

NON-BANK FINANCIAL INSTITUTIONS REGULATORY AUTHORITY (NBFIRA)

PENSIONS PRUDENTIAL RULES

In terms of Section 50 of the NBFIRA Act – Section 43 on Licensing

PFA3

**New Licence Application - Pension Fund
Custodian**

March 1, 2012

1. General Information

Custodian

- 1.1. Name of custodian¹:
- 1.2. Previous Name(s):
- 1.3. Certificate of Incorporation Number:
- 1.4. Date of incorporation:
- 1.5. Country of incorporation:
- 1.6. Income Tax P.I.N. Number:
- 1.7. Income Tax Reference Number.....
- 1.8. The custodian is registered under the Banking and Financial Services Act (BSFA)
 Yes No

[If YES, attached copy of Certificate of Registration and disclose conditions attached to certificate of registration]

Registered Office

- 1.9. Provide details of the custodian’s registered office:
 - Building.....
 - Road.....
 - Town/City
 - Country.....
 - Postal Address
 -
 -
 - Telephone.....
 - Fax.....
 - Email.....

Head Office

- 1.10. If different to Registered Office, provide details of the custodian’s registered office:
 - Building.....
 - Road.....
 - Town.....
 - Country.....

¹ The investment of the assets owned by a pension fund is distinct from the administration of a pension fund. If a single institution performs both administration and asset management, the institution will be required to register as both an administrator and as an asset manager.

Postal Address:.....
.....
.....

Telephone.....
Fax.....
Email.....

Reliance on Other Parties

1.11. Provide the name of the persons who assisted in compiling this application (if applicable).

Name.....
Name.....
Name.....

[Please provide the contact details of these persons in Appendix A]

Contact Details

1.12. Provide details of the contact person(s) for further enquiries regarding this application

Name.....
Qualification/ role.....
Postal Address

.....
.....

Telephone.....
Fax.....
Email.....

2. Governance

Key Persons

2.1. The directors and senior managers have been appointed

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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[If YES, complete Appendix B and Appendix D for each director and senior manager and attach with application. Please note that the Regulatory Authority may decline or postpone approval where only a minority of directors and senior managers have been appointed.]

2.2. State the name of the chairperson

.....

2.3. State the name of the chief executive officer

.....

[Complete Appendix B and Appendix D]

2.4. The following office bearers have been appointed:

Auditor	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
Other?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

[If YES, complete Appendix C and Appendix E for each service provider and attach with application]

3. Ownership and Control

Group Structure

- 3.1. Attach a structural chart of the group of companies to which the custodian belongs. Include the respective percentages of shareholdings.
- 3.2. Attach an organisational chart of the custodian. Include the functions of the various departments.
- 3.3. How many of these employees have previous experience in working for a pension or provident fund custodian?

4. Capital Requirements

4.1. The company complies with the minimum capital requirements set by the Regulatory Authority.

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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[The relevant details are provided in the attached business plan (see Appendix H)]

5. Size and Type of Business

5.1. Please disclose the proposed total value of the assets to be held by yourselves in custody for clients:

P

(Amount in words)

5.2. Please disclose the current total number of pension or provident funds who have placed these assets under your custodianship or who have indicated that they will place assets under your custodianship provided your application to be registered as a custodian is successful:

Number of single-employer funds:

Number of multi-employer funds:

NBFE/RA

Systems, Controls and Reporting

5.3. Attach a brief overview of the administration system, controls and reporting capabilities of the custodian used to secure the proper functioning of the custodian.

5.4. Are your auditors satisfied as to your systems and controls?

Yes No

[Attach declaration from the auditors on systems and controls]

If NO, please detail the issues identified by the auditors and the action that management has taken to address these issues:

Issues identified:

.....
.....
.....
.....

5.5. Action taken to address the issues:

.....
.....
.....
.....

Professional Indemnity cover

5.6. Do you have professional indemnity cover to an amount equal to at least the expected total assets under administration?

Yes No

[Please attach a copy of the policy]

5.7. If you hold professional indemnity cover to a lesser amount, please explain why you believe such amount to be adequate and whose advice you sought in determining this lesser amount

(a) Amount of cover held: P.....

