as directors of corporate Trustees**

No Member or Employee or officer of an Employer who is or will be for the time being a director or other officer of the Trustees will be disqualified from exercising any power of discretion vested in the Trustees by this or any other Rule by reason of his dual capacity.

### **3.8 Secretary**

A secretary of the Scheme may from time to time be appointed by the Trustees for such period and generally upon such terms as they will think fit and the secretary will have an office, the address of which will be notified to members and at which notices may be served on him and enquiries may be made.

### **3.9 Administrator**

The Trustees may at any time and from time to time appoint an Administrator of the Scheme, who will be a person or company ordinarily resident in Gibraltar, for the purpose of managing the Scheme and who will be responsible to the CIT for the payment of benefits and of tax on benefits and who will furnish the CIT with returns, accounts and reports, as may be required by him from time to time. Unless and until any appointment is made the Trustees will act as administrator. In the event of an appointed Administrator ceasing for whatever reason to be the appointed Administrator, a new Administrator will immediately be appointed with the approval of the CIT.

### **3.10 Expenses of Administration**

The Trustees will be repaid out of the fund for all liabilities costs and expenses incurred by them in the execution of the trusts hereof and in the management and administration of the Scheme, but may from time to time agree with the Employers that the employers will bear such of the liabilities, costs and expenses of managing and administering the Scheme as the Employers will, in its absolute discretion, decide.

### **3.11 Books of Account**

Where necessary, the Trustees will cause proper books of account to be kept showing all the dealings with the fund, and an account and balance sheet of the fund made up to the accounting date in each year will be prepared and audited by an auditor to be appointed by the Trustees. The Trustees will provide a copy of the audited accounts to the CIT.

### **3.12 Record of Members and relevant matters**

The Trustees will keep a record of all Members of the Scheme and of all matters relevant to the administration of the Scheme and will keep accounts to show the position of the Scheme and the amounts contributed to the Scheme on behalf of each Member including those amounts to be disbursed as costs, charges and expenses under the terms of this Deed. All books of account and records of the Trustees will be kept at the registered office of the Trustees or at such other place as the Trustees think fit.

### **3.13 Investment**

- (a) All moneys belonging to the fund will either be placed on current or deposit account with a bank or invested in the name or under the legal control of the Trustees in the purchase of or at interest upon the security of such stocks, funds, shares, securities or other investments or property of whatsoever nature and wheresoever situate and whether involving liability or not, and whether producing income or not, or upon such personal credit with or without security, as the Trustees will in their absolute discretion think fit, to the extent that the Trustees will have the same full and unrestricted powers of investing and transposing investments in all respects as if they were absolutely and beneficially entitled thereto and so that without prejudice to the generality of the foregoing, trust money may:-

- (i) be invested in or upon any securities the holding of which is restricted to a particular class of persons, the Trustees being members of that class, and the Trustees will, in making any such investment which requires an indemnity to be given by the Trustees against liabilities arising in the event of the fund losing its status as an exempt approved Scheme, have power to bind the fund, notwithstanding that such indemnity may only become operative by reason of some act or omission which constitutes a breach of trust on the part of the Trustees;
  - (ii) be used for entering into underwriting contracts of all kinds, whether resulting in the actual investment of trust moneys or not;
  - (iii) be invested by effecting with one or more Insurance Companies managed fund contracts, deferred annuity policies, annuity policies or contracts for the purpose of providing pensions or benefits, whether immediate or future and whether contingent or otherwise, for the purposes of the Scheme, and the Trustees will have full power to deal with and dispose of any policy effected by them whether by sale, surrender or otherwise in such manner in all respects as the Trustees will in their absolute discretion think fit;
  - (iv) be used to sell, purchase or create any option contract traded on any recognised option market or financial future markets. The Trustees must comply with any requirement necessary with regard to such contracts.
- (b) No loan will be made to the members of the Scheme.
  - (c) No investments will be made in the share capital of the Employer.
  - (d) The value of the member's fund at any time invested in aggregate in the following is restricted to 50%:-
    - (i) loan capital or debenture of the Employer
    - (ii) the value of residential property owned by the Member's fund
    - (iii) the value of property owned by the fund and occupied by the Employer for business purposes.

