

L.N. 365 of 2003

**SPECIAL FUNDS (REGULATION) ACT
(CAP. 450)**

**Special Funds (Registration of Retirement Fund Custodians)
Regulations, 2003**

IN exercise of the powers conferred by paragraph (b) of sub-article (1) of article 50 of the Special Funds (Regulation) Act, the Minister of Finance and Economic Affairs, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

1. (1) The title of these regulations is the Special Funds (Registration of Retirement Fund Custodians) Regulations, 2003. Citation and commencement.

(2) These regulations shall come into force on the 1st January, 2004.

2. Any reference in these regulations to “the Act” is a reference to the Special Funds (Regulation) Act, 2002, and the provisions of article 2 of the said Act shall also apply to these regulations. Interpretation.

3. (1) No person, other than a Retirement Fund Administrator, shall provide or hold itself as providing the services in regulation 5 to a Retirement Fund, unless such person is Registered by the Authority under these regulations, to act as a Retirement Fund Custodian. Registration of Retirement Fund Custodians.

(2) No person shall be registered as a Retirement Fund Custodian unless such person is:

(a) a credit institution licensed under the Banking Act; or; Cap. 371.

(b) an entity licensed as a Custodian for collective investment schemes under the Investment Services Act; or Cap. 370.

(c) a credit institution licensed in a country where, in the opinion of the Authority, it is subject to an adequate level of regulatory supervision, having an established place of business in Malta; or

(d) such other entity acceptable to the Authority;

having the business organisation, systems, experience and expertise deemed necessary by the Authority for it to maintain custody of assets.

(3) An application for the registration of a Retirement Fund Custodian shall be made in the form and manner required by the Authority by directives issued under the Act from time to time and shall:

(a) specify the name, address, telephone number and e-mail address of the applicant;

(b) be accompanied by such fees laid down in the Special Funds (Registration Fees) Regulations, 2003;

(c) contain the address in Malta for the service on the applicant of any notice or other document required or authorised to be serviced on it by or under this Act or any other law;

(d) specify the nature of the applicant's business and relevant experience; and

(e) contain or be accompanied by such other particulars as the Authority may require by means of directives.

Power of the Authority to refuse a registration of a Retirement Fund Custodian.

4. (1) Upon receiving an application, the Authority may register or may decide to refuse to register a Retirement Fund Custodian in terms of these regulations.

(2) The Authority shall not issue a registration to a Retirement Fund Custodian unless it is satisfied that:

(a) the applicant is fit and proper to provide the services of a Retirement Fund Custodian; and

(b) the applicant will comply and observe the provisions of the Act and any regulations prescribed thereunder or directives issued under the Act.

(3) The registration of a Retirement Fund Custodian may be made subject to such conditions as the Authority may deem appropriate, and after registration the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(4) Where a Retirement Fund Custodian contravenes or fails to comply with any of the conditions imposed on it under this regulation, the Authority may by notice in writing and, without recourse to a court hearing, impose on the Retirement Fund Custodian, an administrative penalty which may not exceed forty thousand liri.

(5) The provisions of paragraph (e) of sub-article(1) of article 54 of the Act shall apply *mutatis mutandis* to Retirement Fund Custodians.

5. The Retirement Fund Custodian shall be entrusted with the safekeeping of the assets of a Retirement Fund and shall comply with the provisions of the Special Funds (Control of Assets) Regulations, 2003.

Duties of a Retirement Fund Custodian.

6. (1) The remuneration that is payable to the Retirement Fund Custodian shall be set out in a written contract between such person and the Retirement Fund or the Retirement Fund Administrator, as applicable and shall be approved by the board of directors of the Retirement Fund or the Retirement Fund Administrator and be disclosed in the Retirement Fund's annual report.

Remuneration of the Retirement Fund Custodian.

(2) For the purposes of this regulation "remuneration" includes sums paid in respect of expenses.

(3) The provisions of this regulation shall apply in relation to benefits in kind as well as to payments in cash, and in relation to any benefit in kind, references to its amount are to be taken as references to its estimated money value. The nature of any such benefit shall also be disclosed.

7. Every Retirement Fund Custodian shall pay to the Authority such periodic and application fees, and within such time, as may from time to time be established.

Payment of fees to the Authority.

8. (1) The Authority shall have the power to oversee and monitor the activities and performance of a Retirement Fund Custodian.

Regulation of the Retirement Fund Custodian.

(2) The Authority may at any time cancel or suspend the registration of the Retirement Fund Custodian if:

(a) the Authority considers that such person is not fit and proper to carry out the function required of it in connection with the Retirement Fund; or

(b) information has been furnished to the Authority by or on behalf of the Retirement Fund Custodian which is false, inaccurate or misleading.

(3) The Authority shall, in the exercise of its powers under sub-regulation (2) of this regulation, have regard to all relevant matters and shall act in the best interest of the beneficiaries.

Changes in
information

9. A Retirement Fund Custodian shall provide the Authority with particulars of any changes in the information provided under these regulations as soon as such person, or its delegate becomes aware of such changes.