

**PENSION RULES FOR PERSONAL  
RETIREMENT SCHEMES ISSUED IN  
TERMS OF THE RETIREMENT  
PENSIONS ACT, 2011**

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## REVISIONS LOG

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VERSION	DATE ISSUED	DETAILS
1.00	7 January 2015	Issued
2.00	28 December 2018	Amendments to the Pension Rules for Personal Retirement Schemes
3.00	11 December 2020	MFSA Releases its Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements
4.00	16 April 2021	Circular on the amendments to the Pension Rules and Legal Notices

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## INTRODUCTION

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## The Retirement Pensions Act, 2011

The Retirement Pensions Act, (“the Act”), provides a statutory basis for the regulation in Malta of Retirement Schemes, Retirement Funds and related Service Providers:-

- *Retirement Schemes:* A Retirement Scheme may be an Occupational Retirement Scheme or a Personal Retirement Scheme established for the principal purpose of providing Retirement Benefits.

The Act makes it illegal for a retirement scheme situated in Malta to carry on any activity for the provision of Retirement Benefits in or from within Malta, or for any person to 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 duly licensed under the Act. The Act also makes it illegal for a retirement scheme formed in accordance with or existing under the laws of Malta to carry on any activity for the provision of Retirement Benefits in or from within a country, territory or other place outside Malta unless it is duly licensed under the Act.

- *Retirement Funds:* Retirement Funds are arrangements established for the principal purpose of holding and investing contributions made to one or more retirement schemes and/or overseas retirement schemes.

The Act makes it illegal for a retirement fund situated in Malta to 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 duly licensed under the Act. The Act also makes it illegal for a retirement fund formed in accordance with or existing under the laws of Malta to 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 it is duly licensed under the Act.

- *Service Providers:* Service Providers are entities that are licensed under the Act to provide one or more services listed in the Schedule to the Act.

The Act stipulates that a person requires a licence under the Act to provide to a Retirement Scheme and/or Retirement Fund or to a similar or equivalent arrangement overseas, any one or more of the services listed in the Schedule to the Act. The Act also makes it illegal for a body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, to provide or hold itself out as providing a service in or from within a country, territory or other place outside Malta unless duly licensed under this Act.

## The Pension Rules made by the MFSA by virtue of the Act

Pursuant to article 38(1) of the Act, the administration of the Act shall be vested in the MFSA.

In terms of article 38(2) of the Act, the MFSA may make Pension Rules as may be required for carrying into effect any of the provisions of the Act. The MFSA may amend or revoke such Pension Rules which shall be binding on licence holders and under the Act and others as may be specified therein.

In exercise of those powers, the MFSA has made these Pension Rules for Personal Retirement Schemes.<sup>1</sup>

Breach of these Pension Rules may give rise to administrative penalties and other measures against the offending person, and to offences, in terms of articles 46 and 48, of the Act, respectively.

## **Structure of the Pension Rules for Personal Retirement Schemes**

The Pension Rules for Personal Retirement Schemes are divided into four main parts:

- Part A specifies the nature and licensing process and criteria applicable to Personal Retirement Schemes;
- Part B sets out the Standard Licence Conditions for Personal Retirement Schemes licensed under the Act;
- Part C includes the Appendices and reporting schedules;
- Part D contains Application forms and related information.

## **General**

Any questions concerning the contents of these Pension Rules for Personal Retirement Schemes and their practical application should be addressed to the Insurance and Pensions Supervision Unit of the MFSA.

Copies of the Pension Rules for Personal Retirement Schemes can be downloaded from the MFSA's website ([www.mfsa.com.mt](http://www.mfsa.com.mt)).

These Pension Rules for Personal Retirement Schemes refer to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself. Where necessary, reference should be made directly to the provisions of the Act. Capitalised words and expressions used here and defined in the Act have the same meaning as in the Act, unless indicated otherwise in the Glossary to the Pension Rules issued under the Act.