(b) Reason for holding cover of less than the total assets administered:

.....
.....
.....
.....

- (c) Person / company whose advice was sought on the amount of cover:

.....
[A copy of this report must be attached]

Power of Attorney to Act on Behalf of the Funds that are Managed

- 5.8. Do you hold a power of attorney from each fund that you manage permitting you to deal in the assets of the Fund?

Yes No

6. Declaration and Payment

I hereby enclose –

- a. Appendix A: Contact details of assisting parties
- b. Appendix B: Particulars of the directors and senior managers
- c. Appendix C: Questionnaire for directors and senior managers
- d. Appendix D: Particulars of service providers
- e. Appendix E: Questionnaires for service providers
- f. Appendix F: Particulars of the shareholders
- g. Appendix G: Risk Management Plan
- h. Appendix H: Business plan (if applicable)
- i. Appendix I: Questionnaire for trustees
- j. Copy of the Certificate of Incorporation under the Companies Act
- k. Articles of Association
- l. Annual returns submitted to Patents and Company Registration Office
- m. Structural chart of the company group
- n. Organisational chart of the company
- o. Sample contract and service level agreement to be used in respect of a client fund
- p. Copy of the professional indemnity insurance policy
- q. Copy of report by an insurance professional advising on the amount of professional indemnity cover to be held
- r. Overview of administration system, controls and reporting capabilities of the custodian
- s. Declaration from the Auditors that the systems and controls have been investigated and have been found to be appropriate for a custodian (or a qualified declaration that identifies the issues that the custodian must address).

I hereby declare that the Non-Bank Financial Institutions Regulatory Authority Act (2006) has been complied with and the statements contained herein and the documents submitted herewith are true and accurate to the best of my knowledge and belief. Any alterations in particulars stated here in or in the said documents will be promptly communicated to the Regulatory Authority within a period not later than thirty days from the date of the alteration.

Signed on this day of

.....
Signature of Applicant

Full Name:

Designation:

I hereby submit payment in respect of application for registration of a pension fund custodian.

Amount paid : P.....

Cheque No. :

Date Paid :

Paid By : (Full Names)

Signature :

Designation :

OFFICIAL DATE STAMP

APPENDIX A: Reliance on Other Parties

A.1. Provide the contact details of parties assisting with the application
[To be completed by every party assisting with the application]

Name.....

Qualification/ role.....

Physical Address:

Building.....

Road.....

Town.....

Country.....

Postal Address.....

.....

.....

.....

Telephone:.....

Fax.....

Email.....

APPENDIX B: Particulars of Key Person

Name of Custodian:

Director or senior manager (Full Name)	Nationality	Permanent Address	Occupation	Date of Appointment	Role	Qualifications/ Experience as custodian	Number of shares held

Note: "Senior manager" comprises the Chief Executive Officer, Chief Operating Officer and Chief Information Officer

APPENDIX C: Particulars of Service Providers

Name of Custodian:

	Name of firm	Income Tax Number	Address	Telephone, or E-mail	Professional body to which Partner/company are members	Date of appointment
Auditor						
Bankers						
Legal advisors						

Appendix D: Questionnaire for Directors and Senior Managers

D1. Contact details

Name:

Primary residential address:

.....

Postal address:

.....

Email address:

Telephone number:

Mobile number:

Occupation:

D2. In what capacity are you being appointed?

- Director
- Chief Executive Officer
- Chief Operating Officer
- Chief Information Officer

D3. Qualifications and membership of professional bodies:

Qualification or membership of a professional body	Institution granting the qualification or professional body	Date granted

[Please note that evidence of professional and academic qualifications must be enclosed with the questionnaire]

D4. Prior experience in this or a similar role:

Period	Name of company	Nature of experience gained that you believe is relevant to your appointment at the Custodian

[Please note that a brief curriculum vitae should be enclosed with the questionnaire]

D5. Has any previous appointment as a director or senior manager of a custodian or fund manager been terminated for a reason other than resignation or retrenchment?

Yes No

If YES, please give details:

.....

D6. Have you ever been sentenced for fraud or dishonesty where the sentence has required a period of imprisonment of 6 months or more or payment of a fine as an alternative to such imprisonment?

