

Liechtenstein Law Gazette

Year 2007

No. 16

published on 17 January 2007

Ordinance

of 12 December 2006

**on the Law on Supervision of Institutions for
Occupational Retirement Provision
(Pension Funds Ordinance; PFO)**

Pursuant to article 7 paragraph 2, article 10 paragraph 2, article 11 paragraph 2, article 26 paragraph 3, article 29 paragraph 1, article 30 paragraph 3, article 31 paragraph 4, article 33, article 39 paragraph 2, and article 54 of the Law on Supervision of Institutions for Occupational Retirement Provision (Pension Funds Act; PFA), Liechtenstein Law Gazette LGBL 2007 No. 11, the Government hereby issues the following Ordinance:

I. General provisions

Article 1

Relationship to occupational pensions

The Pension Funds Act and this Ordinance shall not apply to institutions operating occupational pensions. To such institutions, only the provisions of the Law on Occupational Pensions (Occupational Pensions Act; OPA) shall apply.

Article 2

Administration of occupational retirement provision

Institutions may administer occupational retirement provision for one or more sponsoring undertakings.

Article 3

Retirement benefits

As a rule, payment of retirement benefits is lifelong; however, benefits may also be limited in time or in the form of a bulk capital payment.

Article 4

Reinsurance and pension reinsurance

Reinsurance protection offered by an institution does not constitute occupational retirement provision and shall not be permissible. An exception shall be pension reinsurance in which technical risks of sponsoring undertakings with respect to retirement benefits are assumed. The FMA may issue guidelines on the content and form of pension reinsurance.

II. Taking up business activities, preconditions for business activities

Article 5

License application

The license application and the supporting materials must be submitted in German. The FMA may allow certified translations.

Article 6

Obligation of sponsoring undertakings to provide capital cover

1) A sponsoring undertaking is required to provide regular capital cover and to present evidence thereof where it has agreed to a benefit. The capital cover may be ensured through a one-off transaction; if this does not suffice for cover, the sponsoring undertaking shall be required to render additional cover.

2) Paragraph 1 shall also apply to sponsoring undertakings that join a collective scheme.

Article 7

Professional qualifications and personal integrity of the management bodies

1) To assess the professional qualifications of the board of directors or foundation council and of the other management bodies, it shall be required that at least one member of each management body has sufficient theoretical and practical knowledge of occupational retirement provision and sufficient management experience. This shall be assumed if evidence is provided of three years of managing activities at an institution of comparable size and type of business.

2) Personal integrity shall be assumed if:

- a) the persons referred to in paragraph 1 are not listed in Liechtenstein or foreign criminal records due to a punishable act against third-party assets as defined in the Criminal Code;
- b) bankruptcy has never been initiated against the person, or if no unsatisfied creditor claims remain from bankruptcy more than ten years prior.

3) If the institution consults external advisors in its activities, such advisors must meet the requirements set out in paragraphs 1 and 2.

Article 8

Responsible actuary

1) The responsible actuary must provide evidence of personal integrity under article 7, paragraph 2 and evidence of professional qualifications. Professional qualifications shall presuppose sufficient

knowledge of actuarial mathematics and professional experience; professional experience shall be assumed if at least three years of activity as an actuarial mathematician or equivalent activities can be demonstrated.

2) Prior to his appointment, the name of the prospective responsible actuary must be given to the FMA, along with the facts relevant to assessing his personal integrity and professional qualifications as set out in paragraph 1. If reasonable doubts exist with respect to the requirements for an appointment, then the FMA may demand that a different person be appointed. If the institution does not comply with this demand or if reasonable doubts arise with respect to the requirements for an appointment of the second person as well, then the FMA may appoint the responsible actuary itself.

3) If circumstances become known after the appointment that would have stood in the way of an appointment, or if the responsible actuary does not properly fulfill the responsibilities entrusted to him, then the FMA may demand that another responsible actuary be appointed. Paragraph 2, sentence 3 shall apply *mutatis mutandis*.

4) The FMA must be notified without delay if the responsible actuary leaves his position.

5) A responsible actuary may be appointed by way of an employment contract or outsourcing.

6) The general management of an institution shall be required to provide the responsible actuary with all requisite information and to submit the actuarial certification referred to in article 9 to the FMA.