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<sup>1</sup> There are separate Rules for Occupational Retirement Schemes, Retirement Funds and for Service Providers which are available from the MFSA website.

## **PART A**

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### **AN OVERVIEW OF THE LICENSING REQUIREMENTS APPLICABLE UNDER THE RETIREMENT PENSIONS ACT, 2011 (“the Act”)**

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## **A.1 Overview of Personal Retirement Schemes**

### **A.1.1 Definition**

- 1.1.1 In terms of articles 2 and 3 of the Act, a Personal Retirement Scheme is a retirement scheme which is not an occupational retirement scheme and to which contributions are made for the benefit of an individual with the principal purpose of providing Retirement Benefits for that individual. Retirement Benefits refer to benefits payable with reference to retirement or on having reached a particular age, and may involve supplementary benefits paid on disability or death.
- 1.1.2 Moreover, a scheme or arrangement does not constitute a Personal Retirement Scheme under the Act, if it provides for:
- (a) the payment of Retirement Benefits to five or fewer Members; or
  - (b) 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 specified in Pension Rules for Personal Retirement Schemes, except in those cases where the retirement scheme or arrangement provides that the payment is made by reason of the disability or death of a Member.

Provided that a scheme or arrangement described in paragraph (a) above may, by written notice to the MFSA, apply to be considered as a Personal Retirement Scheme for purposes of the Act.

- 1.1.3 If there is any doubt as to whether, for the purposes of the Act, a scheme or other arrangement is a Personal Retirement Scheme within the meaning of the Act, the MFSA should be approached and it shall conclusively determine the matter.

### **A.1.2 Establishment and Form**

- 1.2.1 A Personal Retirement Scheme may be established in the following forms under Maltese law:
- (a) as an investment company with variable share capital (“SICAV”) under the Companies Act (Chapter 386 of the Laws of Malta);
  - (b) as a non-discretionary trust by trust deed under the Trusts and Trustees Act (Chapter 331 of the Laws of Malta);
  - (c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta); or
  - (d) in any other legal form as may be approved by the MFSA.

1.2.2 A Personal Retirement Scheme shall be established exclusively:

- (a) as a non-member directed Scheme; or
- (b) as a member-directed Scheme as specified under Section B.9 of Part B of these Pension Rules.

1.2.3 A non-member directed Scheme shall include a Scheme which offers a selection of investment options by the Retirement Scheme Administrator (a number and diversity of investment choices) for the Member to choose from. In that case, the following conditions shall be complied with by the Retirement Scheme Administrator of such Scheme:

(a) the Scheme Document shall clearly outline the list of investment options it offers to Members, approved by the Investment Manager of the Scheme. The said investment options shall also include a default investment option adequate for retail members. Members are to be provided with complete information as to the investment options sufficient to permit them to construct an appropriate investment portfolio in light of their own individual circumstances and in the context of the Scheme Document;

(b) information provided to the Members regarding any investment options offered by the Scheme is to be standardised and readily comparable. As a minimum, this information is to include disclosure of all charges, fees and expenses associated with each investment choice, as well as portfolio composition and historical data.

### **A.1.3 Nature and Operation**

1.3.1 A Personal Retirement Scheme is established with the purpose of providing retirement benefits to an individual or a number of unrelated individuals. Access to these Schemes is not offered through the employment of the individuals concerned. The latter is meant to exclude personal pension schemes where the relationship of group is one of employment, but access refers to the fact that the Scheme itself is not established at the initiative of the employer.

1.3.2 A Personal Retirement Scheme is operated in accordance with a written instrument (known as the "*Scheme Document*") which lays down the rules stipulating the Retirement Benefits and the conditions under which these are granted. The Scheme Document may be incorporated as part of the Constitutional Document of the Scheme.

