

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**Application for Licensing a Personal
Retirement Scheme**

Non-Member Directed

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INTRODUCTION

INFORMATION CONCERNING THE APPLICATION FOR LICENSING A NON-MEMBER DIRECTED PERSONAL RETIREMENT SCHEME

- The Pensions Rules under the Retirement Pensions Act, 2011 should be read carefully before this Application form is completed.
- This application form is to be completed in a **proper and comprehensive** manner and not in a piece-meal fashion. The Application should be accompanied by the appropriate fee and all the relevant documents for the processing of the respective Application to commence. In the instance where application documents are submitted in a piecemeal fashion or are incomplete, the processing of an application will not start and will be delayed until receipt of all the relevant documents and fees concerned. The MFSA may also return the application pack if it is considered to lack the required detail and has missing documentation. An Application is deemed to have been officially submitted once a full application pack (i.e. the Application Form and all relevant supporting documentation) together with the relevant application fee is submitted to the MFSA. The fee structure is found in the Retirement Pensions (Fees) Regulations, 2015 can be downloaded from the MFSA's website.
- If a licence is granted, its terms will depend (inter alia) upon all matters and circumstances discussed as part of the Application process. It is therefore essential that all pertinent matters are brought to the attention of the MFSA to enable the Authority to form a complete and thorough understanding of the proposed application.
- Responsibility for the submission of all relevant information rests with the Applicant. Timely responses from applicants are expected. Undue and unjustifiably lengthy delays in the submission of responses from applicants may require the re-submission of updated documents.
- The provision of false, misleading or inaccurate information or omission of provision of material information may prejudice the status of the application and may also have a bearing on the fitness and properness of the person providing the information. Any person who knowingly or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect is guilty of an offence under the Retirement Pensions Act.
- If, after the Application has been submitted, the Applicant becomes aware that the information submitted has changed or if the Applicant becomes aware of any material fact that affects the information submitted, the Applicant must inform MFSA immediately.
- All questions should be answered. If the Applicant believes that a question does not apply, the response should be "Not Applicable". *None of the questions are to be left unanswered.*
- Hard copies of applications and supporting documents are to be submitted. A scanned copy of the application is also to be emailed to aupensionstrustscsps@mfsa.com.mt
- Any supporting documents submitted as part of the application pack which are not in either English or Maltese should be translated into one of these languages before being submitted to the Authority.

SECTION 1

ESTABLISHMENT AND FORM

1.1	Name of the Scheme (this is the name that will appear in the Licence, if granted):
1.2	Will the Scheme be marketed with a different name than the name given in Q.1.1 above?
	Yes / No: If Yes, please indicate marketing name and the rationale for opting to choose a different name for marketing purposes:
1.3	Please identify the Legal Form of the Scheme
	<p>a) A non-discretionary Trust</p> <p>b) Contract</p> <p>c) SICAV <i>If the entity is still in formation please indicate the proposed registered address:</i> <i>If entity is already incorporated, please indicate:</i></p> <ul style="list-style-type: none">• Date and Place of incorporation of the entity:• Registration Number (if applicable):• Registered Address (if applicable):• Current Business Address (if applicable):• Email:• Telephone:• Web-site Address: <p>Has the entity ever been known by another name? If Yes, please advise the names by which the entity has been known previously:</p> <p>Please provide information explaining the nature of the entity and reasons for its existence prior to this application.</p> <p>Please indicate whether there have been or there are any pending litigations or censures or other complaints related to the entity, providing relevant details.</p> <p>Please submit certified true copies of documents of establishment and copies of recent audited accounts.</p>
	<p>d) Other Legal Form</p>
1.4	Please explain the rationale for the establishment of the Scheme.

1.5	Does the Scheme or any of its proposed Directors (as applicable) have any pending applications in other Jurisdictions; or has ever been refused a licence or ever withdrew an application for licensing? If so, please provide details.