Article 9

Duties of the responsible actuary

The responsible actuary shall be responsible for the actuarial tasks of the institution. He shall be entrusted with the following duties:

- a) He must ensure that the calculation of the contributions and the technical provisions complies with the applicable requirements and actuarial principles. In this regard, he must review the financial situation of the institution primarily with respect to whether ongoing fulfillment of the commitments arising from the institution's contracts is guaranteed at all times and whether the institution maintains sufficient resources.

- b) He must annually certify under the annual account statement that the required technical provisions have been established (actuarial certification). He shall explain in a report to the general management of the institution which calculation approaches and other assumptions were used as a basis for the certification.
- c) As soon as he realizes in the course of fulfilling the duties entrusted to him that he may not be able to provide the certification set out in subparagraph (b) or only with reservations or that actuarial principles are violated, then he must inform the general management and, if the general management does not remedy the complaint without delay, immediately also inform the FMA.

Article 10

Outsourcing

- 1) Outsourcing shall only be permissible if:
 - a) the provisions concerning bookkeeping, secrecy, and data protection are complied with;
 - b) the books are kept in Liechtenstein; and
 - c) audits as well as the right to information and the audit powers of the FMA are in no way hampered or curtailed.
- 2) Article 7 shall apply *mutatis mutandis* to the professional qualifications and personal integrity of third parties to whom these functions are transferred.
- 3) To the extent that it is important for an evaluation of the business activities of an institution, third persons shall also be required to provide information and submit documents with respect to contracts or other agreements concerning outsourcing.

Article 11

Information on the functioning of pension schemes

- 1) Members and beneficiaries shall be sufficiently informed of the conditions of the pension scheme, in particular concerning:
 - a) the rights and obligations of the parties involved in the pension scheme;
 - b) the financial, technical, and other risks associated with the pension scheme;

- c) the nature and distribution of those risks.
 - 2) The FMA shall be informed how and with what frequency the information under paragraph 1 is provided.

III. Capital resources and technical provisions

Article 12

Principle

1) Institutions shall be required to establish at all times in respect of the total range of their pension schemes an adequate amount of technical provisions corresponding to the financial commitments which arise out of their portfolio of existing pension contracts.

2) Institutions operating pension schemes shall establish additional technical provisions to the extent that they underwrite the liability to cover against biometric risk or guarantee a given investment performance or a given level of benefits. The additional provisions shall be calculated in accordance with article 18.

Article 13

Time and method for calculating technical provisions

1) The technical provisions shall take place every year.

2) The method and basis of calculation of technical provisions shall in general remain constant from one financial year to another. However, discontinuities may be justified by a change of legal, demographic or economic circumstances underlying the assumptions, as long as they are approved by the FMA.

3) The FMA may at any time order an estimate of the technical provisions, especially in the case of unusual business expansion.

Article 14

Calculation of technical provisions

The calculation of the technical provisions shall be executed and certified by the responsible actuary or another specialist in this field, on the basis of recognized actuarial methods. The following principles shall apply:

- a) The minimum amount of the technical provisions shall be calculated by a sufficiently prudent actuarial valuation, taking account of all commitments for benefits and for contributions in accordance with the pension arrangements of the institution. It must be sufficient both for pensions and benefits already in payment to beneficiaries to continue to be paid, and to reflect the commitments which arise out of members' accrued pension rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking account, if applicable, of an appropriate margin for adverse deviation.
- b) The maximum rates of interest shall be chosen prudently and in accordance with the rules set out by the FMA. The yield on the corresponding assets held by the institution and the market yields of high-quality or government bonds shall be taken into account.
- c) The biometric tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the group of members and the pension schemes, in particular the expected changes in the relevant risks.

Article 15

Funding of technical provisions

1) The institution must have at all times sufficient and appropriate assets to cover the technical provisions in respect of the total range of pension schemes operated.

2) With respect to business activities within the scope of the EEA Agreement, the assets prescribed by paragraph 1 must be situated in one or more Contracting Parties to the EEA Agreement. In justified cases, the FMA may grant exemptions from this locational requirement.

Article 16

Recovery plan

Where an institution does not have sufficient assets under article 12 for a limited period of time, the FMA may require the institution to draw up a recovery plan. This recovery plan must be realizable and shall be subject to the following conditions:

- a) The plan must show how to reestablish the required amount of assets to cover fully the technical provisions in due time. The plan shall be made available to members or, where applicable, to their representatives and shall be subject to approval by the FMA.
- b) In drawing up the plan, account shall be taken of the specific situation of the institution, in particular the asset/liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, and whether the scheme is a start-up scheme.
- c) In the event of termination of a pension scheme during the period referred to above in this paragraph, the institution shall inform the FMA. The institution shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the FMA and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality.

