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PART A - THE SPECIAL FUNDS (REGULATION) ACT, 2002 AND THE REGISTRATION REQUIREMENTS

A.1 The Special Funds (Regulation) Act, 2002 (“SFA”)

The SFA provides a statutory basis for the registration and regulation in Malta of Retirement Schemes, Retirement Funds and their related parties. The SFA is intended to cover schemes or arrangements, which provide retirement benefits to residents of Malta as well as non-residents.

The SFA is divided into three Parts. Part I contains the basic definitions. Part II contains the registration obligations and essential requirements for registered Retirement Schemes, Retirement Funds and their related parties, as well as requirements applicable to auditors and actuaries. Part III contains general provisions describing, inter alia, the powers of the MFSA as well as disciplinary sanctions for non-compliance.

These directives regard only Occupational Retirement Schemes.

A.1.1 Overview of the Registration Requirements under the SFA

A.1.1.1 Retirement Schemes

Definition

An Occupational Retirement Scheme is a scheme or arrangement established by written instrument under which payments are made to Members and Beneficiaries for the principal purpose of providing Retirement Benefits and to which contributions are made solely by an employer for the benefit of employees or by an employer and the employees for the benefit of the employees. Retirement Benefits means pension or other benefits payable to a Beneficiary(ies) after retirement, permanent invalidity or death.

Form

A **Retirement Scheme** constitutes a pool of assets earmarked to provide Retirement Benefits to Members and Beneficiaries.

A Retirement Scheme is established by a written instrument (known as the **Scheme Document**) which lays down the rules stipulating the retirement benefits and the conditions under which these are granted.

A Retirement Scheme may be established as a trust constituted by a trust deed between the Employer and the Retirement Scheme Administrator providing trustee services and other person as otherwise may be provided by the Authority. A Retirement Scheme may also be established by way of contract between the Contributor(s) and the Retirement Scheme Administrator, or in any other form as may be specified by the Authority.

Nature

A Retirement Scheme may be a *Defined Benefit Scheme* or a *Defined Contribution Scheme*.

A Defined Benefit Scheme is intended for the provision of fixed or determinable retirement benefits.

A Defined Contribution Scheme has as its primary purpose the provision of retirement benefits which are established by reference to the contributions and the returns or gains that are received on the invested contributions.

A Retirement Scheme may also be any other type of scheme providing cover against biometrical or investment risks or any other schemes as may be prescribed.

A Retirement Scheme may also be established as either a *Closed Scheme* or an *Open Scheme*.

Closed Schemes are Retirement Schemes whose membership is limited either to a single employer or a group of related employers.

Open Schemes are Retirement Schemes whose membership is open for all and is only dependent on acceptance by the scheme's administrator.

A scheme or arrangement does not constitute a Retirement Scheme under the SFA if it provides for:

- a) the payment of Retirement Benefits to five or fewer Beneficiaries; or
- b) solely the payment of proceeds from the surrender or maturity of a long term contract of insurance effected by an insurance company authorised under the Insurance Business Act 1998; or
- c) the commencement of payment of Retirement Benefits to a Beneficiary on a date that is earlier than that on which such Beneficiary has attained the age of fifty, or later than that on which the Beneficiary attains the age of seventy, except in the cases where the scheme provides that:
 - i. the payment is made by reason of the Permanent Invalidity or death of a Beneficiary; or
 - ii. the payment is by means of a cash lump sum to the Beneficiary without the necessity of the Beneficiary's consent in the event that the Beneficiary is no longer employed by the Contributor of the scheme and the total Retirement Benefits due to the Beneficiary is such amount as the Authority shall prescribe by regulation.

Notwithstanding the foregoing, a scheme or arrangement described in subsection (a) or (b) may elect to be considered a scheme for purposes of the SFA.

If there is any doubt as to whether, for the purposes of the SFA, a scheme or other arrangement is a Retirement Scheme within the meaning of the SFA, the MFSA may conclusively determine the matter.

Registration Requirement

A Retirement Scheme requires registration under the SFA. In terms of Article 3(1) of the SFA, no person shall:

- a) provide or hold her/himself out as providing a scheme situated in Malta
- b) accept money or other consideration from a Contributor(s) with respect to a scheme situated in Malta

unless such scheme, is a Registered Scheme complying with the requirements of the SFA.

Investment Of Contributions

A Retirement Scheme is required to invest its Contributions in accordance with the Scheme Document and may opt to invest into one or more Retirement Funds also registered under the SFA.

Related Parties

The Retirement Scheme is required to have a Retirement Scheme Administrator, an Auditor and, in the case of a Defined Benefit Retirement Scheme (or any other scheme providing cover against biometric or investment risks), also an Actuary. In the case of a Retirement Scheme established as a Trust, trustee services are to be provided by the Retirement Scheme Administrator and as otherwise may be provided by the Authority.

The Retirement Scheme Administrator may, subject to the provisions of the Scheme Document, appoint an Asset Manager to advise on or manage the investment of all or any of the Retirement Scheme's assets or may undertake such functions itself if appropriately registered to do so. The Retirement Scheme Administrator may, subject to the provisions of the Scheme Document, appoint an entity to carry out the back-office administration duties to an entity, subject to MFSA's approval of the appointed third party. In certain circumstances, in order to protect the interests of beneficiaries, the MFSA may require the Retirement Scheme to appoint a depositary in accordance with conditions agreed in advance with the MFSA.

In delegating functions to third parties, the Retirement Scheme Administrator retains overall responsibility for the overall administration and operation of the scheme and the custody and investment management of its assets and is expected to put in place adequate monitoring arrangements to ensure the appointed third parties are carrying out the functions in line with the required requirements.

Employee Representation

Employee representation in Retirement Schemes is optional. The arrangements for the provision of employee representation in a Retirement Scheme are subject to MFSA's approval and should be discussed in advance with the MFSA.

Funding

Retirement Schemes are funded by the **Contributor(s)**, who may be either:

- a. solely the Employer or
- b. the Employer and the Employees

A Defined Benefit Retirement Scheme (and any other type of scheme providing cover against biometrical or investment risks and other schemes as may be prescribed) is required to meet certain technical provisions requirements. These are outlined in detail in Part B of these Directives.

A.1.1.2 Retirement Funds

Definition

A “Retirement Fund” is an investment company with fixed or variable share capital incorporated under the Companies Act, 1995, set up for the principal purpose of holding and investing the Contributions made to one or more Retirement Schemes or to one or more Overseas Retirement Plans.