Yes No

If YES, please give details:

.....

D7. Have you ever been declared bankrupt?

Yes No

If YES, please give details:

.....

D8. Have you ever previously been a trustee of a pension or provident fund, or have you ever been involved in the investment of assets for a pension or provident fund or the provision of custodianship to a pension or provident fund, or the administration of a pension or provident

fund, where the pension or provident fund has had to be deregistered as a result of any failure on the part of the trustees or the persons investing the assets of the fund, holding the assets in custody, or administering the fund, or where the Regulatory Authority has appointed a curator?

Yes No

If so, please give details:

.....
.....
.....

D9. Are you disqualified from holding office as a director or senior manager by any law?

Yes No

If YES, please give details:

.....
.....
.....

D10. Are you, or have you been in the past 2 years, an employee or director of the sponsor of the custodian?

Yes No

If YES, please give details:

.....
.....
.....

D11. Do you own shares in the sponsor of the fund or the custodian, or have any actual or perceived business relationship with the custodian, other than your appointment as a director or senior manager?

Yes No

If YES, please give details:

.....
.....
.....

D12. If you are appointed as an independent director of the custodian:-

- a. What proportion of your annual income is derived from services supplied to the sponsor² and companies associated with the sponsor, with the exception of remuneration received as an independent director of the custodian?

.....

- b. List any other companies or trusts sponsored by the custodian on which you serve as a director:

.....
.....
.....

D13. If you are a member of a professional body which has a disciplinary code, please identify the body and give details of any complaints against you which caused you to have disciplinary action taken against you. Please also complete this statement if you were such a member and had disciplinary action taken against you but you are no longer a member of that body (in Botswana or elsewhere)³.

Name of the professional body	Date, nature of the complaint against you, and nature of the disciplinary action taken against you

I certify that the above information is, to the best of my knowledge, correct and complete and that I am not physically or mentally incapable of performing the duties expected of me

Signed:

.....

Name in block letters

² Note: The term “sponsor” used in this form relates to the organisation which controls the custodian or any company associated with it.
³ Please note that the term “disciplinary action” will include a reprimand and must be stated even if you took remedial steps which avoided more serious disciplinary action.

APPENDIX E: Questionnaire for Service Providers

[AUDITOR]

E1. Contact details

Business name:

Physical address of business:

.....
.....
.....

Postal address of business:

.....
.....
.....

Email address:

.....

Telephone number:

.....

E2. Service to be offered to the custodian:

<input type="checkbox"/>	Auditor
<input type="checkbox"/>	Bankers
<input type="checkbox"/>	Legal advisors

E3. Individual who will take responsibility for service delivery to the custodian:

.....

E4. Qualifications and membership of professional bodies:

Qualification or membership of a professional body	Institution granting the qualification or professional body	Date granted

[Please note that evidence of professional and academic qualifications must be enclosed with the questionnaire]

E5. Has this individual ever been barred from entry to any profession or occupation?

Yes No

If YES, please give details:

.....

.....

.....

E6. Practising certificates from professional bodies of this individual:

Period	Certificate	Professional Body	Conditions on the certificate

E7. Has the application for a practising certificate ever been declined for this individual?

Yes No

If YES, please give details:

.....
.....
.....

E8. Has this individual ever been dismissed or the subject of disciplinary proceeding by an employer?

Yes No

If YES, please give details:

.....
.....
.....

E9. Prior experience of the individual in offering this sort of service to custodians:

Period	Name of the custodian	Nature of service provided

E10. Have you a contract and service level agreement with the custodian which complies with the standards laid down in the rules⁴?

Yes No

E11. Names of your directors (if a company) or your partners (if a partnership):

Name	Primary residential address	Occupation

E12. Have you, or, if a company or partnership, any of your directors or partners, ever been

⁴ Please note that the NBFIRA may request sight of the contract and service level agreement.

sentenced for fraud or dishonesty where the sentence has required a period of imprisonment of 6 months or more or payment of a fine as an alternative to such imprisonment ?

Yes

No

If YES, please give details:

.....
.....
.....

