

## **PART C – GENERAL DIRECTIVES**

### **C.1 Outsourcing**

In order to assist Retirement Scheme/ Fund Administrators (“the Administrators”) who are considering outsourcing, the MFSA has collated some points for consideration and guidance.

- 1.1 While in some circumstances an Administrator can delegate authority, responsibility cannot be delegated. Therefore, the management of the Administrator will remain responsible for any functions delegated (“outsourced”) elsewhere.
- 1.2 Accordingly, on an on-going basis the Administrator must ensure that the outsourced function is carried out at a proper standard and that the integrity of the Administrator’s own systems and controls is not prejudiced.

The entity or person supplying the service (“the service provider”) must be competent and financially sound. The Administrator must be able to demonstrate that it has taken proper steps to verify this and that it also has procedures in place for assessing the service provider’s performance on an on-going basis. Additionally, the Administrator must be able to satisfy the MFSA – if called upon to do so – that the service provider is committed for the term of the contract to devoting appropriate resources to providing the service.

- 1.3 The contract between the Administrator and the service provider must enable the Administrator to provide the MFSA with any information relating to the outsourced activity that the Authority requires in order to carry out its role.
- 1.4 If the additional approval of any Regulator (other than the MFSA) is required, the Administrator must inform the MFSA if that Regulator objects at the outset or at any subsequent time.
- 1.5 An Administrator must have contingency plans in place to enable it to set up new arrangements quickly and with minimum interruptions to business, if the contract for outsourcing is suddenly terminated or if the service provider fails. Such contingency plans must be regularly reviewed. The level of detail in such plans may vary. (As the contract with an intra-group service provider is highly unlikely to be terminated through the actions of the service provider, the only significant risk is that the service will be interrupted by another unrelated and unanticipated event. This eventuality should be included in the service provider’s business contingency plan).
- 1.6 Where a service provider services several entities or if the Administrator’s business experiences peaks in required outputs, the Administrator should satisfy itself as to the minimum level of resources that the service provider will be able to devote to providing the agreed level of service at such times.

- 1.7 The Administrator must be able to demonstrate to the MFSA – if called upon to do so – that it has taken all reasonable steps to ensure that the confidentiality of its customer’s affairs will be protected under the outsourcing contract. This is an on-going responsibility which the Administrator must fulfil at all times.
- 1.8 The Administrator must ensure that the work it outsources will not be outsourced again by the service provider to another service provider. Provided that this shall not preclude the outsourcing of custody functions by a Retirement Fund Administrator to a Registered Custodian which in turn appoints one or more sub-custodians to hold custody of the Retirement Fund’s assets.
- 1.9 The service contract must be a legally enforceable document, prepared and agreed on an arm’s length basis – even when the service provider and the Administrator form part of the same group.
- 1.10 These guidelines are not exhaustive and may be changed from time to time in light of experience.

## **C.2 Operation of a web-site or electronic network**

- 2.1 A Retirement Scheme/ Fund Administrator (“the Administrator”) shall not set up, operate or otherwise be associated or connected with a web-site or other electronic network, unless the following Standard Operational Conditions are satisfied at all times:
- a) the Administrator assumes full responsibility for all information that is communicated or displayed on the said web-site or other electronic network and for the overall quality of any such information communicated or displayed thereon;
  - b) the Administrator must be able at all times to positively identify any person submitting any information, message or other contribution on the said web-site or other electronic network. Upon demand, the Administrator shall forthwith provide the MFSA with such details as may be appropriate towards identifying the said person, including name and surname, residential or business address and the identity card, passport number or reference number of any other official registration or identification record;
  - c) a person’s contribution on the said web-site or other electronic network shall be accompanied by his name and surname and e-mail address;
  - d) the Administrator shall not permit any statements to be displayed on the said web-site or other electronic network that could bring the MFSA or the market into disrepute or is otherwise detrimental to the interests of the MFSA or the market;
  - e) the Administrator shall at all times allow unrestricted access to the MFSA on the said web-site or other electronic network;
  - f) the Administrator shall designate a senior officer to act as main point of contact with the MFSA in respect of the said web-site or other electronic network. Any change of this designation or temporary substitute designation shall be immediately communicated to the MFSA;
  - g) the Administrator shall ensure that all the data and information explained on the web-site is complete and constantly up-dated;
  - h) the Administrator shall ensure that the appropriate warnings and disclaimers can be viewed in the same browser format as the rest of the site so as to be visible to all the visitors to the site.

