

Instructions

Establishment of a pension fund

These instructions contain a brief overview of the procedure for establishing a pension fund in the Principality of Liechtenstein and the documentation to be submitted. In actual cases, the legal provisions and the orders issued by the Financial Market Authority as the supervisory body apply exclusively. The FMA is available for any further questions.

1. General provisions

- Institutions offering occupational retirement provision (pension funds) in or from the Principality of Liechtenstein are subject to supervision by the FMA (article 46 of the Law on Supervision of Institutions for Occupational Retirement Provision; Pension Funds Act, PFA). A pension fund means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking for the purpose of providing retirement benefits on the basis of an agreement in the context of an occupational activity (article 5, paragraph 4 PFA).
- Pensions funds must hold a license by the FMA prior to taking up business activities (article 6, paragraph 1 PFA).
- Performing activities subject to a license without a license is prohibited and punishable by law (article 51, paragraph 1(a) PFA).
- The licensing conditions set out in articles 7 et seqq. PFA must be permanently fulfilled. Changes to the approved business plan under article 7, paragraph 1 PFA require prior approval by the FMA (article 35, paragraph 1 PFA). In such cases, entries in the Public Registry are only permissible after approval by the FMA (article 35, paragraph 2 PFA).
- Institutions under the PFA must be kept strictly separate from institutions under the Occupational Pensions Act. There are no institutions subject to both laws.

According to article 1 of the Occupational Pensions Ordinance, the Occupational Pensions Act and the Occupational Pensions Ordinance only apply to persons insured by the Liechtenstein Old Age and Survivors' Insurance (AHV). In all other cases, the PFA applies. Liechtenstein employers who in principle are subject to the Occupational Pensions Act have the option of voluntary insurance under the PFA. In such cases, they are subject exclusively to the PFA (see also article 2a of the Occupational Pensions Act).

- The FMA enters institutions receiving a license for business activities in a special register kept by the FMA (article 17 PFA).

2. Licensing procedure

- During the licensing procedure, the FMA conducts a thorough and comprehensive review of the legal and financial circumstances of the applicant. Of particular significance are the applicant's reliability, qualifications, and the ability to continuously meet future obligations vis-à-vis members and beneficiaries.
- First, the application is subject to a preliminary review. The FMA comprehensively reviews this preliminary application and responds within a useful time period (as a rule in writing). The applicant may then correct or amend the license application.
- The final license application must then be submitted in writing and accompanied by the business plan to the FMA, Heiligkreuz 8, P.O. Box 684, LI-9490 Vaduz (article 7 PFA). The application must be submitted in the name and on behalf of the company (in the course of formation), together with an appropriate authorization (authorization granted by the applicant to submit the application, if the application is not submitted by the applicant directly), as follows: "Application for grant of a license as an institution for occupational retirement provision to Company X (in the course of formation)". The application must be structured according to article 7 PFA.
- If, during the licensing procedure, facts change that might be relevant to the license application, updated application materials must immediately be resubmitted.
- All information provided by the applicant will be kept confidential and are subject to secrecy in accordance with article 38 PFA.
- The licensing procedure is subject to a fee. Please see item 4 of these instructions.
- The duration of the licensing procedure primarily depends on the quality of the license application. In the interest of fast processing, the content of each application is processed to the extent that the submitted documentation allows.
- After reviewing the submitted documentation, the applicant is informed in writing of the completeness of the documentation and, if the prerequisites are met, the license is issued. Conditions may be stipulated (article 15 PFA).
- When receiving a license to commence business activities, article 82, paragraph 2 of the National Administration Act permits the applicant to waive a formal copy of the decree granting the license. The advantage is that the procedure can be concluded more rapidly. In this case, the FMA informs the applicant of its decision on the application by way of a simple notification without reasons. If the FMA does not approve the application, the applicant will in any event receive a formal decree with reasons. The waiver may also be revoked within four weeks of delivery of the simple notification. The applicant must state

in the license application whether he/she waives the formal copy of the decree for purposes of accelerating the licensing procedure.

