

PART B

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Part B - Standard Operational Conditions

B.1 Retirement Scheme (“the Scheme”)

B.1.1 General Conditions

1.1.1 The Scheme shall be established by a written instrument, known as the Scheme Document.

1.1.2 The Scheme may be either a Defined Benefit Scheme, or a Defined Contribution Scheme.

1.1.3 The Contributors of the Scheme shall appoint a Scheme Administrator to perform duties in connection with the ordinary and day-to-day operations of the Scheme. The Scheme shall be operated in accordance with the Scheme Document and the SFA.

1.1.4 The Scheme shall invest its Contributions in line with the Scheme Investment Objectives outlined in the Scheme Document and in line with SOC 2.7.2.

The investment management function shall be undertaken by the Scheme Administrator or an Asset Manager who need to demonstrate competence in relation to the said activity.

1.1.5 The Scheme shall appoint an auditor to the Scheme approved by the MFSA.

A replacement of the auditor of a Scheme shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the auditor of a Scheme.

1.1.6 The appointment, including the replacement, of any party to act in the capacity of a Scheme Administrator, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of a Scheme Administrator.

However, in circumstances specified in the Scheme Document, the Contributor, or where there is more than one Contributor, a majority of Contributors, by value of contributions, may remove the Scheme Administrator at its/ their discretion. The MFSA shall be notified immediately upon such occurrences.

In such cases, the Contributor(s) shall appoint a replacement Scheme Administrator within fourteen days of such vacancy occurring. If the Contributor(s) fail in this regard, then the MFSA may, on application made by any one of the Contributors or Beneficiaries, appoint a person to fill such vacancy itself.

During any period where there is no Scheme Administrator or during any period of incapacity of the Scheme Administrator, any officer of the Scheme authorised generally or specifically for that purpose by the Contributors shall carry out the functions of the Scheme Administrator.

- 1.1.7 The appointment, including the replacement, of any party to act in the capacity of Asset Manager, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the Asset Manager.
- 1.1.8 The MFSA shall be entitled to be satisfied, on a continuing basis, that the Scheme Administrator, Asset Manager, auditor and every other party involved with a Scheme has the appropriate expertise and experience to carry out its functions, as applicable.
- 1.1.9 The MFSA's permission shall be obtained before any of the following documents are amended:
 - a) Scheme Document;
 - b) any other document affecting the rights of the Beneficiary(ies) and /or Contributor(s) of the Scheme;
 - c) the Scheme Particulars or similar document giving details of the Scheme;
 - d) any agreement between the Scheme or the Scheme Administrator and the Asset Manager where applicable;
 - e) any other material agreement related to the Scheme.
- 1.1.10 The Scheme shall submit annual reports to the MFSA and such other information, returns and reports as the MFSA may from time to time request.
- 1.1.11 The Scheme shall keep such accounting and other records as are necessary to enable it to comply with the MFSA's Operational Conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.
- 1.1.12 The Scheme shall comply with the applicable conditions of its Scheme Document, the SFA and any other regulations which may apply. It shall disclose the identity of its regulator or regulators in all correspondence and other documents. Wording similar to the following shall be used: "Registered as a Retirement Scheme by the Malta Financial Services Authority".
- 1.1.13 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.
- 1.1.14 The MFSA shall be informed of any material information concerning the Scheme, its Administrator or its operation, as soon as the Scheme or its Administrator becomes aware of that information.
- 1.1.15 The Scheme shall observe its Investment Policy and Restrictions.

1.1.16 The MFSA shall be notified of any breach of the Operational Conditions or of any of the provisions of the Scheme Document or Particulars as soon as the Scheme or its Administrator becomes aware of the breach.

1.1.17 In the event of termination of the Scheme, where practicable, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Contributor(s) and/ or Beneficiary(ies) and Scheme Administrator shall use their best endeavours to delay the termination of the Scheme or to proceed with the termination in accordance with conditions imposed by the MFSA.

In the event of termination of the Scheme during a period where an actuarial valuation reveals an under-provision relative to the minimum Technical Funding Requirement, the Scheme Administrator shall inform the MFSA. The Scheme Administrator shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the MFSA and a general outline of the procedure shall be made available to members or, where applicable, to their representatives in accordance with the principle of confidentiality.

1.1.18 A request for a variation of any Operational Conditions attaching to the Registration of the Scheme or to any applicable directive shall be submitted by the Scheme Administrator to the MFSA in writing, giving details of the variation requested and the reasons.

1.1.19 The Registration Fee for the Scheme shall be payable by the Scheme Administrator on the day Registration is issued, and thereafter annually upon the anniversary of that date.

B.1.2 Contents of the Scheme Document

1.2.1 The Scheme Document must contain or cover the following matters:

- a) a statement that the principal purpose of the Scheme is to provide Retirement Benefits;
- b) a statement that all contributions to the Scheme may be invested exclusively in one or more Retirement Funds, except for ancillary cash;
- c) a statement that the Scheme is designed and operated for the exclusive benefit of the Beneficiary(ies) of the Scheme;
- d) the specific means to be used to identify all current and future Contributor(s) of the Scheme together with their respective obligations;
- e) the specific means to be used to identify all current and future Beneficiary(ies) of the Scheme together with the specific means to be used

to determine the amount of their respective Retirement Benefits, and the timing of payment of such Retirement Benefits;

- f) the name, address, telephone number and e-mail address (if available) of the Scheme Administrator;
- g) the rules or other criteria governing the valuation of assets and liabilities attributable to the Scheme and the timing of such valuations;
- h) the rules governing admissible costs and expenses payable out of the Scheme assets;
- i) the method to provide for the appointment, removal, and replacement of: the Scheme Administrator, auditor and where applicable, the Asset Manager, and/ or actuary of the Scheme;
- j) the rules governing the surrender, termination or, where appropriate, forfeiture of a Retirement Benefit;
- k) the applicable rules in the event of an inability or failure by a Contributor to fulfil its obligations;
- l) the rules governing alterations to the Scheme Document;
- m) the circumstances leading to the termination of the Scheme, saving the cases established by law;
- n) that, unless otherwise prescribed under the SFA, there exists no statutory provision for compensation in the case where a Scheme or Fund (where applicable) is unable to satisfy the liabilities attributed to it and the Registration of the Scheme or Fund is not an endorsement by the Authority of the Scheme's or Fund's financial performance;
- o) a statement in accordance with Article 46 of the SFA to the effect that the Scheme Document shall, when duly disclosed to a Beneficiary, be binding on that Beneficiary, unless such Beneficiary notifies the Scheme Administrator of her/his written opposition thereto within two months from receipt of the Scheme Document; however, where a Beneficiary who is not also a Contributor to the Scheme opposes the Scheme Document s/he shall forfeit her/his status as a Beneficiary, unless the said Scheme Document reduces the benefits due to her/him under a previously accepted Scheme Document;
- p) the Scheme Investment Objectives including, where applicable, the Fund(s) in which the Scheme assets will be invested or, the basis on which the same will be identified and any other provisions as to how the Scheme assets are to be invested;
- q) terms of how all income and proceeds received by the Scheme are applied

- r) on the retirement, permanent invalidity or death of a Beneficiary or Member or transfer of her/his accrued rights to another Scheme, the basis on which the value of any redemption or liquidation of Fund shares where applicable, or other securities relative thereto, shall be made available to such Beneficiary or Member;
- s) any terms on which a distribution of assets may be made to a Beneficiary or Beneficiaries;
- t) the appointment or confirmation of the appointment, by the Contributor(s) and / or Beneficiaries of the Scheme Administrator;
- u) whether the Scheme is of a Defined Benefit or a Defined Contribution nature and details of any biometrical or investment risks including the nature of the cover provided for such risks;
- v) the persons in whom any residual authority to operate the Scheme and give directions to the Scheme Administrator on matters relating to the Scheme, is vested;
- w) the process by which a decision of the Contributor(s) or the Beneficiary/ Beneficiaries shall be made for the purposes of the Scheme;
- x) the Scheme's accounting reference date;
- y) a provision that not more than 5% of the assets of the Scheme may be invested in Contributor-related Investments;
- z) a provision that in the event of any inconsistency between the Scheme Document and the SFA, the SFA shall prevail and the Scheme Document shall be deemed to be amended to the extent necessary to conform to such SFA;
- aa) provide that the Scheme Administrator will be liable to the Contributor(s) and Beneficiary(ies) for any loss suffered by them as a result of its fraud, wilful default or negligence. It shall be provided that the Beneficiary(ies) shall be able to enforce this liability either direct or indirect through the person in whom any residual authority to give directions to the Scheme Administrator on matters relating to the Scheme is vested;
- bb) provide that the liability of the Scheme Administrator shall not be diminished if it has entrusted to a third party some or all of its functions as Scheme Administrator;
- cc) provisions related to the transferability of the Scheme;
- dd) details regarding the charges of the Scheme
- ee) a statement that in circumstances where a Contributor terminates his/her employment to take up employment in a foreign country where there are

no Occupational Retirement Schemes, that individual will have the possibility to continue providing contributions himself/ herself to the Retirement Scheme – subject to the provision that the individual will additionally be obliged to provide himself/ herself for the contributions previously payable by his/ her past employer from whom such individual would have terminated employment;

- ff) provisions enabling contributions to continue to be made to a Scheme by or on behalf of workers who are posted in another EU Member State during the period of such posting;
- gg) provisions that where contributions are being made to a Scheme as provided for in (ff) above, the posted worker (and where applicable her/his employer) shall be exempt from any obligation to make contributions to a pension scheme or arrangement in another EU Member State.
- hh) The type of information to be provided to Members and Beneficiaries.

The Scheme Administrator is required to notify, within a reasonable time, any relevant information regarding changes to the Retirement Scheme Document, to Members, Beneficiaries, Contributors and others. This notification process is without prejudice to the rights of the Contributors or Beneficiaries or others regarding changes to the Retirement Scheme, as may be applicable under the Act.

B.1.3 The Scheme Particulars

General

1.3.1 The Scheme Administrator shall prepare, maintain and revise at least every three years or more frequently where appropriate a document describing the Scheme (“Scheme Particulars”) in sufficient detail for the Contributor(s), Beneficiary(ies) and Members to make an informed judgement as to the nature of the Scheme.

1.3.2 The Scheme Particulars shall include the following matters:

- a) the Scheme’s structure, purpose and the identity and role of the significant parties related to the Scheme and the category of persons eligible to be Beneficiary(ies);
- b) whether the Scheme is a Defined Benefit or Defined Contribution Scheme, the nature of the benefits provided and any conditions relating thereto, the contributions made or required to fund the benefits and any arrangements for additional contributions, and how such benefits and contributions are calculated;
- c) the Scheme’s Investment Objective, including
 - i. where applicable, the identity of the Fund(s) in which the Scheme invests the contributions;

- ii. the Scheme's liabilities to the Beneficiary(ies);
 - iii. where applicable a summary of the key characteristics of each Fund or sub-fund in which the Scheme invests and the proceedings in relation to changes to the funds selected;
 - iv. details of the investment policy and any investment restrictions. The statement of investment policy, in particular, must be reviewed at least every three years. This statement is to be revised without delay after any significant change in the investment policy. Moreover, this statement shall at least contain such matters as the investment risk measurement methods, the risk-management processes implemented and the strategic asset allocation with respect to the nature and duration of pension liabilities.
- d) any criteria (including benchmarks and performance time scales) against which the Scheme's investment performance is measured;
 - e) any risk parameters applied by the Scheme to its investment policy;
 - f) the fee structures in place for the parties to the Scheme;
 - g) reference to the place where the Scheme Document, if it is not annexed, may be obtained;
 - h) a provision that not more than 5% of the assets of the Scheme may be invested in Contributor-related Investments;
 - i) a statement as to how further information about the Scheme (including the information outlined in SOC 2.4.2) may be obtained by a Contributor or Beneficiary;
 - j) brief indications relevant to the Beneficiary(ies) of the tax provisions applicable to the Scheme and Beneficiaries;
 - k) that, unless otherwise prescribed, there exists no statutory provision for compensation in the case where a Scheme or Fund is unable to satisfy the liabilities attributed to it, and that the Registration of the Scheme or Fund is not an endorsement by the Authority of the Scheme's or the Fund's financial performance;
 - l) a description of the potential conflicts of interest which could arise;
 - m) such other matters as the MFSA may prescribe either generally or in relation to a particular Scheme or class of Schemes.

1.3.3 With the agreement of the MFSA, the Scheme Administrator may address a specific item or items in the above list by cross-referring to the most recent Annual Report for the Scheme, and making available such report in conjunction with the Scheme Particulars.

- 1.3.4 The Scheme Particulars and any amendments thereto shall be sent to and agreed with the MFSA before effected.
- 1.3.5 The Scheme Administrator shall provide copies of the Scheme Particulars to the Fund Administrator of any Fund in which it invests, and to all Contributor(s) and Beneficiary(ies) and Members.

Supplementary Conditions

- 1.3.6 In the case of a Defined Benefit Scheme (or any scheme providing cover against biometrical or investment risks), the Scheme Particulars shall also include the expected (projected) return - which should be determined together with the actuary - on the Scheme's assets.

B.1.4 Appointment of Auditor

- 1.4.1 The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit or her/his firm is:
- a) a director, partner, qualifying shareholder, officer, representative or employee of the Scheme Administrator or any Contributor;
 - b) a partner of, or in the employment of, any person in (a) above;
 - c) a spouse, parent, step-parent, child, step-child or other close relative of any person in (a) above;
 - d) a person who is not otherwise independent of the Scheme Administrator or any Contributor;
 - e) a person who is engaged under a contract of service to provide non-audit services to the Scheme Administrator or to any employer acting as Contributor;
 - f) a Contributor or Beneficiary to or of the Scheme;
 - g) a person disqualified by the MFSA from acting as an auditor of a Scheme.

For this purpose an auditor shall not be regarded as an officer of the Scheme solely by reason of being auditor of the Scheme Administrator or any Contributor.

- 1.4.2 The auditor shall be required to include in the annual report of the Scheme an audit report in a form approved by the MFSA.
- 1.4.3 An auditor of the Scheme shall be appointed on terms that it has a duty to report immediately to the MFSA any fact or decision of which it becomes aware in its capacity as auditor of such Scheme which:

- a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's report on such Scheme; or
 - b) constitutes or is likely to constitute a material breach of the legal or regulatory conditions applicable to a Scheme in or under the SFA; or
 - c) seriously impairs the Scheme's ability to meet the current or future liabilities attributable to it; or
 - d) relates to any other matter which may be prescribed.
- 1.4.4 An auditor of the Scheme shall report to the MFSA any facts or decisions as specified in condition 1.4.3 of any person having close links with such Scheme within the meaning of Articles 7(5) and 8(5) of the SFA, of which s/he becomes aware in her/his capacity as auditor of the Scheme or of the person having such close links.

B.1.5 Scheme's Annual Report

General

- 1.5.1 A Scheme's Annual Report shall be prepared in respect of each year of the scheme. The annual report shall contain information sufficient to enable Contributor(s) and Beneficiary(ies) and Members to make an informed judgement on the development, management, operation and financial performance of the scheme. The contents of the annual report, are set out in Appendix 5.
- 1.5.2 The Scheme's annual report shall be prepared in conformity with International Accounting Standards. Where applicable, accounting policies used shall be consistent with those adopted in the relevant Retirement Fund's annual financial statements (where applicable) and shall be consistently applied.
- 1.5.3 The financial year-end of a Scheme (including any changes thereto) shall be agreed with the MFSA.
- 1.5.4 The annual report shall be produced and submitted to the MFSA within three months of the end of the period concerned. The Scheme Administrator shall prepare and submit such additional financial returns and reports as the MFSA may from time to time request.
- 1.5.5 A copy of the Scheme's Annual Report shall be submitted to the Scheme's Contributor(s) and Beneficiary(ies) and Members free of charge on request.

Supplementary Conditions

- 1.5.6 In the case of a Defined Benefit Scheme (or any scheme providing cover against biometrical or investment risks), the Scheme's Annual Report shall also include a

copy of the latest actuary's report required in terms of SOC 1.6.8(d) or a summary thereof.

- 1.5.7 In the case of a Defined Contribution Scheme, the Scheme's Annual Report shall also include a review of the investment performance of the Scheme's assets including an assessment of their nature, marketability and valuation.