### **3.14 Power to delegate investment functions**

The Trustees will have power from time to time to delegate their powers of making and managing investments and of keeping a register thereof to any person firm or company whom they consider competent to do so, and to pay to such person firm or company such fees as may be agreed, provided the Trustees consider such fees to be reasonable in all the circumstances.

### **3.15 Power to open bank accounts**

The Trustees will open any necessary banking account or accounts for, and in the name of, the Scheme with whichever bank or banks the Trustees see fit and will be entitled to operate that account or those accounts and to sign, endorse or otherwise deal with cheques, bills and other negotiable and restricted instruments as they think fit. They will be entitled to exercise all powers, rights and privileges to enable them to carry out any transaction, act, deed or thing arising hereunder or in connection with the Scheme, without the consent or agreement of either the Employers or the Members.

### **3.16 Power to employ agents and rely on advisers**

The Trustees may act on the opinion or advice of any accountant, actuary, lawyer or any other professional person or agent employed or instructed in the carrying out of the business of the Scheme. This may include the receipt and payment of pensions and other such benefits. The Trustees will not be responsible for the default of any agent if employed in good faith.

### **3.17 Notices**

Any notice to the Trustees or to any Member, Pensioner or other person in receipt of a pension or annuity or entitled to any other benefit hereunder may be given by sending the same through the post in a letter addressed to him at his last known place of abode, and any notice so sent will if sent by post to a Gibraltar address be deemed to be served on the day following that on which it is posted and in any other case on the fourth day following that on which it was posted.

### **3.18 Members to give notice of addresses**

Every Member, Pensioner and annuitant will give notice in writing to the Trustees of his place of residence at the time he becomes a Member or entitled to a pension out of the fund and, thereafter, will give immediate notice of any change of residence.

### **3.19 Indemnity**

The Trustees will be indemnified against all liabilities incurred by them in the execution of the trusts hereof and the management and administration of the Scheme, and will have a lien on the fund for such indemnity and no trustee will be liable for anything whatever other than a breach of trust knowingly and willfully committed; and further, the Trustees may enter into such agreements and give such undertakings indemnities or guarantees which are binding on the fund, as the Trustees will, in their absolute discretion, decide are necessary and proper for the efficient administration of the Scheme.

### **3.20 Payment of pensions**

The following administrative provisions will apply to the payment of pensions:-

- (a) all pensions and annuities will be payable at such periods as the Trustees will from time to time, either generally or in any particular case, decide and any pension or annuity may be paid in advance if the Trustees think fit;
- (b) pensions will not be apportioned until the date of death or the date upon which they otherwise cease to be payable and, if paid in arrears or partly in arrears, the Pensioner or annuitant concerned and his personal representatives will have no claim against the trustee or the fund for payment up to the cessation of the benefit, provided that not more than one month's payments of pension are in arrears;
- (c) pensions and annuities are payable only to a bank account maintained by the Pensioner or annuitant or in such other manner as the Trustees think fit, and any agreement for a payment through the post, or otherwise, which may in any particular case be made by the Trustees, will be at the risk of the Member or annuitant concerned;
- (d) before making or sanctioning any payment out of the fund, the Trustees may require the production of a certificate, or such other evidence as they may think fit, of the birth, marriage, continued existence or death of the person claiming benefit or of a Member, his spouse or Dependants or the identity of any person named in a certificate or any other material fact;
- (e) if the Trustees are of the opinion that any person entitled to benefit is incapable of managing his affairs due to physical or mental infirmity, the Trustees will be entitled at their discretion to pay any such benefit to any person approved by them who undertakes to apply such benefit to or for the maintenance or benefit of the person concerned, and the Trustees will not be under any obligation to see to the application of any benefits so payable and actually paid to such person as aforesaid.

### **3.21 Claims only in accordance with Rules**

No Member, Pensioner or annuitant will have any claim or right to any benefit save if and so far as the Scheme allows and in accordance with the Rules.

