ESTABLISHING A QROPS IN MALTA
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First Retirement Schemes and Administrators Established in Malta

The Malta Financial Services Authority (MFSA) issued the first registrations for Retirement Scheme Administrators and Retirement Schemes under the Special Funds (Regulation) Act towards the end of February 2010. The Melita International Retirement Scheme, which is to be administered by Custom House Global Fund Services Limited, and the MCT Malta Private Retirement Scheme, to be administered by MC Trustees (Malta) Limited, were the first Schemes to be registered under the Act. Dominion Fiduciary Services (Malta) Limited has also been registered as an administrator. It is expected that the administrators whose Schemes have been registered will now submit notifications to Her Majesty’s Revenue and Customs in the UK that the Schemes fulfil the requirements for being a “qualifying recognised overseas pension scheme (QROPS)” under UK Law.

The MFSA announced in December 2009 that HMRC had confirmed that pension schemes established in Malta and regulated by the MFSA may be considered on a case by case basis to be eligible for QROPS status. This recognition is based on the current legislation in both Malta and the UK.

Establishing a QROPS in Malta

A Retirement Scheme in Malta can be established either by way of a trust or a contract to the satisfaction of the MFSA. If the Scheme is established by way of a trust (as is usually the case) a trustee will need to be appointed to act by way of a registration under the pensions law (the Special Funds (Regulation) Act). If the applicant intends to hold, or already holds a trustee authorisation from MFSA under the Trusts and Trustees Act, they will be eligible to make an abridged application to act as a Retirement Scheme Administrator. Alternatively, applicants can complete a full application if their proposed activities will be limited to the administration of retirement schemes only.

Once the Scheme is established in Malta, the Administrator will then submit a notification to Her Majesty’s Revenue and Customs in the UK that the Scheme fulfils the requirements for being a QROPS in light of the UK Finance Act 2008.

The UK legislation requires that a Retirement Scheme needs to be regulated in the country where it is established by an appropriate body that will ensure that the Scheme is administered soundly in order to protect the interests of its members. The legislation also requires that the Scheme is recognised for tax purposes in the country where it is established. Both of these requirements are satisfied by the laws and regulations in Malta that deal with Retirement Schemes.

The Regulator and the Regulatory Environment

The MFSA is the single regulator of Financial Services in Malta - regulating Investment Business, Insurance Business, Banking, Trustee Services and Pensions.

Retirement Schemes registered in Malta are regulated by the Special Funds (Regulation) Act and the various regulations and directives issued thereunder. Parts A, B and C of the Directives issued by the MFSA are particularly relevant to QROPS type Schemes. We have been working with MFSA to ensure that the Directive are applied only as necessary for QROPS type Schemes, and can give specific assistance in this regard.

Registration of Retirement Schemes and Retirement Scheme Administrators

Applicants are encouraged to hold informal discussions with the MFSA (personally or through their representatives in Malta) before lodging a final application form with the Authority. Applications and other documents will be submitted in draft initially and reviewed by the Authority in order to avoid hiccups at a later stage.

Licensing the Retirement Scheme

An application for registration of a Scheme must be filed with the MFSA, which must be accompanied by a copy of the Scheme document or trust deed, the applicable fees and any other information or particulars the MFSA may require. A Scheme Administrator and, if necessary, an Asset Manager or Custodian (as discussed below) will also need to be registered with the MFSA. An auditor will need to be appointed in accordance with MFSA requirements as well as an actuary in the rare case of a defined benefit scheme.

The Scheme Administrator

A Retirement Scheme must appoint a Retirement Scheme Administrator to perform the day to day duties of operating the scheme. The Administrator must be a body corporate, rather than an individual. In the case of a Scheme established by way of trust, the Scheme Administrator will also act as trustee of the
Scheme. If the Scheme Administrator is or intends to be authorised under the Trusts and Trustees Act, it may apply to be registered under the abridged application process under the Special Funds (Regulation) Act. They can, alternatively, make a full application under the Special Funds (Regulation) Act if they intend to provide Retirement Scheme administration services only. We would be pleased to provide additional information in this regard, upon request.

The relevant application forms for the Retirement Scheme and Retirement Scheme Administrator, and lists of materials that must be attached thereto are contained in Part E of the Directives issued by the MFSA and a copy can be found on the MFSA website.