B.1.6 Supplementary Conditions for Defined Benefit Schemes and other Schemes as may be prescribed

Appointment of Actuary

- 1.6.1 The Scheme Administrator of a Defined Benefit Scheme (or any other Scheme providing cover against biometrical or investment risks) shall appoint an actuary to the Scheme. The actuary should be a member of a recognised professional actuarial association or have a recognised actuarial degree and 3 years' experience in advising Defined Benefit Schemes.
- 1.6.2 If at any time the Scheme Administrator of such Scheme referred to in 1.6.1 fails to have an actuary in office for a period exceeding four weeks, such Administrator shall notify the MFSA who shall be entitled to appoint a person to fill that vacancy; the fees and charges so incurred being payable by the Scheme or if the MFSA so specifies, by the Scheme Administrator.
- 1.6.3 A person shall not be appointed as actuary to a Scheme if s/he is employed under a contract of service by the Scheme Administrator or any Contributor or is a Contributor or Beneficiary to or of the Scheme.
- 1.6.4 The appointment of and replacement of the actuary of a Scheme shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of the actuary of a Scheme.
- 1.6.5 An actuary of the Scheme shall be appointed on terms that it has a duty to report immediately to the MFSA any fact or decision of which it becomes aware in its capacity as actuary of such Scheme which:
- a. is likely to lead to a serious qualification of, or refusal to issue, the actuary's report on such Scheme; or
 - b. constitutes or is likely to constitute a material breach of the legal or regulatory conditions applicable to a Scheme in or under the SFA; or
 - c. seriously impairs the Scheme's ability to meet the current or future liabilities attributable to it; or
 - d. relates to any other matter which may be prescribed.
- 1.6.6 An actuary of the Scheme shall report to the MFSA any facts or decisions as specified in condition 1.6.5 of any person having close links with such Scheme

within the meaning of Articles 7(5) and 8(5) of the SFA, of which s/he becomes aware in her/his capacity as actuary of the Scheme or of the person having such close links.

1.6.7 On the appointment or a change in actuary, the Scheme Administrator shall provide the MFSA with the declaration referred to in Annex III to the Application Form for Registration as a Retirement Scheme.

1.6.8 The actuary shall:

- a) advise the Scheme Administrator (on an on-going basis) on the appropriate rates of Scheme contributions;
- b) calculate the technical provisions for any biometrical or investment risks or level of benefits for which the Scheme provides cover in accordance with recognised actuarial methods and complete and certify such calculations at least as frequently as the prescribed intervals;
- c) prior to the commencement of the Scheme, provide the Scheme Administrator with a certificate (in the form of that in Appendix 7) setting out whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule of Payments relates;
- d) provide the Scheme Administrator following the end of the first Scheme year and every third Scheme year thereafter in respect of such year, or on an annual basis if required by SOC 1.6.10, with an actuarial report containing the following:
 - i. an actuarial valuation of the assets and liabilities of the Scheme as at the end of the relevant Scheme year including a note of the assumptions and methods of valuation used and expressed so as to enable the expected future course of the Scheme's contribution rates and funding level to be understood;
 - ii. a certificate (in the form of that in Appendix 7) setting out the position of the Scheme with respect to the minimum Technical Funding Requirement and whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule relates or is expected to restore the funding position over this period and indicating any relevant changes that have occurred since the most recent actuarial valuation was prepared.

1.6.9 An actuarial valuation is required with an effective date no later than the first anniversary of the date on which the Scheme commenced and, normally, with effective dates at no more than three years intervals thereafter.

- 1.6.10 Where an actuarial valuation shows that the Scheme's assets are below the minimum Technical Funding Requirement then annual valuations and certificates will be required until the funding position is restored.
- 1.6.11 The actuarial valuation report and accompanying certificate must be signed no more than one year after the effective date of the valuation. The certificate must relate to the position of the scheme at the date 7 days before it is signed.
- 1.6.12 The calculation of the technical provisions shall be carried out according to the following principles:
- a) the minimum Technical Funding Requirement shall be calculated by a sufficiently prudent actuarial valuation. It must be sufficient both for pensions and benefits already in payment to Beneficiaries to continue to be paid, and to provide Beneficiaries with an actuarial value of their accrued pensions rights;
 - b) the minimum Technical Funding Requirement shall be assets that, had the Scheme wound up on the valuation effective date, the assets would have provided for:
 - i. benefits in course of payment;
 - ii. benefits, other than those referred to in (i), which consist of additional benefits secured or granted under the Scheme on behalf of the Beneficiary concerned by way of additional voluntary contributions or a transfer of rights from another Scheme;
 - iii. benefits with at least uniform attribution, other than those referred to in (i) or (ii), payable in respect of reckonable service completed up to the effective date; and
 - iv. the estimated expenses of administering the winding up of the Scheme.
 - c) where there is no sponsoring employer to underwrite biometrical risks or guarantees on investment performance or a given level of benefits then the minimum Technical Funding Requirement shall be increased by an amount calculated in accordance with Articles 27 and 28 of Directive 2002/83/EC of the European Parliament;
 - d) in calculating the minimum Technical Funding Requirement the actuary may assume that the liabilities of the Scheme could have been provided on winding up by paying assets of equivalent actuarial value to the above benefits to another Scheme or purchasing of appropriate insurance contracts to provide the same benefits;
 - e) any maximum Technical Funding Requirement which may be prescribed;
 - f) the biometrical tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics

of the Beneficiaries and the Scheme, in particular the expected changes in the relevant risks;

- g) the rate of interest used shall be chosen prudently taking into account, if applicable, an appropriate margin for adverse deviation and determined in accordance with any conditions of the MFSA including other provisions of these directives;
- h) the prudent rates of interest shall be determined by taking into account:
 - i. the yield on the corresponding assets held by the scheme and the future investment returns and/or
 - ii. the market yields of high quality or government bonds;
- i) the method and basis of calculation shall in general remain constant from one scheme year to the other. However, modifications may be justified due to a change of legal or economic circumstances underlying the assumptions.

1.6.13 Where a Beneficiary or Member thereof wishes to transfer the value of her/his accrued benefits to another Scheme, such Beneficiary or Member thereof shall request the Scheme Administrator to obtain the actuarial value of these benefits. The actuary shall certify that the method used to calculate this value is appropriate. Such an actuarial value shall be assessed using market rates of interest.

1.6.14 The calculations of actuarial values for transfer to another Scheme shall be carried out according to the following principles:

- a) market rates of interest used to calculate the actuarial value of accrued benefits shall be determined on the basis of market redemption yields on Government bonds of appropriate currency, duration and type at the time of transfer with allowance for investment of future interest/ redemption receipts at such rates as the actuary considers reasonable;
- b) guaranteed or statutory increases, both in deferment and after payment commences, should be valued as part of the accrued benefit;
- c) the actuary should first advise and then establish with the Scheme Administrator whether and to what extent it is considered appropriate to make any addition for future discretionary increases to the accrued benefits or for any other benefits that may be granted on a discretionary basis;
- d) in general it would be inappropriate to allow for discretionary benefits in the calculation of transfer values unless the Scheme could satisfy the minimum Technical Funding Requirement with allowance made for such benefits for all Beneficiaries or Members;
- e) the method and assumptions used for calculating the actuarial value of benefits to be transferred out of the Scheme should be consistent with the

method and assumptions used to calculate benefits for a person acquiring transfer credits in the Scheme.

B.1.7 Programmed Withdrawal Arrangements

Purpose

- 1.7.1 The following Standard Operational Conditions explain the manner in which retirement benefits as defined in Article 2 (1) of the Special Funds (Regulation) Act, 2002 shall be paid in the form of a stream of income payments, other than any benefits paid on death or permanent invalidity of the member.

Methodology

- 1.7.2 On retirement, 30 per centum of the assets of a member in a Retirement Scheme or Retirement Fund, as the case may be, may be paid as a cash lump sum. The remaining assets shall be used to provide a retirement income.
- 1.7.3 The Retirement Scheme or Fund shall, at the request of the Malta Financial Services Authority, demonstrate that any remaining assets of a member which are not paid in the form of a cash lump sum outlined in SOC 1.7.2, generate sufficient income to the retiree. By way of example, a Retirement Scheme or Fund may base its calculation of a retiree's stream of income on publicly available annuity/drawdown rates.
- 1.7.4 Where subsequent to a valuation of a retiree's assets, it is established that the retiree's value of assets is more than sufficient to provide the retirement benefit determined in accordance with SOC 1.7.3., then 50 per centum of the excess value of such assets as determined by the valuation may be withdrawn as a lump sum.
- 1.7.5 The valuation shall be performed not more than once every financial year, and not within the first three years, from commencement of retirement benefits.
- 1.7.6 The above shall be without prejudice to any other limitations on withdrawal of retirement assets as specified by any other pensions or taxation legislation to which a retiree is subject to.
- 1.7.7 In the case where a retiree is domiciled in Malta the conditions in SOC 1.7.4, shall only apply where the annual retirement benefit from an annuity exceeds €50,000. This value shall be adjusted annually to take account of changes in the index of inflation as published by the National Statistics Office in the Government Gazette of Malta.

B.2 Registration of Retirement Scheme Administrator

B.2.1 General Conditions

- 2.1.1 The Scheme Administrator shall be a company operating in and shall have an established place of business in Malta and either:
- a) has its head office in Malta; or
 - b) in the case of a company whose 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.
- 2.1.2 The activities of the Scheme Administrator shall ordinarily be limited to retirement benefits-related operations and activities arising therefrom. Provided that this shall not preclude the Scheme Administrator from being involved in other non SFA – related activities provided such other activities are considered to the satisfaction of the MFSA as not creating a conflict of interest with the Administrator’s duties under the SFA and do not expose the Scheme Administrator to undue risks. Such Scheme Administrators are required to ring-fence all assets and liabilities related to the Retirement Scheme and manage and organise their business in connection with the Retirement Scheme, separately from the other activities without any possibility of transfer, as may be agreed with the MFSA.
- 2.1.3 The Scheme Administrator shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities.
- 2.1.4 The Scheme Administrator’s business shall, unless the MFSA has agreed otherwise in writing, be conducted on a day-to-day basis by at least two individuals resident in Malta in satisfaction of the “dual control” principle.
- 2.1.5 The Scheme Administrator shall commence its business within six months of the date of its Registration by MFSA in terms of the SFA.
- 2.1.6 Upon the Scheme Administrator ceasing for whatever reason to be Administrator to the Scheme, the Scheme Administrator shall co-operate fully with any duly appointed replacement Scheme Administrator to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Beneficiary(ies).
- 2.1.7 The Scheme Administrator shall take out and maintain adequate insurance cover as it considers appropriate.
- 2.1.8 The Scheme Administrator will be liable to the Contributor(s) and Beneficiary(ies) of the Scheme for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.
- 2.1.9 The Scheme Administrator shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Scheme

Administrator shall supply the MFSA with such information and returns as the MFSA requires.

2.1.10 Where a standard condition demands that a Scheme Administrator notifies the MFSA of an event, such notification shall be made to the MFSA formally, by means of a written communication. Provided that where a Scheme Administrator is also an Investment Services Licence Holder in terms of the ISA or is a company licensed to carry on the business of insurance, as Principal, (“Insurance Principal”) under the Insurance Business Act, 1998 (“IBA”) and is subject to the same notification or MFSA consent requirements as provided for in this section, such Administrator may satisfy its requirements under the ISA or Insurance Business Act (as applicable) and SFA by means of one and the same notification or request for consent, provided that appropriate reference is made to the fact that such notification or request for consent is in satisfaction of the respective requirements under the ISA or Insurance Business Act (as applicable) and SFA. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

2.1.11 The Scheme Administrator shall notify the MFSA in writing of:

- a) payments owed to the Scheme which are not made in accordance with the Schedule of Payments (referred to in standard condition 2.3.2 (b)) and are not received within 30 days of their due date;
- b) any breach of the conditions of Registration (as soon as it becomes aware of the breach);
- c) any breach of the SFA or of any of the provisions of the Scheme Document or Particulars of any Fund in which it invests by any provider of services to the Scheme or Fund as soon as the Scheme Administrator become aware thereof;
- d) a change in the Scheme Administrator’s name or business name (if different) at least one month in advance of the change being made;
- e) a change of address (at least one month in advance);
- f) the Scheme Administrator ceasing or being about to cease to act as Administrator of the Scheme, the reasons for such cessation and any circumstances connected therewith which in its opinion significantly affects the interests of the Scheme’s Beneficiary(ies) or prospective Beneficiary(ies);
- g) the cessation of any appointment of an Asset Manager, auditor or actuary of the Scheme, the reasons therefor and any circumstances connected therewith which in its opinion significantly affects the interests of the Scheme’s Beneficiary(ies) or prospective Beneficiary(ies);
- h) the departure of a director or manager (within 14 days of the departure). The Scheme Administrator shall also request the director or manager to

confirm to MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the notification of departure;

- i) a change in the list of authorised signatories (as soon as the change is made);
- j) the termination of a representative's contract (as soon as the contract is terminated);
- k) the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Scheme Administrator's voting share capital on becoming aware of the situation;
- l) the provision of a related company loan, within 15 days of making the loan. [the definition of 'related company' may be found in Appendix 1];
- m) any proposed material change to the Scheme Document or Particulars (on becoming aware of the proposal);
- n) any proposed material change to the Scheme Administrator's business at least one month before the change is to take effect;
- o) any evidence of fraud or dishonesty by a member of the Administrator's staff or anyone connected with the operation of the Scheme immediately upon becoming aware thereof;
- p) a decision to make a material claim on any insurance policy held in relation to the Administrator's business (as soon as the decision is taken);
- q) any actual or intended legal proceedings of a material nature by or against the Administrator or relating to the Scheme which might adversely impact on the operation of the Scheme or its compliance with the Scheme Document or the SFA upon becoming aware of the same;
- r) any material changes in the information supplied by the Scheme Administrator to the MFSA upon becoming aware of the same;
- s) in relation to each Scheme for which the Scheme Administrator acts as Administrator, a change in the investment policy of that Scheme;
- t) any other material information concerning the Scheme Administrator, its business or staff and any Scheme in relation to which it acts as Administrator - immediately upon becoming aware of the matter.

2.1.12 The Scheme Administrator shall obtain the written consent of the MFSA before:

- a) making any change to its share capital or the rights of its shareholder;

- b) acquiring 10 per cent or more of the voting share capital of another company;
- c) taking any steps to cease its business;
- d) agreeing to sell or merge the whole or any part of its undertaking;
- e) granting a loan to a shareholder or director;
- f) the appointment of a director and of senior managers responsible for the business of the Scheme Administrator (including the Compliance Officer), at least twenty one business days in advance. The request for consent of the appointment of any of the above, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule I of these directives – duly completed by the person proposed. Where the person proposed had previously submitted a PQ to the MFSA in connection with some other role, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto. For the purposes of the above, ‘manager’ should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA’s authorisation;
- g) the change in the responsibilities of a director or manager at least twenty one business days in advance. The request for consent of the change in responsibilities of a director or manager shall be accompanied by a confirmation by the proposed director or manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

A change in the responsibilities of a director or manager should only be notified to the MFSA when such a change is material. Material changes include:

- i. those which lead to a change in the status or seniority of the person concerned (upwards or downwards);
 - ii. those which alter the responsibilities of the person concerned in (h) below.
- h) any persons, whether directors, managers or senior staff members whose appointment is subject to MFSA’s consent in terms of standard condition 2.1.12 (f).

The request for authorisation shall include all relevant details in order to enable the MFSA to assess whether the persons concerned are sufficiently competent to undertake such activities. For this purpose, details of relevant experience, training and/or qualifications will be required.

- i) the appointment of any person as an Asset Manager, auditor or actuary of the Scheme or other person related to the Scheme. The Scheme Administrator shall provide MFSA with the terms of the appointment, and the contents of the contract effecting such appointment.
- 2.1.13 The Scheme Administrator shall co-operate fully with any inspection or other enquiry or compliance testing carried out by the MFSA, or an inspector acting on its behalf.
- 2.1.14 The Scheme Administrator shall submit a Certificate of Compliance, in the form set out in Appendix 3, to the MFSA for each six month period following the Registration date. The Certificate of Compliance shall be signed by a Director on the authority of the Board, or by a partner on the authority of all other partners, and shall be submitted within one week from the end of the period to which it relates.
- Where there have been breaches of the SFA or of the conditions/ directives issued thereunder, the Administrator is required to include a statement regarding such breaches in its Certificate of Compliance.
- 2.1.15 Where, in the event of a dispute between the Scheme Administrator and a Contributor or a Beneficiary, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:
- make all the necessary arrangements at their own cost;
 - appoint as Arbitrator(s), person(s) mutually acceptable; and
 - be bound by the decision of the Arbitrator(s) as if such decision was a judgement of the Court.
- Alternatively, the matter may have to be referred to the Courts.
- 2.1.16 It is understood and acknowledged by the Scheme Administrator 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.
- 2.1.17 The Scheme Administrator shall pay promptly all amounts due to the MFSA.
- 2.1.18 The Registration fee shall be payable by the Scheme Administrator on the date of the granting of Registration, and thereafter annually within one week from the anniversary of that date.
- 2.1.19 If so required by the MFSA, the Scheme Administrator shall do all in its power to delay the cessation of its business, or the winding up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of the Contributor(s) and Beneficiary(ies).