Registration Requirements

A Retirement Fund must be registered under the SFA. In terms of Article 3(3) of the SFA, no person shall maintain or hold itself out as maintaining a Retirement Fund situated in Malta unless such fund is a registered Retirement Fund complying with the requirements of the SFA.

Related Parties

A Retirement Fund is required to have a minimum of three Directors, a Retirement Fund Administrator and an Auditor. The appointment of an Asset Manager to the Fund is at the discretion of the Retirement Fund. Where an Asset Manager is not appointed, the asset management function shall be undertaken by the Board of Directors who need to demonstrate competence in relation to the said activity.

Furthermore, the assets of the Retirement Fund shall be held in custody by the Retirement Fund Administrator or an entity which is registered under the SFA as Custodian of Retirement Funds. The Retirement Fund Administrator may carry out the custody function itself, where it satisfies the criteria applicable to Custodians of Retirement Funds, as explained further in section A.10 of these directives.

A.1.1.3 Related Parties - Retirement Scheme / Fund Administrators

Definition

A Retirement Fund Administrator or Retirement Scheme Administrator must be a company operating in Malta, which has its head office in Malta, or if its head office is outside Malta is established in a country, which in the opinion of the MFSA is subject to an adequate level of regulatory supervision.

Retirement Scheme / Fund Administrators perform the duties associated with the ordinary day-to-day operations of the Retirement Scheme / Fund. Article 18 of the SFA stipulates the duties of the Retirement Fund Administrator, while the duties of the Retirement Scheme Administrator are specified in Articles 17 and 19 of the SFA, as also included in Part B.

Registration Requirement

In terms of Article 17 of the SFA, no person shall provide a Retirement Scheme or a Retirement Fund with administrative services (described further in Part B), unless such person is registered under the provisions of the SFA to act as a Retirement Scheme Administrator or a Retirement Fund Administrator, as the case may be.

In the case of a Retirement Scheme established as a trust, no person may provide, inter alia, trustee services to a Retirement Scheme, unless such person is registered under the SFA as a Retirement Scheme Administrator or is otherwise registered by the Authority to perform any such services.

A.1.1.4 Related Parties - Asset Managers

Definition

An Asset Manager must be a company operating in Malta and in possession of an appropriate licence under the Investment Services Act, 1994, or – in the case of a Retirement Scheme Asset Manager – a company authorised to carry on long-term business under the Insurance Business Act, 1998 in class VII – ‘pension fund management’. An Asset Manager may also be a company operating outside Malta, provided it is established in a country where in the opinion of the MFSA it is subject to an adequate level of regulatory supervision or in the instance where services are being offered to a Retirement Scheme, be a company who is established in another Member State and is duly authorised to carry out portfolio investment management, in accordance with Directives 85/611/EEC, 93/22/EEC, 2000/12/EC or 2002/83/EC.

Registration Requirement

In terms of Article 24 of the SFA, no person other than those that may be exempted, shall provide or hold itself out as providing discretionary investment management services to any Retirement Scheme or Retirement Fund unless such person is a registered Asset Manager.

A.1.1.5 Related Parties - Retirement Fund Custodians

Definition

A Retirement Fund Custodian must be an entity in possession of:

- a) an appropriate licence under the Investment Services Act, 1994 or
- b) licensed under the Banking Act, 1994 or
- c) a credit institution licensed in a country where in the opinion of the MFSA 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 MFSA having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to maintain custody of assets.

Registration Requirement

In terms of the SFA (Registration of Retirement Fund Custodians) Regulations, 2003, no person other than the Retirement Fund Administrator shall provide or hold itself out as providing custody services to any Retirement Fund unless such person is a registered Retirement Fund Custodian.

A.1.1.6 Related Parties - Others

The appointment of any other related party that may be required or may be considered necessary to provide services to a Retirement Scheme (e.g. Custodian) is subject to MFSA's prior approval.

A.1.2 Operational Conditions for Persons registered under the SFA

The detailed operational conditions for persons registered under the SFA are stipulated in the SFA itself, in these directives issued by the MFSA, and in secondary legislation which may be issued from time to time.

The detailed operational conditions applicable are set out in Part B of these directives. While the operational conditions should be sufficiently flexible to operate in a range of different situations, they may be supplemented or varied from time to time, or varied to reflect particular circumstances. A person registered under the SFA will be notified of any operational conditions, which are to be varied or disappplied, and of any additional operating conditions, which are to apply, whether in the case of that particular person registered under the SFA or generally. Where any variations to the operating conditions are made in the context of a registration application by a particular applicant, the applicant will be notified thereof prior to final registration.

The MFSA has the right, at any time and from time to time, to vary or revoke any operating condition (without compromising regulatory standards) or impose new operating conditions.

A.2 Registration Criteria for Retirement Schemes and Retirement Funds

A.2.1 Registration Criteria - Retirement Scheme

The Retirement Scheme must satisfy the registration criteria as per Table A.1. Furthermore, the Retirement Scheme must have a Scheme Document which meets the requirements set out in Article 4 (1) of the SFA and in Part B of these directives. The MFSA will also need to be satisfied as to the fitness and properness as described in further detail in section A.10 in Part A.

The MFSA shall refrain from registering a Retirement Scheme unless it is satisfied that :

- a. the Retirement Scheme Administrator and any other person carrying out trustee services (in the case of a Retirement Scheme established as a Trust), as may be applicable, is fit and proper
- b. the Retirement Scheme Administrator and any other person carrying out trustee services (in the case of a Retirement Scheme established as a Trust), as may be applicable, will comply with and observe the provisions of the SFA and any regulations or directives prescribed thereunder, and
- c. the proposed Retirement Scheme will comply with the provisions of the SFA and any regulations and directives prescribed thereunder.

When considering whether to grant or refuse a registration, the MFSA shall in particular have regard for:

- a. the protection of investors and the general public;
- b. the protection of the reputation of Malta taking into account Malta's international commitments; and
- c. the promotion of competition and choice, and,
- d. the reputation and suitability of the Retirement Scheme Administrator and any other related parties.

