Investment Management Services for Malta Pension Schemes
Introducing Pension Schemes
Laws and Regulations

- The Retirement Pensions Act 2011 and subsidiary legislation issued thereunder
- The Pension Rules on Retirement Schemes
- The Trusts and Trustees Act / Companies Act / Investment Services Act
Regulations issued under the RPA

- Control of assets regulations
- The IORP regulations
- Exemption Regulations for the registration of Custodians and Investment Managers
Types of Schemes under the RPA

- Personal Pension Scheme
- Occupational Pension Scheme
Personal Retirement Schemes

A Personal Retirement Scheme is a retirement scheme which is not an occupational retirement scheme and to which contributions are made for the benefit of an individual with the principal purpose of providing Retirement Benefits for that individual (third pillar)
Occupational Pension Schemes (second pillar)

• Definition under the SFA – *a scheme to which contributions are made solely or partly by an employer for the benefit of employees*

• Definition under the RPA – *a retirement scheme established for, or by, an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees*
Scheme Set-Up

- Retirement Scheme Administrator
- Retirement Scheme
- Member
- Beneficiary / Dependents
Service Providers

- Asset Manager
- Auditor
- Custodian
- Actuary
- Retirement Scheme Administrator
RPA elements of a Retirement Scheme

• Payment of retirement benefits to more than 5 members (may be approved by the MFSA nonetheless)
• Has to have drawdown between 50 and 75, bar death or disability of the Member
• For the purposes of the local tax incentives, a long term contract of insurance (life policy) issued by an insurance company authorised under the Insurance Business Act may also qualify as long as the withdrawal rules and age brackets in the pension rules are observed
Scheme Types

- Trust
- Contract
- SICAV
- Any other legal form
- Foundation?
Trust Scheme

- Trustee/RSA
- Retirement Scheme / Trust
- Member/Investment Advisor
- Beneficiary
- Custodians
- Investment Managers
SICAV Scheme

- RSA
- Beneficiary
- Custodians
- Investment Managers
- Member/Investment Advisor
Institution for Occupational Retirement Provision (IORP)
Passporting OUT: Maltese IORPs receiving contribution from sponsoring undertakings located in other Member States or EEA States

1. Notification
2. Notification within 3 months
3. Reply within 2 months
4. May start operating after receiving communication from host country or on expiry of 2 month period
Passporting IN: Sponsoring Undertaking located in Malta sponsoring a European IORP

1. Notification

2. Notification within 3 months

3. Reply within 2 months

4. May start operating after receiving communication from host country or on expiry of 2 month period

Retirement Scheme Administrator

European IORP

Maltese Sponsoring Undertakings + Employees

Maltese Sponsoring Undertakings + Employees

Home Authority

Maltese Authority
TAXATION OF LICENCED PENSION SCHEMES
Basic tax rules for Malta pension schemes

Contributions into the pension scheme are not exempt from tax (but there is a tax credit available for qualifying Malta personal scheme contributors)

The income of a licensed pension scheme is exempt from taxation in terms of the income tax act

Bar a max 30% lump sum payment, the withdrawals from a pension scheme are subject to income tax, bar the application of any DTA rules

Section 12(1)(h) can also be seen to exempt other capital sums in terms of the pension rules
INVESTMENT RESTRICTIONS
Personal Retirement Schemes: Investment Restrictions B3.2

- Assets need to be invested in the best interest of the Beneficiaries
- Assets of a scheme need to be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole
- Assets of a scheme should be sufficiently liquid and/or generate sufficient income to ensure that benefits can be paid upon retirement
- No transactions (inc. Loans) with members or connected persons
- No borrowing in connection with property purchases other than (a) on fully commercial terms and,
  - (b) borrowing up to max of 50% of the value of property purchased as valued by an Independent Qualified Valuer (now defined)
- Property held by the scheme may be occupied by the member or connected person provided its on fully commercial terms as valued by an IQV
- Clear investment policy should be in place and disclosed to the member
New Rules re Failure to comply with Investment Restrictions – B3.3

Breach of investment restrictions which is UNKNOWN to RSA or IM

A remedy to be put in place by the RSA within 3 months of when he gets to know of the breach (or other period dictated by the MFSA)

If the RSA or IM did not know about the failure to comply, then there is no breach of licence conditions, but if the RSA does nothing within 3 months from getting to know, it will be considered as a breach
WITHDRAWALS FROM SCHEMES
rules on withdrawals
Personal Plans: Part B 4.6

Malta Schemes

- 30% PCLS (to be paid within a year) followed by sufficient income – now defined
- Additional cash lump sum permissible after 3 years – annual cash sums allowed

QROPS

- 4.6.8 – all assets must be withdrawn in full compliance with HMRC tax rules
Sufficient Retirement Income

• What is sufficient retirement income?

• Can the RSA make arbitrary assessments?

• The annual national minimum wage, or if not available, the mean or median income as determined in the country where the member is resident
THE INVESTMENT MANAGER AND
THE CUSTODIAN
The Exemption Regulations – LN 6 of 2015
Custodians and Investment Managers

MFSA have to confirm in writing that exemption applies for NON EU/EEA licencees.

EU or EEA licensed is exempt

NON EU/EEA - Is subject to an equivalent level of regulatory supervision
Requirements for IMs and Custodians

• Investment Managers and custodians who have local licences have to ‘register’ for pensions
• Non Maltese IMs and custodians ‘might’ need to passport into Malta
• An agreement with the scheme/RSA needs to be approved by the MFSA prior to commencing the service
• There needs to be independence between the IM and the Custodian
New obligations on fee disclosure

1.3.19 (a) (ii) of Personal Plans Rules

- Where the RSA appoints a service provider, a written agreement shall be entered into to include fees charges and expenses inc. The basis of calculation, frequency of payment and form where they are payable (i.e. From scheme assets or not)

Scheme Particulars

- this should include information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the Scheme to the RSA and to any IM, IA, Custodian, Back-Office Admin and to third parties, and in respect of the reimbursement of costs by the Scheme to these persons (Part C Appendix 3)

S12 Control of Assets Regs

- Agreements between the RSA or any other licensee and the customer need to specify the amount and purpose of any fees with the customer
Part B 4.1.17 of the rules for personal schemes: a service provider shall be liable for fraud, wilful default or negligence including the unjustifiable failure to perform in whole or in part the obligations of the service provider under the Pensions Rules.

Part B 4.1.18 of the rules for personal schemes: In the case of outsourcing, service provider shall not diminish its responsibility and if outsourcing made to an ‘affiliate’, then the service provider is also liable for the loss suffered by the member or customer as a result of the acts, omissions or insolvency of the group company.
Section 9 of the Control of Assets Regulations – a subject person having control over members assets shall be liable for fraud, wilful default or negligence...

And shall also be liable for an ‘unjustifiable failure to perform in whole or in part the obligations of the subject person under the Pensions Rules’
In case of outsourcing... If you outsource to a group company, you are also liable for the loss suffered by the member or customer as a result of the acts, omissions or insolvency of the group company

If you outsource to a company which is not a group company, you are also liable for the loss suffered by the member or customer as a result of the acts, omissions or insolvency of the company UNLESS you can prove that the person appointed was and remains competent to carry out the functions that you delegated.....
Is there an opportunity for Maltese Investment managers?: discussion

• Are the incentives on 3rd pillar introduced by Malta government too low?
• Is there an opportunity for the local IM to try to partake in the international pensions market?
• Will the pensions market in Malta spread into occupational plans?
• Why should someone invest in a pension plan?
Goodbye Tension...
Hello Pension!