- 2.1.20 A request for a variation of any conditions attaching to the Registration of the Scheme Administrator or to any applicable directive shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 2.1.21 The Scheme Administrator shall comply with:
- a) all applicable laws and regulations whether in Malta or elsewhere including without limitation the SFA;
 - b) the Scheme Document and any other binding agreements, statements or documents specifying how the Scheme will be operated.
- 2.1.22 The Scheme Administrator may not use the Scheme's assets for its own purposes.
- 2.1.23 The Scheme Administrator shall procure that not more than 5% of the Scheme's assets shall be invested in Contributor-related Investments.
- 2.1.24 Where payments owed to the Scheme are not made in accordance with the Schedule of Payments then this should be reported to the MFSA (in line with standard condition 2.1.11) and Beneficiaries if the payment is not received within 30 days of their due date. In addition, the Scheme Administrator shall take action to obtain payment as described in Article 34 of the SFA.

B.2.2 Independence

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

Since independence may be compromised in a variety of ways, any facts, relationships, arrangements or circumstances which bring or are likely to bring that independence into question shall be declared to the MFSA as soon as the Scheme Administrator becomes aware of any such matter.

- 2.2.2 If the Scheme Administrator has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Scheme, it shall immediately declare the nature of that interest to the Contributor(s).
- 2.2.3 The Scheme Administrator shall be a separate independent person from the Fund Administrator, where applicable.

B.2.3 Duties

General

- 2.3.1 The Scheme Administrator is responsible for the operation of the Scheme in accordance with the Scheme Document and for all functions of the Scheme not attributed by the Scheme Document or the SFA to the Contributor(s) or the Beneficiaries. The Scheme Administrator shall act in the best interests of the Scheme and its Beneficiaries.
- 2.3.2 The Scheme Administrator shall ensure that the Scheme complies with the provisions of the SFA, the directives and all applicable laws.
- 2.3.3 The Scheme Administrator shall perform all duties associated with the ordinary or day-to-day operations of the Scheme, including but not limited to the following:
- a) investing all contributions in accordance with the terms of the Scheme Document;
 - b) maintaining custody of assets;
 - c) maintaining a Schedule of Payments for all Schemes containing the rates of contributions payable towards the Scheme by or on behalf of the employer and, where applicable, by any other Contributor(s) to the Scheme and the dates on which such contributions are to be paid. The form of the Schedule shall be set out in Appendix 10. The Scheme Administrator shall ensure the first Schedule of Payments is prepared and certified before the Scheme commences and is revised prior to the signing of subsequent actuarial valuation reports;
 - d) where payments owed are not made in accordance with the Schedule of Payments then this should be reported to the MFSA and Beneficiaries if the payment is not received within 30 days of their due date. In addition the Scheme Administrator shall take action to obtain payment as described in Article 34 of the SFA;
 - e) ensuring that the Scheme has received all payments owed to it by any Contributor or issuer of an security where the Scheme is invested including any Retirement Fund(s) as may be applicable, in the proper amounts and in a timely manner;
 - f) ensuring that all income and proceeds received by the Scheme are applied in accordance with the terms of the Scheme Document;
 - g) ensuring that all disbursements are effected in accordance with the Scheme Document;
 - h) maintaining accurate records regarding the net asset value of the Scheme in accordance with the SFA and the Scheme Document;

- i) ensuring that the interests in any security in which the Scheme may be invested, including the shares of any Retirement Fund or Funds as may be applicable held for the benefit of an individual who is to receive payments under such Scheme, shall, upon the retirement, permanent invalidity, death or transfer of such individual to another Scheme, be redeemed or otherwise liquidated by the Scheme from such Fund(s), and the value of such redemption or liquidation shall be made available to the Beneficiary or as provided for in the Scheme Document;
- j) calculating the appropriate equivalent actuarial value of accrued benefits where a Beneficiary wishes to transfer the value of her/his accrued benefits to another Scheme. A Scheme Administrator which is not resourced to carry out such calculation must either procure the necessary resources or appoint an appropriately qualified third party advisor to carry out this task on its behalf;
- k) obtaining certification from an actuary that the method used to calculate the equivalent actuarial value of benefits to be transferred to another Scheme is appropriate;
- l) complying with any conditions of the Income Tax Acts for qualification for tax-exemption or tax-approval;
- m) seeking to ensure that all instructions and decisions affecting the Scheme are in conformity with the law and the Scheme Document;
- n) arranging for all necessary accounting, actuarial or other services;
- o) maintaining accurate records regarding the Scheme's Contributors and Beneficiaries;
- p) complying with all the Scheme's statutory and other conditions, including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;
- q) ensuring that the Scheme Document complies with Section B.1, Part B;
- r) ensuring that it establishes at all times the adequate amount of liabilities to reflect the financial commitments arising out of the Scheme(s) for which it acts as Scheme Administrator;
- s) ensuring that sufficient technical provisions have been established and are operated to deal properly with biometrical risks or guarantees of investment performance or level of benefits and that the same are calculated and certified by an actuary or other appropriate specialist on the basis of recognised actuarial practice and in line with 1.6.12;
- t) ensuring that it does not underwrite the liability to cover any biometrical risk or guarantees on investment performance or given level of benefits for any Scheme for which it acts as Scheme Administrator;

- u) prepare the Scheme's Annual Report in respect of each scheme year in accordance with the provisions of the SFA and these directives.
- v) in the case of a Retirement Scheme established as a trust, provision of trustee services, or as otherwise may be provided for by the Authority.

And where any of the above requirements are not fulfilled the Scheme Administrator shall use all reasonable endeavours to rectify the same.

Additional Duties in relation to Defined Benefit Schemes (or any scheme providing cover against biometrical or investment risks)

2.3.4 The Scheme Administrator shall also have the following additional duties in relation to Defined Benefit Schemes (or any scheme providing cover against biometrical or investment risks):

- a) establishing by obtaining an actuarial valuation report whether, any ancillary cash plus the net asset value of the Scheme invested in securities or in one or more Retirement Funds (as may be applicable), after deduction of the liabilities associated with such Scheme, equals or exceeds the present value of the future payment liability of the Scheme to its Beneficiaries, provided that where applicable, the value of the Scheme's assets invested in any Retirement Fund(s) concerned shall be the value at that given time of the assets and property of any kind of such Retirement Fund(s);
- b) ensuring at prescribed intervals that the contribution rates set out in the Schedule of Payments are such that the Scheme is expected to satisfy the minimum Technical Funding Requirement. The Scheme Administrator should establish whether the Requirement is met by obtaining certification by the actuary of the initial Schedule of Payments and obtaining an actuarial valuation report with an effective date as from the date of the anniversary of the commencement of the Scheme and, normally, at intervals of three years thereafter. If the Scheme has an underprovision, then actuarial valuations are required every year;
- c) obtaining a certificate from the actuary stating the funding position of the Scheme and whether in her/his opinion the contributions set out in the Schedule of Payments are adequate to maintain or achieve the minimum Technical Funding Requirement within/over 10 years (or average working lifetime of the contributing individuals if less) or before the Scheme winds up if earlier and indicating any relevant changes since the last valuation;
- d) where an actuarial valuation shows that, on the effective date of the valuation, the value of the Scheme assets was less than the minimum Technical Funding Requirement taking action to ensure that the employer and, where appropriate, any other Contributor, sets up a concrete and realisable plan to re-establish the required amount of assets to cover fully

the technical provisions in due time. The plan shall be made available to members, or where applicable to their representatives and/or shall be subject to approval by the MFSA. Thereafter, the Scheme Administrator shall ensure that the employer, and where appropriate, any other contributor makes an appropriate payment to the Scheme Administrator so that within the prescribed time-scale, the value of the Scheme assets is not less than the minimum Technical Funding Requirement. The required increase in the Scheme assets shall be achieved within 10 years (or average working lifetime of the contributing individuals if less) from the date the actuarial valuation is signed or before the date at which the Scheme is wound up if earlier. The Scheme Administrator shall liaise with the employer, and where applicable, any other Contributor, to ensure that in drawing up the plan, account shall be taken of the specific situation, in particular the asset/ liability structure, risk profile, liquidity plan, the age profile of the members entitled to receive retirement benefits, start-up schemes and schemes changing from non-funding or partial funding to full funding;

- e) where an actuarial valuation reveals an underprovision relative to the minimum Technical Funding Requirement, if the required payment is not received so that the value of the Scheme assets is restored to at least the minimum Technical Funding Requirement within the periods prescribed in paragraph (d) (or other such period as the MFSA shall prescribe) notifying the MFSA and Beneficiaries within 30 days of the end of the prescribed period and seeking to obtain the required payment in accordance with Article 35 of the SFA;
- f) ensuring that any assets in excess of the Minimum Technical Funding Requirement shall not be distributed to a party other than to a Beneficiary of the Scheme unless it is to provide a suspension or reduction in contributions paid by a Contributor or in such other manner as may be prescribed;
- g) if in the opinion of the actuary there is an excessive overprovision of assets, the Scheme Administrator shall keep such excess in the Scheme. In such case, an appropriate reduction in the value of the Scheme's assets could be secured through a reduction or suspension of the contributions in the Scheme;
- h) ensuring that the liabilities that represent future payment obligations to Beneficiaries, shall not be distributed to a party other than to a Beneficiary of the Scheme, except in such manner as may be prescribed.

Additional Duties in relation to Defined Contribution Schemes

2.3.5 The Scheme Administrator shall ensure that, with respect to a Defined Contribution Scheme, any assets of the Scheme in excess of current liabilities shall not be distributed to a party other than to a Beneficiary of the Scheme, except in a manner that may be prescribed.

B.2.4 Information for Scheme Members, Contributors and Beneficiaries

General

2.4.1 The Scheme Administrator shall ensure that the Scheme's Contributors and Beneficiaries and Members are sufficiently informed of the conditions of the Scheme including:

- a) the contractual rights and obligations of the parties to the Scheme;
- b) the financial, technical and other risks embedded in the Scheme;
- c) the distribution of risks embedded in the Scheme to the contracting parties.

2.4.2 The Scheme Administrator shall provide any Contributor or Beneficiary, or Members :

- a) on request with detailed and substantive information on:
 - i. applicable target level of benefits, if any;
 - ii. the level of benefits in case of termination of employment;
 - iii. the range of investment possibilities and the actual investment portfolio as well as information on risk exposure and costs related to the investments;
 - iv. the investment policy principles of the Scheme;
 - v. the arrangements relating to the transfer of pension rights to another Scheme in the event of termination of the employment relationship.
- b) on request a copy of the Scheme's Annual Report.
- c) brief particulars of the situation of the Retirement Scheme, including of the Retirement Fund(s) in which the Scheme may be invested, as well as the current level of financing of the accrued individual entitlements on an annual basis.

2.4.3 Generally, all agreements, written communication and notification or information sent by the Scheme Administrator to the Contributor(s) and Beneficiaries and Members, should be presented transparently and clearly.

2.4.4 The Scheme Administrator shall ensure that the Scheme's Contributors and Beneficiaries and Members who move to another EU Member State, are provided with adequate information as to their pension rights and choices which are available to them under the Scheme.

2.4.5 Each Beneficiary and Member shall be provided, on retirement or when other benefits become due, with appropriate information on the Benefits due to her/him and the corresponding payment options.

B.2.5 Delegation of Duties and Appointment of Other Service Providers to the Scheme

Delegation of administrative functions

2.5.1 The MFSA's consent should be obtained prior to the appointment of a sub-Administrator or delegation by a Scheme Administrator of any of its functions as Scheme Administrator under the Scheme Document or the SFA. Where a Scheme Administrator so delegates it must retain full liability and responsibility to the Scheme, its Contributor(s) and Beneficiaries for the functions so delegated. The general guidelines outlined in Part C shall apply.

In the instance that a Retirement Scheme does not opt to invest exclusively in one or more Retirement Fund and does not opt to appoint an Asset Manager separate from the Retirement Scheme Administrator, the MFSA may require the appointment of a custodian by the Retirement Scheme for the custody of the assets of the Retirement Scheme and /or monitoring the duties of the Retirement Scheme Administrator. A custodian may either 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) an institution licensed in a country within the European Union and duly authorised in accordance with Directive 93/22/EEC or Directive 2000/12/EC, or accepted as a depositary for the purposes of Directive 85/611/EEC, or
- d) a credit institution 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
- e) any other entity acceptable to the MFSA.

which shall have the business organisation, systems, and appropriate expertise and experience deemed necessary by the MFSA for it to carry out such functions.

Appointment of Service Providers - General

2.5.2 Where a Scheme Administrator appoints any Asset Manager, actuary, auditor or other external service provider to provide services to the Scheme it shall ensure that:

- a) the Scheme (acting through the Scheme Administrator) shall have a right of action against such service provider for any breach of its duties;
- b) where such appointee is an affiliate of the Scheme Administrator, the Scheme Administrator shall be liable for any loss or prejudice suffered by the Scheme, its Contributor(s) or Beneficiaries as a result of any breach of duty or insolvency of such person. Provided that the actuary and auditor may not be affiliates of the Scheme Administrator;
- c) where the appointee is not an affiliate of the Scheme Administrator (and without prejudice to the liability of such person) the Scheme Administrator must as a minimum ensure that it acts with due skill care and diligence. In selecting the service provider, the Scheme Administrator must:
 - i. assess its suitability for the role contemplated and agree the terms of its appointment;
 - ii. satisfy itself on an ongoing basis that the service provider remains suitable for the role contemplated and provides the relevant services to a proper and appropriate standard; and
 - iii. takes prompt and appropriate action if the service provider fails (or reasonably appears likely to fail to provide its services to such standard.

2.5.3 Where a person is appointed to provide services to the Scheme, the appointment must be evidenced by a written agreement between the Scheme Administrator and such service provider. The written agreement shall identify the terms of appointment including:

- a) the services to be provided;
- b) the remuneration, fees, charges or expenses which are payable to such person including:
 - i. the basis of calculation and the proceedings for making changes in that calculation or changes to such remuneration, fees and charges;
 - ii. the basis of payment (deduction or billing etc.);
 - iii. the frequency of payment, and
 - iv. whether the same are payable out of the Scheme Assets.

2.5.4 The Scheme Administrator shall ensure that any person appointed as an Asset Manager, auditor or actuary of the Scheme has any necessary Registration, licence or approval required from MFSA.

B.2.6 General Conduct of Business Rules applicable to the Scheme Administrator

2.6.1 The Scheme Administrator shall act honestly, fairly and with integrity - in the best interests of the Beneficiaries. Such action shall include:

- a) declining to act for a prospective contributor if the Scheme Administrator cannot satisfy itself as to the identity of that person;
- b) avoiding conflicts of interest where this is possible and, where it is not, ensuring - by way of disclosure, internal procedures or otherwise - that Contributor(s) and/or Beneficiaries are treated fairly. The following procedures should be followed during Board Meetings where a director of the Scheme Administrator considers that s(he) has or may have a conflict of interest:
 - i. that person should declare that interest to the other directors either at the Meeting at which the issue in relation to which s(he) has an interest first arises, or if the director was not at the date of the Meeting interested in the issue, at the next Board Meeting held after s(he) became so interested;
 - ii. unless otherwise agreed to by the other directors, a director shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
 - iii. the interested director should not vote at a Board Meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;
 - iv. the Board minutes should accurately record the sequence of such events.
- c) abiding by all relevant laws and regulations;
- d) avoiding any claim of independence or impartiality which is untrue or misleading;
- e) avoiding making misleading or deceptive representations to Contributors or Beneficiaries;

- f) avoiding receiving or making any payments, gifts or other benefits which could adversely affect impartiality;
- g) avoiding the imposition of unfair or unreasonable charges on the Scheme and its Beneficiaries, taking into account, where applicable, both the charges levied on the Scheme and on the Fund(s) in which the Scheme invests;
- h) assuming responsibility for any liability arising from negligence or a breach of the MFSA's regulations by the Administrator or a member of its staff;
- i) ensuring that the Registration is not presented as an opinion expressed by the MFSA on the merits of using the services of the Administrator.

2.6.2 The Scheme Administrator shall act with due skill, care and diligence – in the best interests of the Beneficiaries. Such action shall include:

- a) executing instructions and decisions in a prompt and timely fashion;
- b) ensuring that contributors and prospective contributors are provided with adequate information on the Scheme to enable them to take an informed decision;
- c) avoiding conducting itself in such a way as may bring Malta into disrepute or damage its standing;
- d) acting in accordance with the terms of the Scheme Document and any other document describing how its services are to be provided.