SECTION 2

NATURE AND OPERATION

2.1	Please specify the nature of the scheme:
	a) Defined Contribution b) Defined Benefit
2.2	Will the Scheme be providing cover to any biometrical risks or guarantees any investment performance or a given level of benefits? If this is the case, the MFSA may require the Scheme to hold additional assets above the technical provisions to serve as a buffer.
2.3	If the Scheme is to be a Defined Benefit Scheme or the Scheme intends to offer an element of biometric or investment risk cover, please explain how this defined benefit and / or element of biometric or investment risk cover will be achieved.
2.4	Please state the base currency of the Scheme.
2.5	Please outline the list of investment options the Scheme shall offer to its Members, as approved by the Investment Manager of the Scheme in a standardised and readily comparable manner.
2.6	Please indicate the default investment option which is adequate for retail members.
2.7	Please provide details of any applicable charges, fees and expenses associated with the Scheme and with each investment choice. Please also indicate where these are disclosed to the Members.
2.8	Please advise whether the Scheme will be seeking to qualify as a Qualifying Recognised Overseas Pension Scheme under the rules issued by Her Majesty's Revenue and Customs.

2.9	Please indicate what is the intended target market of members for the Scheme

2.10	<p>Please describe briefly how the Scheme is to be marketed and how it intends to accept membership in the Scheme</p> <ul style="list-style-type: none">a) Through Investment Advisorsb) Appointment of Introducersc) Direct marketing by the Scheme / RSAd) Other
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SECTION 3

CONTRIBUTIONS AND BENEFITS

Contributions

3.1	Please indicate the estimated number of scheme members projected for the first three years.
3.2	Please specify the basis of the above assumptions.
3.3	Please indicate whether the Scheme will be accepting other contributors apart from the members. If yes, please provide details.
3.4	Please specify the nature of contributions that will be accepted into the Scheme (more than one source can be indicated):
	<ul style="list-style-type: none"> a) In-Specie Transfers from other Pension Schemes (please specify what type of in-specie transfers will be accepted): b) Cash Transfers from other Pension Schemes: c) Contributions not linked to other Pension Schemes: d) Others (please specify): <p><i>May we remind you that if any contributions, other than in cash, shall be accepted, the Retirement Scheme Administrator is to ensure that the requirements contained in Section B.1.2.3 of the Pension Rules for Personal Retirement Schemes are adhered to.</i></p>
3.5	Will members have the option of transferring the contributions to another pension scheme?
	Yes: No:
3.6	Please explain how the Members' contributions will be invested (more than one option can be marked) taking into account the applicable Investment Restrictions.
	<ul style="list-style-type: none"> a) Through a Retirement Fund b) On a discretionary basis by the entity undertaking the Investment Management function c) Other (please specify)
3.7	The Scheme shall invest its Contributions in line with the Scheme Investment Objectives and Statement of Investment Principles outlined in the Scheme Document and Scheme Particulars and shall observe the investment restrictions in Part B.3.2 of the Pension Rules for Personal Retirement Schemes. Please explain how the option/s chosen above, satisfy/ies the indicated investment requirements.

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3.8	Since the contributions will have to be held in a pooled form, please confirm what procedures will be put in place in order for the Retirement Scheme Administrator to keep track of the contribution pooled by each Member.

Benefits

3.9	Please outline the procedure that has to be followed by the Member in order to elect to take the retirement benefits.

SECTION 4

RELATED PARTIES AND GOVERNANCE ARRANGEMENTS

The Retirement Scheme Administrator

4.1	Please indicate the Retirement Scheme Administrator who shall be responsible for the administration of the Scheme
4.2	Is the administrator already licensed as a Retirement Scheme Administrator under the Retirement Pensions Act? If the answer to this is no, please confirm whether an application for such licensing will be/was submitted in conjunction with this application.
4.3	List the names of any other schemes (if any) administered by the Retirement Scheme Administrator.
4.4	Please detail any fact, arrangement, relationship or circumstances which might compromise the independence of the Retirement Scheme Administrator.
4.5	In the case where the Scheme will be established in the form of a Trust or Contract, please provide us with the names and positions of the key functionaries within the Retirement Scheme Administrator who shall be responsible for the administration, management and supervisory functions of the Scheme. Please also attach an organigram clearly indicating the reporting lines.
4.6	In the case where the Scheme will be established as a SICAV, please list the members of the Board of Directors and their position.
4.7	Does the Retirement Scheme Administrator intends to carry out any of the mandatory functions:
	<input type="checkbox"/> Investment Manager (please complete Annex IV below) <input type="checkbox"/> Custodian (please complete Annex IV below) <input type="checkbox"/> None

The Investment Manager and Custodian who will be undertaking the Mandatory Functions

Please note that if one of the mandatory functions (either the Investment Management function or the Custody function) will be undertaken by the Retirement Scheme Administrator, the Retirement Scheme Administrator must be duly licenced under the Retirement Pensions Act to carry out investment management services for a Scheme and is therefore required to complete a separate application form.