1.3.3 A Personal Retirement Scheme may offer retirement benefits by reference to the contributions and the returns or gains that are received on the invested contributions less expenses and any losses in relation thereto. A Personal Retirement Scheme may also provide cover against Biometrical Risk or guarantee a given level of investment performance or level of benefits subject to the conditions outlined in the Pension Rules for Personal Retirement Schemes.

1.3.4 Personal Retirement Schemes are schemes established by a Retirement Scheme Administrator, and their membership is open to a number of individuals acceptable to the Retirement Scheme Administrator.

## A.1.4 Governance Arrangements & Related Parties

- 1.4.1 A Personal Retirement Scheme, irrespective of its legal form, requires the appointment of the following:
- (a) a *Retirement Scheme Administrator* - A Service Provider licensed under the Act who would be responsible for the overall operation, management and administration of the Personal Retirement Scheme. The Retirement Scheme Administrator is required to carry out duties specified in Part B.1 of the Pensions Rules for Service Providers issued in terms of the Act.<sup>2</sup> The Retirement Scheme Administrator carries out the day-to-day administration duties and may also, in the case of non-member directed Schemes, either carry out the investment management of the assets or provide custody services, if it is duly licensed to do so under the Act;
  - (b) an *Auditor*, in terms of the article 16 of the Act; and
  - (c) an *Actuary* (whose appointment is required only in the case of a Defined Benefit Retirement Scheme).
- 1.4.2 A Personal Retirement Scheme requires the appointment of an Investment Manager and Custodian, unless one of the functions is carried out by the Retirement Scheme Administrator. The appointment of an Investment Advisor is optional.
- 1.4.3 Without prejudice to the provisions of Part IV of the Act relating to governance, the MFSA may consider different structural and governance proposals as long as these arrangements provide appropriate protection for Members and Beneficiaries of the Personal Retirement Scheme and its assets.

## A.1.5 Mandatory Functions

- 1.5.1 A Personal Retirement Scheme, irrespective of its legal form, is also required to have the following:

(a) *Investment Management Function*

The function relating to the investment management is mandatory. Depending on the structure and nature of the Personal Retirement Scheme an investment manager, separate from the Retirement Scheme Administrator, may need to be appointed for the investment management of the assets. Separation of the custody and investment management function is compulsory.

(b) *Custody Function*

The function relating to the custody of assets is mandatory. Depending on the structure and nature of the Personal Retirement Scheme, a custodian separate from the Retirement Scheme Administrator may need to be appointed for the safe-keeping of assets. The Custodian shall also be responsible for monitoring the extent to which the

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<sup>2</sup> Please refer to the Rules issued under the Act for Service Providers for details regarding the licensing criteria and requirements as well as the operational conditions applicable to Service Providers.

Investment Manager is abiding by the investment restrictions of the Scheme laid out in Part B.3.2 of the Pension Rules for Personal Retirement Schemes. Separation of the custody and investment management function is compulsory.

- 1.5.2 In delegating/outsourcing functions to third parties, the *Retirement Scheme Administrator* retains responsibility for the overall operation, management and administration of the Personal Retirement Scheme and the investment management and custody of the assets of the Retirement Scheme. The Retirement Scheme Administrator is expected to put in place adequate monitoring arrangements to ensure the appointed third parties are carrying out the functions in line with the stipulated requirements.

#### **A.1.6 Funding**

- 1.6.1 Personal Retirement Schemes are funded by the *Contributor(s)*, who may be either:

- (a) solely the individual concerned;
- (b) any other person (including the Employer) on behalf of the individual Member.

#### **A.1.7 Technical Provisions**

- 1.7.1 A Personal Retirement Scheme providing cover against biometric risks or guaranteeing a given level of investment performance or given level of benefits is required to meet certain technical provisions requirements as set out in the Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2015 and Part B of these Pensions Rules for Personal Retirement Schemes.