### **3.22 Annuity in satisfaction of Member's rights**

The Trustees, acting on Actuarial Advice if appropriate, may at any time, and from time to time, if and when they will for any reason consider it convenient in any particular case, purchase from any Insurance Company any policy of insurance or annuity contract for the purpose of answering or satisfying any benefits which may be paid to any person under the Rules, whether immediately or prospectively, on terms which as nearly as may be correspond to the terms on which such benefits would otherwise be payable under the Rules. Any policy or contract so purchased will be purchased in the name or names of the person or persons to whom the benefits purchased are to be paid, or in the name of the Trustees for him or them, and will be paid or applied for the purposes and in the manner to and for and in which the said benefits in respect of which the same was purchased is payable or applicable in accordance with the Rules.

No Member or person on whose behalf any such policy or contract is purchased under the provisions of this Rule will thereafter have any claim upon or interest in the fund.

### **3.23 Effect of misstatements**

If any Member or Dependant of a Member will make any misstatements as to any of the matters referred to in the preceding Rules, the Trustees, on discovering the misstatement, will have power, acting on Actuarial Advice if appropriate, to make such arrangements as they will consider fair by way of adjustment of any pension, annuity or other money payable out of the fund.

### **3.24 Information to be available**

Every person having any rights under the Scheme being a present or former Employee or Member will on demand be entitled to inspect a copy of the Rules during normal office hours, and of all amendments thereof and the latest statement of accounts and balance sheet.

### **3.25 Arbitration**

In the case of any dispute or difference arising between any person or persons interested in the fund (whether actually or prospectively or contingently) and the Trustees or the Member concerning the exact meaning or construction of any of these Rules or any rights or liabilities thereunder, it will (so far as the decision or determination of such dispute or difference is not otherwise effectively provided for by the Rules) be referred to arbitration by a single arbitrator (to be appointed, failing agreement between the parties, by the Leader of the Gibraltar Bar) in accordance with the provisions of the Arbitration Act or any modification or re-enactment thereof for the time being in force.

### **3.26 Restrictions**

No annuity payable under the plan shall be capable of surrender, assignment or commutation except as described in Section 8.6 and that no loanback facility will be allowed i.e. a plan cannot be mortgaged or charged as security for a loan.

## **SECTION 4 - ALTERATIONS IN AND ADDITIONS TO RULES**

### **4.1 Power of alteration**

The Trustees may at any time, and subject only to the following Rules of this Section, by deed, alter or repeal all or any of the Rules for the time being in force or make any new Rules to the exclusion of or in addition to all or any of the existing Rules aforesaid, and any Rules so made will be deemed to be Rules of the same validity as if originally embodied herein and will be subject in like manner to be altered or modified.

### **4.2 Effect on existing benefits**

No alteration or addition will prejudice or affect any pension or annuity then payable under the Scheme.

#### **4.3 Alterations not to affect purpose of the Scheme**

There will be no alteration which will have the effect of altering the purpose of the Scheme, which will continue to be the provision of Relevant Benefits for Members, either on retirement at a specified age or on death or incapacity at some earlier age.

#### **4.4 Alterations not to contravene any laws or regulations**

There will be no alterations which will contravene any law or regulation of Gibraltar for the time being applicable to the conduct of pension schemes, or whereby the same will cease to be an approved scheme pursuant to the Income Tax Act, its subsidiary regulations and statutory modification or re-enactment thereof for the time being in force.

#### **4.5 Consent of Trustees**

There will be no alteration without the consent in writing of the Trustees and of the CIT.

## **SECTION 5 - ELIGIBILITY AND MEMBERSHIP**

### **5.1 Eligibility**

Any individual who is chargeable to tax in Gibraltar on income derived from employment or from trade, profession or vocation and does not include an individual who is in pensionable employment. It also includes any individual who has no income chargeable to tax in Gibraltar and only for the purpose of receiving a transfer payment from another pension scheme, but no contributions can be made unless he has income chargeable to Gibraltar.

### **5.2 Application for membership**

- (a) An individual who wishes to enter into membership of the Scheme must complete the Deed of Adherence and any relevant application form required by the Administrator and/or Trustees which must include the following undertakings:
- (i) the Member agrees to be bound by these Rules:
  - (ii) the Trustees agree to administer the Scheme as required by these Rules.
- (b) A person can become a Member only if he or she is under age 75 and if the Trustees agree.

