

NOTICE:

This document is an advanced draft intended for consultation purposes only.

DRAFT BILL to Regulate Retirement Schemes, Retirement Funds and Service-Providers related thereto

BE IT enacted by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I

PRELIMINARY

Short Title.

1. The short title of this Act is the Retirement Pensions Act.

Interpretation.

2. (1) In this Act and in the Schedule thereto unless the context otherwise requires –

"advertisement" means any form or medium of advertising or promotional activity, other than a scheme document, scheme particulars or retirement fund particulars and, without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or show cards, by means of letters, circulars, catalogues, price lists or other documents, by the

exhibition of pictures or photographic or cinematographic films, by way of sound, television or other broadcast, by the distribution of recordings or in any other manner, the contents of which, either invites persons, or contains material calculated to induce persons to become or offer to become members in a retirement scheme or investors in a retirement fund; and references to the issue of an advertisement shall be construed accordingly;

"beneficiary" means an individual receiving retirement benefits in accordance with the provisions of a scheme document, whether a member of a retirement scheme or not;

"biometric risks" means risks linked to death, disability and longevity;

"Commissioner" means the Commissioner of Inland Revenue;

"competent authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act, which body shall act as the competent authority for the purposes of this act and also for relevant purposes of the Directive;

"contributor" means -

(a) the individual who contributes solely or partly to the retirement scheme; and, or

(b) the employer, who contributes solely or partly to the retirement scheme;

"defined benefit retirement scheme" means a retirement scheme, other than a defined contribution retirement scheme, which has as its primary

purpose that of providing for the payment of fixed or determinable retirement benefits;

"defined contribution retirement scheme" means a retirement scheme which has as its primary purpose that of providing for the payment of retirement benefits, which are established by reference to the contributions paid into such retirement scheme, the accumulation of profits, gains and other income, after the deduction of expenses and losses in relation thereto;

"Directive" means Directive 2003/41/EC of the European Parliament and of the Council of the 3rd June, 2003 on the activities and supervision of institutions for occupational retirement provision as may be amended from time to time and includes any implementing measures that may be issued thereunder;

"directive" means a directive issued under article 40 of this Act;

"document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"instrument" shall have the same meaning as assigned to it in the Investment Services Act, as may be amended from time to time;

"licence" means a retirement scheme licence or a retirement fund licence or a licence of a service provider providing any one or more of the services listed in the First Schedule, and "licensing" and "licensed" shall be construed accordingly;

“Licence Holder” means a person or body corporate or unincorporated body holding a licence under this Act;

“Malta’s international commitments” means Malta’s commitments, responsibilities and obligations arising out of membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral, multilateral, to which Malta is a party;

“member” means a person whose personal or occupational activities entitle or will entitle him to retirement benefits in accordance with the provisions of a scheme document;

“Minister” means the Minister responsible for finance;

“occupational retirement scheme” means a retirement scheme to which contributions are made solely or partly by employer(s) for the benefit of members;

“overseas regulatory authority” means an authority in a country or territory outside Malta which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act.”;

“overseas retirement scheme” means a retirement scheme or arrangement, organized under the laws of a country outside of Malta, which govern the rights and responsibilities of the parties thereto,

and under which retirement benefits are paid;

"permanent invalidity" means a medically-determined disability of a permanent nature, which as certified by a medical doctor acceptable to the Retirement Scheme Administrator has rendered the member incapable of meeting the requirements of the employment he had been performing at the onset of such disability;

"Pension Rule" means a rule issued by the competent authority in accordance with article 37(2);

"personal retirement scheme" means a retirement scheme to which contributions are made solely by an individual for the benefit of that individual;

"prescribed" means prescribed by regulations made under this Act in accordance with article 36;

"qualifying shareholding" means 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;

"recognition" means a recognition under this Act issued to a person carrying back-office administrative activities as established by Pension Rules in relation to a retirement scheme and, or retirement fund as applicable, and "recognising" and "recognised" shall be construed accordingly;

"recognised person" means a holder of a recognition under this Act;

"retirement benefit" means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death;

"retirement fund" means an arrangement established for the principal purpose of holding and investing the contributions made to one or more retirement schemes and, or to one or more overseas retirement schemes;

"retirement scheme" means a scheme or arrangement with the principal purpose of providing retirement benefits. A scheme or arrangement shall not constitute a retirement scheme under this Act if it provides for:

(a) the payment of retirement benefits to five or fewer members; or

(b) solely the payment of proceeds from the surrender or maturity of a long term contract of insurance; or

(c) the commencement of payment of retirement benefits to a member on a date that is earlier than that on which such member has attained the age of fifty, or later than that on which the member attains the age of seventy, except in those cases where the retirement scheme or arrangement provides that:

(i) the payment is made by reason of the permanent invalidity or death of a member; or

(ii) the payment is made by means of a cash lump sum to the

member without the necessity of the member's consent in line with any Pension Rules issued by the competent authority under the Act in the event that the member is no longer employed by the employer;

Provided that a retirement scheme or arrangement described in paragraphs (a) or (b) above may by written notice to the Authority apply to be considered a retirement scheme for purposes of this Act;

"retirement scheme administrator" means a person licensed, to provide the retirement scheme administration services referred to in the First Schedule;

"schedule of payment" has the meaning given by article 17;

"scheme document" means the written instrument evidencing a licensed retirement scheme stipulating the retirement benefits and the conditions under which these are granted;

"service" means any service falling within the First Schedule, when provided in relation to an instrument and carried out in relation to a retirement scheme or to a retirement fund; and, or any back-office administrative activity as established by Pension Rules when provided in relation to a retirement scheme or to a retirement fund;

"service-provider" means any person licensed under this Act to provide any one or more of the services listed in the First Schedule and, or recognised to provide any one or more of the back-office administrative activities established by

Pension Rules, in relation to a retirement scheme or retirement fund;

“subsidiary” has the same meaning as that given to the term by article 2 of the Companies Act;

"tax" means the tax imposed by The Income Tax Acts;

"The Income Tax Acts" means collectively the Income Tax Act and the Income Tax Management Act;

(2) In this Act and in the Schedule and in any regulations prescribed or Pension Rules issued thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

(3) The objective of this Act is, in part, to implement the provisions of the Directive, and shall be interpreted and applied accordingly.

PART II

LICENSING and RECOGNITION REQUIREMENTS

LICENSING OF RETIREMENT SCHEMES

**Requirement of licence
for retirement schemes.**

3. (1) Subject to the provisions of subarticle (5), no retirement scheme shall carry on any activity for the provision of retirement benefits in or from within Malta unless such retirement scheme is situated in Malta and unless there is in respect of such retirement scheme a valid licence under this Act.

(2) Subject to the provisions of sub-article (5), no retirement scheme formed in accordance with or existing

under the laws of Malta shall carry on any activity for the provision of retirement benefits in or from within a country, territory or other place outside Malta unless there is in respect of such retirement scheme a valid licence under this Act.

(3) Subject to the provisions of subarticle (5), no person shall accept money or other consideration from a contributor with respect to a retirement scheme carrying on any activity for the provision of retirement benefits in or from within Malta unless such retirement scheme is situated in Malta and unless there is in respect of such retirement scheme a valid licence under this Act.