#### **A.1.8 Investment of Contributions**

- 1.8.1 A Personal Retirement Scheme is required to invest its Contributions in accordance with the Constitutional Document, Scheme Document and Scheme Particulars (as applicable), and the investment restrictions set out in Part B of the Pension Rules for Personal Retirement Schemes issued in terms of the Act. A Personal Retirement Scheme may opt to invest either directly or indirectly on the market.

## A.2 Licensing Requirements

### A.2.1 Licensing Requirement

2.1.1 In terms of article 4 of the Act, a Personal Retirement Scheme requires a licence to carry on any activity for the provision of Retirement Benefits. In terms of this article:

- (a) no retirement scheme shall carry on any activity for the provision of Retirement Benefits in or from within Malta unless such scheme is situated in Malta; and
- (b) 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; and
- (c) 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 scheme is situated in Malta,

unless such scheme is duly licensed under the Act.

2.1.2 Subarticle (6) of article 4 of the Act permits the initial steps for the incorporation or establishment of a Personal Retirement Scheme to be taken before a licence has been obtained, but a retirement scheme may not deal or carry out any licensable activity before it is licensed.

### A.2.2 Licensing Criteria

2.2.1 A Personal Retirement Scheme must be constituted and structured in line with the requirements set out by the MFSA and must have a Scheme Document as stipulated in Part B.2.1 of the Pension Rules for Personal Retirement Schemes. Moreover, the MFSA shall refrain from licensing a Personal Retirement Scheme unless it is satisfied that:

- (a) the Personal Retirement Scheme and the *Retirement Scheme Administrator*, will comply with and observe the provisions of the Act and any regulations or Pension Rules made thereunder;
- (b) the Personal Retirement Scheme and *Retirement Scheme Administrator* are fit and proper persons, also to carry out the functions required of them;
- (c) the name of the Personal Retirement Scheme is one which, in the opinion of the MFSA, is not misleading; and
- (d) any aspect of or related to the application does not raise any regulatory concerns.

2.2.2 When considering whether to grant or refuse to grant a licence to a Personal Retirement Scheme, the MFSA shall in particular have regard for:

- (a) the protection of Members and Beneficiaries;
- (b) the promotion of competition and choice; and,



- (c) the reputation and suitability of the Personal Retirement Scheme, the persons responsible thereof and all other parties connected therewith.
- 2.2.3 The MFSA will consider the nature of the Personal Retirement Scheme and will need to be satisfied that appropriate governance structures and mechanisms are in place. Sound and prudent management, adequate resources, and a responsible attitude towards Members and Beneficiaries are essential. The business should be well organised and have adequate controls and sufficient records should be maintained to demonstrate these attributes.
- 2.2.4 The MFSA will also need to be satisfied that the applicant, the Service Providers and the related parties are fit and proper to provide or carry out the indicated activities. The MFSA has the right to refuse a Licence if it does not approve a party involved with the Personal Retirement Scheme.
- 2.2.5 The "fit and proper" test is one which a Personal Retirement Scheme and its Service Providers and related parties must satisfy on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that it meets the required standards is on the Personal Retirement Scheme and its Service Providers and related parties. It is not the duty of the MFSA to prove the converse before it can refuse or before it intends to suspend or cancel a Licence. The MFSA's approach is cumulative that is to say the MFSA may conclude that a Personal Retirement Scheme and/or its Service Providers and/or related parties has failed the test on the basis of considering several situations, each of which on its own merit would not lead to that conclusion. An open and honest relationship with the MFSA is thus essential. When arriving at its decision as to whether a Personal Retirement Scheme and its Service Providers and related parties are fit and proper, the MFSA will take account of all material facts whether such facts are divulged or not (for example in respect of a Director's criminal record). It should be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.
- 2.2.6 In general terms, there are three criteria which must be all met, to satisfy the "fit and proper" test:
- (a) integrity;
  - (b) competence; and
  - (c) solvency.