A.2.2 Registration Criteria - Retirement Fund

The Retirement Fund must satisfy the registration criteria as per Table A.1. The Retirement Fund's Memorandum and Articles of Association must meet the requirements set out in Article 4 (2) of the SFA and in Part B of these directives. Moreover, the name of the Retirement Fund must be one which, in the opinion of the MFSA, is not misleading. The MFSA will also need to be satisfied as to the fitness and properness of the Retirement Fund and its constituent parties as described in further detail in section A.10 in Part A.

Article 8 of the SFA, prohibits the MFSA from registering a Retirement Fund unless it is satisfied that:

- a. the promoters, the directors and the Retirement Fund Administrator are fit and proper,

- b. the directors and the Retirement Fund Administrator will comply with and observe the provisions of the SFA and any regulations or directives prescribed thereunder, and
- c. the proposed Retirement Fund will comply with the provisions of the SFA and any regulations and directives prescribed thereunder.

When considering whether to grant or refuse a registration, the MFSA shall in particular have regard for:

- a. the protection of investors and the general public;
- b. the protection of the reputation of Malta taking into account Malta's international commitments;
- c. the promotion of competition and choice, and
- d. the reputation and suitability of the promoter(s), directors, Retirement Fund Administrator and any other related parties.

Directors

In terms of Article 14 of the SFA, a Retirement Fund must have at least three directors.

Corporate Directors will only be permitted where:

- a. an individual within the Company (Director/ Manager/ Employee) is identified as the person responsible for the functions of Director to the Retirement Fund, and
- b. the Company concerned is involved in financial/ investment services-related activity.

Such person will require the MFSA's approval on the same basis as an individual person seeking to act as a Director in his/ her individual capacity.

At least one individual or company acting as Director of a Retirement Fund must be resident in Malta.

Company Secretary

Individuals seeking the MFSA's approval to act as Secretary of a Retirement Fund must submit a duly completed Personal Questionnaire Form ("P.Q."). Such persons should be able to demonstrate (inter alia) that they hold a professional qualification. In this respect, the following qualifications are considered appropriate:

- a. membership of the Institute of Chartered Secretaries and Administrators;
- b. holders of an LL.D. degree;
- c. holders of a CPA/CPAA warrant;
- d. an academic or professional qualification considered by the Authority to be comparable to any of the above coupled with appropriate experience and/or training in a relevant discipline.

The above list is subject to change from time to time.

Corporate Secretaries will only be permitted where an individual within the Company (Director/Manager/Employee) is identified as the person responsible for the functions of Secretary to the Scheme.

Such person will require the MFSA's approval on the same basis as a person seeking to act as Secretary of a Retirement Fund in his/her individual capacity. In this regard, the requirements outlined above will be applicable to such person.

Individuals or Companies acting as Secretary to a Retirement Fund must be resident in Malta.

Independence of the Retirement Fund

The following independence requirements would need to be satisfied:

- a) a majority of the Directors of the Retirement Fund shall be independent from the Retirement Scheme / Fund Administrator and where the Contributor to a Retirement Scheme is a business concern, the Directors of the Retirement Fund shall also be independent from such Contributor. They shall act independently of each other and solely in the interests of the investors into the Retirement Fund.
- b) any Asset Manager appointed to the Retirement Fund, and the Retirement Fund Administrator, shall be separate persons independent of each other and where the Contributor to a Retirement Scheme is a business concern, the Asset Manager shall also be separate person independent from such Contributor;
- c) except as may be authorised by the MFSA, a person shall not act as a member of the Board of Directors of the Retirement Fund or of the Asset Manager or as an officer responsible for the administration and management of the Asset Manager and at the same time hold a similar position with the Retirement Fund Administrator or the Retirement Fund Custodian as applicable.

A.3 The Application Documents for Retirement Schemes and Retirement Funds

A.3.1 Application Documents - Retirement Scheme

A request for registration of a Retirement Scheme should be made by submitting a duly completed Application for registration as a Retirement Scheme in the form set out in Schedule A supported by the following:

- a) a description of the nature of the Retirement Scheme;
- b) the Retirement Scheme Document containing statements in line with Section B.1.2 in Part B;
- c) the Retirement Scheme Particulars which satisfy the requirements of Section B.1.3 in Part B;
- d) a one-off application fee;
- e) the terms of appointment of the auditor and in the case of a Defined Benefit Scheme (or any other scheme as may be prescribed), also of the actuary;
- f) details of any other material contracts.

The MFSA may require any additional documents as deemed necessary.

A.3.2 Application Documents - Retirement Fund

A request for registration of a Retirement Fund should be made by submitting a duly completed Application for registration as a Retirement Fund in the form set out in Schedule B supported by the following:

- a) a description of the nature of the Retirement Fund, including a general description of the investment objective(s), the risk and return characteristics of the Retirement Fund, as well as information relating to the type and diversification of assets comprised in the investment portfolio of the Retirement Fund;
- b) the Retirement Fund's Memorandum and Articles of Association which satisfy the requirements of Section B.3.3 in Part B;
- c) draft Retirement Fund Particulars which satisfy the requirements of Section B.3.4 in Part B;
- d) a duly completed Personal Questionnaire by each Director;
- e) a one-off application fee;
- f) the terms of appointment of the auditor to the Retirement Fund;
- g) details of any other material contracts.

The MFSA may require any additional documents as deemed necessary.

A.4 The Registration Process for Retirement Schemes and Retirement Funds

There are typically three phases to the registration process:

Phase One - Preparatory

- a) MFSA recommends that following due consideration of the relevant legal and regulatory requirements, the representatives of the Retirement Scheme / Fund arrange to hold a preliminary meeting with representatives of the MFSA to describe their proposal in advance of submitting an application for registration. The professional advisor drafting the scheme document, any representative of the employer and/or employees and a representative of the Retirement Scheme Administrator should ideally be present at the initial meeting(s) in respect of the Retirement Scheme. Although guidance will be given on the applicable regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of an Application will remain with the Applicant.

It is essential that the promoters submit a comprehensive (written) description of the proposed activity before the meeting. The description should include the overall structure of the Retirement Scheme / Fund and the individual entities to be connected with it.

- b) The promoters should then submit draft (rather than Final) Application Forms for each person requiring registration, together with supporting documents as specified in the Application Forms themselves.
- c) The draft Applications and supporting documentation will be reviewed and comments provided to the Applicant. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents, begins at this stage.
- d) The MFSA will consider the nature and structure of the Retirement Scheme / Fund and the entities involved and the way in which the assets are to be invested. On the basis of this analysis, a decision will be made regarding any variations to the applicable directives and operational conditions. Some of these may be disapplied or amended (where the circumstances justify such treatment, as long as Beneficiaries are adequately protected) and supplementary conditions may also be applied. The operational conditions are very important since they represent the ongoing conditions to which the Applicants will be subject, if and when registered. The Applicant will have the opportunity to consider these before they are finalised.