(4) The Authority may by notice in writing to any person determine that for the purposes of this Act, a retirement scheme or other arrangement is a retirement scheme situated in Malta or is a retirement scheme carrying on any activity in or from within Malta, and subject to any appeal under article 43, with respect to such person, the determination by the Authority, unless otherwise overruled by the Tribunal referred to in that article shall be conclusive for all purposes of this Act.

(5) No retirement scheme shall be precluded by the provisions of sub-articles (1) to (3) from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the retirement scheme or from taking such steps as may be necessary for securing the licensing of the retirement scheme by the competent authority.

(6) A retirement scheme licensed under this Act shall not be subject to any licensing requirements under the Investment Services Act.

LICENSING OF RETIREMENT FUNDS

**Requirement of licence
for retirement funds.**

4. (1) Subject to the provisions of subarticle (4), no retirement fund shall carry on any activity in relation to a retirement scheme and, or overseas retirement scheme, in or from within Malta unless such retirement fund is situated in Malta and unless there is in respect of it a valid licence under this Act.

(2) Subject to the provisions of subarticle (4), no retirement fund formed in accordance with or existing under the laws of Malta shall carry on any activity in relation to a retirement scheme and, or overseas retirement scheme, in or from within a country, territory or other place outside Malta unless there is in respect of it a valid licence under this Act.

(3) The competent authority may by notice in writing to any person determine that for the purposes of this Act, a fund is a retirement fund situated in Malta or a retirement fund carrying on any activity in relation to a retirement scheme and, or overseas retirement scheme, in or from within Malta, and subject to any appeal under article 43, with respect to such person, the determination by the competent authority, unless otherwise overruled by the Tribunal referred to in that article shall be conclusive for all purposes of this Act.

(4) No retirement fund shall be precluded by the provisions of sub-articles (1) and (2) from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the retirement fund or from taking such steps as may be necessary for securing the licensing of the retirement fund by the competent authority.

(5) A retirement fund licensed under this Act shall not be subject to any licensing requirements under the Investment Services Act.

LICENSING OF SERVICE-PROVIDERS

Requirement of licence for persons providing services listed in the First Schedule.

5. (1) No person shall provide or hold itself out as providing any one or more of the services listed in the First Schedule in or from within Malta to a retirement scheme or retirement fund or to a similar or equivalent arrangement established overseas, unless it is in possession of a valid licence under this Act.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing any one or more of the services listed in the First Schedule in or from within a country, territory or other place outside Malta unless it is in possession of a valid licence under this Act.

(3) The Authority may by notice in writing to any person determine that a service falls within the First Schedule when provided in relation to an instrument and subject to any appeal under article 43, with respect to such person, the determination by the Authority, unless otherwise overruled by the Tribunal referred to in that article shall be conclusive for all purposes of this Act.

RECOGNITION of SERVICE PROVIDERS

Requirement of recognition for persons carrying on back-office administrative activities.

6. Any person who in or from within Malta provides to licence holders, or to similar or equivalent persons overseas, any one or more of the back-office administrative activities, as established by Pension Rules issued by the competent authority which do not themselves constitute licensable activity under this Act, shall be required to apply for recognition by the competent authority under this article, and no person shall provide such activities unless he is so recognised.

PART III

APPLICATION, GRANT, REVOCATION, ETC., OF LICENCES and RECOGNITIONS

Application for a
licence and, or
recognition.

7. An application for a licence or recognition, as the case may be, shall be made in the form and manner required by the competent authority and shall -

(a) contain or be accompanied by such other information and particulars, in addition to those required by this article, as the competent authority may require or as may be prescribed;

(b) be verified in the manner and to the extent required by the competent authority, or as may be prescribed;

(c) contain the address in Malta for service on the applicant of any notice or other documents required or authorized to be served on him by or under this Act;

(d) be accompanied by such fee or fees as may be prescribed; and

(e) in the case of a retirement scheme also:

(i) specify the nature of the retirement scheme;

(ii) contain or be accompanied by a copy of the scheme document;

(f) in the case of a retirement fund, also contain or be accompanied by a copy of the constitutional document of the retirement fund;

(g) in the case of a service-provider providing any one or more of the services listed in the First Schedule also specify the nature of the applicant's business and relevant experience.

Power of competent authority to refuse or grant a licence and, or recognition.

8. (1) The competent authority may grant, or refuse to grant a licence or recognition, as the case may be, applied for under this Act.

(2) The competent authority shall not grant a licence or recognition, as the case may be, applied for under this Act, unless it is satisfied that -

(a) in the case of a retirement scheme:

(i) it is constituted and structured in line with any Pension Rules, as applicable, that may be issued by the competent authority in terms of article 37(2);

(ii) the retirement scheme will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder and any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, is a fit and proper person to carry out the functions required of it in connection with the retirement scheme;

(iii) there is a scheme document which contains terms and provisions in line with any Pension Rules that may be issued by the competent authority in terms of article 37(2);

(iv) the name of the retirement scheme is one which, in the opinion of the Authority, is not misleading.

(b) in the case of a retirement fund:

(i) it is constituted and structured in line with any Pension Rules, as applicable, that may be issued by the competent authority in terms of article 37(2);

(ii) the retirement fund will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder and any person responsible for the operation, administration and management of the retirement fund is a fit and proper person to carry out the functions required of it in connection with the fund;

(iii) it has a constitutional document which contains terms and provisions in line with any Pension Rules that may be issued by the competent authority in terms of article 37(2);

(iv) the name of the retirement fund is one which, in the opinion of the competent authority, is not misleading;

(c) in the case of a service provider:

(i) the applicant is a fit and proper person to provide the services concerned, and

(ii) the applicant will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;

(3) In granting a licence and, or recognition as the case may be, the competent authority may subject it to such rules as it may deem appropriate, and having granted a licence and, or recognition the competent authority may, from time to time, vary or revoke any Pension Rules so imposed or impose new Pension Rules.

(4) When considering whether to grant or refuse to grant a licence and, or recognition as the case may be, the

competent authority shall, in particular, have regard to:

(a) the protection of beneficiaries, members, investors and, or the general public;

(b) the protection of the reputation of Malta taking into account Malta's international commitments;

(c) the promotion of competition and choice; and

(d) the reputation and suitability of the applicant and in the case of the retirement scheme and, or retirement fund, the persons responsible for the operation, administration and management thereof, as the case may be.

(5) Every licence shall specify, as the case may be:

(a) the nature of retirement scheme to which the licence relates;

(b) the service(s) which the service provider has been licensed to provide.

(6) Every recognition shall specify, as the case may be, the activities which the recognised person has been recognised to provide.

(7) Without prejudice to the generality of subarticle (3), the rules to which the competent authority shall subject a licence and, or recognition may be made applicable to –

(a) all licences and, or recognitions granted;

(b) certain categories of licences;

(c) all licences granted to certain categories of holders;

(d) all licences in relation to particular services or retirement schemes or retirement funds, as the case may be.

(8) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the competent authority shall inform an applicant of its decision whether or not to grant a licence or recognition.