2.6.3 The Scheme Administrator shall ensure the adequate disclosure of relevant material information to prospective and actual contributors in a way which is fair, clear and nor misleading. This shall include:

- a) disclosing the identity of its regulator in all correspondence and other documentation. Wording similar to the following shall be used to disclose the Administrator's regulated status: "Registered as an Administrator for Retirement Schemes with the Malta Financial Services Authority";
- b) reporting fully, accurately and promptly to contributors the details of transactions entered into by the Scheme;
- c) accounting to Contributor(s) and Beneficiaries, in general at least once every year or as otherwise agreed, on the performance of the Scheme(s).

2.6.4 The Scheme Administrator shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls in respect of its own business and the Scheme to ensure compliance with regulatory conditions and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed. This shall include:

- a) having adequate arrangements to ensure that its staff are suitable, adequately trained and properly supervised;
- b) having procedures to ensure that its staff conduct business openly, fairly, in compliance with rules and regulations, avoiding conflicts of interest and avoiding any undisclosed or improper benefit to staff;
- c) having procedures to ensure the adequate supervision of staff who shall not be allowed to act beyond their levels of competence;
- d) maintaining adequate records of the training, experience and qualifications of staff;
- e) establishing and maintaining appropriate compliance procedures with a view to ensuring that the staff are aware of and comply with the SFA, the regulations made under the Act and the conditions of Registration;
- f) ensuring that adequate procedures for dealing with complaints are in place. This shall include the setting up of a “Complaints Register” within which the Scheme Administrator is to record every complaint and the action taken in its regard;
- g) having adequate internal control procedures to protect Contributors and Beneficiaries, third parties and the Scheme Administrator itself from financial loss arising from theft, fraud, or other dishonest acts, professional misconduct or omissions;
- h) keeping a record of any disciplinary action taken against staff for a breach of any regulation; and
- i) making provision for the protection of Contributors and Beneficiaries in the event of the interruption or cessation of the whole or part of the Scheme Administrator 's business due to internal or external environmental factors, including technical or human failure. For this purpose, the Scheme Administrator shall have an appropriate documented Disaster Recovery and Business Continuity Plan which is regularly tested and updated.

B.2.7 Conduct of Business Rules related to the Scheme’s Assets

General

2.7.1 The Scheme Administrator shall arrange for the Scheme assets to be invested in a prudent manner and in the best interest of Beneficiaries. In the case of a potential conflict of interest, the Scheme Administrator, or the Asset Manager that may be appointed to manage the Scheme’s assets, shall ensure that investment activity is carried out in the sole interest of members and beneficiaries;

2.7.2 The Scheme Administrator shall ensure that the assets of a Scheme are:

- a) invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- b) properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole.
- c) predominantly invested in regulated markets. Not more than 10 per cent of the Scheme assets can be invested in securities which are not traded in or dealt on a market which:
 - i. is regulated, operates regularly, is recognised and is open to the public;
 - ii. has adequate liquidity and adequate arrangements in respect of the transmission of income and capital.
- d) invested in derivative instruments only insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the institution's assets. Excessive risk exposure to a single counterparty and to other derivative operations shall be avoided. The Scheme shall not be leveraged or geared in any way though the use of futures, options or other derivatives;
- e) properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings. In particular, the Scheme assets shall be invested as follows:
 - i. Not more than 10 per cent of assets shall be invested in securities issued by the same body.
 - ii. Not more than 10 per cent of the assets shall be kept on deposit with any one body. This limit may be increased to 30 per cent in respect of money deposited with a bank licensed under the Banking Act of Malta, 1994, or with a bank outside Malta where this is established and regulated in EU/EEA member states.
 - iii. Scheme shall not hold more than 10 per cent of any class of security issued by any single issuer.

Provided that the above limits, subject to approval from the MFSA, may not apply to investment in government bonds.

- f) Subject to the provisions of the scheme document, the Scheme may borrow as long as the borrowings do not exceed 10 per cent of the value of the scheme and provided such borrowing is temporary and for liquidity purposes.
- g) A Scheme shall not grant loans or act as guarantor on behalf of a third party. This is without prejudice to the right of the Scheme to acquire debt securities.
- h) the Scheme may acquire the Units of Retirement Funds or other Collective Investment Schemes adequately regulated subject to the following:

- i. where a Scheme invests in the Units of another scheme (i.e. a Retirement Fund or other Collective Investment Scheme in terms of (iii) below) managed or advised by the same management company or advisor or by an associate of the Scheme's Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges.
- ii. where commission is received by the management company of the Scheme by virtue of an investment in the units of another scheme, that commission shall be paid into the property of the Scheme.
- iii. the underlying scheme which is not a Retirement Fund, must be properly diversified and predominantly invested in regulated markets.
- iv. the Scheme shall not invest in a feeder fund or, without MFSA approval, in a fund of funds.
- v. not more than 20% of the Scheme's assets shall be invested in total in any one collective investment scheme.

2.7.3 In the case of assets held to cover the technical provisions, then:

- a) the assets shall be invested in a manner appropriate to the nature, currency and duration of the future retirement benefits and to ensure the security, quality, liquidity and cost efficiency of the portfolio as a whole;
- b) the assets shall be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole measured against its ability to finance the future retirement benefits.

2.7.4 Not more than 5% of the Scheme's assets shall be invested in Contributor-related Investments. For this purpose, if applicable, the Scheme Administrator shall make the necessary arrangements with the Fund Administrator of any Fund(s) in which it invests.

2.7.5 The Scheme Administrator shall comply with the conditions laid out in the Special Funds Act (Control of Assets) Regulations, 2003, as applicable.

Custody rules

Non-cash assets

2.7.6 Title to assets shall be registered in the name of the Scheme Administrator (or such other person as the MFSA may agree) on behalf of the Scheme in a way which clearly distinguishes them from assets owned by the Scheme Administrator.

Provided that in the instance where the Retirement Scheme Administrator provides trustee services, title to assets shall be registered in the name of the Scheme Administrator in its capacity as trustee or in such other way that the existence of the Retirement Scheme is disclosed and in a way which clearly distinguishes them from assets owned by the Scheme Administrator and any other assets held by the Retirement Scheme Administrator under any other Retirement Scheme established as a trust.

- 2.7.7 The Scheme Administrator shall acquire and hold any securities, any entitlement thereto and any other property or right acquired or held by it for the purposes of the Scheme, together with any interest therein and all rights and benefits attaching thereto or arising therefrom, whether of a proprietary or personal nature, for the purposes of the Scheme and the Scheme's Beneficiaries in accordance with the Scheme Document and the SFA.
- 2.7.8 The Scheme Administrator shall ensure that adequate arrangements are maintained to ensure that the Scheme's assets, including documents evidencing title thereto, are properly recorded, identified, segregated and controlled, so that they and the Beneficiaries' interests in them are safeguarded.

The Scheme Administrator shall ensure that the Scheme's assets are clearly identified in its records as property attributable to the Scheme.

Cash assets

- 2.7.9 All ancillary cash and any other money which the Scheme Administrator holds or receives in respect of the Scheme ("Scheme Money") which is not due to the Scheme Administrator shall be held by the Scheme Administrator for the purposes of the Scheme. The Scheme Administrator shall take steps to protect Scheme Money in the event of the Scheme Administrator's insolvency, by ensuring that a liquidator is unable to claim the Scheme Money as part of the assets of the Scheme Administrator.
- 2.7.10 Scheme Money shall be held in specially created segregated accounts. Such assets shall not be commingled with the cash assets of the Scheme Administrator or any other person. The account shall be entitled "Retirement Scheme Bank Account" and bear the name of the Scheme or in the case of a Retirement Scheme in the form of a trust, the name of the account shall evidence the existence of the Retirement Scheme. The Scheme Administrator shall ensure that the bank acknowledges in writing that it renounces, and will not attempt to enforce or execute, any charge, right of set-off or other claim against the account, or combine the account with any other account in respect of any debt owed to it by the Scheme Administrator, and that interest payable on the account will be credited to the account and that it will deal with the assets in accordance with the Scheme Administrator's instructions.
- 2.7.11 Where Scheme Money is paid into a bank account abroad, it is the responsibility of the Scheme Administrator to ensure and demonstrate to the MFSA that money held in such an account is afforded protection which is at least equal to or better than that provided under the MFSA's conditions.

- 2.7.12 Only the Scheme's Money shall be paid into a Retirement Scheme's bank account.
- 2.7.13 Money shall only be withdrawn from a Retirement Scheme's bank account if it is not Scheme's money (for example if a cheque containing both Scheme's Money and the Scheme Administrator's money is paid into the account), or if it is properly required for payment to or on behalf of the Scheme, or if it is properly transferred to another Scheme bank account.
- 2.7.14 The Scheme Administrator shall account properly and promptly for the Scheme's money and shall ensure that:
- a) the Scheme's Money and other money do not become intermingled;
 - b) at all times it knows how much Scheme's Money stands to the credit of each Scheme; and
 - c) money belonging to one Scheme is not used for another.
- 2.7.15 At least once a month, including at the Accounting Reference Date, the Scheme Administrator shall reconcile the balance on each Retirement Scheme Bank Account(s) as recorded by the Scheme Administrator with the balance on that account(s) as set out in the statement issued by the bank.
- 2.7.16 As at the same date as in 2.7.14, the Scheme Administrator shall also reconcile, where applicable, the total of the balances on all Retirement Scheme Bank Account(s) as recorded by the Scheme Administrator with the total of the corresponding credit balances in respect of the Schemes(s), as recorded by the Scheme Administrator.
- 2.7.17 Any differences identified as a result of the reconciliations carried out in accordance with 2.7.15 or 2.7.16 shall be corrected immediately unless, in the case of 2.7.15 they arise solely as a result of timing. The Scheme Administrator shall notify the MFSA if it has not carried out the reconciliations on the due date or, if having done so, it is unable to correct any differences.
- 2.7.18 The reconciliations required in 2.7.15 and 2.7.16 shall be carried out within two weeks of the date at which the reconciliation was due.

B.2.8 Record Keeping Rules related to the Administrator and the Scheme

- 2.8.1 The Scheme Administrator shall maintain sufficient records to be able to demonstrate its compliance and that of the Scheme with: the regulations, the provisions of the Scheme Document and the conditions of Registration.
- 2.8.2 The Scheme Administrator shall at all times maintain proper and accurate accounting records to show and explain the transactions, and assets and liabilities of the Scheme in order to disclose with reasonable accuracy the Scheme's financial

position. It shall also at all times maintain proper and accurate records in relation to the following:

- a) the net asset value of the Scheme in accordance with the regulations and the Scheme Document;
- b) the Scheme's Contributor(s) and Beneficiaries;
- c) the contributions paid by each Contributor and the dates on which they were paid;
- d) action taken to recover Contributions not paid on the due date;
- e) the amount of any deficit identified under Article 35 of the SFA in relation to a Defined Benefit Scheme (or any scheme providing cover against biometrical or investment risks), and the action taken in regard thereto;
- f) accrued pension benefits of the Beneficiaries;
- g) transfers of Beneficiaries' pension benefits into and out of the Scheme, the terms of such transfers and related asset movements;
- h) payments made to employers and to Beneficiaries leaving the Scheme other than on a pension benefit transfer;
- i) payments made in respect of Contribution-related Investments;
- j) any other payments into and withdrawals from the Scheme assets and the reason for such payment(s);
- k) any resolutions passed by or proceedings of Contributor(s) and/or Beneficiaries.

2.8.3 The Scheme Administrator shall retain such records where they relate to a particular Beneficiary or Contributor for the period expiring ten years after such person has ceased to be a Beneficiary or Contributor and where they relate to the Scheme generally for ten years after the Scheme year to which they relate.

2.8.4 The Schemes' accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.

B.3 Retirement Fund Registration

B.3.1 General Conditions

3.1.1 The Fund shall be established as a company formed and registered in Malta under the Companies Act of 1995 as either an Investment Company with fixed share capital (INVCO) or as an Investment Company with variable share capital (SICAV).

3.1.2 The Fund shall have a permanent place of business and be operated in Malta.

3.1.3 The Directors of the Fund shall be independent from the Scheme /Fund Administrator and where the Contributor to a Scheme is a business concern, the Directors of the 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 Fund.

3.1.4 The assets of the Fund shall be entrusted to the Fund Administrator who shall maintain or arrange custody of such assets.

3.1.5 The Board of Directors of the Fund shall be responsible either directly or through an Asset Manager to invest all money and other assets received by the Fund in accordance with the Fund's Memorandum of association.

Any Asset Manager appointed to the Fund shall be a separate person independent of the Scheme / Fund Administrator and where the Contributor to a Scheme is a business concern, the Asset Manager shall also be independent from such Contributor.

3.1.6 The Fund must have at least three Directors in line with the following conditions:

- a) the appointment of any person as a Director shall be subject to the prior approval of the MFSA. The request for consent of the appointment of a new Director should reach the MFSA at least 21 days prior to the proposed date of appointment and be accompanied by a Personal Questionnaire, in the form set out in Schedule I duly completed by the proposed Director. The proposed Director shall not assume any powers or commence any duties as a Director unless and until the MFSA has approved her/his appointment;

Where the proposed Director has previously submitted a Personal Questionnaire to the MFSA in connection with some other role, the request for consent need not be accompanied by a new Personal Questionnaire. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto;

- b) if any person shall for whatever reason cease to be a Director, the Fund shall notify the MFSA of this, including the reasons for such cessation, and any circumstances connected therewith which in its opinion significantly affects the interests of the Scheme's Beneficiaries or prospective Beneficiaries;
- c) corporate Directors will only be permitted where:
 - i. an individual within the Company (Director/ Manager/ Employee) is identified as the person responsible for the functions of Director to the Fund, and
 - ii. the Company concerned is involved in financial/ investment services-related activity.

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

- d) at least one individual or company acting as Director of a Fund must be resident in Malta. The Company Secretary shall also be resident in Malta.

3.1.7 The appointment, including the replacement, of any party to act in the capacity of a Fund Administrator, Custodian or Asset Manager to a Fund, the terms of that appointment, and the contents of that agreement to which the appointment is subject, shall be agreed in advance with the MFSA. The MFSA shall have the right to require the replacement of all or any of these parties.

3.1.8 The MFSA shall be entitled to be satisfied, on a continuing basis, that any provider of services to the Fund has the appropriate expertise and experience to carry out its functions.

3.1.9 A replacement for the auditor of a Fund shall be agreed in advance by the MFSA. The MFSA shall have the right to require the replacement of the auditor of a Fund.

3.1.10 The MFSA's permission shall be obtained before any of the following documents are amended:

- a) the Constitutional Documents;
- b) the Fund's particulars or similar document giving details of the Fund;
- c) the latest annual reports for the Fund;
- d) the Fund's administration agreement and any other documents detailing the relationship between the Fund and the persons responsible for the administration and management of the Fund;

- e) the agreement between the Fund Administrator and the Custodian (if applicable);
- f) the agreement between the Fund and the Asset Manager (if applicable).

The Constitutional Documents shall set down the procedures for amending these documents.

- 3.1.11 The Fund acknowledges that the MFSA has the right to require the suspension of the repurchase or redemption, or sale or issue of units. Where the Fund suspends temporarily the re-purchase or redemption of units, it shall inform the MFSA immediately and, in any event, within the working day.
- 3.1.12 A Fund shall keep such accounting and other records as are necessary to enable it to comply with the MFSA Operational Conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.
- 3.1.13 The Fund shall comply with the regulations to which it is subject and shall disclose the identity of its regulator in all correspondence and other documents. Wording similar to the following shall be used: “Registered as a Retirement Fund by the Malta Financial Services Authority”.
- 3.1.14 The Fund shall cooperate fully with any compliance test, inspection or other enquiry carried out by, or on behalf of, the MFSA. The Fund shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information.
- 3.1.15 Where, in the event of a dispute between a Fund and a Scheme or Overseas Retirement Plan investing in the Fund, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:
 - make all the necessary arrangements at their own cost;
 - appoint as Arbitrator(s), person(s) mutually acceptable; and
 - be bound by the decision of the Arbitrator(s) as if such decision was a judgement of the Court.

Alternatively, the matter may have to be referred to the Courts.

- 3.1.16 The MFSA shall be informed of any material information concerning the Fund or its operation, as soon as the Fund or its Administrator becomes aware of that information.