### **5.3 Membership Letter**

Every Member who has joined the Scheme will be given details in writing of the Scheme as follows.-

- (a) The main benefits as they apply including those:-
- on normal retirement
  - on death in service
  - on death after retirement
  - on voluntary withdrawal from the Scheme before retirement
  - on early retirement
  - on late retirement
  - on any options at retirement
- (b) The basis of contributions by Members and the administrative arrangements for contributions;
- (c) How the Scheme is financed and the basis on which the Member contributes to it;
- (d) The legal constitution of the Scheme;
- (e) Details of the Administrator and Trustees of the Scheme and how they are appointed or replaced; and
- (f) Brief details of the powers of amendment of benefits and Rules and how changes can be effected.



#### **5.4 Voluntary election to withdraw**

Every Member can voluntarily elect to withdraw from the Scheme at any time before reaching Normal Retirement Date by giving written notice of such an election to the Trustees.

In the case of a Member discontinuing contributions the plan will be made paid up until such time as benefits can be paid to the Member. The Scheme cannot be surrendered at any time.

### **SECTION 6 – TRANSFERS AND REFUND OF CONTRIBUTIONS**

#### **6.1 Transfers**

Transfer payments may be accepted from and paid to approved schemes in accordance with the applicable Rules and Regulations.

A transfer payment proceeds from a life assurance, the contributions of which have received tax relief under the Income Tax Act, and a lump sum from an approved pension scheme, are not contributions for the purpose of the Income Tax Act.

#### **6.2 Refunds of contributions**

No return of premiums paid into the Scheme by the Member or Employer is permitted.

### **SECTION 7 - MEMBER'S CONTRIBUTIONS**

#### **7.1 Ordinary contributions**

Contributions can be paid by the Member and/or Employer at a rate agreed and subject to the maximum level of 25% of total earnings for any tax year. A Member may only claim tax relief on contributions paid by him and not by the Employer.

Such contributions can be in the form of regular or single contributions.

#### **7.2 Duration of contributions**

Contributions may commence with effect from the Joining Date and cease on the attainment of Normal Retirement Date, if the Member enters pensionable employment, ceases to be in receipt of earnings or as required by the Member and/or Employer.

In the case of a Member being permitted to retire after the Normal Retirement Date, contributions will cease on actual retirement. Such a Member's benefits, upon the Member reaching the age of seventy-five years, will be calculated accordingly or in accordance with Rule 8.3.

A Member may only claim tax relief on personal contributions and not on those paid by the Employer.

## **SECTION 8 - BENEFITS ON RETIREMENT**

### **8.1 Entitlement to benefit**

Each Member who retires on or after Normal Retirement Date will be entitled during his life to an annual pension commencing from actual retirement, in accordance with this Section, to lump sum benefits at his election in accordance with Rule 8.6, or to a pension for a Nominated Beneficiary in accordance with Section 10.

### **8.2 Calculation of pension**

The Trustees will determine the amount of pension payable. In calculating this amount, any wishes of the Member relating to payment of benefits after his death will be taken into account.

### **8.3 Deferment of pension**

In cases where the Member, although he has reached his Normal Retirement Date elects not to receive a pension from the Scheme, payment of any pension may be deferred until the Member attains 75 years of age.

### **8.4 Early retirement on the grounds of ill health**

Subject to the CIT's discretion, retirement benefits may commence before the age of 55 on ill-health grounds.

### **8.5 Early retirement in other cases**

Subject to the CIT's discretion, retirement benefits may commence before the age of 55 where a special occupation is taken into account.

### **8.6 Lump sum benefits on retirement**

Any Member to whom this Rule is applied who becomes entitled to a pension out of the fund may, at the time when such pension commences to be payable, elect to receive a lump sum of such amount as the Member may require, but not exceeding the limits specified in Rule 11.2, and the consideration for such lump sum payment will be a reduction in the pension payable under the foregoing provisions of this Section of an amount equivalent to the lump sum payable pursuant to this Rule.

### **8.7 Payment of lump sum benefits**

In cases where retirement or payment of pension is deferred the Member may with the consent of the Trustees, elect to receive his lump sum benefits on attaining Normal Retirement Date.