(9) Any requirement in this Act that a person be a fit and proper person to carry out certain activities or functions shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any qualifying shareholder or director or officer of such person, or any person responsible for such activities or functions be a fit and proper person to carry out such activities or functions.

(10) (a) Where close links exist between an applicant and any other person the competent authority shall:

(i) only grant a licence if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to grant a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The competent authority may from time to time, by means of Pension Rules issued under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(11) The competent authority shall establish a register of all holders of a licence and, or recognition. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence and, or recognition was issued and in the case of cross-border activities carried out in terms of the Directive, the register shall also indicate the Member States in which the relevant licence holder is operating. The register shall be updated on a regular basis.

Power of competent authority to cancel or suspend a licence or recognition.

9. (1) Without prejudice to any other provision of this Act and of any regulations or Pension Rules made thereunder, the competent authority may at any time cancel or suspend a licence and, or recognition in accordance with the provisions of this Act.

(2) In the case of a retirement scheme, the competent authority may cancel or suspend a licence:

(a) if it considers that the retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, as the case may be, is not a fit and proper person to carry out the functions required of it in connection with the retirement scheme; or

(b) if it considers that the retirement scheme to which the licence refers or any person, by whatever name designated, responsible for the operation, administration and management of the

retirement scheme, as the case may be, does not comply with the provisions of this Act or of any regulations or Pension Rules issued thereunder, or that there has been a contravention of any such provisions, or an obligation or condition to which the retirement scheme is subject by virtue of or under this Act has not been satisfied or complied with; or

(c) if information has been furnished to the competent authority by or on behalf of or in relation to the retirement scheme which is false, inaccurate or misleading; or

(d) if the retirement scheme or Retirement Scheme Administrator, as the case may be, has not commenced to provide the activities it has been licensed to carry on within the time provided for in the licence or has ceased to carry on such activities; or

(e) if it considers it desirable to cancel or suspend the licence for the protection of beneficiaries, members, investors and, or the general public, and the reputation of Malta taking into consideration Malta's international commitments; or

(f) at the request of the retirement scheme or Retirement Scheme Administrator, as the case may be; or

(g) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse to grant such a licence;

(3) In the case of a retirement fund, the competent authority may cancel or suspend a licence:

(a) if it considers that the retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the fund, as the case may be, is not a fit and proper person to carry out the functions required of it in connection with the retirement fund;

(b) if it considers that the retirement fund to which the licence refers or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, does not comply with the provisions of this Act or of any regulations or Pension Rules issued thereunder, or that there has been a contravention of any such provisions, or an obligation or condition to which the retirement fund or its licence is subject by virtue of or under this Act has not been satisfied or complied with; or

(c) if information has been furnished to the competent authority by or on behalf of or in relation to the retirement fund which is false, inaccurate or misleading; or

(d) if the retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, has not commenced the activities it has been licensed to carry on within the time provided for in the licence or has ceased to carry on such activities; or

(e) if it considers it desirable to cancel or suspend the licence for the protection of investors

and, or the general public, and, or the reputation of Malta taking into consideration Malta's international commitments; or

(f) at the request of the retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the fund as the case may be; or

(g) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse to grant such a licence.

(4) In the case of a service provider, the competent authority may cancel or suspend a licence and, or recognition as the case may be:

(a) if it considers that the service provider is not a fit and proper person to provide the service(s) he is licensed and, or recognised to provide; or

(b) if it considers that the service-provider thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any regulations or Pension Rules issued thereunder, or has failed to satisfy or comply with any obligation or condition to which he or the licence and, or recognition as the case may be, is subject by virtue of or under this Act; or

(c) if the competent authority has been furnished by or on behalf of the service-provider with information which is false, inaccurate or misleading; or

(d) if the service-provider has not commenced

to provide the service he has been licensed and, or recognised to provide within the time provided for in the licence and, or recognition or has ceased to provide such service; or

(e) if it considers it desirable to cancel or suspend the licence and, or recognition for the protection of investors and, or the general public, and, or the reputation of Malta taking into account Malta's international commitments; or

(f) at the request of the service-provider; or

(g) in any of the circumstances under which the competent authority would have been precluded from issuing the licence and, or recognition as the case may be, or where under this Act it would have been entitled to refuse to grant such a licence and, or recognition; or

(h) if the service-provider thereof has obtained the licence and, or recognition by making false statements or by any other irregular means.

Notification of proposed refusal, variation, cancellation or suspension of a licence and, or recognition.

10. (1) Where the competent authority proposes -

(a) to vary any condition to which a licence and, or recognition is subject or to impose a condition thereon; or

(b) to refuse an application for a licence and, or recognition or to cancel or to suspend a licence and, or recognition, it shall give the applicant or as the case may be, to the licence holder and, or recognised person, or in the case of a retirement

scheme or a retirement fund the person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme or retirement fund, as the case may be, a notice in writing of its intention to do so, such notice setting out the reasons for its proposed action.

(2) Every notice given under subarticle (1) shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under subarticle (1).

PART IV

GOVERNANCE

Requirement for a Retirement Scheme Administrator.

11. A retirement scheme shall have a Retirement Scheme Administrator, who shall carry out such duties, functions and responsibilities as may be specified and who shall be subject to any requirements, as may be stipulated by Pension Rules issued by the competent authority in terms of article 37(2) under this Act.

General duty for any person responsible for a retirement scheme or fund.

12. (1) A Retirement Scheme Administrator and any person, by whatever name designated, responsible for any part of the operation, administration and management of

the retirement scheme, whether by delegation or otherwise, shall act in the best interests of the retirement scheme and may not use the assets of the retirement scheme for its own or other purposes.

(2) Any person, by whatever name designated, responsible for all or any part of the operation, administration and management of the retirement fund, whether by delegation or otherwise, shall act in the best interests of the retirement fund and may not use the assets of the retirement fund for its own or other purposes.

Liability.

13. (1) In the discharge of its duties, functions and responsibilities, and without prejudice to the liability for damages under any other law, any person, by whatever name designated, responsible for all or any part of the operation, administration and management of the retirement scheme or fund shall be liable for any loss or damage suffered as a result of fraud, wilful default or negligence on its part.

(2) The liability of:

(a) any person, by whatever name designated, responsible for all or any part of the operation, administration and management of the retirement scheme or fund; and, or

(b) the service provider shall not be diminished if it has entrusted or delegated to a third party some or all of its duties, functions and responsibilities.

Delegation.

14. A retirement scheme and, or a Retirement Scheme Administrator, as the case may be, may delegate one or more of its duties to a service provider or similar

entity, subject to any Pension Rules issued by the competent authority in terms of article 37(2) under this Act.

Auditors and Actuaries.

15. (1) Every retirement scheme which is an occupational retirement scheme, shall appoint an auditor; and every defined benefit retirement scheme which is an occupational retirement scheme, shall also appoint an actuary.

(2) Every auditor and actuary of a licence holder or recognised person as the case may be, shall have the right to demand such information or explanations as he deems necessary in the performance of his duties from any officer or employee of, or any person under an appointment from that licence holder or recognised person as the case may be.

PART V

OTHER REQUIREMENTS AND GENERAL PROVISIONS

RETIREMENT SCHEMES

Assets, Permitted investments and borrowing powers of a retirement scheme.