### **C.3 Standards for Advertisements and other Promotional Communications or Material**

No person may issue or cause to be issued an advertisement, including promotional material, in or from Malta promoting Retirement Schemes/ Funds or similar arrangements or promoting any service in relation to such Schemes/ Funds or similar arrangements, unless its contents have first been approved by the MFSA . The MFSA may impose such conditions, limitations and restrictions with respect to the issue or approval of advertisements, as it may consider appropriate.

Advertisements, including promotional material relating to Retirement Schemes or Funds registered or to be registered in terms of the SFA, or relating to services carried out in relation thereto, shall first be vetted by the Retirement Scheme Administrator or Fund Administrator, who shall be responsible for ensuring that the adverts comply with the MFSA's requirements and for submitting such adverts to the MFSA for its approval.

- 3.1 The standards specified in this Section, must be observed by the Retirement Scheme or Fund Administrator ('the Administrator' as applicable) when issuing promotional material or communications to existing or potential Contributors and/or Beneficiaries.
- 3.2 The Administrator must exercise due care, diligence and skill in applying these standards. Communications by the Administrator must be fair, clear and not misleading.
- 3.3 Any statements made about a Scheme or Fund must be consistent with its Scheme/ Fund Document or Particulars and in the case of the Fund also with its Constitutional Documents.
- 3.4 The Scheme's or Fund's Registration shall not be presented as an opinion expressed by the MFSA on the merits of the Scheme or Fund. Any advertisement relating to the Scheme or Fund shall, unless the MFSA prescribes otherwise, contain a statement that there exists no statutory provision for compensation in the case where a Scheme or Fund is unable to satisfy the liabilities attributable to it, and that the Registration of the Scheme or Fund is not an endorsement by the MFSA of the Scheme's or Fund's financial performance.
- 3.5 A Scheme/ Fund Administrator issuing an advertisement relating to a Fund or Scheme shall ensure that:
  - a) the advertisement is not misleading and does not contain a statement, promise or forecast which is untrue or misleading;
  - b) it does not contain any statement of fact which the Administrator does not at the time the advertisement is issued have reasonable grounds, supported by sufficient evidence, for believing to be true;
  - c) it does not contain any statement of opinion held by any person which the Administrator does not at the time the advertisement is issued have reasonable

grounds supported by sufficient evidence for believing to be the honestly held opinion of that person at that time;

- d) it does not contain a statement of fact which the Administrator does not at the time the advertisement is issued have reasonable grounds for believing will continue to be true for so long as it remains relevant to the subject-matter of the advertisement;
- e) it does not contain a statement relating to taxation, unless it is properly qualified to show what it means in practice and to whom it applies;
- f) it contains sufficient information to enable one to understand what is being offered and any risks involved and to enable one to make an informed decision;
- g) it contains appropriate disclaimers, warnings and a reference to the product documentation and the place from where this may be obtained or accessed;
- h) it does not signify that the advertisement is approved or has been approved by the MFSA;
- i) the advertisement makes clear the identity of the person making/ issuing the advertisement.

3.6 An Administrator in assessing whether an advertisement or other communication meets these standards shall:

- a) take into account matters which have been omitted (or might properly have been included) in the communication as well as the content of the communication itself and the context in which it is issued;
- b) if the communication is subject to regulation outside Malta, comply with those regulations.