Phase Two – Pre-Registration

- e) Once the review of the draft Application and supporting documents have been completed and any variations to the operational conditions established, the MFSA will (provided it considers this appropriate) issue its 'in principle' approval for registration of the Retirement Scheme / Fund and any related parties.

- f) At this stage, the Applicant will be required to finalise any outstanding matters, such as the incorporation and capitalisation of any corporate entities, submission of signed copies of the Application forms and supporting documents in their final format.
- g) Registration will be effected once all pre-registration issues have been resolved. Where the application is one of a number of related registration applications, the MFSA will normally require that registration for all the relevant entities takes place simultaneously. Alternatively, where the MFSA agrees that registration need not be simultaneous, this will normally be on the condition that business is not commenced until all the necessary registrations are in place.

Phase Three – Post-Registration/ Pre-Commencement of Business

- h) The Applicant may also be required to satisfy a number of post-registration matters prior to formal commencement of business.

Registration is granted on terms that the MFSA will not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

A.5 Registration Criteria for Retirement Scheme Administrators and Retirement Fund Administrators

A.5.1 Registration Criteria - Retirement Scheme / Fund Administrator

The Retirement Scheme / Fund Administrator must satisfy the registration criteria as per Table A.1. The MFSA must be satisfied that the Retirement Scheme / Fund Administrator is a fit and proper person to provide the Retirement Scheme / Fund concerned with the services with which it will be entrusted, and will comply with and observe the provisions of the SFA and any Regulations or directives prescribed thereunder. In particular, the MFSA will not register a Retirement Scheme/ Fund Administrator under the SFA unless it is satisfied that the entity concerned has the business organisation, systems, experience and expertise, as required to perform its duties in terms of such registration.

To the extent that any investment management or custody function (as applicable) and/or back-office administration duties relating to the Retirement Scheme is to be carried out by the Retirement Scheme Administrator, the Scheme Administrator must satisfy the MFSA (on an on-going basis) that there will be available to it staff who are qualified by their ability, knowledge and practical experience of financial matters and investment management and custody to discharge such investment management or custodial role (as applicable) and/or administration systems to carry out back-office administration; and that such persons will devote sufficient time and have available to them sufficient resources to carry out such functions to an acceptable standard.

In the case of Retirement Schemes established as Trusts, the provision of trustee services by a person other than the Retirement Scheme Administrator in certain circumstances (e.g. to cater for employee representation), is subject to MFSA's approval and is subject to registration criteria as considered applicable within the whole structure of the Scheme.

Independence of the Retirement Scheme Administrator

The following independence requirements would need to be satisfied:

- a) The Retirement Scheme Administrator shall be a separate person from the Contributor(s) and shall act independently from the Contributor of any Retirement Scheme for which it is Retirement Scheme Administrator and in the best interests of the Beneficiary(ies).

While such independence does not preclude a Contributor from being represented on the Scheme Administrator's Board, there should be a majority of Directors on the Board who are independent of any Contributor.

- b) The Retirement Scheme Administrator, where applicable, shall be a separate person independent from the Retirement Fund. A majority of the Directors of the Retirement Scheme Administrator shall be independent of the Retirement Fund.
- c) The Retirement Scheme Administrator shall be a separate person independent from the Retirement Fund Administrator.

- d) It may be a requirement that the asset management role and the custody function are carried out by two separate entities independent from each other. Where applicable, the Retirement Scheme Administrator carrying out either the asset management function or providing custodial services, would be required to comply with this independence requirement.

Independence of the Retirement Fund Administrator

The following independence requirements would need to be satisfied:

- a) The Retirement Fund Administrator shall be a separate person from the Contributor(s) and shall act independently from the Contributor of any Retirement Scheme which invests in the Retirement Fund for which it acts as Retirement Fund Administrator.

While such independence does not preclude a Contributor from being represented on the Fund Administrator's Board, there should be a majority of Directors on the Board who are independent of any Contributor.

- b) The Retirement Fund Administrator shall be a separate person independent from the Retirement Fund. A majority of the Directors of the Retirement Fund Administrator shall be independent of the Retirement Fund.
- c) Where the Directors of the Retirement Fund invest all money and other assets of the Retirement Fund through an Asset Manager, then the Retirement Fund Administrator and the Asset Manager shall be separate persons and shall act independently of each other.
- d) The Retirement Fund Administrator shall be a separate person independent from the Retirement Scheme Administrator.

Financial Resources Requirements for Retirement Scheme / Fund Administrators

Operational conditions contained in Section B.7 of Part B, set out the requirements for the maintenance of financial resources by Retirement Scheme / Fund Administrators.

The specific requirements for financial resources are as follows:

- a) *Net Tangible Assets Requirement*
 Net Tangible Assets should (where applicable) exceed the following minimum Net Tangible Asset Requirement:
- | | |
|---|--|
| - Retirement Scheme Administrator: | |
| - Eligible for the abridged application process | Not Applicable unless stated otherwise |
| - Eligible for the full application process | €116,468.67 |
| - Retirement Fund Administrator: | |
| - Eligible for the abridged application process | Not Applicable |
| - Eligible for the full application process | €116,468.67 |

b) *Expenditure Based Requirement*

Liquid capital should (where applicable) exceed the higher of €11,646.87 and the following minimum Expenditure Based Requirement:

	Percentage of previous year's Annual Expenditure
- Retirement Scheme Administrator	
- Eligible for the abridged application process	Not applicable unless stated otherwise
- Eligible for the full application process	25 per cent
- Retirement Fund Administrator	
- Eligible for the abridged application process	Not applicable
- Eligible for the full application process	25 per cent

The Expenditure Based Requirement is determined by reference to the Annual Expenditure as defined in Appendix 1.

Although the requirement is based on the latest audited financial statements, the applicant should consider the potential requirement in relation to the latest period for which information is available, in order to avoid the possibility of a breach occurring when the audited financial statements are formally approved. In the case of a company's first period of account, the Expenditure Based Requirement shall be computed on the basis of the best available estimates for the period concerned. This figure shall be agreed by the MFSA.