16. (1) The assets of a retirement scheme shall be used for the exclusive purpose of providing retirement benefits to the members and beneficiaries of the retirement scheme and of defraying the expenses as stipulated in the scheme document and as are allowable in terms of Pension Rules issued under article 37(2), of the Act.

(2) A retirement scheme shall comply with such requirements in terms of Pension Rules issued by the competent authority in terms of article 37(2), with regards to the investment, management, accounting and valuation of its assets and the extent to which it may borrow money.

Schedule of payments of occupational retirement schemes.

17. (1) An occupational retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of an occupational retirement scheme, shall maintain and from time to time revise a schedule (hereinafter and in article 18 referred to as a schedule of payments), showing –

(a) the rates of contributions payable towards the retirement scheme by or on behalf of the employer(s) and, where applicable, by any other contributors of the retirement scheme;

(b) the dates on or before which such contributions are to be paid; and

(c) such other matter as may be prescribed.

(2) Every defined benefit retirement scheme which is an occupational retirement scheme may be subject to additional regulations regarding its Schedule of Payment as may be prescribed.

Payment of contributions for occupational retirement schemes.

18. (1) Except in such circumstances as may be prescribed, every occupational retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of an occupational retirement scheme, and an actuary of any such scheme, shall, where any amounts payable by or on behalf of the contributor(s) of the retirement scheme in accordance with the schedule of payments have not been paid on or before the due date, give notice of that fact, within such period as may be prescribed to the competent authority and to the members.

(2) (a) Where, the occupational retirement scheme or any person, by whatever name designated,

responsible for the operation, administration and management of the retirement scheme, as the case may be, desires to sue for the recovery of a debt due from a contributor in respect of any contribution, he may make a declaration on oath before the registrar of the courts, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due.

(b) The declaration referred to in paragraph (a) shall be served upon the contributor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the contributor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded.

(c) The application filed in terms of paragraph (b) shall be served upon the, occupational retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the occupational retirement scheme, who shall be entitled to file a reply within the period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(d) In the case of an urgent nature the court may, upon an application of the retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, as the case may be, or the contributor, shorten any time limits provided for in this subarticle by means of a decree served on the other parts.

(e) Any executive title obtained according to the previous paragraphs of this subarticle in the absence of any opposition on the part of the contributor shall be

rescinded if upon a request by writ of summons to be filed by the contributor within twenty days from the first service upon him of an executive warrant based on the said title or of any other judicial act wherein reference is made to the said title the court is satisfied that the contributor was unaware of the service of the declaration referred to in paragraph (a) during the period during which he could oppose the same and that the claim contained in the said declaration is unfounded on the merits.

(f) No opposition other than that specifically provided in paragraph (e) shall stay the issue or execution of any executive act obtained thereunder or the paying out of the proceeds of any warrant or sale by auction carried out in pursuance thereof.

(3) In the case of an occupational retirement scheme any amounts payable by the contributor in accordance with the payment schedule shall be paid on or before the due date. Any contributor who fails to effect such payment on or before the due date shall be guilty of an offence.

Reporting requirements of occupational retirement schemes.

19. The occupational retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the occupational retirement scheme, as the case may be, shall produce such annual accounts, reports, certificates and information as may be required by Pension Rules issued by the competent authority in terms of article 37(2).

Disclosure of retirement scheme information.

20. (1) The retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, as the case may be, shall comply with any Pension Rules issued by the competent authority regarding the submission

to the competent authority and the publication and availability to members and beneficiaries of a document, known as “scheme particulars”, containing information about the retirement scheme .

(2) A retirement scheme shall comply with any other disclosure requirements that may be established by the competent authority in terms of article 37(2) of this Act, including the type of documents to be issued, the form and content of any document that may be required and to whom such documents are required to be provided.

Scheme document as binding agreement.

21. The scheme document shall, be binding on those members and beneficiaries as may be provided for in regulations or pension rules made for the purpose of this article.

Unenforceability of unlicensed retirement schemes.

22. (1) A retirement scheme which is not licensed in accordance with this Act shall be unenforceable against any contributor and such contributor shall be entitled to recover any money paid, or other property transferred by him under the retirement scheme, or where such property cannot be so recovered, such contributor shall be entitled to have it replaced by its value at the time of the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him.

(2) The provision of subarticle (1) shall not affect any liability which any person may incur apart from this article.

Assignment or attachment of retirement scheme assets.

23. (1) The creditors of a contributor may not enforce

their rights over the contributor's interest in the retirement scheme; nor may such creditors attach or subject such interest to any precautionary or executive warrant:

Provided that nothing in this subarticle shall be deemed to deprive any creditor of such contributor of any rights granted to a creditor under article 1144 of the Civil Code.

(2) Except as may be prescribed under this Act, every agreement that is made by a contributor to transfer, dispose of or charge his interest in the retirement scheme shall be void.

DEFINED BENEFIT OCCUPATIONAL RETIREMENT SCHEMES

Technical
requirement

funding

24. (1) Every defined benefit retirement scheme, which is an occupational retirement scheme, shall comply with technical, financial and actuarial management regulations as well as regulations regarding under-provision or overprovision of technical funding requirement as may be prescribed.

(2) Where in the case of a defined benefit retirement scheme, which is an occupational retirement scheme, it appears to the retirement scheme or any person, by whatever name designated, responsible for the operation, administration and, or management of the retirement scheme, as the case may be, or the retirement scheme actuary, at the end of such period as may be prescribed that the technical funding requirement is not met, such retirement scheme or any person, by whatever name designated, responsible for the operation, administration and, or management of the retirement scheme, or actuary, as the case may be, shall give written notice to the competent authority of that fact together with such information as may be prescribed relating to the failure to meet that requirement.

Distributions by a defined benefit retirement scheme.

25. Subject to any regulations or pension rules made for the purpose of this article, a retirement scheme shall distribute benefits to members and, or beneficiaries in the amounts and at the times specified in the applicable scheme document.

RETIREMENT FUNDS

Assets, investments and borrowing powers of a retirement fund. Permitted and

26. (1) The assets of the retirement fund shall not be for the benefit of any investor in the retirement fund, but shall be used for the exclusive purpose of providing retirement benefits to the members and beneficiaries of the retirement schemes or the overseas retirement schemes which have invested in such retirement fund, and of defraying the expenses as are allowable under this Act, of such retirement scheme, or the bona fide expenses of the overseas retirement scheme, as applicable.

(2) A retirement fund shall comply with such requirements in terms of Pension Rules issued by the competent authority in terms of article 37(2), with regards to the investment, management, accounting and valuation of its assets and the extent to which it may borrow money.

Reporting requirements by retirement funds.

27. A retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, shall produce such annual accounts, reports, certificates and information as may be required by Pension Rules issued by the competent authority under article 37(2).

Disclosure of retirement fund information.

28. A retirement fund shall comply with any disclosure requirements that may be established by the competent authority in terms of article 37(2) of this Act, including the type of documents to be issued, the form and content of any document that may be required and to whom such

documents are required to be provided.

GENERAL

Payment of periodic fees.