3. License application

The license application and the required documentation must, as a rule, be submitted in German. The FMA may grant exceptions. The application must also contain the following minimum information and evidence (see article 7 PFA):

- **Background:**

Information must be provided on the applicant (shareholders; business activities, in particular relating to occupational retirement provision; business figures, etc.);

- **Business idea:**

The applicant must provide detailed information on the business idea (information on the planned activities and target markets, i.e. country of activity, marketing and distribution, any risks, etc.);

- **Formation of the institution in the legal form of a registered foundation, a company limited by shares, a European Company (SE), a cooperative society, or a European Cooperative Society (SCE), and evidence that both the registered office under the statutes and the main administration of the institution are located in Liechtenstein:**

Documentation (e.g. organizational chart) is required indicating where the main administration is located and what the administrative functions at the registered office in Liechtenstein are. It should be apparent who performs which functions where (see below on outsourcing);

- **Purpose and organizational structure of the institution, whereas the purpose of the company must be limited to retirement provision (as set out in article 2, paragraph 1 PFA) and activities immediately connected therewith:**

If the institution offers the possibility of reinsurance as set out in article 4 PFO, this must be indicated in the declaration of purpose;

- **(Draft) statutes:**

With respect to the content of the statutes, please refer to the instruction on “Statutes of pension funds” (available for download on the website of the FMA; www.fma-li.li);

- **Necessary information concerning capital resources and solvency:**

According to article 9 PFA, the institution must maintain minimum capital guaranteeing permanent fulfillment of the institution's obligations. The minimum capital may be paid up in Swiss francs or the equivalent in euros or U.S. dollars. The FMA determines the requisite minimum capital on a case-by-case basis, taking into account the risks to be covered and the quality of the risk management. With respect to the buffer, article 11 PFA requires that institutions underwriting the liability to cover against biometric risk themselves or guaranteeing a given investment performance or a given level of benefits must hold on a permanent basis additional assets above the technical provisions (see below). Provisions concerning the extent of the required buffer are contained in articles 12 et seqq. PFO, in particular article 18 PFO. Basic relevant information on adequate capitalization and solvency must be provided here, including information on the availability of an organizational fund for the formation and development costs or for unusual business expansion;

- Obligation of the sponsoring undertaking to provide capital cover where it has agreed to performance (article 6 PFO);
- Information on identity and level of participation of beneficial owners in the institution and the sponsoring undertaking, who must guarantee solid and prudent management of the institution:

The following documentation in particular must be provided:

Extract from the commercial registry, business and audit reports of the last three years.

It must also be indicated under this point whether occupational retirement provision is administered for one or more sponsoring undertakings (article 2 PFO) and in which countries the institution plans to accept sponsoring undertakings;

- Legal separation between the sponsoring undertakings and the institution as well as between their assets and account books (article 8, paragraph 1 PFA);
- Evidence of the professional qualifications and personal integrity of the board of directors or foundation council and of the general management to direct an institution, and equivalent evidence for consulted advisors (article 7 PFO):

At least one member of each governing body must have sufficient theoretical and practical knowledge of occupational retirement provision and sufficient management experience. This is assumed if evidence is provided of three years of managing activities at an institution of comparable size and type of business.

All members of governing bodies must submit the following documentation:

- current signed curriculum vitae,

- passport copy,
- current extract from the criminal register,
- current extract from the collections and liens register,
- declaration concerning pending criminal, administrative criminal, bankruptcy, estate, or execution proceedings (form is available for download on the website of the FMA; www.fma-li.li),
- copy of signed declaration of acceptance by the person in question.

(Where a current extract is required, the extract may not be older than three months.)

At least one member of the board of directors or the foundation council and of the general management must be a Liechtenstein citizen or a citizen of a Contracting Party to the EEA Agreement or of Switzerland (article 14, paragraph 1 PFA). Moreover, article 14, paragraph 2 PFA stipulates that the members of the board of directors or the foundation council and of the general management must, on the basis of their residence, be capable of actually and properly performing their function and their responsibilities. Information to this effect must be provided;

- Information necessary to assess the personal integrity and the professional qualifications of the responsible actuary:

With respect to the responsible actuary, the abovementioned documentation for members of governing bodies as well as additional diplomas, letters of reference, evidence of membership in professional organizations, etc., must be submitted that provide information on professional qualifications. Professional qualifications presuppose sufficient knowledge of actuarial mathematics and professional experience; professional experience is assumed if at least three years of activity as an actuarial mathematician or equivalent activities can be demonstrated (article 8 PFO);

- Information on the technical provisions, whereas an actuary or other specialist in this field must certify that the technical provisions are calculated on the basis of recognized actuarial methods;
- Statement of the principles and procedures of investment policy:

The minimum information is set out in article 21 PFO. This includes information on the investment risk measurement procedures, risk management, and the duration of pension liabilities. Additionally, article 26 PFA stipulates that institutions must invest their assets in accordance with the prudent person rule and pay particular attention to achieving the greatest possible security, quality, and profitability, while maintaining liquidity to the extent possible (see, in general, articles 19 et seqq. PFO);

- Asset management:

Institutions may appoint an asset manager duly licensed in a Contracting Party to the EEA to manage their assets. If a demonstrated interest exists, the FMA may also approve asset managers outside the Contracting Parties to the EEA Agreement (article 28, paragraph 1, second sentence PFA).