NBFIRA

E13. Have you or, if a company or partnership, any of your directors or partners, ever been declared bankrupt?

Yes No

If YES, please give details:

.....

E14. Have you or, if a company or partnership, any of your directors or partners, ever previously been a trustee of a pension or provident fund, or have you ever been involved in the investment of assets for a pension or provident fund, or the holding of such assets in custody for a pension or provident fund, or the administration of a pension or provident fund, where the pension or provident fund has had to be deregistered as a result of any failure on the part of the trustees or the persons investing the assets of the fund or administering the fund, or where the Regulatory Authority has appointed a curator?

Yes No

If YES, please give details:

.....

E15. If you are a member of a professional body which has a disciplinary code, please identify the body and give details of any complaints against you which caused you to have disciplinary action taken against you? Please also complete this statement if you were such a member and had disciplinary action taken against you but you are no longer a member of that body (in Botswana or elsewhere)⁵.

Name of the professional body	Date, nature of the complaint against you, and nature of the disciplinary action taken against you

E16. Are you or, if a company or partnership, any of your directors or partners, disqualified from holding office as a trustee, manager, custodian or administrator by any law?

Yes No

If YES, please give details:

⁵ Please note that the term “disciplinary action” will include a reprimand and must be stated even if you took remedial steps which avoided more serious disciplinary action.

.....
.....
.....

E17. Do you have any actual or potential conflicts of interest which might interfere in the exercise of your duties towards the custodian? (Such conflicts might be a business association, cross shareholding or common holding company with the custodian, or any organisation that provides services to the fund manager.)

Yes No

If so, please give details:

.....
.....
.....

E18. Have you disclosed these potential or actual conflicts of interest to the custodian⁶?

Yes No

I certify that the above information is, to the best of my knowledge, correct and complete.

Signed:

.....
Name in block letters

⁶ Please note that the presence of an actual or potential conflict of interest is not a bar to appointment as a service provider to the administrator. It is important that these conflicts be managed through proper disclosure to the administrator, the regulator and other stakeholders.

Appendix F: Particulars of Shareholders

Name of Custodian:

Full Name of Natural Person or Company	Country of permanent residence (individual) or domicile (company)	Address,	Telephone, and E-mail	Shareholding as a percentage of the total shares in issue

APPENDIX G: Risk Management Plan

Provide a Risk Management Plan including at least the following information.

- G.1 An outline the major risks to the Custodian, the likelihood and the potential consequences of these risks, including:
 - a. Operational risk (systems failure, outsourcing and fraud and theft)
- G.2 A brief description of the measures and procedures in place to identify, monitor and manage the following:
 - a. Governance and decision making
 - b. Financial position and solvency
 - c. Operational risk (systems failure, outsourcing and fraud and theft)
- G.3 A brief description of the measures and procedures in place to mitigate the following risks:
 - a. Operational risk
- G.4 A description of the internal controls and risk control measures that will be implemented to ensure the proper functioning of the custodian.
- G.5 A description of the use of internal reporting and audit mechanisms to manage the risk of the custodian.

APPENDIX H: Business Plan

- H.1 The business plan should state the main objective of the custodian
- H.2 The Plan should be able to demonstrate that the custodian will maintain reasonable capital to back their operation.
- H.3 The Business Plan should show the initial set up costs (if a new operation) and then for each of the next 3 years
 - a. Initial capital (at least 6 months’ gross fee income)
 - b. Assumptions used
 - c. Initial start up costs
 - d. Projected business acquired(or business already acquired):
 - In terms of numbers of pension or provident funds expected to contract with the custodian and the total expected assets in respect of those funds
 - Other business from other asset owners, individuals, companies, trusts etc.
 - e. Basis for determining and projected management fees
 - f. Projected revenue accounts
 - g. Projected profit and loss accounts
 - h. Projected cashflow statements
 - i. Projected balance sheets
- H.4 Provide the following information relating to share capital

Authorised capital

Type of Shares	Local/ foreign	Number of shares	Nominal value (P)	Total amount (P)
Total				

Paid up capital

Type of Shares	Local/foreign	Number of shareholders	Number of shares	Nominal value (P)	Total amount (P)	% of total
Total						

NBFFRA