Investment Manager

4.8	Please indicate the proposed Investment Manager and its regulatory status.
	<p>Name of Investment Manager:</p> <p>Country of establishment:</p> <p>Date of licence:</p> <p>Regulatory Authority:</p> <p>Details of licence held:</p> <p><i>Please ensure that the proposed Investment Manager fits within one of the criteria stipulated under Section B.1.3.6 of the Pension Rules for Personal Retirement Schemes.</i></p>
4.9	If the Investment Manager is not yet licenced by the MFSA please provide details of its licensing status (if applicable).
4.10	If the Investment Manager is licensed in another EU or EEA State, please indicate whether the Investment Manager has already passported for the provision of its services as applicable (if applicable).
4.11	If the Investment Manager is licensed in a jurisdiction outside the EU or EEA, please indicate whether the Investment Manager has already applied under the Retirement Pensions Act (Exemption) Regulations, 2015 or whether it intends to do so (if applicable).
4.12	Please detail any fact, arrangement, relationship or circumstances which might compromise the independence of the Investment Manager.

Kindly submit a copy of the **final draft agreement** governing this relationship, clearly indicating the functions to be carried out by the Investment Manager and the granting of access to the necessary information to the Retirement Scheme Administrator and / or the Custodian.

Custodian

4.13	Please indicate the proposed Custodian and its regulatory status.
	Name of Custodian: Country of establishment: Regulatory Authority: Details of licence held: <i>Please ensure that the proposed Custodian fits within one of the criteria stipulated under section B.1.3.9 of the Pension Rules for Personal Retirement Schemes.</i>
4.14	If the Custodian is not licensed by the MFSA, please provide details of its licensing status (if applicable).
4.15	If the Custodian is licensed in another EU or EEA State, please indicate whether the Custodian has already passported for the provision of its services as applicable (if applicable).
4.16	If the Custodian is licensed in a jurisdiction outside the EU or EEA, please indicate whether the Custodian has already applied under the Retirement Pensions Act (Exemption) Regulations, 2015 or whether it intends to do so (if applicable).
4.17	Apart from the safekeeping of assets, the Custodian shall, where applicable, be responsible to supervise the operation of a Scheme. Please explain how the Custodian will be able exercise such monitoring as stated in section 1.3.8 of the Pension Rules for Personal Retirement Schemes.
4.18	Please detail any fact, arrangement, relationship or circumstances which might compromise the independence of the Custodian.

Kindly submit a copy of the **final draft agreement** governing this relationship.

The Investment Advisor

4.19	Please indicate whether the Scheme intends to appoint an Investment Advisor. If this is the case please proceed with the questions, otherwise please skip to the next section. Kindly note that this appointment is optional.

4.20	Please provide the following details in respect of the proposed Investment Advisor.
	Country of establishment: Regulatory Authority: Details of licence held: <i>Please ensure that the proposed Investment Advisor fits within one of the criteria stipulated under section B.1.3.11 of the Pension Rules for Personal Retirement Schemes.</i>

4.21	If the Investment Advisor is not licensed by the MFSA, please provide details of its licensing status (if applicable).

4.22	If the Investment Advisor is licensed in another EU or EEA state, please indicate whether the Investment Advisor has passported for the provision of its services as applicable (if applicable).

4.23	If the Investment Advisor is licensed in a jurisdiction outside the EU or EEA state, please explain the assessment undertaken by the Retirement Scheme Administrator to ensure that the jurisdiction from which the Investment Advisor operates is subject to an equivalent level of regulatory supervision as Malta.

4.24	Please provide details of the main functions to be carried out by the Investment Advisor. Please also indicate whether the Investment Advisor shall also be acting as an introducer.

Kindly submit a copy of the **final draft agreement** governing this relationship.

The Auditor

The Scheme shall appoint an auditor approved by the MFSA in terms of the Retirement Pensions Act. The appointed Auditor is to send a declaration confirming the statements contained in Annex II below.