The pension fund may only entrust persons and institutions with the investment and management of its assets who are appropriately qualified, and it must take all necessary measures to prevent conflicts of interest and personal pecuniary advantages, in order to safeguard the interests of the members and beneficiaries. Information in this regard must also be provided (article 22 PFO);

- Information on custody of the investments and the depositary to be appointed:

The depositary must have a license authorizing it to perform the activities concerned. The depositary may also be domiciled in another Contracting Party to the EEA Agreement or, with the consent of the FMA, outside the EEA (article 12 PFA). Also according to article 12 PFA, the depositary must comply with the instructions of the pension fund. If the depositary determines that an instruction violates legal requirements, it must inform the pension fund thereof in writing and, should the instruction not be revoked, notify the audit office within a useful time period. The statement by the depositary in this regard (in which the depositary confirms the abovementioned obligations with a signature) must be made on the form provided by the FMA on its website for this purpose (www.fma-li.li);

- Contracts or other arrangements according to which the business activities or parts of the business activities are to be delegated to third persons (outsourcing), whereas the main administration, including accounting, must remain in Liechtenstein:

Outsourcing contracts must be presented. Article 10 PFO contains provisions on the permissibility of outsourcing contracts. The outsourcing contract must at least contain:

- A written agreement, according to which the outsourcee pledges to comply with all instructions by the outsourcer that are issued in connection with the outsourced business operations.
- The outsourcee must, upon request, provide the outsourcer with all account books, records, and documents and with all information on business operations and the asset situation, to the extent necessary for a comprehensive assessment of the outsourced business operations.
- The obligation of secrecy (article 34 PFA), especially also assurance of protection from unauthorized access to the data of the outsourcer.

- Comprehensive right to access and information at all times on the part of the FMA with respect to the outsourcee.
 - Compensation rules.
 - Duration of contract (with cancellation procedures).
 - Applicable law.
 - Legal venue clause.
- Type of risk borne by the institution and envisaged reinsurance coverage:

Submission of any draft reinsurance contracts, with declaration by the reinsurer that the contracts will enter into effect if the license is granted;

- Budgeted balance sheets and budgeted income statements for the first three business years (with information on the accounting standard to be used and the first statement of accounts);
- Functioning and proper rules governing each pension scheme operated by the institution:

Detailed information must be submitted concerning the pension plans, including the underlying bases for calculation;
- Information provided to members and beneficiaries concerning article 7, paragraph 1(p) PFA (functioning and proper rules governing each pension scheme operated by the institution) and concerning the conditions according to which the pension scheme functions:

The information must at least contain the points set out in article 11 PFO. It must also be indicated how the information obligations under articles 11, 32, and 33 PFO will be complied with. Income from assets and the associated costs must be presented transparently;

- Evidence of appointment of an external audit office under article 30 PFA:

A declaration of acceptance by the audit office must be provided;

- If cross-border activities are planned as set out in articles 18 et seq. PFA, general information in this regard must be provided, especially concerning the provision plans to be offered in which countries. The corresponding notification procedure can only be initiated after the licenses has been granted to the institution;
- Information on risk management and internal control mechanisms (articles 23 et seq. PFO):

Through risk management appropriate to their business activities and through internal control mechanisms, the institutions shall ensure that risks are recognized early and that measures to prevent or remedy such risks are taken;

- Information on whether members or beneficiaries have granted exemptions to the obligation of secrecy (e.g. vis-à-vis tax authorities in the country of residence, for the purpose of claiming tax deductions for premiums) (see article 34, paragraph 4 PFA).

4. Licensing fee

The fee for grant of a license and entry into the register under the PFA is CHF 10,000 to 30,000. The FMA may adjust the licensing fee in accordance with the actual work incurred (article 15e, paragraphs 1 and 2 of the FMA Fee Ordinance).

5. The most important legal foundations

- Law of 24 November 2006 on Supervision of Institutions for Occupational Retirement Provision (Pension Funds Act; PFA, LGBl. 2007 No. 11, as amended);
- Ordinance of 12 December 2006 on the Law on Supervision of Institutions for Occupational Retirement Provision (Pension Funds Ordinance; PFO, LGBl. 2007 No. 16, as amended);
- Ordinance of 21 December 2004 on the Levy of Supervision Taxes and Fees pursuant to the Financial Market Authority Act (FMA Fee Ordinance; 2004 No. 288; as amended).