

<p>The Pensions Regulator</p>	<p><b>Standard Procedure DETERMINATION NOTICE under Section 10(2)(b) and section 96(2)(a) of the Pensions Act 2004 (“the Act”)</b></p> <p><b>The Original Trust  (“the Scheme”)</b></p>	<p>The Pensions Regulator case ref:</p> <p><b>C8480474</b></p>
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1. The Determinations Panel (“the Panel”) met on 8 August 2013 to determine whether Mr J S Kainth and Ms K Jarvis should be given notice in writing pursuant to section 29(5) of the Pensions Act 1995 (“the 1995 Act”) to waive their disqualification to act as trustees of The Original Trust Scheme. This is a reserved regulatory function under the Act and may only be exercised by the Panel. The request to exercise this power is an application under section 10(2)(b) of the Act.

2. The Panel determined that the power waiving disqualification should be exercised.

**Directly Affected Parties**

3. The Warning Notice specified the following parties as being directly affected by the regulatory action outlined therein.
- i. GAM Trustees Limited, an independent trustee
  - ii. x, a member and trustee of the Scheme
  - iii. Jaswinder Singh Kainth (“Mr J Kainth”) and Karen Elizabeth Bridgette Jarvis (“Ms Jarvis”) together “the Applicants”;
  - iv. Ink Fashions Ltd (“the Employer”).

**Details of the Scheme**

4. The Scheme is a defined contribution scheme. It has three members, is open to future accrual and was established as a small self-administered scheme (SSAS). The SSAS status was revoked following the pensions tax simplification which took place in April 2006. However, the reduced regulatory requirements that applied to SSAS schemes continue to apply to Small Schemes. The Pensions Regulator (“the Regulator”) understands that the Scheme qualified as a Small Scheme prior to the Applicants’ disqualification.

5. The Applicants and xxxxxxxxxxxxxxxx are the only members of the Scheme. Xxxxxxxxxxxx is also a trustee of the Scheme along with GAM Trustees Limited, an independent trustee.

6. It is understood that the Employer has assumed responsibility for the Scheme, following Original Leisurewear Ltd (the Former Employer) going into liquidation.

### **Background to Application**

7. On 2 June 2010, Mr J Kainth signed a form of Disqualification Undertaking. He was disqualified from acting as a company director from 25 June 2010 to 24 June 2016 under section 7 of the Company Directors Disqualification Act 1986. As a consequence, Mr J Kainth was automatically disqualified from being a trustee pursuant to section 29(1)(f) of the 1995 Act. He was automatically removed as a trustee of the Scheme pursuant to section 30(1) of the 1995 Act by virtue of his disqualification as a director.
8. On 3 June 2010 Ms K Jarvis signed a form of Disqualification Undertaking. She was disqualified from acting as a company director from 25 June 2010 to 24 June 2016 under section 7 of the Company Directors Disqualification Act 1986. As a consequence, Ms K Jarvis was automatically disqualified from being a trustee pursuant to section 29(1)(f) of the 1995 Act. She was automatically removed as a trustee of this Scheme pursuant to section 30(1) of the 1995 Act by virtue of her disqualification as a director.
9. The disqualification undertakings in respect of Mr J Kainth and Ms K Jarvis give the following reason  
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XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
10. The Applicants have asked the Regulator to consider granting a waiver of the disqualification from acting as trustees in respect of the Scheme. The principal reason for requesting the waiver is the requirement for all members of the Scheme to be trustees in order for it to qualify as a Small Scheme. As a Small Scheme the Scheme is exempt from several requirements to which it would otherwise be subject, including in relation to Employer Related Investments (“ERI”). The Panel understands that the Scheme has a degree of ERI which was permitted so long as the Scheme was a Small Scheme but which is, or may be, in excess of the limits otherwise imposed by the 1995 Act.
11. The Applicants wish to be reappointed as trustees of the Scheme. X has indicated that he supports the application.
12. The Trust Deed and Rules stipulate that the power to appoint trustees may be exercised by the Principal Employer, named as Original Leisurewear Limited. The Rules also appear to provide that in the event that the Principal Employer goes into liquidation, its powers shall be exercisable by the trustees. There is also provision for the Trustees to

admit any other employer to participate in the Scheme, though it is not clear to the Panel whether the Employer, namely Ink Fashions, has been admitted to participate in the Scheme in accordance with the Rules. The Panel is aware, however, that Greyfriars Asset Management LLP, who are stated to act for, and on behalf of, GAM Trustees, have confirmed that GAM Trustees (along with xxxxxxxxxxxx), would as the Scheme's managing trustees, reappoint the Applicants as trustees should the waivers be granted.

13. In the Warning Notice, the Regulator has stated that it believes that there is no risk to other parties if the waiver of disqualification is granted.

### **Decision**

14. The Panel determined that Mr J Kainth and Ms K Jarvis' disqualification from acting as trustees be waived in respect of the Original Trust scheme only.

### **Reasons for decision**

15. In making its decision the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters mentioned in Section 100.
16. The Panel decided to waive the disqualifications for the following reasons:-
  - i. Waiving the disqualifications gives the Scheme the opportunity to regain its status as a Small Scheme, thereby minimising the costs to the Scheme and allowing the Applicants to secure their maximum benefits;
  - ii. The Applicants are two of the three members of the Scheme. Moreover, the third member of the Scheme, xxxxxxxxxxxx, supports the application. It is, therefore, in the interests of the generality of the members of the Scheme to waive the disqualifications;
  - iii. There is no apparent risk to any other party by waiving the disqualifications in relation to this Scheme only.
17. **Appendix 1** to this Determination Notice contains important information about the rights of appeal of the directly affected parties against this decision.

Signed: **Andrew Long**

Chairman: Andrew Long

Dated: 13 August 2013

**Referral to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)**

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under Section 103 of the Pensions Act 2004 (“the Act”) you have 28 days from the date this Determination Notice is given to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Determination Notice. The Tribunal’s address is:

The Tax and Chancery Chamber of the Upper Tribunal  
45 Bedford Square  
London  
WC1B 3DN  
Tel: 020 7612 9700

The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal Rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to The Pensions Regulator. Any copy reference notice should be sent to:

Determinations Panel Support  
The Pensions Regulator,  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW.

Tel: 01273 811852