3.7 The Administrator shall keep a record of all advertisements vetted by it and submitted for MFSA's approval, including the date of issue or publication of such advertisements and the publications in which they were included (if applicable).

3.8 In the case of promotional communications to any prospective Retirement Scheme Contributor or Beneficiary, inviting them (whether directly or indirectly, expressly or by implication) to participate in any Scheme being promoted, or likely to have such an effect, the Scheme Administrator shall ensure that such person is provided with reasonably sufficient information about the Scheme [and Fund(s) – this would form part of Scheme information] and other relevant matters to enable that person to understand what is being offered (including any special factors as well as risks and tax implications), and to enable such person to make an informed decision about whether or not to participate in such Scheme. Such promotional communications shall include provision of a copy of the up to date Scheme Particulars and (if available), audited accounts of the Scheme.

## C.4 Complaints Procedures

In the event of receiving a complaint, the Retirement Scheme/ Fund Administrator (“the Administrator”) should follow the procedure outlined below.

- 4.1 Part B of these directives require, *inter alia*, that the Administrator retains a record of each complaint received – and of the action taken.
- 4.2 The Administrator should within seven business days, acknowledge receipt of any complaints received.
- 4.3 Where a complaint is made orally, the Administrator should summarise its understanding of the complaint and ask the complainant to confirm that understanding.
- 4.4 The letter of acknowledgement referred to in condition 4.2 above, should confirm that:
  - a) the Administrator will investigate the complaint and;
  - b) on completion of the investigation, the Administrator will write to the complainant concerning the outcome;
  - c) if within two months after receipt of the complaint the investigation has not been completed, the Administrator must inform the complainant in writing.
- 4.5 In respect of 4.4 (b), the Administrator should send the complainant a letter explaining the outcome of the investigation. If the Administrator considers it appropriate to take remedial action, the proposed course of action should be described fully in the letter. The Administrator must also inform the complainant that the complainant may refer the complaint to the MFSA if (s)he is not satisfied with the proposed remedial action.
- 4.6 If within two months after receipt of the complaint, the investigation has not been completed, the Administrator will so inform the complainant in writing within seven business days of the end of that period. The letter should explain clearly that the Administrator will continue with the investigation of the complaint and that if the complainant is not satisfied with the progress of the investigation, (s)he may refer the matter to the MFSA.
- 4.7 MFSA may give the Administrator such directions as appear to be reasonable in the circumstances.
- 4.8 The holders of a Registration should not overlook arbitration as a means of settling a dispute that has otherwise proved to be insoluble.

## C.5 Penalties

Breach of these directives may give rise to disciplinary action being taken against the offending Registered Person or other person responsible for the Retirement Scheme/ Fund including the secretary or director of a Retirement Fund.

Where a Registered Person or other person responsible for the Retirement Scheme/ Fund breaches or infringes a registration condition, the MFSA may by virtue of authority granted to it under Article 7(6), 8(6), 17(6), 24(6) of the SFA impose penalties without recourse to a court of law, up to a maximum of €93,174.94. The SFA grants the Authority discretion to impose administrative penalties on registered persons and on registered persons' directors or officers.

In determining whether to impose a penalty or other sanction in terms of the SFA, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, such as:

- a. the good faith and the degree of openness of the Registered Person in the fulfilment of its obligations under the SFA, relative directives and Registration Conditions or of decisions of the competent authority in his regard;
- b. the degree of diligence and co-operation shown by the Registered Person;
- c. any evidence of wilful deceit on the part of the Registered Person or its officers;
- d. the seriousness of the effects of the infringement;
- e. the repetition, frequency or duration of the infringement by the Registered Person;
- f. the profits obtained by the Registered Person by reason of the infringement;
- g. the economic size of the Registered Person;
- h. prior sanctions imposed by the competent authority or other regulatory authorities on the same Registered Person.

Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Registered Person from its performance, unless the decision of the MFSA explicitly states the contrary.

A right of appeal to the Financial Services Tribunal is available to Registered Persons on whom penalties are imposed.