

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Note for information

The MFSA has today issued a circular letter to registered persons, schemes or funds which are currently registered in terms of the Special Funds (Regulation) Act. The scope of this circular letter is to provide assistance to these licenceholders to carry out the transition process and obtain the respective licence in terms of the Retirement Pensions Act.

The Retirement Pensions Act (Chapter 514 of the Laws of Malta) (“the RPA”) was published by means of Act No. XVI of 2011, in the Government Gazette on the 5th August 2011. This Act repeals and replaces the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta), regulations and directives issued thereunder.

On the 13th January 2015, the Notice of coming into force of the RPA was published in the Government Gazette No. 19,366 and the RPA came into force on the 1st January 2015.

Article 56 of the RPA states that the Minister, acting on the advice of the Malta Financial Services Authority (“MFSA”), may, by regulations make transitional provisions in respect of those 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 prescribe a period within which such persons shall apply for a licence under the RPA.

The Retirement Pensions (Transitional Provisions) Regulations, 2015 provide that any scheme or arrangement, retirement fund, or any person registered in terms of the Special Funds (Regulation) Act, shall have until the **31st December 2015** to comply with the RPA. Until such time a licence is granted by the MFSA under the RPA, the Retirement Pensions (Transitional Provisions) Regulations, 2015 provide that such persons will continue to be governed by the provisions of the Special Funds (Regulation) Act.

It is important to highlight the following provisions under the RPA and also under the Pension Rules issued under the said Act:

Service Providers

- I. The RPA caters for the licensing of Retirement Schemes, Retirement Funds and Service Providers. In the context of the latter, no person shall provide or hold itself out as providing any one or more of the following services listed in the Schedule to the RPA in or from within Malta to a retirement scheme or retirement fund or to a similar or equivalent arrangement established overseas, unless it is duly licensed under this Act. (*Article 6(1) of the RPA refers*).

(a) Retirement Scheme Administration

- administering the operation of a retirement scheme.

(b) Custodian or Trustee Services

- acting as custodian or trustee of a retirement scheme
- acting as custodian or trustee of a retirement fund.

(c) Investment Management

- management of the assets of a retirement scheme
- management of the assets of a retirement fund.

For the purposes of the above, 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.

- II. The RPA also caters for the recognition of **Back Office Administrators** where 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 which do not themselves constitute a licensable activity under this Act, shall be required to apply for recognition by the competent authority under article 7 of the RPA, and no person shall provide such activities unless he is so recognised. (*Article 7 of the RPA refers*).
- III. Under the RPA there is no requirement to appoint a retirement fund administrator which required registration under the Special Funds (Regulation) Act. However, article 13(2) of the RPA provides that any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, 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. Such person requires MFSA's approval (Standard Licence condition 1.3.1 of Part B.1.3 - Standard Rules for Retirement Funds).
- IV. The appointment of an Investment Manager, Custodian, Investment Advisor, Introducer or Back-Office Administrator by the Retirement Scheme Administrator to the Scheme or Retirement Fund is optional. However, the function relating to the investment management and custody of assets is mandatory. Depending on the structure and nature of the Scheme, a Custodian separate from the Retirement Scheme Administrator may need to be appointed for the safe-keeping of assets. If the investment management

function is carried out by the Retirement Scheme Administrator, there will be no need to appoint an Investment Manager. As long as the entity undertaking the investment management of the Scheme is a separate and independent entity from the entity undertaking the custody function of the Scheme, there is no need to appoint a separate Custodian for the safe-keeping of assets. (*Part A – Pension Rules for Service Providers refers*).

The transition process will entail the following:

1. Service Providers

a) Retirement Scheme Administrator

By the 1st June 2015, Retirement Scheme Administrators registered in terms of the Special Funds (Regulation) Act are required to:

(i) complete and submit the application form for Retirement Scheme Administrator (Transitional Process). This application may be downloaded from the MFSA's website;

(ii) advise whether the Retirement Scheme Administrator has appointed /will appoint an Investment Manager, Custodian, Investment Advisor or a Back-Office Administrator. If this is the case, submit a draft agreement between the two parties which agreement shall be in line with paragraph 1.3.19 of Part B – Standard Licence Conditions for Personal Retirement Schemes; and

(iii) confirm that the independence requirements set out in paragraph 4.2 of Part A to the Pension Rules for Service Providers are being satisfied by the Retirement Scheme Administrators, Retirement Scheme/Fund Investment Managers and Retirement Scheme / Fund Custodians licensed under the RPA.

b) Retirement Scheme / Fund Investment Manager

By the 1st June 2015, Asset Managers registered in terms of the Special Funds (Regulation) Act are required to complete and submit the application form for an Investment Manager (Transitional Process). This application may be downloaded from the MFSA's website.

N.B. Please refer to the Appendix 1 attached to this letter for further guidance in relation to the appointments of Back Office Administrator, Investment Advisors or Introducers.

