

# Consultation on Pension Rules on Occupational Retirement Schemes on the Encouragement of Long-Term Shareholder Engagement

Ref: 05-2019

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NOTE: 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 from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

## 1. Purpose

On the 20th May 2017, Directive (EU) 2017/828 of the European Parliament and of the Council of the 17 May 2017 ("the New EU Shareholders Rights Directive"), which amends Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, was published in the Official Journal of the European Union. The said Directive came into force on the 10th June 2017. This New EU Shareholders Rights Directive aims to encourage transparent and active engagement by shareholders of listed companies by revising the current Shareholders' Rights Directive 2007/36/EC. The amended Directive establishes specific requirements in order to encourage shareholder long-term engagement and increase transparency. Member States are required to transpose the New EU Shareholders Rights Directive by the 10th June 2019.

Any comments and feedback are to be addressed to the Insurance and Pensions Supervision by email on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt). Interested parties are kindly asked to submit any comments in writing by not later than **Friday 3rd May 2019**.

## 2. Scope

The New EU Shareholders Rights Directive introduces a new definition of "institutional investor" which is defined as "an institution for occupational retirement provision falling within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;". The said Directive also introduces a new Chapter 1b applicable to institutional investors, to the extent that they invest directly or through an asset manager in shares traded on a regulated market.

Therefore, an Occupational Retirement Scheme licensed under the Retirement Pensions Act (Cap.514), investing in shares traded on a regulated market, falls within the scope of the said Directive and is now captured by some of the requirements of the New EU Shareholders Rights Directive, when acting as "institutional investors" in listed companies. It is also being proposed to apply the requirements applicable to "assets managers" in terms of this Directive to Investment Managers licensed under the Retirement Pensions Act to carry out investment management services for an Occupational Retirement Scheme.

## 3. Engagement Policies

In terms of Article 3(g) of the New EU Shareholders Rights Directive, Occupational Retirement Schemes falling within the definition of "institutional investors" are required to be more transparent as regards their approach to shareholder engagement. Under the proposed amendments, Occupational Retirement Schemes will be required to develop and publicly disclose a policy on shareholder engagement or to explain why they have chosen not to do so.

The policy on shareholder engagement should describe how such Schemes integrate shareholder engagement in their investment strategy, which different engagement activities they choose to carry out and how they do so. The engagement policy should also include policies to manage actual or potential conflicts of interests. It is being proposed that Occupational Retirement Schemes publicly disclose, annually, how they have implemented any engagement policy, along with certain detailed information. They will be required to explain the most significant shareholder votes that they have participated in. They must also disclose how they have cast votes at general meetings. Occupational Retirement Schemes will have an option not to disclose insignificant votes.

#### **4. Investment strategy of an occupational retirement scheme and arrangements with Investment Managers**

In terms of the proposed paragraph 1.11, which transposes the requirements of Article 3(h), Occupational Retirement Schemes will be required to publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets. The proposed Appendix also contains requirements that where an Investment Manager invests on behalf of an Occupational Retirement Scheme, such Scheme is to publicly disclose the information found paragraph 1.12 regarding its arrangement with the Investment Manager.

In line with the New EU Shareholders Rights Directive, the MFSa proposes to create a requirement that this information be available free of charge on the website of the Occupational Retirement Scheme. It should be updated on an annual basis, unless there is no material change.

#### **5. Transparency on the Investment Manager**

Paragraph 1.15 of the proposed Appendix will require investment managers to disclose certain information, at least on an annual basis to Occupational Retirement Schemes. The aim of this increased transparency so as to enable Occupational Retirement Schemes to assess whether and how the Investment Manager is acting in their best long-term interests and to assess whether the strategy of the Investment Manager allows for effective shareholder engagement.