## **8.8 Payment of pension**

Subject to the provisions of this Section any credit or balance due to a Member, as the case may be, may at any time be used by the Trustees at their discretion or (as soon as reasonably practicable) upon receipt of written request of the Member who has reached his Normal Retirement Date, to either

(i) purchase an annuity payable for the Member's life from an Insurance Company of the Members choice within such reasonable period as they will determine. Such annuity may be of a fixed amount or of a lower commencing amount but increasing from year to year and may provide for relevant Dependents' benefits or of such other amount or benefits as the Member may require but always subject to the limitations referred to in Section 11; or

(ii) pay a pension at such frequency as the member may decide and of such amount as shall be determined by Actuarial Advice; and

(iii) in lieu of either (i) or (ii) pay a lump sum equivalent to the total balance due to the member except for that element of the fund which has been transferred to the Scheme under QROPS status from the UK. In which case 70% of the fund must be used to provide a pension income or may result in the loss of QROPS status.

Save that no payment shall be made if that payment is in contravention of the Income Tax Act, any Guidance Notes issued by the CIT or any other legislation in force at the time of payment which is applicable to such payments.

## **SECTION 9 - BENEFITS ON DEATH**

### **9.1 Lump sum benefits on death**

Where a Member dies before Normal Retirement Date at any time or place, there will be raised out of the fund and held upon Discretionary Trusts a lump sum of an amount which does not exceed that specified in Rule 11.2.3

The Trustees will pay or apply at their discretion the whole or any part of that sum to all or any of:-

- (i) the personal representatives of the deceased Member, or
- (ii) his Nominated Beneficiary, or
- (iii) such person or persons as the Trustees will in their discretion decide, in such shares as the Trustee in their discretion will decide, who fall into the class of the Member's spouse, issue, parents, grandparents, the spouse and issue of such persons and the former spouse and those who were financially dependent on the Member at his time of death.

### **PROVIDED THAT:-**

- (i) the Trustees may hold such lump sum on trust for a period of up to two years after the death of a Member until they are able to distribute the sum; and
- (ii) if at the expiration of two years the Trustees have not distributed the lump sum, wholly or in part, whatever remains of the lump sum will be transferred to a separate account outside the Scheme to be held on trust by the Trustees for the personal representatives of the deceased Member or, if there are none, the statutory next of kin of this Member;

- (iii) the Trustees may, but without being in any way bound to do so, have regard to any document signed by the Member or Pensioner concerned expressing his wishes relating to the disposal of any sum to be held upon the Discretionary Trusts.

The Trustees will have power to declare in respect of any sum or part thereof such separate trusts, terms and limitations including maintenance, education, advancement and accumulation of income during a minority, and including such discretionary trust and powers, as the Trustees will from time to time by deed revocable or irrevocable appoint, but without infringing the Rule against perpetuities, and the Trustees will have power to appoint as trustees of such fund any two individuals or one corporate trustee as the Trustees will in their absolute discretion decide and to remove any of such Trustees and appoint any other trustee in place of any one so removed.

## **9.2 Spouses and Dependants' pension on death**

Where a Member dies before the Normal Retirement Date, the Member's spouse or Dependants, subject to the provisions of Section 9 and other Rules of this Section, will be entitled to a pension or annuity in such amounts or proportions and for such duration as the Trustees will decide (subject to the limits referred to in Section 11).

Each such pension will start on the Member's death and will be payable for life in the case of a spouse. A pension payable in respect of a Child of the deceased who is not for any other reason a Dependant will cease on the later of the eighteenth birthday of the Child or the cessation of his full time education or vocational training.

## **9.3 Death after retirement**

On the death of any Pensioner within five years after actual retirement there will be raised out of the fund and held on the Discretionary Trusts an amount equal to the balance of the pension which a Pensioner would have received during the remainder of the period of five years but without taking into account any increase in pension under Section 12 which comes into force after the date of death.

## **9.4 Benefit after leaving non pensionable employment**

Where a Member dies after leaving non pensionable employment but before his Normal Retirement Date or before his pension has been paid, benefits will be payable in the same way as provided in Rule 9.1 and 9.2.

# **SECTION 10 - ALLOCATION**

## **10.1 Right to make an allocation**

Subject to Rule 10.2 a Member may at any time before his pension comes into payment by written application to the Trustees surrender part of his pension (in this Section called "an allocation") in order that a deferred pension or annuity payable on his death may be provided for a Nominated Beneficiary.