The fee for submission of a Scheme application to the MFSA is €1,165 and a further fee will be due upon registration and annually thereafter. The level of this fee is dependent on the number of Scheme members and currently ranges from €116 to €2,330. In addition, the Retirement Scheme Administrator fee for submission of a full application to MFSA is €465, with an additional €1,400 due on registration and annually thereafter. Since the Administrator must be constituted as a body corporate, its Memorandum and Articles will also need to be registered with the Company Registry in Malta. The current registration and annual return fees for the company will depend on its authorised share capital, but currently we would expect them to be in the region of €600.

The Asset Manager

An Asset Manager will need to be appointed to a Retirement Scheme in circumstances where the Retirement Scheme Administrator does not have investment services expertise in-house. It is the Asset Manager’s role (if appointed) to manage the investment portfolio of the Scheme. The appointment can be relatively straightforward, particularly for EU based advisors who can make use of their ability to passport their services into Malta.

The Custodian

The MFSA may require the appointment of a Custodian to a Retirement Scheme. This may occur if a Retirement Scheme does not invest its members’ contributions in a Retirement Fund or Funds (as defined in the Special Funds (Regulation) Act), and does not engage the services of an Asset Manager.

Minimum Funds

The Administrator is required to meet a minimum Net Tangible Asset Requirement. In practice, this means that the minimum initial capitalisation requirement is €125,000.

Permitted Investments

There are certain investment restrictions in relation to personal Retirement Schemes in Malta. The Scheme’s Administrator will be responsible for applying diversification and prudent man principles and assets must be invested in the best interests of beneficiaries. The following investment restrictions apply specifically to Schemes that are intended to be offered as QROPS:

- no transactions may be entered into with members or persons connected to them, including the making of loans;
- no borrowing is allowed in relation to the purchase of property for members or persons connected to them;
- the Scheme may only borrow on a short term basis in relation to the management of its assets, and
- the Scheme shall not engage in any leverage.

There is also the need to demonstrate that the investment policy and applicable risks have been disclosed to the client and accepted by them.

Contents of Scheme Documentation

MFSA has specific rules on details that should be included in the Scheme documentation, as outlined in the Special Funds (Regulation) Act and expanded upon in the Directives issued under it. An important restriction arises from the rule that the Scheme documentation should set out, from the outset, the precise means to be adopted to identify current and future beneficiaries and to determine the amounts of their respective benefits and timing thereof. This can have an impact on the extent of discretion that may be exercised by the trustee/Retirement Scheme Administrator and is an area where we can provide assistance in drafting Malta specific documentation.

Outsourcing

MFSA will allow outsourcing of administrative functions in some circumstances but responsibility cannot be delegated and the management of the Administrator will remain responsible for any functions delegated to third parties.

Maturity of Retirement Schemes

Upon maturity, it is necessary for a personal Retirement Scheme to offer a beneficiary the option of purchasing an annuity. However, the take up of an annuity is not compulsory and benefits may also be paid out in the form of a lump sum of up to 25% of the value of the member’s fund and/or an income stream for life. MFSA intends to introduce detailed rules in relation to the payment of benefits as an income stream for life. In the meantime, applicants can make their own prudent
suggestions to MFSA on how they intend this to be achieved. If these suggestions are accepted by MFSA, they may be offered to prospective members of the Scheme until MFSA has set out its own rules. At that point, current members will have the choice to retain the arrangements put in place before the MFSA rules, or may follow the MFSA rules. All new members will be obliged to take benefit payments under the terms of the MFSA rules.

About Ganado & Associates (G&A)

G&A has extensive legal expertise in the Pensions field and is well positioned to assist your company whether in relation to the setting up of your QROPS operations in Malta or ongoing legal support.

Mrs. Eleanor Charlton is a senior associate in the Insurance & Pensions Law department at G&A. She is a solicitor regulated by the Solicitors Regulation Authority of England and Wales and has been active in developing the firm’s Pensions practice, particularly in relation to QROPS.

If you require further information, please contact Mrs. Eleanor Charlton (echartlon@jmganado.com) and/or Dr. Matthew Bianchi (mbianchi@jmganado.com).

Further information about G&A, our services and copies of our previous Pensions related publications can be found on our website: http://www.jmganado.com