2. Schemes / Funds

a) Personal Retirement Schemes

By the 1st June 2015, Retirement Scheme Administrators administering Schemes registered in terms of the Special Funds (Regulation) Act are required to:-

- complete and submit the application form for Personal Retirement Schemes (Transitional Process). This application may be downloaded from the MFSA's website; and
- submit a revised Scheme's Constitutional Document, Scheme Document and Scheme Particulars (all in tracked format) reflecting, as a minimum, the information outlined in Appendices 1 to 3 (as applicable) of Part C - Appendices to Pension Rules for Personal Retirement Schemes.

b) Member Directed Schemes

By the 1st June 2015 where a Personal Retirement Scheme is a member directed scheme, Retirement Scheme Administrators are required to confirm that the supplementary conditions for member directed schemes set out in Part B.9 of the Standard Licence Conditions for Personal Retirement Schemes issued under the RPA are being met.

c) Occupational Retirement Schemes

By the 1st June 2015, Retirement Scheme Administrators administering Schemes registered in terms of the Special Funds (Regulation) Act are required to:-

- complete and submit the application form for Occupational Retirement Schemes (Transitional Process). This application may be downloaded from the MFSA's website; and
- submit a revised Scheme's Constitutional Document, Scheme Document and Scheme Particulars (all in tracked format) reflecting, as a minimum, the information outlined in Appendices 1 to 3 (as applicable) of Part C - Appendices to Pension Rules for Occupational Retirement Schemes.

d) Retirement Funds

By the 1st June 2015, any person, by whatever name designated, responsible for the operation, administration, management of the fund registered in terms of the Special Funds (Regulation) Act is required to:

- complete and submit the application form for Retirement Funds (Transitional Process). This application may be downloaded from the MFSA's website; and

- submit a revised Retirement Fund's Constitutional Document and Fund Particulars (in tracked format) reflecting, as a minimum, the information outlined in Appendices 1 and 2 of Part C - Appendices to Pension Rules for Retirement Funds.

A person, scheme or arrangement, or fund registered under Special Funds (Regulation) Act, will only be permitted to continue carrying on the respective licensed activities under the RPA, by adhering to the requirements of **the transition process**.

Any queries in relation to the above should be sent directly to Mr Claudio Xerri (cxerri@mfsa.com.mt) or Ms Stephanie Bugeja (sbugeja@mfsa.com.mt).

Appendix 1

In accordance with the requirements of the RPA any person who, in or from within Malta, provides to licence holders, or to similar or equivalent persons overseas, the services of:-

- Back Office Administrator; and/or
- Investment Advisor; and/or
- Introducer,

is requested to adhere to the requirements set out in the respective sections below.

1. **Back-Office Administrator**

Any person who, in or from within Malta, provides to a Retirement Scheme and/or a Retirement Fund registered under the SFA or the RPA, or to similar or equivalent persons overseas, any one or more of the back-office administrative activities stipulated in Part C of the Pension Rules in relation to a Retirement Scheme and/or in relation to a Retirement Fund is required to apply for recognition as a Retirement Scheme / Fund Back-Office Administrator by the Authority under article 7 of the RPA in the form set out in Part F – Schedule G or Part F – Schedule H, as applicable.

An abridged application process shall apply in the case where a company applying for recognition as a Retirement Scheme / Fund Back-Office Administrator is in possession of a recognition certificate issued under the Investment Services Act, 1994 to provide back-office administration services.

2. **Investment Advisor**

Where a Retirement Scheme Administrator or the Retirement Scheme/ Fund has appointed/intends to appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Scheme, the Retirement Scheme Administrator shall submit to the Authority evidence of the appointment by a written agreement which agreement shall be in line with paragraph 1.3.19 of Part B – Standard Licence Conditions for Personal Retirement Schemes with paragraph 1.4.19 of Part B –

Standard Licence Conditions for Occupational Retirement Schemes; and with paragraph 1.4.14 of Part B – Standard Licence Conditions for Retirement Funds.

3. Introducer

Where a Personal Retirement Scheme and/or Retirement Scheme Administrator has appointed or intends to appoint persons to act as introducers to carry out activities as prescribed in Part D.1 – Pension Rules for Introducers, it shall:

- a) Establish and maintain a register containing the names and addresses of the introducers and any other particulars as the Personal Retirement Schemes / Retirement Scheme Administrators may deem appropriate. In this regard, before appointing a person as an introducer, a Personal Retirement Scheme / Retirement Scheme Administrator should obtain information on the person's standing and professional reputation and must be satisfied, on reasonable grounds, that the person being considered is:
 - of good repute and integrity; and
 - suitable for effecting introductions between customers and the Personal Retirement Scheme / Retirement Scheme Administrator.
 - b) maintain a record of any remuneration paid to each introducer;
 - c) ensure that introducers are adequately informed of the activities which they may undertake as introducers;
 - d) put in place adequate controls and procedures for effecting introductions so as to ensure that appointed introducers do not carry on any activities which would require the individual or entity to be licensed or recognised under the Act. In this regard, introducers should be made aware of such controls and procedures.
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