29. Every licence holder and recognised person under this Act shall pay to the competent authority such periodic fees, and within such time, as may from time to time be prescribed.

Changes in information.

30. A licence holder, or recognised person, or any person having responsibility for the operation, administration and management of a retirement scheme or retirement fund shall provide the competent authority with particulars of any changes in the information provided under this Act as soon as such person or its delegate becomes aware of such changes and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning of article 8.

Notification of new or increased control

31. (1) No person shall acquire, directly or indirectly, a qualifying shareholding in a service-provider or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the service-provider reaches or exceeds 20 per cent, 33 per cent or 50 per cent, or so that the service provider becomes the subsidiary of such person, unless such person has served on the competent authority a written notice stating that he intends to acquire or increase such shareholding, and –

(a) the competent authority has, before the end of the period of three months beginning with the service of that notice, notified him in writing that there is no objection to his acquiring or increasing such shareholding; or

(b) that period has elapsed without the competent authority having served on him a notice of objection; or

(c) the competent authority has, before the end of the said period of three months served a notice of objection which has subsequently been withdrawn, cancelled or quashed for any reason:

Provided that the acquisition or increase of the qualifying shareholding takes place within one year following the event mentioned in paragraph (a), (b) or (c) as the case may be:

Provided also that in the case envisaged in the aforesaid paragraph (c) of this sub-article the aforesaid period of one year shall commence to run from the date that the person concerned has been notified of the withdrawal, cancellation or quashing of the notice of objection, as the case may be.

(2) A notice served on the competent authority under subarticle (1) shall contain such information as the competent authority may direct and the competent authority may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the competent authority may reasonably require for deciding whether to serve a notice of objection.

(3) Where additional information or documents are required from any person by a notice under subarticle (2), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subarticle (1)(a).

(4) Every notice of objection mentioned in subarticle (1)(b) shall state the reasons for such objection

and shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the competent authority giving reasons why the notice of objection should be withdrawn; and the competent authority shall consider any representations so made before arriving at a final decision.

(5) The competent authority shall notify its final decision in writing to the person who makes representations in writing under subarticle (4), within thirty days of receipt of representations as provided for in the said subarticle (4).

(6) Any person who proposes to sell or dispose, directly or indirectly, of a qualifying shareholding in a service provider or to reduce his qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the service provider would fall below 20 per cent, 33 per cent or 50 per cent, or so that the service provider would cease to be his subsidiary, must inform the competent authority in writing stating his intention to sell, dispose of or reduce his shareholding and stating the size of his shareholding following such sale, disposal or reduction.

(7) Immediately on becoming aware of any proposed or actual acquisition or disposal of part or all of a shareholding in its share capital in any of the circumstances dealt with in this article a service provider shall inform the competent authority in writing.

(8) Where the influence exercised by a person acquiring or proposing to acquire a part of the share capital is likely to be prejudicial to the sound and prudent management of a service provider, the competent authority may issue a notice of objection; and exercise any of the powers assigned to it under this Act, including the power to issue directives, as it may deem reasonable and appropriate

in the circumstances.

(9) A copy of any notice served on the person concerned in terms of subarticle (8) shall be served on the company to whose shares it relates.

(10) Without prejudice to the provision of article 47, where a share holding in a service provider is acquired despite the objection of the competent authority, the exercise of the corresponding voting rights shall be suspended and any votes cast in contravention of this subarticle shall be null and void.

(11) If the acquirer of the qualifying holding referred to in this article is:

(a) a person holding a licence or an equivalent authorisation from an overseas regulatory authority, or

(b) the parent undertaking of a person referred to in paragraph (a), or

(c) any person controlling a person referred to in paragraph (a),

and if, as a result of that acquisition, the service provider in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition by the competent authority must be the subject of prior consultation with the overseas regulatory authority taking into account Malta's international commitments.

Compliance with tax requirements.

32. A retirement scheme or retirement fund shall comply with any requirements as established from time to time by the Commissioner.

Advertisements.

33. No person, other than licence holders, may issue or cause to be issued an advertisement in connection with a retirement scheme or retirement fund in or from within Malta unless its contents have been approved by a licence holder in accordance with any applicable Pension Rules that the competent authority may issue in terms of article 37(2).

REPORTING DUTIES

Auditors' and actuaries' duty to report.

34. (1) Every auditor or actuary of a licence holder or recognised person, as applicable, shall have the duty to report immediately to the competent authority any fact or decision of which it becomes aware in its capacity as auditor or as actuary of such licence holder or recognised person which –

(a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's or actuary's report on such licence holder or recognised person; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to a licence holder or recognised person in or under this Act; or

(c) seriously impairs the licence holder's or recognised person's ability to meet the current or future liabilities attributable to it; or

(d) which negatively and materially affects the interests of members and beneficiaries.

(2) An auditor or an actuary of a licence holder or recognised person, as applicable, shall report to the competent authority any facts or decisions as specified in sub-article (1) of any person having close links with such licence holder within the meaning of article 8, of which he

becomes aware in his capacity as auditor or actuary of the licence holder or recognised person or of the person having such close links.

(3) The matters which may be prescribed for the purpose of sub-article (1)(d) may include matters related to persons or entities other than a retirement scheme or retirement fund, including but not limited to any person providing any one or more of the services listed in the First Schedule and, or back-office administrative activities as established by Pension Rules.

Duty to report.

35. (1) If a retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, or any service provider of any retirement scheme or retirement fund knows or otherwise suspects that any duty relevant to the operation of the retirement scheme or retirement fund imposed under this or any other law on any person acting in connection with the retirement scheme or retirement fund has not been or is not being complied with, he must immediately give a written report on the matter to the competent authority.

(2) The competent authority may by directive disqualify a person from its position if it appears to the competent authority that the person has failed to comply with subarticle (1) or the obligations arising under articles 34 and 35, as applicable.

PART VI

POWERS TO MAKE REGULATIONS

GENERAL PROVISIONS

Minister's powers.

36. (1) The Minister, acting on the advice of the competent authority, may make regulations to give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following;

(a) amend any of the definition contained in article 2 and amend the Schedule to this Act;

(b) regulate retirement schemes and retirement funds, as well as the services provided and activities carried on in conjunction therewith or in relation thereto; establish the form and content of applications to the competent authority for licensing or recognition or other purposes in terms of this act; the format, content or amendment of a scheme document, the constitutional document of a retirement fund, scheme particulars and fund particulars; and provide for any matter he may deem expedient and may in particular grant rights to the members, beneficiaries and investors in respect of such retirement schemes and funds, as the case may be, and regulate the exercise thereof; provide for and regulate the payment of such fees and other charges as may be prescribed; regulate any fees and, or any other charges imposed directly or indirectly on members, beneficiaries or investors; provide for the safekeeping and custody of the property of retirement schemes and retirement funds; provide for the protection of the property of the retirement scheme or retirement fund in the event of the insolvency of the custodian as may be applicable, and for the purpose of this paragraph "custodian" shall include a sub-custodian; provide for and regulate the appointment of employee representation in the governance of retirement schemes; regulate the appointment and, or removal of any person, by whatever name designated, responsible for the operation, administration and management of

the retirement scheme and, or retirement fund; establish the nature and classification of retirement schemes and funds and prescribe conditions pertaining thereto; regulate the dissolution and, or liquidation of retirement schemes and retirement funds;