Where no audited accounts are available for an applicant, the MFSA will require the auditor's confirmation that financial resources are in place and that they meet the Financial Resources Requirements at a date prior to the granting of Registration.

A.6 The Application Documents for Retirement Scheme Administrators and Retirement Fund Administrators

A.6.1 Registration as part of a related application by a Retirement Scheme / Fund

Normally a Retirement Scheme / Fund Administrator will apply for registration as part of a related application for registration by a Retirement Scheme / Fund. In such circumstances, the Retirement Scheme / Fund Administrator's registration will be dealt with as part of the overall process of registering the Retirement Scheme or Retirement Fund concerned.

A.6.2 Services to Multiple Retirement Schemes or Funds

Although a registration of a Retirement Scheme / Fund Administrator will normally be by reference to a particular Retirement Scheme or Fund, registration as a Retirement Scheme / Fund Administrator allows that administrator to act as such in relation to other Retirement Schemes / Funds.

A registered Retirement Scheme / Fund Administrator which wishes to act for additional Retirement Schemes / Funds will need to obtain MFSA's prior consent as further detailed below under the section 'Discrete Application Process'. While each application will be looked at on its particular facts, the MFSA anticipates that this should be a relatively simple process and that its main consideration will normally be to establish that there are, in its view, reasonable grounds for believing that the Retirement Scheme / Fund Administrator has the necessary resources to carry out the additional work to an acceptable standard.

A.6.3 Discrete, Abridged and Full Application Processes

Discrete Application Process

A Retirement Scheme / Fund Administrator which is already registered under the SFA, may apply for MFSA's authorisation / consent to provide its services to:

- a. a Retirement Scheme / Fund which is already established and registered, as where an existing Retirement Scheme / Fund Administrator is retiring, and a replacement needs to be appointed
- b. additional Retirement Schemes / Funds.

In such cases, the registration of the Retirement Scheme / Fund Administrator will constitute a discrete exercise. The following documents would need to be submitted:

- a. details of the Retirement Scheme / Fund to which services will be provided
- b. copy of the agreement to be entered into with the Retirement Scheme / Fund
- c. confirmation that the Retirement Scheme / Fund Administrator has the necessary resources to carry out the additional work to an acceptable standard, together with brief details of the basis for such confirmation / details of such resources – primarily in terms of staff and systems.

Abridged Application Process

An abridged application process shall apply in the case where a company applying for registration as a Retirement Scheme or Fund Administrator is already licensed under the ISA as a Category 2 or 3 Investment Services Licence Holder to provide the relevant services.

In the case of an application for registration as a Retirement Scheme Administrator, the abridged application process shall also apply for an insurance company authorised to carry out long term business under the Insurance Business Act, 1998 in class VII – ‘pension fund management’.

In the case of a Retirement Scheme established as a trust, a Corporate Trustee already licensed to provide trustee services under the Trusts and Trustees Act, would also qualify for the abridged application process to be registered as a Retirement Scheme Administrator, subject to satisfying the financial resources requirements ordinarily applicable to Retirement Scheme Administrators registered under the SFA and any other requirements ordinarily applicable to Retirement Scheme Administrators.

Full Application Process

The full application process applies in those circumstances where the abridged application process does not apply.

For the avoidance of doubt, all entities applying for registration as Retirement Scheme/ Fund Administrators – whether through the abridged or full application process - will be required to satisfy the MFSA that they possess the appropriate organisational set-up, systems, experience and expertise for the effective performance of their duties. The difference between the abridged and full application process relates primarily to the extent of detail which the MFSA will request upon application for registration under the SFA in that relevant information regarding the entity in question which is already known to MFSA by virtue of the entity’s regulated status under the Investment Services Act or Insurance Business Act, 1998 or the Trust and Trustees Act, as may be the case, will be taken into account.

Abridged and Full Application Process

A request for registration should be made by submitting a duly completed Application for registration as a Retirement Scheme / Fund Administrator in the form set out in Schedules C or D supported by the following:

- a) a description of the nature of the applicant’s business and relevant experience including a description of the administrative services to be provided and details as to whom such administrative services will be provided;
- b) in the case of a Retirement Scheme Administrator, a copy of the proposed Scheme Document;
- c) in the case of a Retirement Fund Administrator, a copy of the proposed agreement with the Retirement Fund;

d) a one-off application fee (where applicable).

A.7 Registration Criteria for Asset Managers

A.7.1 Registration Criteria - Malta-based Managers

An Asset Manager based in Malta will require an appropriate investment services licence under the Investment Services Act, 1994 for investment management services of the type to be provided to the Retirement Fund / Scheme in question. Alternatively, and only in the instance where the services of the Asset Manager are provided to a Retirement Scheme, a company authorised to carry on long-term business under the Insurance Business Act, 1998 in class VII – ‘pension fund management’ will be eligible to act as Retirement Scheme Asset Manager. (For the avoidance of doubt, such a company would not require an Investment Services Licence under the ISA).

While the MFSA reserves the right to make such enquiries and impose such conditions as it sees fit, generally, where a company applying for registration as an Asset Manager under the SFA is already licensed/ authorised or seeking a licence/ authorisation under the ISA/ Insurance Business Act, 1998 to provide services of the kind which it is proposing to provide as such Asset Manager, the existence or granting of such Investment Services licence under the ISA/ authorisation under the Insurance Business Act, 1998 will (in the absence of any special or unusual circumstances) be regarded by MFSA as sufficient in itself to justify its registration as Asset Manager under the SFA.

A.7.2 Registration Criteria - Overseas-based Managers

The MFSA will only accept overseas-based Asset Managers not licensed under the ISA or not authorised under the Insurance Business Act, 1998, if the applicant can demonstrate to the MFSA that it is subject to an adequate level of regulation. The MFSA must also be satisfied as to the reputation and the suitability of the Asset Manager in relation to the services it is proposing to provide to the Retirement Fund / Scheme in question. (For the avoidance of doubt, such overseas asset manager would not require an Investment Services Licence under the ISA).

In general, it will be expected that the permissible activities of the entity in terms of its overseas regulated status, includes the provision of portfolio management services in relation to instruments of the nature to which the Retirement Fund or Scheme as applicable, will be investing in.

An overseas-based person who is established in another Member State and is duly authorised to carry out portfolio investment management, in accordance with Directives 85/611/EEC, 93/22/EEC, 2000/12/EC or 2002/83/EC is exempt from the registration requirement.

