

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation regarding the Review of the Regulatory Framework under the Special Funds (Regulation) Act

Explanatory Note

8th June, 2007

1.0 Introduction

- 1.1 The Special Funds (Regulation) Act (“SFA”) came into effect on 1st October 2002. Developments in the field of occupational pensions during the past four years have prompted the need to review that law and the regulations that have been issued under its provisions.

This Explanatory Note to Circular 01/2007 relates to changes being proposed to the regulatory framework under the SFA and provides some general information on the proposed Bill as well as an outline of the main changes with reference to the SFA. The extent of the revisions suggest the drafting of new legislation, entitled the Retirement Pensions Act (“RPA”), which would replace the current SFA.

- 1.2 The enclosed draft Bill is being issued for consultation to interested parties prior to implementation. The proposed Bill provides a regulatory framework for the regulation of retirement schemes, retirement funds and service-providers related thereto. The Bill is primarily intended to regulate the establishment of:

- a. **Retirement Schemes** which may be:
 - Occupational Schemes (i.e. arrangements to which an employer or employer and employees contribute towards the provision of retirement benefits) or
 - Personal Schemes (i.e. arrangements to which an individual contributes towards the provision of retirement benefits for the benefit of that individual).
 - b. **Retirement Funds** which are pension pooling vehicles that may be used by local / overseas Retirement Schemes for the investment of the scheme's assets.
 - c. **Service Providers** (including Administrators, Asset Managers, Advisors, Custodians and back-office administrative service providers) that may provide services to licensed Retirement Schemes and Retirement Funds or to equivalent arrangements overseas.
- 1.3 The Bill represents a full revision of the SFA taking primarily into account:
- a. developments arising following the transposition of the EU Pensions Directive (Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision); and
 - b. comments raised by the industry in previous consultations.

The Bill also reflects a legislation which is more principle based with detailed conditions to be included in supporting regulations and rules.

- 1.4 In view of the proposed changes to the SFA, the Legal Notices and Directives currently supporting the SFA would also need to be changed. Consultation Papers regarding the amendments to the supporting Legal Notices and Directives will be issued in this regard in due course.

2.0 Salient amendments

2.1 The following is a summary of the main changes:

- a. *Change in name* – The new law is to be named the Retirement Pensions Act, The new name gives a clear indication that the act relates to pensions;
- b. *Structure of the law* – The RPA provides a regulatory framework which is principle based with details to be included in the rules and regulations. The intention is to make the law more user-friendly and less prescriptive than the SFA which includes various operational requirements in the act itself. The operational requirements will thus be included in supporting Regulations in the form of Legal Notices issued under Ministerial power and in the form of Rules issued by the Competent Authority.

There have been accordingly various changes with reference to the SFA including the removal or rewording of certain articles currently found under the SFA and the introduction of new articles.

Retirement schemes and retirement funds have been catered for separately in the new law for greater clarity. Common regulatory requirements however have been grouped together and applied, where relevant, to retirement schemes, funds and service providers alike. The drafting approach adopted for the RPA is similar to the one under the Investment Services Act, 1994. The RPA has also been aligned, where relevant, with recent amendments proposed under the Investment Services Act.

The proposed Bill is structured into eight Parts. Part I includes definitions for the terminology used; Part II relates to the licensing and recognition requirements, Part III to the application requirements for licences and recognition, and provisions relating to the granting and revocation of licences and recognitions; Part IV deals with governance requirements; Part V includes

other requirements and general provisions; Part VI relates to powers to make regulations; Part VII deals with regulatory and investigatory powers; Part VIII relates to appeals, remedies, sanctions and confidentiality and Part IX is a miscellaneous section.

The schedules to the current SFA have been removed and a new schedule introduced with details of the licensable activities for service providers.

c. *Change in terminology*

- Instead of reference to “Directives” (guidelines), the proposed Bill now refers to “Pension Rules”.
- The term “registration” is also no longer used and instead the RPA makes use of the term “licence”. The term “licence holder” has also been introduced.
- The term “service providers” has been introduced to capture all the functionaries of retirement schemes / funds.
- A number of new definitions have also been included for better clarity.

d. *Different legal forms* – The RPA provides for the establishment of retirement schemes in different legal forms, not only by contract or trust but also in a corporate form by way of a SICAV constituted by Memorandum and Articles of association under Company Law. The choice of legal structure will be considered in greater detail in the Pension Rules supporting the RPA.

The RPA allows retirement funds to take legal forms other than the corporate vehicle currently provided for under the SFA.

The Companies Act will be updated to reflect the possibility for Retirement Schemes to be set up as SICAVs.

- e. *Introduction of recognition requirement for back-office administrators* – A new recognition regime has been introduced for persons providing back-office administrative activities. This is a new area which was previously not catered for under the SFA. Further details on back-office administrative activities and the applicable recognition requirements will be included in Pension Rules to be issued by the competent authority under the RPA.
- f. *Other*
- The concept of a “retirement fund administrator” has been removed in order for the law to be less “prescriptive” with respect to retirement funds. The governance of retirement funds will be dealt with in more detail in Pension Rules issued by the Competent Authority.
 - The definition of “retirement scheme administrator” has been amended to reflect more the role of a governing body responsible for the overall operation of the retirement scheme. A full section of the Bill has been included reflecting governance issues.
 - Details regarding the Technical Funding Requirement have been removed from the law and are to be included in Legal Notices issued under the RPA.

3.0 Consultation Period

- 3.1 The MFSA kindly requests interested parties to submit their comments in relation to the draft Bill, by not later than Friday 20th July, 2007. Comments should be submitted in writing and addressed to:

The Deputy Director
Pensions Unit
Malta Financial Services Authority
Notabile Road
Attard BKR 14
E-mail address: pu@mfsa.com.mt

3.2 Kindly contact Mr. Robert Higgans should you have any queries or require any clarifications.

4.0 Way Forward

4.1 It is intended that, following the end of the consultation period on the proposed Bill and the review of the comments received in this regard, the draft Legal Notices and Pension Rules to be eventually issued under the RPA would also be circulated for consultation.

5.0 Important Note

5.1 The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

5.2 In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

5.3 This consultation is also being exercised at the request and on behalf of the Ministry of Finance.