- 3.1.17 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.
- 3.1.18 The Fund shall observe its Investment Policy and Restrictions.
- 3.1.19 The financial year-end of a Fund shall be agreed with the MFSA.
- 3.1.20 A request for a variation of the conditions of Registration of the Fund shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons. The MFSA has the right, from time to time, to vary or revoke any condition of Registration or to impose any new condition.
- 3.1.21 The Registration Fee for the Fund shall be payable by the Fund on the day Registration first becomes effective, and thereafter annually upon the anniversary of that date.
- 3.1.22 The MFSA shall be notified of any breach of Operational Conditions or of any of the provisions of the Fund's Constitutional Documents as soon as the Fund or any provider of services to the Fund becomes aware thereof.
- 3.1.23 In the event of a winding-up of the Fund, where practicable, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Fund and its Administrator shall use their best endeavour to delay the winding up of the Fund or to proceed with the winding-up in accordance with conditions imposed by the MFSA.
- 3.1.24 Where a Fund is closed-ended, neither the authorised nor the issued share capital of the Fund shall be increased or reduced without the advance permission of the MFSA.
- 3.1.25 The Fund shall promptly notify the MFSA in writing of:
- a) a change in its address;
 - b) a proposed change to its Investment Objectives;
 - c) the Fund Administrator being about to cease to act as Administrator of the Fund, the reasons for such cessation and any circumstances connected therewith which in its opinion significantly affects the interests of the Fund;
 - d) any proposed material change to the Fund's business at least one month before the change is to take effect;
 - e) any evidence of fraud or dishonesty by anyone connected with the operation of the Fund immediately upon becoming aware thereof;

- f) any actual or intended legal proceedings relating to the Fund which might adversely impact on the operation of the Fund or its compliance with its Constitutional Documents or the SFA upon becoming aware of the same;
 - g) any changes in any information supplied by the Fund to the MFSA whether under the SFA or otherwise upon becoming aware of the same;
 - h) any material information concerning the Fund, the Asset Manager (if any) and any other service provider to the Fund which might reasonably be expected to be significant or considered significant by the MFSA upon becoming aware of the same.
- 3.1.26 The Fund shall have sufficient initial paid-up share capital to provide financial resources for its Operational Conditions. This amount shall be agreed with the MFSA. On an on-going basis, the Fund shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.
- 3.1.27 The Fund shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory conditions.
- 3.1.28 The Fund shall comply with directions given by the Fund Administrator, being directions designed to ensure that the Fund is properly managed and administered in accordance with the Constitutional Documents, the Operational Conditions and the most recently published Fund Particulars.
- 3.1.29 The Fund shall comply with the all applicable laws and regulations whether in Malta or elsewhere including without limitation the SFA and the Exchange Control Act, 1972.
- 3.1.30 The director(s) or other senior official(s) responsible for the day to day running of the Fund as well as any other party to the Fund, shall be liable to unit holders for any loss or prejudice suffered by them resulting from their fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part their obligations.

B.3.2 Supplementary Operational Conditions for Retirement Funds in the form of Umbrella Funds and Funds investing in collective investment schemes

Umbrella Retirement Funds

- 3.2.1 In addition to registration being obtained for the umbrella Retirement Fund, each sub-fund shall require registration by the MFSA, following the submission of an application form and supporting documentation.
- 3.2.2 Each sub-fund shall comply with the laws and regulations governing Funds.

- 3.2.3 A meeting of the unit holders in any one sub-fund may approve a modification of the Constitutional Documents or any policy statement only if the provisions to be modified relate only to that sub-fund.

Funds investing in collective investment schemes

- 3.2.4 The underlying collective investment scheme(s) shall fall within the objectives and investment policy as set in the Fund's Particulars.

B.3.3 Contents of the Retirement Fund's Constitutional Documents

- 3.3.1 The Constitutional Documents of the Fund shall provide that the objectives of the Fund are limited to the following:

- a) the receipt of contributions from one or more Schemes established under the SFA and/ or from one or more Overseas Retirement Plans; and
- b) the investment of such contributions and all return on such contributions in instruments or immovable property with the aim of maximising return on such contributions; and
- c) the payment of Retirement Benefits to the Beneficiaries of the Scheme(s) or the Overseas Retirement Plan(s) which have invested in the Fund; and
- d) the carrying out of all matters or functions connected or ancillary to the objectives mentioned in subparagraphs (a) and (b) hereof.

- 3.3.2 The Constitutional Documents shall provide for the following, subject to variation in the case of Retirement Funds not constituted as SICAVs or as may otherwise be agreed with the MFSA:

- a) that the assets of the Fund shall be entrusted to a Fund Administrator who shall maintain or arrange custody of such assets;
- b) the procedures for the creation and cancellation of units;
- c) the method of valuation of the Fund's assets;
- d) that the value of the Fund's units shall be issued or sold at a price arrived at by dividing the net asset value of the Fund by the number of units outstanding. Such value may be adjusted for duties and charges;
- e) units shall not be issued unless the equivalent of the net issue price is paid into the assets of the Fund within time limits specified in the Constitutional Documents;

- f) that the value of the Fund's units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the Fund by the number of units outstanding. Such price may be decreased by duties and charges;
- g) the frequency of the calculation of the issue and repurchase prices which shall be at least once a month;
- h) that the Fund shall be bound to repurchase its units at the request of the Scheme Administrator or Overseas Retirement Plan holding such units, on such terms as may be provided in its Constitutional Documents;
- i) that the Fund Administrator shall issue written confirmation of entry in the register of units or fractions of units;
- j) that rights attaching to fractions of units shall be exercisable in proportion to the fractions of a unit held except for voting rights which shall only be exercisable in whole units;
- k) provisions relating to the allocation and distribution of income;
- l) that the assets of the Fund shall not be for the benefit of any investor in the Fund but shall be used for the exclusive purpose of providing Retirement Benefits to the Beneficiaries of any Scheme(s) which has/have invested in the Fund, and of defraying the expenses of a Scheme as are allowable under the SFA, or the bona fide expenses of an Overseas Retirement Plan, as applicable;
- m) specify the conditions under which there may be effected, and the procedure to be followed with respect to, the appointment and replacement of the Fund Administrator, Custodian (where appointed) and any Asset Manager, including a provision that the Fund Directors shall have power to remove the Fund Administrator and any Asset Manager and including the right of the MFSA to require such replacement. There shall be provisions to ensure the protection of unit holders in such circumstances;
- n) identify the basis upon which the Directors, Asset Manager, Custodian and the Fund Administrator may charge remuneration and expenditure to the Fund; and the basis on which any other costs or expenses may be charged to the Fund;
- o) that a General Meeting of the Schemes investing in the Fund shall be held at least once each year.

B.3.4 The Retirement Fund Particulars

General

- 3.4.1 The Fund shall prepare, maintain and from time to time revise as appropriate a document in a form agreed with the Fund Administrator describing the Fund ("Fund Particulars") in sufficient detail for Contributor(s), Beneficiaries and others to make an informed judgement from the Particulars as to how the assets of the Fund are

managed and invested. The Fund Particulars shall be dated and the essential elements of which shall be kept up to date.

3.4.2 The Fund shall lodge a signed copy of the Fund Particulars with the MFSA.

3.4.3 The Fund Particulars shall include the following matters:

- a) a statement of the Fund's Investment Objectives;
- b) the Fund's or as the case may be its Asset Manager's approach to achieving the Fund's Investment Objectives;
- c) the Fund's approach to risk and any risk parameters applied to its investment policy;
- d) any formally adopted criteria (such as benchmarks and performance time scales) for measuring the Fund's or its Asset Manager's investment performance;
- e) the extent to which the Fund may borrow money;
- f) the identity of any Asset Manager appointed to the Fund, and the general nature of the service provided;
- g) the identity and role of any other significant service providers appointed to the Fund;
- h) the Fund's policy on the realisation of assets;
- i) the fee structures in place for such Asset Manager(s) and service providers to the Fund, together with details of all other fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Fund;
- j) such other matters as the MFSA may prescribe either generally or in relation to a particular Fund or class of Funds.

3.4.4 The Fund shall ensure that the Fund Particulars are correct and up to date. It shall provide copies of such Particulars to the Scheme(s) investing in the Fund and notify it/ them of any changes thereto. The Fund shall also make available copies of the Particulars on request to Contributor(s) or Beneficiaries of any Scheme investing in the Fund.

3.4.5 The Fund Particulars and any amendments thereto shall be sent to and agreed with the MFSA before publication.

Supplementary Conditions Applicable for Umbrella Retirement Funds

3.4.6 The Fund Particulars shall state the charges, if any, applicable to the exchange of units in one sub-fund for units in another. Charges shall be detailed in the most

recent Fund Particulars. Any increase in the charges shall be notified to the MFSA and the Fund Administrator and published in revised Fund Particulars at least 90 days before becoming effective.

- 3.4.7 The Fund Particulars shall state the procedures and basis of valuation (including in respect of any foreign exchange conversion) to be applied to the exchange of units in one sub-fund for units in another.
- 3.4.8 The Fund Particulars shall state the basis of apportioning charges, expenses, liabilities and amounts received (which are not clearly attributable to only one fund) between sub-funds. This basis should be fair to the holders of units in each sub-fund.
- 3.4.9 The Fund Particulars for a sub-fund shall state that the Fund as a whole is constituted as an umbrella retirement fund and name the other sub-funds.
- 3.4.10 The Fund Particulars shall give details of all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Fund.

B.3.5 The Fund's Investments

Investment Objective & Policy

- 3.5.1 The Fund's Investment Objectives and Policy must include the following:
 - a) the Fund shall derive in each fiscal year at least ninety per cent of its gross income from dividends, rent or interest payments with respect to instruments or immovable property, or from gains from the sale or other disposition of such instruments or immovable property, or from other income derived with respect to its business of investing in such instruments or immovable property;
 - b) the extent (if any) to which it may invest in Contributor-related Investments and the type(s) of Contributor-related Investments which it may invest in;
 - c) the Fund's policy on the kind of investments to be held, the balance between different kinds of investments and any risk parameters.
- 3.5.2 In establishing its Investment Objectives and Policies, reviewing the same and investing the Fund's assets pursuant thereto, the Fund and where relevant any Asset Manager of the Fund shall:
 - a) have regard to the security, quality, liquidity and profitability of the Fund's portfolio as a whole;
 - b) have regard to the need for the diversification of investments in such a way as to avoid accumulations of risk in the portfolio as a whole, insofar as appropriate to the circumstances of the Fund and any Scheme investing in the Fund;

- c) have regard to the suitability to the Fund's Investment Objectives and any such Scheme of any class of investments in which it is proposed to invest, and the suitability of any proposed investment as an investment in any such class;
 - d) exercise its investment powers in accordance with and with a view to giving effect to the foregoing, in the best interests of the Fund's shareholders, and according to the 'prudent man' principle, this meaning discharging its duties with the care, skill, prudence and diligence that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and aims.
- 3.5.3 The MFSA may by directive, or by the imposition of conditions on a Fund's Registration, require a Fund to adopt specific investment restrictions. The nature of these restrictions may vary depending on the nature and purpose of the Fund and the Scheme(s) investing in it.

Generally, however, the MFSA would not consider it appropriate for a Fund intended or offered as the main form of pension provision for a private individual to adopt a high-risk investment profile.

In this regard, the investment restrictions set out in Appendix 9 will normally be expected to be adhered to by the Fund.

B.3.6 Management of the Fund's Assets

- 3.6.1 Subject to the SFA and the Scheme Document, it shall be the responsibility of the Directors of the Fund, either directly or through an Asset Manager, to invest all money and other assets received by the Fund in accordance with its Constitutional Documents.
- 3.6.2 The Directors of the Fund must establish and maintain clear arrangements for the investment management of the Fund's assets including the roles which will be adopted by the Directors and any Asset Manager(s) by reference to the Fund's Investment Objectives including:
- a) asset allocation responsibilities; and
 - b) day-to-day investment decision making responsibilities.
- 3.6.3 The Directors of the Fund may appoint an Asset Manager to carry out some or all of their responsibilities in this regard. Where the Fund appoints an Asset Manager to advise on or manage the investment of all or any of the Fund's assets, such appointment must be effected or evidenced by a written agreement between the Fund and such Asset Manager approved by the Directors. Such written agreement must identify:
- a) the services to be provided and the powers of the Asset Manager to act on behalf of the Fund; and

b) the remuneration, fees charges or expenses which are payable to the Asset Manager including:

- i. the basis of calculation and for any change in that calculation;
- ii. the basis of payment (deduction or billing etc.);
- iii. the frequency of payment; and whether the same are payable out of the Fund's Assets.

3.6.4 The Directors must satisfy themselves at the time of appointment and on an ongoing basis that any Asset Manager has the appropriate skills and regulatory licence or authorisation to perform the tasks assigned to it.

3.6.5 To the extent that the investment management function is to be carried out by the Fund itself and not delegated to an Asset Manager, the Fund must satisfy the MFSA that the persons responsible are qualified by their ability, knowledge and practical experience of financial matters and investment management to discharge the investment management role assigned to the Fund. The Fund must also satisfy the MFSA that the persons identified will devote sufficient time and have available to them sufficient resources to carry out such functions on behalf of the Fund to an acceptable standard.

The appointment of any Director who is to carry out the investment management function shall be subject to MFSA's consent. The request for authorisation shall include all relevant details in order to enable the MFSA to assess whether the Directors concerned are sufficiently competent to undertake such activities. For this purpose, details of relevant experience, training and/or qualifications will be required.

3.6.6 Neither the persons or entity undertaking the management function of the Fund's assets, nor any of their associates shall deal with the Fund as a Principal unless the terms of the transaction or arrangement are on an arm's length basis.

B.3.7 Appointment of Fund Administrator

3.7.1 The Directors shall take all reasonable steps to ensure that there is at all times a Fund Administrator appointed to the Fund.

3.7.2 The appointment of the Fund Administrator must be effected or evidenced by a written agreement between the Fund and such Fund Administrator approved by the Directors. Such agreement must identify:

- a) the services to be provided and the powers of the Fund Administrator to act on behalf of the Fund; and
- b) the remuneration, fees charges or expenses which are payable to such person including:

- i. the basis of calculation and for any change in that calculation;
- ii. the basis of payment (deduction or billing etc.) and
- iii. the frequency of payment, and whether the same are payable out of the Fund assets.

3.7.3 The Directors must satisfy themselves at the time of appointment and on an ongoing basis that the Fund Administrator has the appropriate skills and regulatory Registration to perform the tasks assigned to it.

3.7.4 The Directors of a Fund may at any time, with the approval of the MFSA, replace the Fund Administrator with a new Fund Administrator.

3.7.5 If there is for whatever reason a vacancy, the Directors shall appoint a replacement Fund Administrator as soon as possible and at the latest within 14 days. The Fund Directors shall notify the MFSA of any such vacancy and any subsequent appointment and if the Directors fail to fill such vacancy within the 14 day period, the MFSA may on an application made by any one Director, Contributor or Beneficiary, appoint a person to fill such vacancy.

3.7.6 Anything required or authorised to be done by or to the Fund Administrator may, if the office is vacant or if there is for any other reason no Fund Administrator capable of acting, be done by or to any officer of the Fund authorised generally or specifically in that behalf by the Directors.

B.3.8 Appointment of Other Service Providers to the Fund

3.8.1 Where the Directors of the Fund and/or the Fund Administrator, as applicable, appoint a Retirement Fund Custodian, auditor or other external service provider to provide any other services to the Fund it shall ensure that:

- a) the Fund shall have a right of action against such service provider for any breach of its duties;
- b) where such appointee is an affiliate of the Fund Administrator, the Fund Administrator shall be liable for any loss or prejudice suffered by the Fund as a result of any breach of duty or insolvency of such person;
- c) where the appointee is not an affiliate of the Fund Administrator (and without prejudice to the liability of such person) the Fund Administrator must as a minimum ensure that it acts with due skill care and diligence in:
 - i. selecting the service provider, assessing its suitability for the role contemplated and agreeing the terms of its appointment;

- ii. satisfying itself on an ongoing basis that the service provider remains suitable for the role contemplated and provides the relevant services to a proper and appropriate standard; and
 - iii. takes prompt and appropriate action if the service provider fails (or reasonably appears likely to fail) to provide its services to such standard.
 - d) at the time of appointment and on an ongoing basis that any person appointed as a Retirement Fund Custodian, auditor of the Fund has the appropriate skills and any necessary Registration or approval required from MFSA.
- 3.8.2 Where the Fund Administrator appoints any Retirement Fund Custodian, auditor or other external service provider to the Fund, the appointment must be effected or evidenced by a written agreement between the Fund Administrator (and/or the Fund) and such service provider and approved by the Directors. Such agreement shall identify:
- a) the services to be provided; and
 - b) the remuneration, fees charges or expenses which are payable to such person including:
 - i. the basis of calculation and for any change in that calculation;
 - ii. the basis of payment (deduction or billing etc.); and
 - iii. the frequency of payment, and whether the same are payable out of the Fund assets.