A.8 The Application Documents for Asset Managers

A request for registration should be made by submitting a duly completed Application for registration as an Asset Manager in the form set out in Schedule E supported by the following documentation:

- a) a description of the nature of the applicant's business and relevant experience. The applicant should demonstrate to the MFSA its fitness and properness for the intended activities;
- b) the terms of appointment with the Retirement Scheme / Fund;
- c) a one-off application fee (where applicable).

In the case of an Overseas Manager, other than those exempt from registration, the following additional information shall also be provided:

- d) evidence of incorporation and details of any regulatory licence, authorisation or registration to carry on investment business or provide investment services relevant to the proposed activities;
- e) where applicable, a copy of the last three years audited accounts of the applicant and other relevant related companies;
- f) the address of the premises from where the services will be rendered and contact details.

A.9 Registration Criteria for Custodians of Retirement Funds

A.9.1 Registration Criteria

The custody functions for a Retirement Fund must be undertaken by the Retirement Fund Administrator or an entity Registered as a Retirement Fund Custodian under the SFA. The Retirement Fund Administrator maintaining custody of assets or the Retirement Fund Custodian shall be:

- a) a credit institution licensed under the Banking Act, 1994 or
 - b) an entity licensed as a Custodian of Collective Investment Schemes under the Investment Services Act, 1994, or
 - c) a credit institution licensed in a country where in the opinion of the MFSA 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 MFSA
- having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to maintain custody of assets.

The Retirement Fund Administrator maintaining custody or the entity which is registered under the SFA as Retirement Fund Custodian must also satisfy the registration criteria as per Table A.1.

The MFSA must be satisfied that the Retirement Fund Administrator or the Retirement Fund Custodian as applicable, is a fit and proper person to provide custody services to the Retirement Fund concerned and will comply with and observe the provisions of the SFA and any Regulations or directives prescribed thereunder.

Independence of the Retirement Fund Custodian

The Retirement Fund Custodian shall be independent from the Contributor to a Scheme where this is a business concern. The Retirement Fund Custodian must also satisfy the independence requirements specified in Regulations 17 and 18 of the SFA (Control of Assets) Regulations, 2003.

Financial Resources Requirements

Operational conditions contained in Section B.7 of Part B, set out the requirements for the maintenance of financial resources by the Retirement Fund Administrator maintaining custody or the Retirement Fund Custodian as applicable.

The specific requirements for financial resources are as follows:

- a) *Net Tangible Assets Requirement*
Net Tangible Assets should (where applicable) exceed the following minimum Net Tangible Asset Requirement:

- Eligible for the abridged application process	Not Applicable
- Eligible for the full application process	€116,468.67

Entities providing the services of a Retirement Fund Administrator and maintaining custody of the Retirement Fund's assets will only be required to satisfy the financial resources requirements applicable under this section.

Although the requirement is based on the latest audited financial statements, the applicant should consider the potential requirement in relation to the latest period for which information is available, in order to avoid the possibility of a breach occurring when the audited financial statements are formally approved.

Where no audited accounts are available for an applicant, the MFSA will require the auditor's confirmation that financial resources are in place and that they meet the Financial Resources Requirements at a date prior to the granting of Registration.

A.10 The Application Documents for entities applying for registration as Retirement Fund Custodians

A.10.1 Discrete, Abridged and Full Application Processes

Discrete Application Process

A Retirement Fund Custodian which is already registered under the SFA, may apply for MFSA's authorisation / consent to provide its services to:

- a. a Retirement Fund which is already established and registered
- b. additional Retirement Funds.

In such cases, the registration of the Retirement Fund Custodian will constitute a discrete exercise. The following documents would need to be submitted:

- a. details of the Retirement Fund to which services will be provided
- b. copy of the agreement to be entered into with the Retirement Fund / Retirement Fund Administrator
- c. confirmation that the Retirement Fund Custodian has the necessary resources to carry out the additional work to an acceptable standard, together with brief details of the basis for such confirmation / details of such resources – primarily in terms of staff and systems.

Abridged Application Process

An abridged application process shall apply in the case where a company applying for registration as a Retirement Fund Custodian is already licensed under the ISA as Custodian of Collective Investment Schemes or is already licensed under the Banking Act 1994.

Full Application Process

The full application process applies in those circumstances where the abridged application process does not apply.

For the avoidance of doubt, all entities applying for registration as Retirement Fund Custodian – whether through the abridged or full application process - will be required to satisfy the MFSA that they possess the appropriate organisational set-up, systems, experience and expertise deemed necessary to maintain custody of assets and for the effective performance of their duties as Retirement Fund Custodians. The difference between the abridged and full application process relates primarily to the extent of detail which the MFSA will request upon application for registration under the SFA in that relevant information regarding the entity as a licence holder under the Banking Act, 1994 or under the ISA will be taken into account.

Abridged and Full Application Process

A request for registration should be made by submitting a duly completed Application for registration as a Retirement Fund Custodian in the form set out in Schedule F or G supported by the following:

- a) a copy of the proposed agreement with the Retirement Fund/ Retirement Fund Administrator;
- b) details of any application for an ISA or Banking Act 1994 licence currently in progress; and of any equivalent or other regulatory licence authorisation or registration in any other jurisdiction to carry on safe-custody services relevant to the proposed activities;
- c) a one-off application fee (where applicable).

A.11 The Registration Process for Retirement Scheme / Fund Administrators / Asset Managers / Fund Custodians

There are typically three phases to the application process:

Phase One - Preparatory

- a) It is recommended that following due consideration of the applicable legal and regulatory requirements, the Applicant should arrange to meet representatives of the MFSA in advance of the formal application for registration to describe the background to its application and the way in which it intends to operate. Responsibility for the formulation of the proposal and the completion of an Application will remain with the Applicant.
- b) The Applicant should then submit a draft (rather than Final) Application Form together with supporting documents as specified in the Application Form themselves.
- c) The draft Application and supporting documentation will be reviewed and comments provided to the Applicant. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks begin at this stage.
- d) The MFSA will analyse the submissions and on the basis of this, make a decision regarding any variations to the directives and operational conditions which are to apply. Some of these may be disapplied or amended (where the circumstances justify such treatment) and supplementary conditions applied. The Applicant will have the opportunity to consider these before they are finalised.