4.25	Please indicate the proposed Auditors of the Scheme.

The Actuary

A Defined Benefit Scheme shall appoint an Actuary. This requirement does not apply to a Defined Contribution Scheme. The appointed Actuary is to send a declaration confirming the statements contained in Annex III below.

4.26	Please indicate the proposed Actuary of the Scheme.

Governance Arrangements

4.27	Please provide details where records pertaining to the scheme will be kept. Please also provide details of where such records will be backed up.

4.28	Kindly confirm that the Investment Manager and the Custodian are separate entities and therefore independent from each other.

4.29	Please give details on the due diligence procedures to be undertaken by the Retirement Scheme Administrator in relation to the proposed Investment Manager, Custodian and Investment Advisor (as applicable).

4.30	Please describe the monitoring arrangements to be put in place over the appointed third-party service providers, including Investment Advisors and/or Introducers.

SECTION 5

DOCUMENTATION

The following information should be provided together with this application. Kindly confirm that all the documents are submitted by ticking the checklist.

	Yes	No
The Covering Letter		
A final draft version of the Constitutional Document and Scheme Document (where these two documents are different) clearly indicating where the matters specified in Appendix 1 and 2 in Part C of the Pension Rules for Personal Retirement Schemes are contained in the documents.		
A final draft version of the Scheme Particulars and any other document affecting the rights of contributors into the scheme clearly indicating where the matters specified in Appendix 3 in Part C of the Pension Rules for Personal Retirement Schemes are contained in the documents.		
Supporting Board Resolution – where the Scheme is to be established as a SICAV		
Detailed business plan for the scheme covering three years . In particular the following Details should be given: <ul style="list-style-type: none"> • Administration of the Scheme; • Investment Policy; • Service Providers; • Target market and the countries in which the scheme is or will be promoted; • The method of promotion; • Details of the estimated contributions and the basis of these assumption; • Three years financial projections duly signed by a Certified Public Accountant. The projections are to clearly indicate the basis of the calculations. 		
Final draft copies of any agreements with third party service providers.		
Submission of application fee .		
Submission of the declaration from the Retirement Scheme Administrator as contained in Annex I		
Submission of the declarations from the Auditor / Actuary (where applicable) as contained in Annex II and Annex III.		
Any other documentation which are material to the operation of the Scheme.		
Structural organigram of the Retirement Scheme Administrator and the Scheme.		

Completed forms together with any supporting material should be sent by email to aupensionstrustscsps@mfsa.com.mt and by post to:

The Director – Authorisation Unit
The Malta Financial Services Authority
Attard BKR 3000,
MALTA

Enquiries about an application may be made to the above email address or by telephone on (356) 21 441155.

Annex I

DECLARATION BY THE APPLICANT/RETIREMENT SCHEME ADMINISTRATOR

This declaration is to be signed by the Retirement Scheme Administrator if it is already licenced. Otherwise by the applicant behind this application.

The Retirement Scheme Administrator or applicant, hereby declares that:

- The information supplied in this Application Form is complete and correct;
- There are no inconsistencies between the provisions in the various documents supporting this Application
- The MFSA will be notified immediately if the information provided changes in any material way either prior to or subsequent to licensing;
- The person(s) whose signature appears below is duly authorised by the Applicant to make this Application;

The MFSA is hereby being authorised to make such enquiries as it may consider necessary in connection with this Application. This includes, but is not limited to, the authority to contact other regulatory bodies and also those parties of which details are given in this application.

Furthermore, the applicant/Retirement Scheme Administrator, is to:

- to notify every Scheme Member of the entry in the Scheme and provide them with a copy of the Constitutional Document, the Scheme Document and the Scheme Particulars upon joining the scheme;
- inform the member the right to opt out of the scheme within 30 days of the member receiving a welcome letter without incurring any penalty and without having to give any reason;
- ensure that the investments are in line with the investment restrictions;
- inform the member and investment manager/advisor of any material changes which may affect the Scheme; and
- provide members with the details contained in Section B.5 of the Pension Rules for Personal Retirement Schemes.

Name	
Signature	
Title	
Company	
Date	
Telephone Number	
Email address	

Annex II

DECLARATION – SCHEME AUDITOR

Any appointed Auditor of a Personal Retirement Scheme is required to submit the following declaration to the MFSA. The declaration should be attached together with this application.