B.3.9 Appointment of Auditor to the Retirement Fund

- 3.9.1 The Fund, with the approval of the Retirement Fund Administrator and the MFSA, shall appoint an auditor to the Fund. The auditor shall be required to include in the report of the Fund an audit report in a form approved by the MFSA.
- 3.9.2 The Fund shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit or her/his firm is:
- a) a director, officer or representative of the Fund;
 - b) a partner of, or in the employment of, any person in (a) above;
 - c) a spouse, parent, step-parent, child, step-child or other close relative of any person in (a) above;
 - d) a person who is not otherwise independent of the Fund;

- e) a person who is engaged under a contract of service to provide non-audit services to the Fund Administrator or to any employer acting as Contributor to a Scheme or Overseas Retirement Plan investing in the Fund;
- f) a person disqualified by the MFSA from acting as an auditor of a Fund.

For this purpose an auditor shall not be regarded as an officer of the Fund solely by reason of being auditor of that Fund.

3.9.3 An auditor of the Fund shall be appointed on terms that it has a duty to report immediately to the MFSA any fact or decision of which it becomes aware in its capacity as auditor of such Fund which:

- a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's report on such Fund; or
- b) constitutes or is likely to constitute a material breach of the legal or regulatory conditions applicable to a Fund in or under the SFA; or
- c) seriously impairs the Fund's ability to meet the current or future liabilities attributable to it; or
- d) relates to any other matter which may be prescribed.

3.9.4 An auditor of the Fund shall report to the MFSA any facts or decisions as specified in condition 3.9.3 of any person having close links with such Fund within the meaning of Articles 7(5) and 8(5) of the SFA, of which s/he becomes aware in her/his capacity as auditor of the Fund or of the person having such close links.

B.3.10 Annual Report and other Reporting Conditions

3.10.1 Within three months of its financial year end (or at such other time as may be specified by the MFSA), the Fund shall prepare and submit to the MFSA; each Scheme Administrator of any Scheme and/or the operator of any Overseas Retirement Plan investing in the Fund; and any other person as required by the SFA or which the MFSA may prescribe:

- a) its annual report;
- b) its audited accounts; and
- c) a Directors' report providing information sufficient to enable the persons mentioned above to make an informed judgement on the development, management, operation and financial performance of the Fund.
- d) any changes with respect to, or additions to the terms and provisions:

- i. of the Fund's administration and finances
- ii. of the rights and obligations that arise or may arise in respect of the Fund
- iii. of any other matters that appear to the Authority to be relevant to the Funds in general or to Funds of a description to which the Fund in question belongs.

- 3.10.2 Such reports and accounts shall be in the form set out in Appendix 6 and prepared in accordance with International Accounting Standards, the Companies Act, 1995 and provisions applicable to companies generally to the extent that they are not inconsistent with the provisions of the SFA or these directives. Accounting policies shall be consistently applied. Financial returns shall not be misleading as a result of the misrepresentation or omission of any material item.
- 3.10.3 The Fund shall prepare and submit monthly returns and such additional financial returns and reports as the MFSA may from time to time request. The contents of the monthly returns are set out in Appendix 4. The monthly returns shall be submitted within two weeks of the end of the month concerned.
- 3.10.4 The Fund shall publish any information as required by the MFSA.

B.4 Registration of Retirement Fund Administrator

B.4.1 General Conditions

- 4.1.1 The Fund Administrator must be a company operating in Malta:
- a) which has its head office in Malta, or
 - b) in the case of a company whose head office is outside Malta, this is in a country where it is in the opinion of the MFSA subject to an adequate level of regulatory supervision.
- 4.1.2 The Fund Administrator shall have (unless otherwise agreed by the MFSA), an established place of business in Malta from where its activities shall be carried out. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.
- 4.1.3 The Fund Administrator's duties under the SFA and its terms of engagement with the Fund shall, (unless the MFSA has agreed otherwise in writing), be conducted on a day-to-day basis by at least two individuals resident in Malta in satisfaction of the "dual control" principle.
- 4.1.4 The Fund Administrator shall satisfy the MFSA that it has the appropriate expertise and experience to carry out its functions.
- 4.1.5 Neither the Fund Administrator nor any of its affiliates shall deal with the Fund or any Scheme investing in the Fund as a principal or for its own account unless the terms of the transaction or arrangement are on normal commercial terms as if negotiated on an arm's length basis and the transaction entered into by the Fund is on the best terms reasonably obtainable having regard to the interests of the Fund.
- 4.1.6 The Fund Administrator shall ensure that the sale, issue, repurchase, redemption and cancellation of units effected by or on behalf of the Fund are carried out in accordance with the MFSA's conditions, the Constitutional Documents and the most recent Fund Particulars.
- 4.1.7 The Fund Administrator shall supervise the operation of a Fund to ensure that the Asset Manager or the Directors of the Fund (where the latter undertake the discretionary management of the Fund), comply with the investment restrictions.
- 4.1.8 The Fund Administrator shall ensure that the value of units is calculated in accordance with the provisions of the Constitutional Documents.
- 4.1.9 The Fund Administrator shall carry out the instructions of the Asset Manager, or Fund as applicable, unless they conflict with the Operational Conditions or the Constitutional Documents.
- 4.1.10 The Fund Administrator shall ensure that in transactions involving a Fund's assets, consideration is remitted to it within time limits which are in accordance with accepted market practice in the context of a particular transaction.

- 4.1.11 The Fund Administrator shall ensure that a Fund's income is applied in accordance with the Constitutional Documents.
- 4.1.12 The Fund Administrator shall enquire into the conduct of the Asset Manager or the Directors (as applicable) in each annual accounting period and report thereon to the holders of units. The Fund Administrator's report shall be delivered in good time in order to be included in the Fund's Annual Report. The Fund Administrator's report shall state whether in its opinion the Fund has been managed in that period:
- i. in accordance with the limitations imposed on the investment and borrowing powers of the Fund by the Constitutional Documents and by the MFSA; and
 - ii. otherwise in accordance with the provisions of the Constitutional Documents and the Operational Conditions.
- If the Asset Manager or the Directors (as applicable) have not complied with (i) or (ii) above, the Fund Administrator shall state why this is the case and outline the steps which the Fund Administrator has taken to rectify the situation.
- 4.1.13 The Fund Administrator will be liable to the Fund and the holders of units for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.
- 4.1.14 The liability of the Fund Administrator shall not be diminished if it has entrusted to a third party some or all of the assets in its safe-keeping. This shall be stated in the custody agreement.
- 4.1.15 The Fund Administrator shall not enter into a contract for the sale of assets when such assets are not in the ownership of the Fund.
- 4.1.16 The Fund shall require the Fund, to obtain its approval and that of the MFSA for the appointment of the auditor of the Scheme.
- 4.1.17 The Fund Administrator shall issue registered certificates representing one or more portions of the Fund or alternatively written confirmation of entry in the register of units or fractions of units.
- 4.1.18 The Fund Administrator shall notify the MFSA in writing of:
- a) any breach of the Operational Conditions (as soon as it becomes aware of the breach);
 - b) any breach of the SFA, the Fund's Operational Conditions or any of the provisions of the Fund's Constitutional Documents as soon as the Fund Administrator becomes aware thereof;
 - c) the Fund Administrator being about to cease to act as Administrator of the Fund, the reasons for such cessation and any circumstances connected

therewith which in its opinion significantly affects the interests of the Scheme's Beneficiaries or prospective Beneficiaries;

- d) the appointment of any Custodian, Asset Manager, or auditor of the Fund, the terms of that appointment, and in the case of an appointment the contents of the contract effecting such appointment(s);
- e) the intended termination of any such appointment, the reasons thereof and any circumstances connected therewith which in its opinion significantly affects the interests of the Beneficiaries or prospective Beneficiaries of the Scheme/s investing in the Fund;
- f) the Fund year-end and any change thereto;
- g) any evidence of fraud or dishonesty by a member of the Administrator's staff or anyone connected with the operation of the Fund immediately upon becoming aware thereof;
- h) any actual or intended legal proceedings of a material nature by or against the Fund Administrator or relating to the Fund which might adversely impact on the operation of the Fund or its compliance with the Constitutional Documents or the SFA upon becoming aware of the same;
- i) any material changes in the information supplied by the Fund Administrator to the MFSA whether under the SFA or otherwise upon becoming aware of the same;
- j) any other material information concerning the Fund Administrator, the Fund, Asset Manager, and any other service provider to the Fund which might reasonably be expected to be significant to or considered significant by the MFSA upon becoming aware of the same.
- k) a change in the Fund Administrator's name or business name (at least one month in advance);
- l) a change in the Fund Administrator's address (at least one month in advance);
- m) the departure of a director or manager (within 14 days of the departure). The Fund Administrator shall also request the director or manager to confirm to MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Administrator's notification of departure;
- n) a change in the list of authorised signatories (as soon as the change is made);
- o) the termination of a representative's contract (as soon as the contract is terminated);

- p) on becoming aware of it, the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Fund Administrator's voting share capital;
 - q) any proposed material change to the Constitutional Documents of a Fund for which the Administrator provides a service, on becoming aware of the proposal
 - r) any proposed material change to the Fund Administrator's business at least one month before the change is to take effect;
 - s) a decision to make a material claim on any insurance policy held in relation to the Administrator's business (as soon as the decision is taken).
- 4.1.19 The Fund Administrator shall commence its business within six months of the date of Registration.
- 4.1.20 Upon the Fund Administrator ceasing for whatever reason to be the Administrator to the Fund, the Fund Administrator shall co-operate fully with the new Fund Administrator, to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Fund.
- 4.1.21 The Fund Administrator shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Fund Administrator shall supply the MFSA with such information and returns as the MFSA requires.
- 4.1.22 Where a Operational Condition demands that a Fund Administrator notifies the MFSA of an event, such notification shall be made to the MFSA formally, by means of a written communication. Provided that where a Fund Administrator is also an Investment Services Licence Holder in terms of the ISA and is subject to the same notification or MFSA consent requirements as provided for in this section, such Administrator may satisfy its requirements under the ISA and SFA by means of one and the same notification or request for consent, provided that appropriate reference is made to the fact that such notification or request for consent is in satisfaction of the respective requirements under the ISA and SFA. The request to notify the MFSA of any event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.
- 4.1.23 The Fund Administrator shall take out and maintain adequate insurance cover as it considers appropriate.
- 4.1.24 The Fund Administrator shall obtain the MFSA's prior written consent before:
- a) making any change to its share capital or the rights of its shareholder;

- b) acquiring 10 per cent or more of the voting share capital of another company;
- c) taking any steps to cease its business;
- d) agreeing to sell or merge the whole or any part of its undertaking;
- e) granting a loan to shareholder or director;
- f) making application to a Regulator abroad to undertake any form of licensable activity outside Malta;
- g) the appointment of a director and of senior managers responsible for the business of the Administrator (including Compliance Officer), at least twenty one days in advance. The request for consent of the appointment of any of the above, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule I to these directives– duly completed by the person proposed. Where the person proposed had previously submitted a PQ to the MFSA in connection with some other role, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto. For the purposes of the above, “manager” should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA’s authorisation.
- h) the change in the responsibilities of a director or manager at least twenty one business days in advance. The request for consent of the change in responsibilities of a director or manager shall be accompanied by a confirmation by the proposed director or manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or updates thereto.

A change in the responsibilities of a director or manager should only be notified to the MFSA when such a change is material. Material changes include:

 - those which lead to a change in the status or seniority of the person concerned (upwards or downwards);
 - those which alter the responsibilities of the person concerned in respect of activity which required Registration.
- i) delegating any of its functions.

4.1.25 The Fund Administrator shall maintain sufficient records to be able to demonstrate compliance with the regulations and the conditions of its Registration.

- 4.1.26 The Fund Administrator shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.
- 4.1.27 The Fund Administrator shall submit a Certificate of Compliance, in the form set out in Appendix 3, to the MFSA for each six month period following the Registration date. The Certificate of Compliance shall be signed by a Director on the authority of the Board and shall be submitted within one week from the end of the period to which it relates.
- Where there have been breaches of the SFA or of the Operational Conditions, the Administrator is required to include a statement regarding such breaches in its Certificate of Compliance.
- 4.1.28 The Fund Administrator shall pay promptly all amounts due to the MFSA.
- 4.1.29 The Registration Fee shall be payable by the Fund Administrator on the date of the granting of the Registration, and thereafter annually within one week from the anniversary of that date.
- 4.1.30 If so required by the MFSA, the Fund Administrator shall do all in its power to delay the cessation of its business, or the winding up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of the Scheme(s) invested in the Fund(s).
- 4.1.31 A request for a variation of the Operational Conditions or to any applicable directive shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 4.1.32 The Fund Administrator shall ensure:
- a) that the Fund Particulars are prepared and kept up to date;
 - b) that the Fund issues its audited accounts, annual report and directors' report in accordance with the SFA.
- 4.1.33 The Fund Administrator shall comply with the conditions laid out in the Special Funds Act (Control of Assets) Regulations, 2003.

B.4.2 Independence

- 4.2.1 The Fund Administrator shall act independently of the Directors of the Fund, of any Asset Manager, and of any Contributor.

Since independence may be compromised in a variety of ways, any facts, relationships, arrangements, or circumstances which bring or are likely to bring that independence into question shall be declared to the MFSA as soon as the Fund Administrator becomes aware of any such matter.

- 4.2.2 If the Fund Administrator who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Fund, it shall immediately declare the nature of that interest to the Fund's directors.
- 4.2.3 The Fund Administrator shall be a separate independent person from any Asset Managers appointed to the Fund.
- 4.2.4 The Fund Administrator shall be a separate independent person from the Scheme Administrator.

B.4.3 Duties

- 4.3.1 The Fund Administrator shall perform all duties associated with the ordinary or day-to-day operations of the Fund, including but not limited to the following:
- a) receiving the assets of eligible investors, and maintaining or arranging custody of such assets;
 - b) ensuring that the Fund receives all payments owed to it in the proper amounts and in a timely manner;
 - c) ensuring that all income and proceeds received by the Fund are applied in accordance with the Fund's Constitutional Documents;
 - d) ensuring that all disbursements are effected in accordance with the Constitutional Documents;
 - e) maintaining accurate records regarding the net asset value of the Fund in accordance with the SFA and the Constitutional Documents;
 - f) maintaining accurate records regarding the Fund's investors;
 - g) complying with all the Fund's statutory and other conditions including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;
 - h) complying with any conditions of the Income Tax Acts for qualification to tax-exemption or tax-approval;
 - i) ensuring that all instructions and decisions affecting the Fund are in conformity with the law and the Constitutional Documents;
 - j) providing or arranging for all necessary accounting or other services;
 - k) carry out the instructions of the Fund's directors unless they conflict with the SFA or the Fund's Constitutional Documents or its terms of appointment or the Fund Administrator's duties under the foregoing;

- l) enquire into the conduct of the Fund and any Fund Manager in each accounting reference period and whether the Fund has been managed in accordance with the Fund's Investment Objectives, Fund Particulars and Constitutional Documents.
- 4.3.2 The Fund Administrator shall act in the best interests of the Fund and may not use the Fund's assets for its own or other purposes.
- 4.3.3 The Fund Administrator shall comply with and ensure that the Fund complies and acts in accordance with:
- a) all applicable laws and regulations whether in Malta or elsewhere and the disclosure of information, admissible financial transactions and the preparation of its financial audit; and
 - b) the Fund's Constitutional Documents.

B.4.4 Delegation of functions

- 4.4.1 The MFSA's consent should be obtained prior to the appointment of a sub-Administrator or delegation by a Fund Administrator of any of its functions as Fund Administrator under the Constitutional Documents or the SFA. Where a Fund Administrator so delegates it must retain full liability to the Fund for the functions so delegated. The general guidelines outlined in Part C shall apply.

B.4.5 Conduct of Business

- 4.5.1 The Fund Administrator shall act honestly, fairly and with integrity in the best interests of the Fund. Such action shall include:
- a) declining to act for the Fund if the Fund Administrator cannot satisfy itself as to the eligibility of the Scheme and/or Overseas Retirement Plan to invest in the Fund;
 - b) avoiding conflicts of interest where this is possible and, where it is not, ensuring - by way of disclosure, internal procedures or otherwise - that the Fund and its Beneficiaries are treated fairly. The following procedures should be followed during Board Meetings where a director considers that s(he) has or may have a conflict of interest:
 - i. that person should declare that interest to the other directors either at the Meeting at which the issue in relation to which s(he) has an interest first arises, or if the director was not at the date of the Meeting interested in the issue, at the next Board Meeting held after s(he) became so interested;

- ii. unless otherwise agreed to by the other directors, a director shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
 - iii. the interested director should not vote at a Board Meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;
 - iv. the Board minutes should accurately record the sequence of such events.
- c) abiding by all relevant laws and regulations;
 - d) avoiding any claim of independence or impartiality which is untrue or misleading.
 - e) avoiding making misleading or deceptive representations to Scheme(s) / Fund(s);
 - f) avoiding receiving or making any payments, gifts or other benefits which could adversely affect impartiality;
 - g) avoiding the imposition of unfair or unreasonable charges;
 - h) valuing assets on the basis of market value or, if they are not readily marketable, valuing them on an appropriate arm's length basis or as disclosed in the Fund's Constitutional Document;
 - i) conducting all transactions on an arm's length basis, particularly where the Fund Administrator is acting as principal in a transaction;
 - j) assuming responsibility for any liability arising from negligence or a breach of the MFSA's regulations by the Fund Administrator or a member of its staff;
 - k) ensuring that the Registration is not presented as an opinion expressed by the MFSA on the merits of using the services of the Fund Administrator.