Phase Two – Pre-Registration

- e) Once the review of the draft Application and supporting documents has been completed, the MFSA will (provided it considers this appropriate) issue its 'in principle' approval for registration.
- f) At this stage, the Applicant will be required to finalise any outstanding matters, such as (in the case of a new entity) its incorporation and capitalisation, submission of a signed copy of the Application form and supporting documents in their final format.
- g) Registration will be effected once all pre-registration issues have been resolved.

Phase Three – Post-Registration/ Pre-Commencement of Business

- h) The Applicant may also be required to satisfy a number of post-registration matters prior to formal commencement of business.

Registration is granted on terms that the MFSA will not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.

A.12 Fitness and Properness - Retirement Schemes / Funds / Related Parties

The "fit and proper" test is one which each Retirement Scheme, Retirement Fund, Retirement Scheme Administrator, Retirement Fund Administrator, Asset Manager and Retirement Fund Custodian and other related party that may be appointed including any party providing trustee services, must satisfy both as part of the initial registration process and on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that the required standards are met is on the applicant. It is not the task of the MFSA to prove that the relevant person is fit and proper either on licensing or thereafter.

In general terms, to satisfy the "fit and proper" test, an applicant must show appropriate integrity; competence; and solvency.

Integrity involves the person concerned acting honestly and in a trustworthy fashion in relation to dealings with others including in particular any dealings with clients, contributors or beneficiaries.

Competence involves being able to demonstrate a level of knowledge, professional expertise and experience appropriate to the role assigned to that person in the operation of the Retirement Scheme / Fund, Retirement Scheme / Fund Administrator and/or the Asset Manager and the Retirement Fund Custodian. The degree of competence required will depend upon the function being performed. The MFSA will take into account the qualifications, experience and skills of those involved.

Solvency means being satisfied that the person concerned has sufficient financial resources to remain solvent and meet its liabilities as they fall due.

The MFSA's approach is cumulative, that is to say it may conclude that a person has failed the test on the basis of considering several situations, each of which on its own would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether a person is fit and proper, the MFSA will take account both of what is said and of what is not said (for example in respect of a person's criminal record). It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

Individuals seeking the MFSA's approval to act as Directors of a Retirement Fund or of any of their service-providers, must submit a duly completed Personal Questionnaire ("PQ"). Such persons should be able to demonstrate (inter alia) that they have appropriate experience and competence in particular when they are to undertake investment management activities themselves.

A.13 Overseas Retirement Plans

Definition

An Overseas Retirement Plan is a bona fide scheme or arrangement, organised under the laws of a country outside of Malta, which governs the rights and responsibilities of the parties thereto, and under which payments are made to Beneficiaries for the principal purpose of providing Retirement Benefits.

Qualification as an Overseas Retirement Plan

An Overseas Retirement Plan does not require registration under the SFA. However, it may either decide to establish a Retirement Fund registered under the SFA or else invest its Contributions in an already established Retirement Fund registered under the SFA. Consequently, the Overseas Retirement Plan should be considered eligible as such by the Retirement Fund in which it will be investing.

The following issues shall particularly be taken into account in arriving at a decision whether a scheme or arrangement is eligible or qualifies as an Overseas Retirement Plan:

- a) whether it falls within the definition of an Overseas Retirement Plan as specified in Article 2 of the SFA;
- b) its reputation and suitability;
- c) whether it is subject to an adequate level of regulatory supervision in the jurisdiction where its operations take place, and,
- d) any other criteria as may be determined from time to time.

Qualification Procedure

Where an Overseas Retirement Plan is interested in investing in an already established Retirement Fund it shall first contact such fund. The Retirement Fund shall undertake its own checks and enquiries to establish whether in its opinion, the scheme or arrangement qualifies to invest in the fund (by reference to the issues outlined in points (a) to (d) above). The Retirement Fund shall notify the MFSA of any scheme which it has considered as being eligible or qualifies as an Overseas Retirement Plan, including the basis for its eligibility or qualification.

In the instance where the Overseas Retirement Plan is to establish and register Retirement Funds locally, the eligibility or qualification of the scheme shall be considered as part of the application process for the registration of the Retirement Fund(s). In such case, the applicant would need to demonstrate that the scheme or arrangement qualifies as an Overseas Retirement Plan.

The Retirement Fund in which an Overseas Retirement Plan invests shall be responsible for ensuring that the qualification or eligibility of the Overseas Retirement Plan remains so applicable on an ongoing basis. The Retirement Fund shall notify the MFSA as soon as it is aware that such qualification or eligibility is no longer applicable.

It is not permissible for Overseas Retirement Plans to be promoted / made available to residents of Malta.

A.14 Fees

Reference should be made to the SFA (Registration Fees) Regulations, 2003, as may be amended from time to time, for details of the applicable fees.

Where applicable, Application Fees are payable on submission of the Application Form (or the draft Application Form if this is submitted initially) and are not refundable. Annual Fees are payable on the day the Registration is issued and thereafter annually, upon the anniversary of that date.

Details of the current Registration Fees are also available from the MFSA.

TABLE A.1 - Summary of Registration Requirements

The applicable registration requirements are summarised in the Table below:

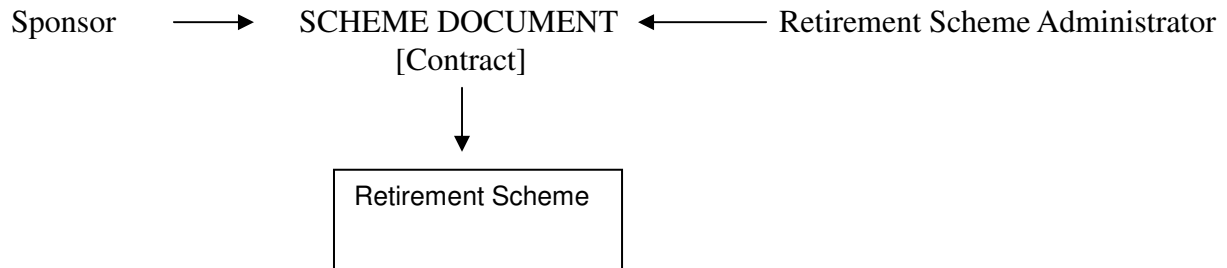
<u>Person</u>	<u>Application for Registration under the SFA</u>		<u>Constitutional Set-Up</u>	<u>Place of Operation</u>
Retirement Scheme	✓		By contract or by trust deed under Maltese Law	Malta
Retirement Scheme Administrator	✓	<p>There are the following forms of Application Process:</p> <ul style="list-style-type: none"> ▪ abridged application process: applies in the case of those applicants who hold a Category 2/3 Investment Services Licence to provide the relevant services or appropriate authorisation under the Insurance Business Act, 1998; ▪ abridged application process subject to satisfaction of certain conditions, applies in the case of those applicants who hold a licence under the Trusts and Trustees Act to provide trustee services (in the case of Retirement Schemes established as Trusts) ▪ full application process applies in other cases. 	Unspecified	<ul style="list-style-type: none"> ▪ Operating in Malta - has its head office in Malta, or - if its head office is outside Malta, this must be in a country which in the opinion of the MFSA is subject to an adequate level of regulatory supervision
Retirement Fund	✓		<p>Investment Company:</p> <ul style="list-style-type: none"> ▪ Fixed or ▪ Variable capital 	Malta