Article 17

Funding of technical provisions in the event of cross-border activity

In the event of cross-border activity, the technical provisions shall at all times be fully funded in respect of the total range of pension schemes operated. If these conditions are not met, the FMA shall take the necessary measures.

Article 18

Buffer

1) The amount of the buffer under article 11 of the Act shall reflect the type of risk and asset base in respect of the total range of schemes operated. These assets shall be free of all foreseeable liabilities and shall

serve as a safety capital to absorb discrepancies between the anticipated and the actual expenses and profits.

2) For the purposes of calculating the minimum amount of the additional assets, the provisions under supervision law applicable to the solvency margin in life insurance shall apply.

IV. Investment rules

Article 19

Principles

- 1) The following rules shall apply to the investment of assets:
 - a) The assets shall be invested in the best interests of members and beneficiaries. In the case of a potential conflict of interest, the institution, or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of members and beneficiaries.
 - b) Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits.
 - c) The assets shall be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels.
 - d) Investment in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. The institution shall also avoid excessive risk exposure to a single counterparty and to other derivative operations.
 - e) The assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the institution to excessive risk concentration.
 - f) Investment in the sponsoring undertaking shall be no more than 5% of the portfolio as a whole and, when the sponsoring undertaking

belongs to a group, investment in the undertakings belonging to the same group as the sponsoring undertaking shall not be more than 10% of the portfolio. When the institution is sponsored by a number of undertakings, investment in these sponsoring undertakings shall be made prudently, taking into account the need for proper diversification.

- g) The provisions set out in subparagraphs (e) and (f) shall not apply to investments in government bonds.
- h) Investments in risk capital markets shall be permissible.

2) The institutions shall report to the FMA as of 31 March, 30 June, 30 September, and 31 December of each year on the amount of the technical provisions and the assets serving to cover them. The report shall comply with the requirements and guidelines issued by the FMA.

Article 20

Limits

1) The following limits shall be observed with respect to the investment of assets:

- a) Investment of up to 70% of the assets covering the technical provisions or of the whole portfolio for schemes in which the members bear the investment risks in shares, negotiable securities treated as shares and corporate bonds admitted to trading on regulated markets, whereby they shall decide themselves on the relative weight of these securities in their investment portfolio. Provided it is prudentially justified, the FMA may, however, apply a lower limit to institutions which provide retirement products with a long-term interest rate guarantee, bear the investment risk and themselves provide for the guarantee;
- b) Investment of up to 30% of the assets covering technical provisions in assets denominated in currencies other than those in which the liabilities are expressed.

2) Paragraph 1 shall not preclude the FMA from ordering the application of more stringent investment rules on an individual basis, provided they are justified in particular on grounds of prudence or in the light of the liabilities entered into by the institution.

Article 21

Investment policy principles

The statement of investment policy principles must contain, at least, information on the investment risk measurement methods, the risk-management processes implemented, and the strategic asset allocation with respect to the nature and duration of pension liabilities.

Article 22

Asset management

1) The institution may only entrust persons and institution with the investment and management of their retirement assets who are appropriately qualified.

2) The institution shall take all necessary measures to prevent conflicts of interest and personal pecuniary advantages, in order to safeguard the interests of the members and beneficiaries.

V. Risk management

Article 23

Principle

1) 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.

2) Risk management must in particular apply to insurance, credit, market, liquidity, and operational risks.

Article 24

Documentation

Institutions must record their risk management by way of sufficiently detailed documentation. The FMA may impose requirements in this regard.

VI. Accounting and reporting

Article 25

Accounting and reporting

1) Instead of the accounting rules set out in the Law on Persons and Companies (articles 1045 et seq. PGR), the international accounting standards of the International Accounting Standards Board (IASB), the United States Generally Accepted Accounting Principles (US GAAP), or the Swiss Financial Reporting Standards (FER) may be applied when drawing up the business report. The guidelines issued by the FMA shall supplement these principles.

2) When drawing up the business reporting in accordance with the accounting rules set out in the PGR, the rules for large companies shall apply to the institutions, irrespective of their legal form.