4.5.2 The Fund Administrator shall act with due skill, care and diligence – and in the best interests of the Fund. Such action shall include:

- a) executing instructions and decisions in a prompt and timely fashion and, to the extent possible, in the order in which they are received;
- b) avoiding conducting itself in such a way as may bring Malta into disrepute or damage its standing;

- c) acting in accordance with the terms of its agreements, Fund Particulars, explanatory memoranda, and any other documents describing how its services are to be provided.
- 4.5.3 The Fund Administrator shall ensure the adequate disclosure of relevant material information in a way which is fair, clear and not misleading. This shall include disclosing the identity of its regulator in all correspondence, and other documentation. Wording similar to the following shall be used to disclose the Administrator’s regulated status: “Registered as an Administrator for Retirement Funds with the Malta Financial Services Authority”.
- 4.5.4 The Fund Administrator shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with regulatory conditions and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed. This shall include:
- a) having adequate arrangements to ensure that its staff are suitable, adequately trained and properly supervised;
 - b) operating in accordance with the provisions of its Registration;
 - c) having procedures to ensure that its staff conduct business openly, fairly, in compliance with rules and regulations, avoiding conflicts of interest and avoiding any undisclosed or improper benefit to staff;
 - d) having procedures to ensure the adequate supervision of staff and representatives who shall not be allowed to act beyond their levels of competence;
 - e) maintaining adequate records of the training, experience and qualifications of staff;
 - f) establishing and maintaining appropriate compliance procedures with a view to ensuring that the Fund Administrator’s staff are aware of and comply with the SFA, the regulations made under the SFA and the conditions of Registration;
 - g) ensuring that adequate procedures for dealing with complaints from the Fund are in place. This shall include the setting up of a “Complaints Register” within which the Fund Administrator is to record every complaint and the action taken in its regard;
 - h) having adequate internal control procedures to protect the Funds in respect of which it acts as Administrator, third parties and the Fund Administrator itself from financial loss arising from theft, fraud, or other dishonest acts, professional misconduct or omissions;
 - i) keeping a record of any disciplinary action taken against staff for a breach of any regulation; and

- j) making provision for the protection of the Funds in respect of which it acts as Administrator in the event of the interruption or cessation of the whole or part of the Fund Administrator 's business due to internal or external environmental factors, including technical or human failure. For this purposes, the Fund Administrator shall have an appropriate documented Disaster Recovery and Business Continuity Plan which is regularly tested and updated.

B.5 Registration of Asset Managers

B.5.1 General Conditions

5.1.1 The Asset Manager shall be a company:

- a) operating in Malta and in possession of an appropriate ISA licence 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’; or
- b) in the case of a company operating outside Malta, be established in a country where in the opinion of the MFSA it is subject to an adequate level of regulatory supervision or in the instances where services are being offered to a Retirement Scheme, be a company which 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.

5.1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, that the Asset Manager has the appropriate expertise and experience to carry out its functions.

5.1.3 The Asset Manager shall co-operate fully with any enquiry or request for information from or on behalf of, the MFSA.

5.1.4 Where, in the event of a dispute between the Asset Manager and the Scheme or Fund for which it acts as Asset Manager, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:

- make all the necessary arrangements at their own cost;
- appoint as Arbitrator(s), person(s) mutually acceptable; and
- be bound by the decision of the Arbitrator(s) as if such decision was a judgement of the Court.

Alternatively, the matter may have to be referred to the Courts.

5.1.5 The Asset Manager shall be liable for any loss or damage arising out of fraud, wilful default or negligence on the part of the Asset Manager.

5.1.6 The MFSA shall have at any time the power to remove and require the replacement of the Asset Manager.

5.1.7 Subject to the SFA and any terms and provisions as are established in the Scheme Document, it shall be lawful for the Board of Directors of a Fund or the majority by value of contributions to date within the Scheme of the Contributors of a

Scheme, to replace at any time the Fund's or as the case may be, the Scheme's Asset Manager with a new Asset Manager.

5.1.8 The Asset Manager being replaced shall co-operate fully with the new Asset Manager, or where no new Asset Manager is appointed, with the Board of Directors of the Fund or Scheme Administrator, as the case may be, to ensure a proper, orderly and complete hand over of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Fund or Scheme, its shareholders, Contributors, and Beneficiaries.

5.1.9 The remuneration and any costs and expenses by a Scheme or Fund in relation to a Scheme or Fund Asset Manager shall be set out in a written contract between the Fund or Scheme and the Asset Manager, be approved by the Board of Directors in the case of a Fund, and be disclosed in the Scheme's or as the case may be the Fund's annual report.

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

5.1.10 The Asset Manager shall notify the MFSA in writing of any material information concerning its business and of any material change to the information submitted to the MFSA immediately upon becoming aware of the matter.

5.1.11 The Registration Fee for the Asset Manager shall be payable by the Asset Manager on the day Registration first becomes effective, and thereafter annually upon the anniversary of that date.

B.5.2 Independence

5.2.1 An Asset Manager appointed to the Retirement Fund shall be a separate and independent person from the Retirement Fund Administrator, and where the Contributor to a Retirement Scheme is a business concern, the Asset Manager shall also be separate person independent from such Contributor.

5.2.2 Except as may be authorised by the MFSA, a person shall not act as a member of the Board of Directors 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 undertaking custody or the Retirement Fund Custodian as applicable.

B.5.3 Duties

5.3.1 An Asset Manager shall be responsible for all investment services which it has agreed to provide to the Scheme or Fund appointing it.

- 5.3.2 An Asset Manager shall act in the best interests of the Fund or Scheme and may not use the assets of the Fund or the Scheme, as the case may be, for its own purposes.
- 5.3.3 It shall be the duty of the Asset Manager who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Fund or the Scheme, as the case may be, to immediately declare the nature of its interest to the Board of Directors of the Fund or the Scheme Contributor(s)/ Administrator.
- 5.3.4 The Asset Manager appointed by a Scheme Administrator shall comply with the directions given by that Scheme Administrator being directions designed to ensure that the Scheme is properly managed and administered in accordance with its Scheme Document, and the SFA.

The Asset Manager appointed by a Fund shall comply with the directions given by that Fund or Fund Administrator being directions designed to ensure that the Fund is properly managed and administered in accordance with its Constitutional Document and the SFA. In the event of any inconsistency between the directions of the Fund Administrator and the Board of the Fund, the directions of the Board shall be determinative.

B.6 Custody of Retirement Fund's Assets

B.6.1 General Conditions

6.1.1 The Fund Administrator shall be responsible to maintain or arrange for the custody of all the Fund's assets.

6.1.2 The custody functions for a Retirement Fund must be undertaken by the Retirement Fund Administrator or an entity Registered as a Retirement Fund Custodian in terms of the SFA (Registration of Retirement Fund Custodians) Regulations, 2003 and which may either 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) any 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.

6.1.3 The MFSA shall be entitled to be satisfied, on a continuing basis, that the Retirement Fund Administrator maintaining custody or the Retirement Fund Custodian as applicable, has the appropriate expertise and experience to carry out its functions.

6.1.4 The entity maintaining custody shall co-operate fully with any enquiry or request for information from or on behalf of, the MFSA.

6.1.5 Where, in the event of a dispute between the entity maintaining custody and the Fund or Fund Administrator where applicable, it can be shown that unsuccessful efforts have been made to resolve the dispute, the MFSA may encourage the parties to submit the matter to arbitration. In such circumstances, the parties must in advance and in writing agree to:

- make all the necessary arrangements at their own cost;
- appoint as Arbitrator(s), person(s) mutually acceptable; and
- be bound by the decision of the Arbitrator(s) as if such decision was a judgement of the Court.

Alternatively, the matter may have to be referred to the Courts.

6.1.6 The entity maintaining custody shall be liable for any loss or damage suffered by the Fund Administrator (where applicable), the Fund or the holders of units or participants in the Fund arising out of fraud, wilful default or negligence on its part, including the unjustifiable failure to perform in whole or in part its obligations.

- 6.1.7 The MFSA shall have at any time the power to remove and require the replacement of the entity maintaining custody.
- 6.1.8 The entity maintaining custody being replaced shall co-operate fully with the duly appointed replacement entity to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Fund and its unit-holders.
- 6.1.9 The Registration Fee for a Retirement Fund Custodian shall be payable by the Retirement Fund Custodian on the day Registration first becomes effective, and thereafter annually upon the anniversary of that date.

B.6.2 Independence

- 6.2.1 The entity maintaining custody must satisfy the independence requirements specified in Regulations 17 and 18 of the SFA (Control of Assets) Regulations, 2003.
- 6.2.2 The entity maintaining custody shall be independent from the Contributor to a Scheme where this is a business concern.

B.6.3 Duties

- 6.3.1 The entity maintaining custody shall act in the best interests of the Fund and its unit-holders, and may not use the assets of the Fund for its own purposes.
- 6.3.2 The entity maintaining custody shall ensure that in respect of all the Fund's assets, including Instruments and documents evidencing title to Instruments, adequate arrangements are maintained to ensure that they are properly recorded, identified, segregated and controlled, so that they and the Fund's interests in them are safeguarded.
- 6.3.3 The Retirement Fund Custodian appointed by the Retirement Fund Administrator shall comply with the directions given by that Fund Administrator being directions designed to ensure that the Fund's assets are properly administered/ maintained in accordance with the Constitutional Documents, the SFA and applicable laws.

B.6.4 Custody of Assets

- 6.4.1 The Fund assets shall be held in a way which makes it clear that they do not belong to the Fund Administrator or the Retirement Fund Custodian or to any other party other than the Fund concerned. They shall be carefully segregated and be subject to adequate internal controls. Particular attention shall be paid to bearer securities.

- 6.4.2 The Fund's money shall be held in specially created segregated accounts. Such assets shall not be commingled with the cash assets of the Fund Administrator, the Retirement Fund Custodian or any other person. The account shall be entitled "Retirement Fund Bank Account" and bear the name of the Fund. The entity maintaining custody ("entity") shall ensure that the bank acknowledges in writing that it renounces, and will not attempt to enforce or execute, any charge, right of set-off or other claim against the account, or combine the account with any other account in respect of any debt owed to it by the entity, and that interest payable on the account will be credited to the account and that it will deal with the assets in accordance with the entity's instructions.
- 6.4.3 Where Fund Money is paid into a bank account abroad, it is the responsibility of the entity maintaining custody to ensure and demonstrate to the MFSA that money held in such an account is afforded protection which is at least equal to or better than that provided under the MFSA's conditions.
- 6.4.4 Only the Fund's Money shall be paid into a Retirement Fund's bank account.
- 6.4.5 Money shall only be withdrawn from a Retirement Fund's bank account if it is not Fund's money, or if it is properly required for payment to or on behalf of the Fund, or if it is properly transferred to another Fund bank account.
- 6.4.6 The entity maintaining custody shall account properly and promptly for the Fund's money and shall ensure that:
- a) the Fund's Money and other money do not become intermingled;
 - b) at all times it knows how much Fund's Money stands to the credit of each Fund; and
 - c) money belonging to one Fund is not used for another.
- 6.4.7 At least once a month, including at the Accounting Reference Date, the entity maintaining custody ('the entity') shall reconcile the balance on each Retirement Fund Bank Account(s) as recorded by the entity with the balance on that account(s) as set out in the statement issued by the bank.
- 6.4.8 As at the same date as in 6.4.7, the entity maintaining custody ('entity') shall also reconcile, where applicable, the total of the balances on all Retirement Fund Bank Account(s) as recorded by the entity with the total of the corresponding credit balances in respect of the Fund(s), as recorded by the entity.
- 6.4.9 Any differences identified as a result of the reconciliations carried out in accordance with 6.4.7 or 6.4.8 shall be corrected immediately unless in the case of 6.4.7 they arise solely as a result of timing. The entity maintaining custody shall notify the MFSA if it has not carried out the reconciliations on the due date or, if having done so, it is unable to correct any differences.

- 6.4.10 The reconciliations required in 6.4.7 and 6.4.8 shall be carried out within two weeks of the date at which the reconciliation was due.
- 6.4.11 Adequate insurance arrangements shall be maintained to cover the Fund's assets held by the entity maintaining custody.
- 6.4.12 Physical counts and inspections of the Fund's Assets, and the subsequent reconciliation of all such assets with the Fund's records, shall be carried out at least twice a year including at the Fund's Accounting Reference Date, the intervals between the reconciliations being not more than eight and not less than four months. The reconciliation carried out at the Accounting Reference Date shall be reported upon, to the satisfaction of the MFSA, by the Fund's auditor.
- 6.4.13 Any discrepancy arising from the reconciliations performed in accordance with the preceding Operational Condition, shall be resolved immediately. The MFSA shall be notified if the reconciliations referred to in the preceding condition have not been carried out on the due date or, if carried out, there are difficulties to resolve any discrepancies.
- 6.4.14 The entity maintaining custody of the Fund's assets shall comply with the conditions laid out in the SFA (Control of Assets) Regulations, 2003.

B.6.5 Conduct of Business Rules applicable to entities registered as Retirement Fund Custodians

The following standard operational conditions shall only apply for Retirement Fund Custodians registered under the full application process.

- 6.5.1 The Retirement Fund Custodian shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities.
- 6.5.2 The Retirement Fund Custodian's business shall, unless the MFSA has agreed otherwise in writing, be conducted on a day-to-day basis by at least two individuals resident in Malta in satisfaction of the "dual control" principle.
- 6.5.3 The Retirement Fund Custodian shall commence its business within six months of the date of its Registration by MFSA in terms of the SFA.
- 6.5.4 The Retirement Fund Custodian shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. It shall supply the MFSA with such information and returns as the MFSA requires.
- 6.5.5 Where a standard condition demands that a Retirement Fund Custodian notifies the MFSA of an event, such notification shall be made to the MFSA formally, by means of a written communication. The request to notify the MFSA of an event

shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

6.5.6 The Retirement Fund Custodian shall notify the MFSA in writing of:

- a) any breach of the conditions of Registration (as soon as it becomes aware of the breach);
- b) any breach of the SFA as soon as the Retirement Fund Custodian becomes aware thereof;
- c) a change in the Retirement Fund Custodian's name or business name (if different) at least one month in advance of the change being made;
- d) a change of address (at least one month in advance);
- e) the Retirement Fund Custodian ceasing or being about to cease to act as custodian of the Fund, the reasons for such cessation and any circumstances connected therewith which in its opinion significantly affects the interests of the unit-holders;
- f) the departure of a director or manager (within 14 days of the departure). The Retirement Fund Custodian shall also request the director or manager to confirm to MFSA that their departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the notification of departure;
- g) the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Retirement Fund Custodian's voting share capital on becoming aware of the situation;
- h) the provision of a related company loan, within 15 days of making the loan. [the definition of 'related company' may be found in Appendix 1];

A Retirement Fund Custodian which is a credit institution licensed under the Banking Act, 1994 need not comply with the requirements of this Standard Operational Condition.

- i) any proposed material change to the Retirement Fund Custodian's business at least one month before the change is to take effect;
- j) any evidence of fraud or dishonesty by a member of the Retirement Fund Custodian's staff or anyone connected with the operation of the Fund immediately upon becoming aware thereof;
- k) any actual or intended legal proceedings of a material nature by or against the Retirement Fund Custodian upon becoming aware of the same;
- l) any material changes in the information supplied by the Retirement Fund Custodian to the MFSA upon becoming aware of the same;

- m) any other material information concerning the Retirement Fund Custodian, its business or staff and any Fund in relation to which it acts as Retirement Fund Custodian - immediately upon becoming aware of the matter.

6.5.7 The Retirement Fund Custodian shall obtain the written consent of the MFSA before:

- a) making any change to its share capital or the rights of its shareholder;
- b) acquiring 10 per cent or more of the voting share capital of another company;
- c) taking any steps to cease its business;
- d) agreeing to sell or merge the whole or any part of its undertaking;
- e) granting a loan to a shareholder or director;

A Retirement Fund Custodian which is a credit institution licensed under the Banking Act, 1994 need not comply with the requirements of this Standard Operational Condition.