(c) establish or make other arrangements for the compensation of members and, or beneficiaries or investors in cases where a retirement scheme or retirement fund is unable to satisfy claims in respect of any liability incurred by it in connection with a retirement scheme; and to regulate the management and the financing of any such arrangements and, the contributions and levies to be paid thereto, to set the minimum and maximum levels of compensation payable thereunder and may under such arrangements distinguish between different classes of investors, members or beneficiaries and exclude certain classes from compensation, and to make provision for the regulation of and for other aspect related to such arrangements and may moreover provide that such arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the competent authority and provide for the judicial and legal representation thereof; and such arrangements shall be exempt from the payment of income tax as from the date of establishment of such retirement schemes;

(d) prescribe the circumstances when and the conditions under which a scheme document becomes binding on members and beneficiaries;

(e) define the criteria for determining whether a holding is an indirect holding for the purposes of determining whether a qualifying shareholding exists;

(f) regulate the promotion or sale and the issue of advertisements by or on behalf of any person, and by

any means, of a retirement scheme or retirement fund;

(g) exempt any person, retirement scheme and, or retirement fund (including such class or type or description thereof as may be prescribed) or other licence holders or recognised persons, or advertisement from any one or more of the provisions of this Act and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed.

(h) to regulate the segregation of the assets of retirement schemes and retirement funds and the provision of any matter consequential, incidental to or connected therewith;

(i) establish and regulate the maintenance of funding requirements by retirement schemes; prescribe regulations regarding the maintenance of schedule of payments by retirement schemes or by service providers on behalf of retirement schemes; regulate the manner in which a defined benefit retirement scheme deals with surplus funds and under funding;

(j) regulate the payment (including the time thereof), nature and amount of benefits which may or may not be paid to beneficiaries and, or members;

(k) provide for and regulate the payment by any person, body, retirement scheme or retirement fund, or service-provider as the case may be, of licence or recognition fees or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(l) transpose, implement and give effect to the

provisions and requirements of the Directive, as may be amended from time to time, and including any implementing measures issued thereunder as may be applicable to retirement schemes;

(m) provide for and regulate the vesting, acquisition, preservation of retirement rights and any matter ancillary thereto;

(n) regulate the provision of personal retirement schemes and establish condition for the provision thereof as well as determine the application or dis-application of certain provisions of the Act to such retirement schemes;

(o) prescribe circumstances and, or conditions regarding the transfer, disposal, charging, assignment, surrender, termination and, or forfeiture of pension rights and, or benefits; in particular prescribe the circumstances in which and the conditions subject to which a member or beneficiary may transfer his accrued rights from one retirement scheme to another; and a retirement scheme may transfer the liabilities attributable to it to another retirement scheme; and a retirement scheme may provide for the payment of a retirement benefit in the form of a lump sum and, or an annuity; and a contributor may transfer, dispose of or charge his interest in a retirement scheme;

(p) provide for any matter incidental to or connected with any of the above articles.

(2) Regulations made under this article may also contain provision for enabling a member, beneficiary, contributor and generally any person who has entered, or offered to enter, into a retirement scheme, to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed.

(3) Any regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the competent authority such powers of adaptation of the regulations as may be therein specified.

(4) Where regulations have been issued in terms of this article, the competent authority may issue Pension Rules within the meaning of article 37(2) of this Act for the better carrying out and to better implement the provisions of the regulations.

(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

PART VII REGULATORY AND INVESTIGATORY POWERS

Powers of the competent authority.

37. (1) The administration of this Act shall be vested in the competent authority. The competent authority shall perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.

(2) For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue, amend, revoke Pension Rules which shall be binding on licence holders and, or recognised persons under this Act and others as may be specified therein and may relate to a particular class of retirement scheme and, or retirement fund or persons or situations or to persons and situations generally. Such Pension Rules may lay down additional requirements and conditions in relation to activities of that licence-holder or recognised person, the conduct of their business, their

relations with members, beneficiaries, investors, the public and other parties as may be applicable, their responsibilities to the competent authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the competent authority may consider appropriate, in particular in relation to the following -

(a) the legal form and constitution of retirement schemes and, or retirement funds, the governance, structuring and management of such retirement schemes and, or retirement funds;

(b) the appointment and removal, qualifications and experience of any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme and, or fund; and any service-provider of any such retirement scheme and retirement fund;

(c) the powers and duties of any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme and, or retirement fund, any service-provider of any such retirement scheme and, or retirement fund;

(d) the management and valuation of the assets and obligations of the retirement scheme and retirement fund;

(e) the restriction or prohibition of the free disposal of the assets of a retirement scheme falling within such description as may be prescribed, when in particular -

(i) that retirement scheme has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical

provisions;

(ii) that retirement scheme has failed to hold any regulatory own funds as may be applicable;

in accordance with the procedure established under article 29 of the Malta Financial Services Authority Act with respect to freezing of assets;

(f) employee representation in retirement schemes;

(g) the provision of personal retirement schemes and the regulation thereof;

(h) the form and content of applications to the competent authority for licensing or recognition or other purposes in terms of this Act; the format, content or amendment of a scheme document, the constitutional document of a retirement fund, scheme particulars and fund particulars;

(i) the requirements for recognition and generally the provision of back-office administrative activities; establish which activities constitute back-office administrative services for the purpose of recognition of such activities in terms of article 6 and provide generally for any matter ancillary or connected with the provision of such activities;

(j) provisions on financial resources requirements applicable to licence holders and, or recognised persons as the case may be;

(k) reporting and disclosure requirements, including the preparation of periodical reports with respect to retirement schemes and retirement funds and the furnishing of those reports to the competent

authority, members, beneficiaries or investors as the case may be;

(l) provide for and establish the requirements regarding the unitisation of certain classes and nature of retirement schemes and, or retirement funds;

(m) establish the circumstances when ring-fencing measures may be applied and the measures and conditions applicable to retirement schemes and, or retirement funds in this regard;

(n) establish circumstances and conditions applicable regarding the transfer of retirement benefits;

(o) establish conditions and requirements regarding the payment of expenses by retirement schemes and, or retirement funds;

(p) provide for the payment (including the time thereof), nature and amount of benefits which may or may not be paid to members or beneficiaries;

(q) establish conditions and requirements regarding the payment by means of a cash lump sum to a member without the necessity of the member's consent in the event that the member is no longer employed by the employer;

(r) without prejudice to the provisions of the Companies Act, establish the class of persons who may act as auditors of licence holders and, or recognised persons or provide that the persons who may so act shall be persons with professional qualifications or experience as may be established or such other class or classes of persons as are

approved by the competent authority; without prejudice to the provisions of the Companies Act, make provisions relating to the appointment, resignation and removal of auditors of licence holders and, or recognised persons as applicable and the duty of a licence holder or recognised person to make documents available to the auditors of such licence holder or recognised person as applicable;