The letter is to including the following declarations:

- A confirmation that the Auditing Firm has agreed to accept the appointment as Auditor of the Scheme in question;
- The responsibilities of the Audit Firm as the Auditor of the Scheme;
- That the Audit firm holds adequate and appropriate Professional Indemnity Insurance in the context of the application;
- A list of the professional bodies/associations/correspondents memberships within which the Audit Firm is affiliated;
- That the Audit Firm satisfies the eligibility criteria specified in the SLC B.1.4.2 issued under the Pension Rules for Personal Retirement Schemes;
- The Auditor shall report to the MFSA in accordance with the applicable requirements of the Pension Rules issued by the Malta Financial Services Authority;
- That, in accordance with article 35(1) of the Retirement Pensions Act, the Audit Firm undertakes to report immediately to the MFSA any fact or decision about which they become aware in their capacity as Auditors which:
 - is likely to lead to a serious qualification of, or refusal to issue, the Auditor's report;
 - constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the applicant in or under the Retirement Pensions Act;
 - seriously impairs the ability of the applicant to meet the current or future liabilities attributable to it;
 - negatively and materially affects the interests of members and beneficiaries; or
 - relates to any other matter, which has been prescribed.

Moreover, in terms of the said Act, the Audit Firm is bound to report to the MFSA any fact or decisions as specified above pertaining to any person having close links with the applicant within the meaning of article 9(10)(a) of the Act, of which the Audit Firm becomes aware in their capacity as Auditor of the applicant and of a person having close links with the former.

Annex III

DECLARATION – SCHEME ACTUARY

The Actuary of a Retirement Scheme, where the latter has a defined benefit element or is providing cover against biometric or investment risks or where the Scheme itself at withdrawal stage offers a stream of income payments to the respective member, is required to submit the following declaration to the MFSA. The declaration should be attached together with this application.

The letter is to include the following declarations:

- A confirmation that the Actuarial Firm has agreed to accept the appointment as Actuary of the Scheme in question;
- The responsibilities of the Actuarial Firm as the Actuary of the Scheme;
- A confirmation that the Actuarial Firm undertakes to abide by the MFSA's requirements relating to the role of the appointed Actuary as outlined in the Retirement Pensions Act and supporting Regulations and Pension Rules;
- That the Actuarial Firm holds adequate and appropriate Professional Indemnity Insurance in the context of the application;
- A list of the professional bodies/associations memberships within which the Actuarial Firm is affiliated;
- That the Actuarial Firm satisfies the eligibility criteria specified in the SLC B.6.4 issued under the Pension Rules for Personal Retirement Scheme;
- That the Actuarial Firm is satisfied that the Schedule of Payments has been prepared in accordance with the directives laid down by the MFSA;
- The Actuarial Firm shall report to the MFSA in accordance with the applicable requirements of the Pension Rules issued by the Malta Financial Services Authority;
- That, in accordance with article 35(1) of the Retirement Pensions Act, the Actuarial Firm undertakes to report immediately to the MFSA any fact or decision about which they become aware in their capacity as Actuaries which:
 - is likely to lead to a serious qualification of, or refusal to issue, the Actuary's report;
 - constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the applicant in or under the Retirement Pensions Act;
 - seriously impairs the ability of the applicant to meet the current or future liabilities attributable to it;
 - negatively and materially affects the interests of members and beneficiaries; or
 - relates to any other matter, which has been prescribed.

Moreover, in terms of the said Act, the Actuarial Firm is bound to report to the MFSA any fact or decisions as specified above pertaining to any person having close links with the applicant within the meaning of article 9(10)(a) of the Act, of which they become aware in their capacity as Actuaries of the Scheme and of a person having close links with the former.

Annex IV

THE RETIREMENT SCHEME ADMINISTRATOR INVESTMENT MANAGER OR CUSTODIAN

In the case where a Retirement Scheme Administrator is to undertake the Investment Manager function or the custody function, the Retirement Scheme Administrator as Investment Manager/ Custodian is required to provide the following details in the Business Plan:

- Details of the investment/custody services to be provided to the scheme;
- Details of the persons that will be carrying out the Investment Management function or Custody function (as applicable), together with their qualifications, training and experience relevant to the function that will be undertaken;
- Details of the systems/ procedures in place to successfully carry out the relevant function; and
- Details on how the dual control principle will be satisfied.

End of Document