<u>Person</u>	<u>Application for Registration under the SFA</u>	<u>Constitutional Set-Up</u>	<u>Place of Operation</u>
Retirement Fund Administrator	<p>✓</p> <p>There are two forms of Application process:</p> <ul style="list-style-type: none"> ▪ abridged application process: applies in the case of those applicants who hold an appropriate investment services licence; ▪ full application process applies in other cases. 	Unspecified	<ul style="list-style-type: none"> ▪ Operating in Malta - has its head office in Malta, or - if its head office is outside Malta, this must be in a country which in the opinion of the MFSA is subject to an adequate level of regulatory supervision

<u>Person</u>		<u>Application for Registration under the SFA</u>	<u>Constitutional Set-Up</u>	<u>Place of Operation</u>
Asset Manager	✓	<p>Asset Managers must hold an appropriate Investment Services Licence granted under the Investment Services Act, 1994 or (in the case of Retirement Scheme Asset Managers only) be appropriately authorised under the Insurance Business Act, 1998, if based in Malta.</p> <p>If the Asset Manager is based overseas, it must be appropriately regulated in the jurisdiction in which it is based. In such case, the MFSA must be satisfied as to the reputation and suitability of the Asset Manager and that it is subject to an adequate level of regulatory supervision.</p>	Unspecified	<ul style="list-style-type: none"> ▪ Operating in Malta or ▪ Operating outside of Malta either in an EU Member State or in any other country which in the opinion of the MFSA is subject to an adequate level of regulatory supervision.
Retirement Fund Custodians	✓	<p>There are two forms of Application process:</p> <ul style="list-style-type: none"> ▪ abridged application process: applies in the case of those applicants who hold a licence under the Banking Act, 1994 or a Category 4 Investment Services Licence; ▪ full application process applies in other cases. 	Unspecified	<ul style="list-style-type: none"> ▪ Established place of business in Malta
Overseas Retirement Plan	n/a	A scheme or arrangement would need to qualify as an Overseas Retirement Plan (in accordance with section A11) in order to establish and register Retirement Funds locally, or invest in Retirement Fund(s).	Unspecified	Outside of Malta but in a country which in the opinion of the MFSA is subject to an adequate level of regulatory supervision

TABLE A.2.1 – Depiction of Governance Arrangements

Retirement Schemes established by Contract



Appointed Parties:

Retirement Scheme Administrator

- Governing Body of the Retirement Scheme
- Monitoring Duty:
 - Global supervision of the scheme activities and operations and the appointed third parties with the main goal of protecting the interests of beneficiaries and members of the scheme
- Operational Duties:
 - Day-to day administration of the scheme (may be delegated to approved third parties)
 - Investment Management (may be delegated to a registered Asset Manager)
 - Custodial function (may be delegated to an approved custodian)

Asset Manager / Custodian

Separation of asset management function and the custodial role may be required (e.g. where the scheme is invested directly on the market)

This would carry with it the independence requirement between the custody and the asset management function.

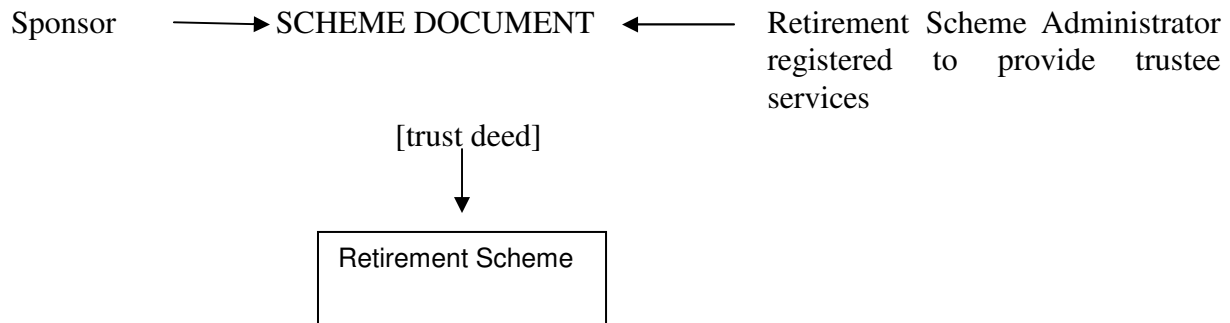
This would mean the obligatory appointment of either a Custodian with a monitoring function over the Asset Manager, or the appointment of an Asset Manager.

Auditor

Actuary (in the case of a DB Scheme)

TABLE A.2.2 – Depiction of Governance Arrangements (cont..)

Retirement Schemes established as Trusts



Appointed Parties:

Retirement Scheme Administrator *(registered to provide trustee services)*

- Governing Body of the Retirement Scheme
- Monitoring Duty:
 - Global supervision of the scheme activities and operations and the appointed third parties with the main goal of protecting the interests of beneficiaries and members of the scheme
- Operational Duties:
 - Day-to day administration of the scheme (may be delegated to approved third parties)
 - Investment Management (may be delegated to a registered Asset Manager)
 - Custodial function (may be delegated to an approved custodian)

Asset Manager / Custodian

Separation of asset management function and the custodial role may be required (e.g. where the scheme is invested directly on the market)

This would carry with it the independence requirement between the custody and the asset management function.

This would mean the obligatory appointment of either a Custodian with a monitoring function over the Asset Manager, or the appointment of an Asset Manager.

Auditor

Actuary *(in the case of a DB Scheme)*