(s) establish the class of persons who may act as actuaries of retirement schemes or provide that the persons who may so act shall be persons with professional qualifications or experience as may be established or such other class or classes of persons as are approved by the competent authority; make provisions relating to the appointment, resignation and removal of actuaries of retirement schemes and the duty of a retirement scheme or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, to make documents available to the actuary of such retirement scheme;

(t) to set minimum standards and requirements which are to be observed by licence holders when issuing or approving advertisements in accordance with article 33; including provision for such exemptions or conditions as may be specified and different provision for different cases or classes of cases, under such terms and conditions as may be established; impose such conditions, limitations and restrictions on a licence holder with respect to the issue or approval of advertisements, as it may consider appropriate;

38. (1) The competent authority may, by notice in writing, require -

(a) any contributor, any service provider or any person who is or was providing, or who appears to be or to have been providing a service to, a retirement scheme, a retirement fund or overseas retirement scheme, or who appears to be or have been carrying on activities in connection with a retirement scheme, a retirement fund or overseas retirement scheme ; or

(b) any contributor, service provider or person who has issued, or appears to have issued an advertisement falling within the provisions of article 33; or

(c) retirement scheme or retirement fund; or

(d) any other contributor, service provider or any other person who appears to be in possession of relevant information,

to do all or any of the following:

(i) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require, with respect to any service, such retirement scheme or retirement fund or advertisement as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 8;

(ii) to furnish to the competent authority any information or documentation aforesaid verified in such manner as it may specify; or

(iii) to attend before the competent authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such service, retirement scheme or retirement fund advertisement.

(2) The competent authority may take and retain copies of any documents furnished or provided under this article.

(3) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642(1) of the Criminal Code.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under subarticle (1), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement by the competent authority.

(8) Without prejudice to the other provisions of this article, a holder of a licence or recognition may be required to submit to the Central Bank of Malta such information as the Bank may reasonable require for the discharge of its duties under the Central Bank of Malta Act.

Appointment
inspectors.

of

39. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any retirement scheme, retirement fund, service provider, overseas retirement scheme or person, referred to in article 38(1)(a) to (c).

(2) An inspector appointed under subarticle (1) -

(a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any retirement scheme, retirement fund, service provider, overseas retirement scheme or person, mentioned in subarticle (1);

(b) shall have and may exercise all the powers conferred on the competent authority by article 38, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement by the competent authority; and

(c) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the competent authority.

(3) The competent authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the retirement scheme, retirement fund, service provider, overseas retirement scheme

or person, concerned.

Power to issue directives.

40. (1) Without prejudice to any of the powers conferred on it by articles 38 and 39, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under article 39 or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and anyone referred to in article 38(1) to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require a retirement scheme, or a retirement fund and any other person who may issue, redeem units or shares in the retirement scheme or retirement fund, as the case may be, to cease the issue, redemption of units or shares or all or any combination of those activities, as may be specified in the directive or further directive;

(c) require that any person having functions in relation to the holder of a licence be removed or removed and replaced by another person acceptable to the competent authority;

(d) require a retirement scheme or any person,

by whatever name designated, responsible for the operation, administration and management of the retirement scheme or retirement fund as applicable, to wind up the retirement scheme or retirement fund by such date and in accordance with such procedure and other provisions as may be specified in the directive or further directive;

(e) require a licence holder or any person who is or was providing, or who appears to be or to have been providing a service to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the licence holder or such other person;

(f) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the Directive.

(3) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

(4) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

Right of entry.

41. (1) Any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 38 or whose affairs are being investigated under article 39, for the purpose of obtaining

there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in subarticle (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing, if required, evidence of his authority, enter any premises referred to in subarticle (1) for the purpose of obtaining there any information or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in subarticle (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order.

Co-Operation with
Overseas Regulatory
authority.

42. (1) The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory competent authority:

- (a) the power to impose, revoke or vary conditions on the licence of a retirement scheme or a retirement fund granted pursuant to the provisions of articles 8(2);
- (b) the power to cancel or suspend a licence or recognition under articles 9(1);
- (c) the powers of inquiry under article 38;
- (d) the power to appoint inspectors under article 39;
- (e) the powers of intervention under article 40;
- (f) the powers of entry under article 41;
- (g) the power to communicate to the overseas

regulatory authority information which is in the possession of the competent authority, whether or not as a result of the exercise of any of the above powers.

(2) The competent authority shall exercise powers by virtue of this article:

(a) where the assistance is requested by the overseas regulatory authority for the purpose of the exercise of one or more of its regulatory functions; or

(b) where so required within the terms of Malta's international commitments; or

(c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a memorandum of understanding concluded with the competent authority.

PART VIII

APPEALS, REMEDIES, SANCTIONS AND CONFIDENTIALITY

Appeals.

43. (1) Subject to the provisions of this article, an appeal shall lie to the Financial Services Tribunal established under article 21 of the Malta Financial Services Authority Act with respect to:

(a) any notice in accordance with article 3(4), 4(3) and 5(3);

(b) any failure to inform an applicant within the terms of articles 8(8);

(b) any refusal, variation, cancellation or suspension of a licence or recognition under article 10(3);

(c) any directive given under article 40;

(d) any decision to make a public statement, under the provisions of article 50, as to a person's misconduct; or

(e) any administrative penalty imposed under article 45;

(f) any decision under article 31(5);

(g) any punishment or penalty imposed under article 45.

(2) An appeal made under this article shall not suspend the operation of any decision or directive from which the appeal is made:

Provided that a decision to cancel a licence or recognition shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned:

Provided further that a decision to issue a statement as to a person's misconduct shall not be published until expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the statement shall not be published before the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.

(3) The provisions of article 21 of the Malta Financial Services Authority Act shall, apply mutatis mutandis to appeals made to the Tribunal under this Act.

44. (1) If, on an application by the competent authority made to the Civil Court, First Hall, the court is satisfied -

(a) that there is reasonable likelihood that a person will contravene any of the provisions of this Act or any regulations or Pension Rules made thereunder, or will contravene or fail to comply with any condition, obligation, requirement, Pension Rules, or directive made or given under any of the provisions of this Act; or

(b) that a person has contravened any such provision or has contravened or failed to comply with any such condition, obligation, requirement, Pension Rules, or directive and that steps could be taken to remedy the contravention or failure,

the court may give such orders as it may deem appropriate to restrain the contravention or, as the case may be, to require the person referred to in paragraph (a) or (b), or any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct.

(2) If, on an application made under subarticle (1), the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of this Act, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on application made under subarticle (1), the court is further satisfied that -

(a) profits have accrued to any person as a result of the contravention; or

(b) a shareholder, contributor, member or a

beneficiary or an investor has suffered loss or been otherwise adversely affected as a result of that contravention,

the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(4) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and authenticated in such manner, as the court may deem appropriate.

(5) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the competent authority.

Administrative penalties
and other measures.

45. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or recognised person or the manager, secretary, director or any other person responsible for a licence holder or recognised person contravenes or fails to comply with any of the conditions imposed in a licence or recognition, and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or Pension Rules issued thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without recourse to a court hearing impose on the licence holder or recognised person, manager, secretary, director, and, or any other person as the case may be, an administrative penalty which may not exceed forty thousand liri.