- f) the appointment of a director and of senior managers responsible for the business of the Retirement Fund Custodian, at least twenty one business days in advance. The request for consent of the appointment of any of the above, shall be accompanied by a Personal Questionnaire (“PQ”), in the form set out in Schedule I to these directives – duly completed by the person proposed. Where the person proposed had previously submitted a PQ to the MFSA in connection with some other role, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or updates thereto. For the purposes of the above, ‘manager’ should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA’s authorisation;
- g) the change in the responsibilities of a director or manager at least twenty one business days in advance. The request for consent of the change in responsibilities of a director or manager shall be accompanied by a confirmation by the proposed director or manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

A change in the responsibilities of a director or manager should only be notified to the MFSA when such a change is material. Material changes include:

- i. those which lead to a change in the status or seniority of the person concerned (upwards or downwards);

ii. those which alter the responsibilities of the person concerned in (h) below.

h) any persons, whether directors, managers or senior staff members whose appointment is subject to MFSA's consent in terms of standard condition 6.5.7 (f).

The request for authorisation shall include all relevant details in order to enable the MFSA to assess whether the persons concerned are sufficiently competent to undertake such activities.

6.5.8 The Retirement Fund Custodian shall co-operate fully with any inspection or other enquiry or compliance testing carried out by the MFSA, or an inspector acting on its behalf.

6.5.9 The Retirement Fund Custodian shall submit a Certificate of Compliance, in the form set out in Appendix 3, to the MFSA for each six-month period following the Registration date. The Certificate of Compliance shall be signed by a Director on the authority of the Board, or by a partner on the authority of all other partners, and shall be submitted within one week from the end of the period to which it relates.

Where there have been breaches of the SFA or of the conditions/ directives issued thereunder, the Retirement Fund Custodian is required to include a statement regarding such breaches in its Certificate of Compliance.

6.5.10 The Retirement Fund Custodian shall pay promptly all amounts due to the MFSA.

6.5.11 If so required by the MFSA, the Custodian shall do all in its power to delay the cessation of its business, or the winding up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of the unit-holders.

6.5.12 A request for a variation of any conditions attaching to the Registration of the Retirement Fund Custodian or to any applicable directive shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

B.7 Financial Resources, Record Keeping and Reporting Rules for Retirement Scheme Administrators, Fund Administrators and Fund Custodians

Unless indicated otherwise, this section applies to Retirement Scheme Administrators, Retirement Fund Administrators and Retirement Fund Custodians and reference to “Registered Person” should be construed accordingly.

B.7.1 Financial Resources and Record Keeping

7.1.1 The Registered Person shall ensure that it maintains adequate financial resources at its disposal to enable it to conduct its business efficiently, meet its business commitments and to be prepared to cope with the risks to which it is exposed.

7.1.2 The Registered Person shall at all times meet both the applicable Net Tangible Assets and Liquid Capital Conditions applicable to its Registration.

Provided that a Registered Person registered under the abridged application process shall be exempt from the applicable minimum Financial Resources Requirements stipulated in these directives

7.1.3 The methodology for calculating the Net Tangible Assets and Liquid Capital Requirement (where applicable) is set out in Appendix 1.

7.1.4 The Registered Person shall comply with any further Financial Resources Conditions set by the MFSA.

7.1.5 The Registered Person shall immediately advise the MFSA if at any time it is in breach of either of the Financial Resources Requirements.

7.1.6 The Registered Person shall maintain proper accounting records to show and explain its own transactions, assets and liabilities.

7.1.7 The accounting records of the each of the Registered Person shall:

- a) disclose with reasonable accuracy, at all times, its financial position; and
- b) enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of Registration.

7.1.8 In particular, the financial records shall contain:

- a) entries from day-to-day of all sums of money received and expended and the matters to which they relate;
- b) a record of all income and expenses, explaining their nature; and

- c) a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments..
- 7.1.9 The Registered Person shall agree with the MFSA its Accounting Reference Date (financial year end).
- 7.1.10 The Registered Person shall in each year prepare an Annual Financial Return in the form set out in Appendix 2 signed by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. Provided that a Registered Person registered under the abridged application process shall be exempt from this requirement.
- 7.1.11 The Annual Financial Return shall be submitted to the MFSA within one month of the Accounting Reference Date.
- 7.1.12 Audited annual financial statements prepared in accordance with International Accounting Standards, together with a copy of the auditors' management letter and the auditors' report required by SOC 7.3.6, shall be submitted to the MFSA within four months of the Accounting Reference Date.
- 7.1.13 In addition to the Annual Financial Return and the audited annual financial statements, the Scheme Administrator and Fund Administrator shall prepare an Interim Financial Return, in the form set out in Appendix 2, at dates three, six and nine months after the Accounting Reference Date. In the event of a change to the Accounting Reference Date, the dates for the preparation of the Interim Financial Returns shall be agreed with the MFSA. Provided that a Registered Person registered under the abridged application process shall be exempt from this requirement.
- 7.1.14 The unaudited Interim Financial Return shall include, as a minimum:
- a) a balance sheet which shows a true and fair view of the state of affairs of the Scheme/ Fund Administrator as, at the balance sheet date; and
 - b) a profit and loss account which shows a true and fair view of the profit or loss of the Scheme/ Fund Administrator for the period covered by the financial statements; and
 - c) a statement of financial resources based on the balance sheet and profit and loss account; and
 - d) if appropriate, a statement of any changes in accounting policies together with an explanation of the effects of the changes.
- 7.1.15 The Interim Financial Return shall be submitted to the MFSA within one month of the date up to which it has been prepared. It shall be signed by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution.

- 7.1.16 The Registered Person shall prepare and submit such additional financial returns as the MFSA may require.
- 7.1.17 The Registered Person shall be responsible for the correct compilation of the financial returns. The nature and content of the financial returns shall be as follows:
- a) they shall be in the form set out in Appendices 2 and 3;
 - b) they shall be in agreement with the underlying accounting records;
 - c) accounting policies shall be consistent with those adopted in the audited annual financial statements and shall be consistently applied;
 - d) information to be included in the financial returns shall be prepared in accordance with International Accounting Standards;
 - e) investments shall be included in the balance sheet at valuations arrived at in accordance with the provisions of International Accounting Standards;
 - f) financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;
 - g) where the Annual Financial Return has been submitted before the relevant audited annual financial statements have been produced it shall be updated to reflect the information in the audited statements - as soon as available.
- 7.1.18 The Registered Person shall retain accounting records for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested.

Supplementary Condition applicable to the Retirement Fund Administrator

- 7.1.19 The Fund Administrator shall ensure that proper records are kept to show and explain transactions carried out on behalf of the Fund. The records shall, where applicable:
- a) record all purchases and sales of assets processed by the Fund Administrator;
 - b) record all receipts and payments of money belonging to the Fund which arise from transactions processed by the Fund Administrator;
 - c) disclose the assets and liabilities of the Fund individually and collectively;
 - d) record all the Fund's Assets (including title documents) in the possession of the Fund Administrator or the Retirement Fund Custodian, or to the order of the Fund Administrator, showing the location of the assets, their owner

and the extent to which they are subject to any charge of which the Fund Administrator has been notified.

B.7.2 Financial notification

7.2.1 The Registered Person shall notify the MFSA immediately it becomes aware:

- a) that it is in breach of the conditions in respect of financial resources, records, reporting or procedures and controls;
- b) that it will be unable to submit an Annual or Interim Financial Return (as applicable) on the due date.

The notice shall give reasons and shall explain what action is being taken to rectify matters.

7.2.2 The Registered Person shall notify the MFSA immediately if:

- a) it is notified that its auditor intends to qualify the audit report;
- b) it becomes aware of actual or intended legal proceedings against it;

B.7.3 Appointment of Auditor

7.3.1 The Registered Person shall appoint an auditor approved by the MFSA. The Registered Person shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor.

The Registered Person shall make available to its auditor the information and explanations s/he needs to discharge her/his responsibilities as an auditor and in order to meet the MFSA's conditions.

7.3.2 The Registered Person shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his firm is:

- a) a director, partner, qualifying shareholder, officer, representative or employee of the Registered Person;
- b) a partner of, or in the employment of, any person in (a) above;
- c) a spouse, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- d) a person who is not otherwise independent of the Registered Person;

- e) a person disqualified by the MFSA from acting as an auditor of a Registered Person.

For this purpose, an auditor shall not be regarded as an officer or an employee of the Registered Person by reason of being auditor of that Registered Person.

7.3.3 The Registered Person shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of her/his appointment. The Registered Person shall confirm in writing to its auditor its agreement to the terms in the letter of engagement. The auditor shall provide the MFSA with a letter of confirmation in the form set out in Annex II to the Application Form for Registration.

7.3.4 The letter of engagement shall include terms requiring the auditor:

- a) to provide such information or verification to the MFSA as the MFSA may request;
- b) to afford another auditor all such assistance as he may require;
- c) to vacate her/his office if s/he becomes disqualified to act as auditor for any reason;
- d) if s/he resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for her/his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters s/he considers should be brought to the attention of the MFSA;
- e) to report immediately to the MFSA any fact of which it becomes aware in its capacity as auditor of the Registered Person which:
 - i. is likely to lead to a serious qualification or refusal of her/his audit report on the accounts of the Registered Person; or
 - ii. constitutes or is likely to constitute a material breach of the legal and regulatory conditions applicable to the Registered Person in or under the SFA;
 - iii. gravely impairs the ability of the Registered Person to continue as a going concern; or
 - iv. relates to any other matter which has been prescribed.

7.3.5 If at any time the Registered Person fails to have an auditor in office for a period exceeding four weeks the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Registered Person.

7.3.6 In respect of each annual accounting period, the Registered Person shall require its auditor to prepare a management letter in accordance with International Standards on Auditing and to confirm to the MFSA that the audit has been conducted in

accordance with International Standards on Auditing and whether, in the auditor's opinion:

- a) the Annual Financial Return together with the audited annual financial statements are in agreement with the accounting records of the Registered Person;
- b) the Annual Financial Return has been prepared in accordance with the MFSA's conditions and is consistent with the audited annual financial statements;
- c) the Financial Resources of the Registered Person have been properly calculated in accordance with the MFSA's conditions and exceed the Registered Person's Resources Requirements as at the Accounting Reference Date;
- d) proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the Annual Financial Return;
- e) the Registered Person has maintained throughout the period covered by the Annual Financial Return, systems adequate to safeguard Assets and Money held on behalf of the Scheme(s)/ Fund(s) and the required reconciliations (where applicable) have been performed in accordance with the Operational Conditions, including at the Accounting Reference Date;
- f) all information and explanations necessary for the purpose of the audit have been obtained.

Provided that (a) to (c) above do not apply, and 'Annual Financial Return' in (d) and (e) above is to be replaced by 'Annual Report', where the Registered Person was registered under the abridged application process.

7.3.7 Where, in the auditor's opinion, one or more of the conditions have not been met, the auditor shall be required to include in her/his report a statement specifying the relevant conditions and the respects in which they have not been met. Where the auditor is unable to form an opinion as to whether the conditions have been met, the auditor shall be required to specify the relevant conditions and the reasons why he has been unable to form an opinion.

7.3.8 The Registered Person is required to include in its annual report to members of the company, a statement regarding breaches of SOCs and/or any regulatory sanctions which occurred during the reporting period. Where there have been no breaches or regulatory sanctions, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of the breach(es) committed and/or regulatory sanction imposed.

B.8 Glossary of Terms

The terminology used in the SFA and in these directives should be treated as distinct and separate from that of the Investment Services Act, 1994 and the Investment Services Guidelines.

Accounting reference date	This refers to the year end of the company
Administrator	A Retirement Scheme Administrator or a Retirement Fund Administrator
Asset Manager	The person who provides investment management services to a Retirement Scheme or Retirement Fund
Beneficiary	The individual who is to receive current or future payments under the Retirement Scheme or Overseas Retirement Plan and, where relevant, the estate of such individual
Biometrical risks	Risks linked to human life including death, disability and longevity risks
Condition	A requirement imposed by the MFSA on a Registered Person as a condition of that person's Registration under the SFA. A condition is personal to the Registered Person concerned
Contributor	<p>The individual, in the case of Retirement Scheme to which contributions are made solely or partly by the individual for the benefit of that same individual; and</p> <p>The employer, in the case of a Retirement Scheme to which contributions are made solely or partly by an employer for the benefit of employee as more fully defined in Article 2 of the SFA.</p>
Contributor-Related Investments	<ol style="list-style-type: none">a) Saving any exemption under Article 50(1) of the SFA, any instrument issued by the Contributor or an affiliate of the Contributorb) Immovable property which is occupied or used by, or held under any title whatsoever by the Contributor or an Affiliate of the Contributorc) Loans to the Contributor or to any an affiliate of the Contributor

Constitutional Documents	In relation to a Fund means its Memorandum and Articles of Association and any document performing a similar function
directive	A directive prescribed by the MFSA under the SFA imposing a requirement in relation to the SFA regime. A directive may apply generally to the regime or the Retirement Schemes, Retirement Funds and related persons or specifically to a particular person or matter
EU Member State	This refers to the member countries of the European Union.
Entity maintaining Custody	<p>In respect of a Retirement Fund, the entity holding custody of assets.</p> <p>This entity shall either be the Retirement Fund Administrator or an entity Registered as a Retirement Fund Custodian under the SFA and must be:</p> <ol style="list-style-type: none"> 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) any other entity acceptable to the MFSA.
Investment Objective	<p>In relation to a Retirement Scheme or Retirement Fund means the criteria governing decisions as to how the Retirement Scheme's or Fund's assets are to be invested including:</p> <ol style="list-style-type: none"> a) in the case of a Retirement Scheme the type of Retirement Fund(s) in which the Scheme may invest b) in the case of a Retirement Fund the type of assets in which the Fund may invest
Investment Restrictions	<p>In relation to a Retirement Scheme or Retirement Fund means the restrictions governing decisions as to how the Retirement Scheme's or Fund's assets are to be invested including:</p> <ol style="list-style-type: none"> a) any limits on the amount of any Fund or type of Fund or asset or type of asset which may be held

- b) the balance (if any) to be maintained between different asset classes
- c) any other investment restrictions however described which shall be observed by the Scheme or as the case may be, the Fund in the investment of its assets

ISA	Investment Services Act, 1994
Member	Member means a person whose occupational activities entitle or will entitle him/her to retirement benefits in accordance with the provisions of a scheme document
MFSA	The Malta Financial Services Authority
Overseas Retirement Plan	A bona fide scheme or arrangement established under the laws of a country other than Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to Beneficiaries for the principal purpose of providing Retirement Benefits
Qualifying shareholder	A holder of a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate.
Registered Person	A Retirement Scheme, Retirement Fund, Retirement Scheme Administrator, Retirement Fund Administrator or Asset Manager registered under the SFA
Regulation	A regulation prescribed by the Minister of Finance under the SFA imposing conditions relating to the SFA
Retirement Benefit	Pensions or other benefits that are payable to a Beneficiary after retirement, permanent invalidity or death;
Retirement Fund	A Maltese-incorporated company registrable under the SFA established for the principal purpose of holding and investing the contributions made to one or more Schemes or to one or more Overseas Retirement Plan and.
Retirement Fund Administrator	The person responsible for the operation of the Retirement Fund and registrable as such under the SFA

Retirement Fund Custodian	An entity which is registered under the SFA to undertake custody of the Retirement Fund assets.
Retirement Fund Particulars	Has the meaning given in SOC 3.4.1 of Part B
Retirement Scheme	A scheme for the provision of retirement benefits situated in Malta and registrable under the SFA as more fully defined in Article 2 of the SFA
Retirement Scheme Administrator	The person responsible for the operation of a Retirement Scheme and registrable as such under the SFA
Retirement Scheme Document	The written contract between the Contributors to the Retirement Scheme and the Retirement Scheme Administrator establishing the Retirement Scheme as amended or supplemented from time to time. It may consist of one or more individual documents clearly identified as such.
Retirement Scheme Year	<ul style="list-style-type: none"> a) The year specified as such in the Scheme Document or if none a period of 12 months commencing on the date on which the Retirement Scheme is established or on such date as the Retirement Scheme Administrator may select; or b) Such other period if any exceeding 6 months but not exceeding 18 months as is selected by the Retirement Scheme Administrator in connection with the commencement or termination of the Retirement Scheme or a variation of the date on which the year or period referred to in paragraph (a) of this definition is to commence
SFA	The Special Funds (Regulation) Act 2002, any regulations or directives made or issued thereunder
SOC	Standard Operational Conditions
Sponsor	The employer/ main Contributor or equivalent person(s) providing the main sponsorship of a Retirement Scheme
Technical Funding Requirement	Has the meaning given in SOC 1.6.12(b) of Part B

Other terms are defined in Article 2 of the SFA. Words and terms defined in the SFA shall have the same meaning in these directives.