## **10.2 Restriction on right to allocate**

Any Member may make an allocation except that the Trustees will have a discretion to refuse an allocation application where a Member is granted a pension on the grounds of ill-health or incapacity or where the medical report referred to in Rule 10.8 does not indicate that he is in good health.

### **10.3 Type of pension**

When an allocation is made under this Section, an annuity or pension will be paid to the Nominated Beneficiary so that the annuity or pension will commence on the date of the Member's death and continue until the date of the beneficiary's death or some earlier date agreed to by the Trustees.

### **10.4 Amount of allocation and pension**

Depending on the terms of the Member's allocation, the annual amount of the annuity or pension to be paid to the beneficiary will be determined by the Trustees having regard to the age and sex of the Member and of the beneficiary, so that the amount of pension allocated by the Member is actuarially equivalent to the amount of annuity or pension secured for the beneficiary. A pension or annuity secured under this Rule is additional to that provided under Rule 9.2.

### **10.5 Restrictions on amount of allocation**

The annual amount of pension allocated by the Member under Rule 10.4 may not exceed in total the amount specified in Rule 11.4.

### **10.6 Number of allocations**

A Member may make a number of allocations in favour of different beneficiaries provided that the total of all allocations and the total of all annuities or pensions payable to such beneficiaries will not exceed the limit set out in Rule 10.5.

### **10.7 Death of beneficiary before Pensioner**

The pension payable to a Pensioner will be permanently reduced by any allocation made under this Section even in the event of the death of the Nominated Beneficiary before the Pensioner.

### **10.8 Medical report**

The Trustees will be entitled to require the Member to obtain a written medical report into the state of health of the Member at the time when his application for an allocation is made under this Section, and may, in the event of the medical report being adverse to the extent that the Member does not have the normal expectation of life, refuse to accept the application.

### **10.9 Administrative arrangements**

The Trustees may, in their absolute discretion, make such administrative arrangements and issue such regulations for the effective operation of this Section as they think fit.

## **SECTION 11 - APPROVED LIMITS**

### **11.1 Definitions**

For the purpose of the limits set out in this Section the following terms will have the meanings ascribed to them:-

"**CONTRIBUTION LIMIT**" means total contributions as detailed in Rule 7.1.

"**LUMP SUM RETIREMENT BENEFIT**" means the total value payable on retirement relate to 11.2

"**LUMP SUM DEATH BENEFIT**" means the value payable relating to 11.3

"**RELEVANT DATE**" means the date of retirement, leaving Scheme or death as the case may require.

### **11.2 Member's lump sum retirement benefit - limits**

The Member's lump sum retirement benefit will at all times be subject to approval to regulation by the CIT and will not exceed:-

- (a) on retirement at, before or after Normal Retirement Date, 25% of the Member's Account;
- (b) Any lump sum commuted under clause 8.8.

### **11.3 Lump sum death benefits - limits**

The lump sum benefit payable on the death of a Member before the commencement of his pension will amount to the accumulated fund within the plan.

### **11.4 Dependant's pensions - limits**

Any pension for a spouse or Dependant will not exceed the amount paid to the Member.

## **SECTION 12 - PENSIONS INCREASES**

### **12.1 Increases in current pensions**

Any pension or annuity currently payable out of the fund may from time to time be increased by such amount and at such times as the Trustees will decide.

## **SECTION 13 - STATUS OF THE SCHEME AND TAXATION**

### **13.1 Status of the Scheme**

The Scheme is treated as an Exempt Approved Scheme and complies with the requirement of the Income Tax Act and with all other Acts enactments or regulations including any preservation requirements of the Gibraltar Parliament as these are amended from time to time.

### **13.2 Undertakings to the Commissioner**

For the purpose of enabling the Scheme to continue to be treated as an Exempt Approved Scheme as aforesaid the Trustees or Administrator may give to the CIT such undertaking or undertakings as may be required from time to time and may vary any such undertaking or undertakings.

### **13.3 Effect of undertakings**

The provisions of any undertaking which may be given pursuant to the foregoing provision of this Section will be deemed to be incorporated in the Rules, and, to the extent that they are inconsistent with any other provisions of the Scheme (including any apart from this Rule which otherwise would have the effect of overriding it), they will override that provision.