(2) Pension Rules may provide for the imposition of administrative penalties or other measures that may be imposed by the competent authority on licence holders, recognised persons or others, as may be specified, whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the rules.

(3) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) Upon the conclusion of any appeal proceedings in terms of article 43 of this Act, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or Pension Rules issued thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(5) The imposition by the competent authority of an administrative measure in terms of this article shall be without prejudice to any other consequences of the act or omission of the offender under civil or criminal law:

Provided that in all cases where the competent authority imposes an administrative measure consisting of an administrative penalty in respect of anything done or omitted

to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

Obligation to give reasons.

46. In exercising its powers referred to in articles 40, 42, 43(1) and 45, the competent authority shall in its decisions state the grounds on which such decisions have been based.

Offences.

47. (1) Any person who contravenes or fails to comply with any of the provisions of this Act, or contravenes or fails to comply with any condition, obligation, requirement, regulation, Pension Rules or directive made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder, or any condition, obligation, requirement or Pension Rules or directive made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who is knowingly a party to the carrying on of any retirement scheme or retirement fund or licensable or recognised activity with an intent to defraud or for a fraudulent purpose, shall be guilty of an offence.

(4) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or

deceptive, induces or attempts to induce another person to enter into or offer to enter into a retirement scheme or retirement fund, shall be guilty of an offence.

(5) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(6) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

Penalties.

48. A person guilty of an offence under the provisions of article 47 shall unless another penalty is prescribed be liable on conviction to a fine (multa) not exceeding two hundred thousand liri or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment

Criminal proceedings.

49. (1) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(2) The provisions of this Act shall not affect any criminal liability that may be incurred by any person under any other law.

Public statement as to misconduct.

50. (1) If it appears to the competent authority that a licence holder and, or recognised person or other person has contravened any of the provisions of this Act or of any regulations made thereunder or has contravened or failed to comply with any condition, obligation, requirement, Pension Rules or directive made or given under any of the provisions of this Act, the competent authority may publish a statement to that effect.

(2) Nothing in this article shall restrict or otherwise prejudice the powers of the competent authority under article 40(4).

Confidentiality.

51. (1) Information obtained by the competent authority or by its officers, employees, agents as well as by inspectors, auditors, actuaries and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations or Pension Rules made thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any person, except in the following cases:

(a) where the information is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings by the Authority before any court under this Act;

(b) where the disclosure is required for the detection, prevention or prosecution of criminal offences under the criminal provisions of this act or any other act;

(c) with a view to enabling or assisting the competent authority in the performance or discharge of any of its functions under this Act;

(d) which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

(e) where a summary or collection of information is prepared or supplied in such a way as not to enable the identity of any person to whom the information

relates to be ascertained;

(f) where the information is disclosed to an auditor or actuary where such disclosure would assist the auditor or actuary in the exercise of its functions under article 15;

(g) where the information is provided to the Central Bank of Malta or to the listing authority under the Financial Markets Act, where such information is required by the Bank or the listing authority in the exercise of their respective functions in terms of law;

(h) in response to a request from, or for the purpose of assisting an overseas regulatory authority pursuant to article 42;

(i) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities and where the disclosure is required for the pursuance of serious regulatory concerns or criminal nature or the detection, prevention or prosecution of criminal offences;

(j) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of a retirement scheme or retirement fund or in relation to the bankruptcy or dissolution and consequential winding up by the Court of a service provider, provided such information does not concern third parties, including third parties involved in attempts to rescue such a retirement scheme or retirement fund, and is necessary for the proceedings, or is disclosed to an overseas body responsible for the liquidation of bankruptcy of a person holding a licence or an equivalent authorisation from an overseas regulatory authority or for other similar procedures.

Provided further that this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.

(2) Subject to the provisions of article 42, information obtained from an overseas regulatory authority may only be disclosed to another person, to another overseas regulatory authority or to any other third party with the prior approval of the authority which had provided the information.

PART IX

MISCELLANEOUS

Language of regulations.

52. Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

Exclusion of liability.

53. The competent authority and any officer or employee of the competent authority, and any other person appointed to perform a function under this Act, or under any regulation and, or, Pension Rules promulgated thereunder, or under a directive made or given under any of the provisions of this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any regulation and, or Pension Rules thereunder, unless the Act or omission is shown to have been done or omitted to be done in bad faith.

Notices.

54. A notice or other document to be given or served under this Act, or any regulations or Pension Rules made

thereunder, shall be deemed to have been duly given or served on a person if –

(a) it has been delivered to it; or

(b) it has been left at the address furnished by it to the competent authority, or to its last known address; or

(c) it has been sent to it by post, e-mail or by telefax at any of the aforesaid addresses; or

(d) in the case of a body of persons, whether corporate or unincorporated, or of a retirement scheme or a retirement fund, if it has been given or served in any of the manners aforesaid to or on a retirement scheme or, any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme or fund, secretary, clerk, manager, or their equivalent, or to any contributor or to any director or member of any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme or fund or an appointed representative.

Minister's power to make transitional arrangements.

55. The Minister, acting on the advice of the competent authority, may by regulations, make transitional provisions in respect of such persons who, on the effective date of this Act, were registered under the Special Funds (Regulation) Act, and, without prejudice to the generality of the foregoing, may, by such regulations, in particular -

(a) prescribe a period within which such persons shall apply for a licence under this Act; and

(b) allow such person to continue carrying on the

activities for which they were registered until such time as the license is refused or until the expiry of the deadline provided in such regulations, which is the shorter period, and on condition that such person has applied for a licence in accordance with the provisions of this Act within the period referred to in paragraph (a).

Repeal of Cap. 450.

56. (1) The Special Funds (Regulation) Act is hereby repealed without prejudice to anything done or which may be done under that Act.

(2) Subject to sub-article (1) hereof, unless the context otherwise requires, any reference to the Special Funds (Regulation) Act used in any law, regulation, rule or other document before the coming into force of this Act, shall be deemed to be a reference to this Act.

FIRST SCHEDULE
ARTICLE 5
LICENSABLE ACTIVITIES

1. *Retirement Scheme Administration*
 - administering the operation of a Retirement Scheme;

2. *Custodian Services*
 - acting as custodian of a Retirement Scheme.
 - acting as custodian of a Retirement Fund.

3. *Investment Management*
 - management of the assets of a Retirement Scheme.
 - management of the assets of a Retirement Fund.

For the purposes of this paragraph, investment management means managing or agreeing to manage assets belonging to a retirement scheme or retirement fund on behalf of a retirement scheme or retirement fund if those assets consist of or include one or more instruments or the arrangements for their management are such that the person may manage those assets to invest in one or more instruments.

4. *Investment Advice*
 - investment advice regarding the assets of a Retirement Scheme
 - investment advice regarding the assets of a Retirement Fund

For the purposes of this paragraph, investment advice refers to the giving, or offering or agreeing to give, to persons advice on the merits of purchasing, selling, subscribing for or underwriting an instrument, or exercising any right conferred by an instrument to acquire, dispose of, underwrite or convert an instrument in relation to assets of retirement schemes or retirement funds.

Reference in this schedule to a Retirement Scheme or to a Retirement Fund shall also include reference to a similar or equivalent arrangement established overseas within the meaning of article 5.