3) Both the business report and the report to the FMA must give a true and fair view of the institution's assets, liabilities, and financial position. The information must be consistent and comprehensive and must be duly approved by the responsible bodies of the institution.

Article 26

Special rule for insurance undertakings

Insurance undertakings operating the business of occupational retirement provision must compile a separate annual income statement for this business. This income statement must comply with the requirements and guidelines issued by the FMA.

VII. Audit office

Article 27

External audit

The legally prescribed external audit may also be conducted by the audit office pursuant to the PGR, provided that this audit office fulfills the special conditions laid out in the following provisions.

Article 28

Recognition of audit offices

- 1) Audit offices authorized as insurance audit offices under insurance supervision legislation shall be recognized as audit offices of institutions.
- 2) The FMA shall withdraw its recognition from the audit office if:
 - a) the preconditions for exercising audit activities are no longer fulfilled;
or
 - b) the audit office seriously breaches its duties.

Article 29

Independence

- 1) The audit office may neither accept administrative or accounting assignments from the institution to be audited nor may it assume other responsibilities that are incompatible with its audit mandate.
- 2) The fees received for an audit mandate may on average not exceed 10% of the total annual fee revenue of the audit office.
- 3) The audit office may not be bound by instructions from:
 - a) persons responsible for the general management or administration of the institution;
 - b) the sponsoring undertaking;
 - c) the beneficial owner of the institution.

Article 30

Special duties of the audit office

- 1) The audit offices shall be required to:
 - a) notify the FMA of every change to the articles of association of the company and to the rules and regulations as well as every change to the composition of its bodies and of the senior auditors reported to the supervisory authority;
 - b) entrust the management of audits only to auditors who have been reported to the FMA and who fulfill the required preconditions;
 - c) report the head of the mandate and the senior auditor to the FMA prior to begin of the audit;

d) submit their business report to the FMA each year.

2) The FMA may demand information concerning the reasons for demission of members of the general management and of the senior auditors reported to the FMA.

Article 31

Audit report

1) The audit report shall clearly show whether:

- a) the provisions governing the business activities of institutions have been complied with; and
- b) the preconditions for granting their license are permanently and continuously fulfilled.

2) In particular, the audit report must contain information on:

- a) the utility and functioning of the risk management and the internal control mechanisms;
- b) compliance with the investment principles and rules and the provisions on asset management.

3) The audit office must independently evaluate the annual account statement, the annual report, and the reporting to the FMA; for this purpose, the institution must make the necessary records available. Reports from the internal audit department shall also be taken into account.

4) The audit office must explain whether:

- a) the business report and the reporting to the FMA have been compiled in accordance with the requirements; and
- b) it has received all the necessary information and records from the institution.

5) The audit report shall be signed by the senior auditor and by the audit office; it shall be submitted simultaneously to the board of directors or foundation council of the institution, to the audit office under the provisions of the PGR, and to the FMA.

IX. Special information requirement and cancellation of contracts

Article 32

Information to be given to the members and beneficiaries

- 1) The institution shall inform the members every year on the situation of the institution as well as the current level of financing of their accrued individual entitlements.
- 2) The institution shall, within a reasonable time, provide the members and beneficiaries with any relevant information regarding changes to the pension-scheme rules.
- 3) Each beneficiary shall receive, on retirement or when other benefits become due, the appropriate information on the benefits which are due and the corresponding payment options.
- 4) On request, members and beneficiaries and their representatives shall receive the following from the institutions:
 - a) the annual account statement and the annual report, and where an institution is responsible for more than one pension scheme, the annual account statement and the annual report relating to each specific scheme;
 - b) information on the investment policy principles;
 - c) detailed and substantial information on the target level of the individual retirement benefits and the level of benefits in case of cessation of employment;
 - d) where the member bears the investment risk, information on the range of investment options, the investment portfolio, the risk exposure, and the costs related to the investments;
 - e) indications of the arrangements relating to the transfer of pension rights to another institution in the event of termination of the employment relationship.

Article 33

Cancellation of contracts

- 1) The institution shall set out the preconditions and the procedure for canceling contractual arrangements with the sponsoring undertaking.

2) The FMA may demand that the institution amend its contractual arrangements with the sponsoring undertaking, if the interests of the members and beneficiaries appear endangered.

X. Final provision

Article 34

Entry into force

This Ordinance shall enter into force at the same time as the Pension Funds Act of 24 November 2006.

The Government:
signed *Otmar Hasler*
Prime Minister