### **13.4 Taxation deductions**

The Administrator will account to the CIT for all taxation for which they may be liable in accordance with all relevant sections of the Income Tax Act or any modifications thereto and will be entitled to deduct from any payment being made to a Member or other person entitled under the Rules the amount for which they are so accountable.

### **13.5 Tax relief**

Relief from tax may be obtained in respect of premiums paid under an approved Transfer Plan scheme if the Member is taxed via the Allowance Based tax system in Gibraltar.

A Member may elect to have a contribution or part of it treated as having been paid in the tax year immediately prior to that in which it was paid or, if there are no relevant earnings in that preceding year, in the tax year before that. Contributions paid by the Employer may not be carried back.

## **SECTION 14 - TERMINATION AND WINDING-UP**

### **14.1 Power of determination**

The Scheme may be terminated by the Trustees. From the expiration of such notice or the termination of the Scheme for any other reason, the Employers will not be liable for any further payments to the fund, but without prejudice to any liability for payments due on or before the date of such determination. Upon such termination, the Trustees will give notice thereof to the Members. The Scheme will thereupon be wound up, unless the Trustees, with the consent of the Administrator decide to continue it as a closed Scheme. A "closed scheme" for the purpose of this rule means one in which no new members will be admitted and no further contributions paid.

### **14.2 Total winding-up of the Scheme**

If the contributions will be terminated in accordance with Rule 14.1 and the Scheme will not be continued as a closed fund, or if the Trustees will at any time be of the opinion that the objects for which the Scheme was established no longer exist or that the administration thereof cannot conveniently be carried on, the Scheme will thereupon be wound up and the trusts upon which the fund was formerly held will cease. The Scheme will in any event be wound up if the perpetuity period will expire.

### **14.3 Entitlement to benefit**

On the termination of the Scheme, Members who have not attained Normal Retirement Age will be treated as if their earnings had then terminated in accordance with Section 5.4 provided that no Member will become entitled to a refund of his contributions.

### **14.4 Application of fund on a winding-up**

Upon the winding up of the Scheme, then, unless there is a transfer of assets in specie to another Transfer Scheme pursuant to this Rule, the assets of the fund will be realised and the fund converted into money and, subject to the payment of all costs charges and expenses which may then be owing, the entire proceeds of such conversion will be applied by the Trustees in satisfying the following obligations in the order in which they are set out below:-

- (a) in securing the continuance as if under the Scheme of any pensions and annuities which have then actually commenced, pensions prospectively payable to Members who are in Service after Normal Retirement Date and benefits payable on the death of any such Pensioner or Member;
- (b) in the provision of benefits for Members and other prospective annuitants and beneficiaries entitled in anticipation to benefits regard being had to the respective prospects of becoming entitled to such benefits had the Scheme continued in existence;
- (c) in paying any balance remaining in their hands, after satisfying their obligations under the preceding paragraphs the Trustees will decide which will be treated as revenue for tax purposes under the Income Tax Act.



#### **14.5 Transfer payments on a winding-up**

In relation to any amount becoming payable under Rules 14.4 and 14.5 the following provisions will have effect in relation to transfer payments:-

- (a) a transfer payment will only be made with the consent of each individual Member except that transfers may be made without the Member's consent if:-
  - (i) the rights allowed in the Transfer Scheme are in the opinion of the administrator of the Transfer Scheme at least equal in value to the rights transferred;
- (b) the amount of the transfer payment will be of such amount or amounts as the Trustees will decide, regard being had to the assets available on the winding-up.

#### **14.6 Securing of benefits on a winding-up**

In cases where a transfer payment is not made in respect of a Member, his benefits will be secured by the purchase of an annuity or other insurance policy or contract from an Insurance Company which will be endorsed to show:-

- (a) that the annuity contract or policy is non-commutable and non-assignable except as shown in paragraph (b) below;
- (b) the amount in monetary terms available by way of commutation or on death;
- (c) the earliest date from which the pension is payable; and
- (d) that any lump sum payable under the contract or policy will be appropriately discounted in the event of the pension becoming payable before his Normal Retirement Date.

#### **14.7 Payment of benefits on a winding-up**

All annuities purchased pursuant to Rule 14.6 will commence to be payable not earlier than the earliest date on which a pension or annuity could have been payable under the provisions of the Rules had the Scheme continued in existence, and all annuities will be non-assignable and non-commutable.