Integrity involves the Personal Retirement Scheme and its Service Providers and related parties acting honestly and in a trustworthy fashion in relation to the Members and Beneficiaries.

Competence means that those people carrying on the business of the Personal Retirement Scheme should be able to demonstrate an acceptable amount of knowledge, qualifications, professional expertise and experience directly relevant to the retirement activities with which they are dealing. The MFSA will also look into the experience and track record of all parties who will be involved in the management of the Personal Retirement Scheme to assess competence. The degree of competence required will depend upon the job being performed.

Solvency means ensuring that proper financial control and management of liquidity and capital is applied. The business should have sufficient technical/ financial resources to meet not only the financial demands on the business but also the technical/ financial resources requirements established by the MFSA.

- 2.2.7 Although Personal Retirement Schemes may vary in nature, the MFSA will apply consistent standards in dealing with different types of Personal Retirement Schemes. Each application is assessed on its own merits and on the basis of the relevant circumstances.

### **A.2.3 Application Documents**

- 2.3.1 A request for the licensing of a Personal Retirement Scheme should be made by submitting a duly completed Application in the form set out in Schedule A in Part D to these Pension Rules for Personal Retirement Schemes, supported by the documents requested in the Application Form. It is important to note that there are two separate Application Forms, one for member-directed Schemes and one for non-member directed Schemes, and therefore the relevant Application Form should be completed. The MFSA may require any additional documents as deemed necessary.

### **A.2.4 The Licensing Process**

- (a) The Pension Rules for Personal Retirement Schemes should be read carefully before an Application Form for licensing is submitted. It is recommended that due consideration is given to the applicable legal and regulatory requirements. Applicants may wish to arrange to meet representatives of the MFSA in advance of submitting a formal application for licensing and, to describe the background to its application and the way in which it intends to operate. Although guidance will be given on the applicable regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of an Application will remain with the Applicant.
- (b) When submitting an application, the application pack should be as comprehensive as possible. An application is deemed to have been officially submitted once a full application pack (i.e. Application Form and all relevant supporting documentation) together with the relevant application fee is submitted to the MFSA. In the instance where application documents are submitted in a piecemeal fashion or are incomplete, the processing of an application will not start and will be delayed until receipt of all the relevant documents and fees concerned.

The application forms and related Schedules in Part D under these Pension Rules should not be amended in any way. All questions in the application form should be answered and any questions which are not relevant to the application at hand should be marked 'Not Applicable' and not deleted.

- (c) Following submission, the Application and supporting documentation will be reviewed and comments provided to the Applicant directly and/or to the Applicant's professional advisors. The MFSA may ask for more information and

may make such further enquiries as it considers necessary. The MFSA will only accept comments on issues arising from its review of the application documents, either directly from the Applicant or the professional advisors thereof or from any other person if the latter is so authorised by the Applicant upon evidence of the said authorisation. The 'fit and proper' checks begin at this stage.

- (d) The MFSA will analyse the submissions and on the basis of this, make a decision regarding the licensing application.

As part of this process the Standard Licence Conditions which are to apply are also determined. Some of the Standard Licence Conditions outlined in the Pension Rules for Personal Retirement Schemes may not be applicable or be amended (where the circumstances justify such treatment) and supplementary conditions applied.

- (e) Following notification of the MFSA's decision regarding the licensing application, the Applicant will be required to finalise any outstanding matters, such as (in the case of a new entity) its incorporation and capitalisation.
- (f) Thereafter, licensing will be effected. Where the application is one of a number of related licensing applications, the MFSA will normally require that licensing for all the relevant entities takes place simultaneously. Alternatively, where the MFSA agrees that licensing need not be simultaneous, this will normally be on the condition that business is not commenced until all the necessary licences are in place.
- (g) The Applicant may also be required to satisfy a number of post-licensing matters prior to formal commencement of business.

### **A.2.5 Fees**

- 2.5.1 The fees can be found in the Retirement Pensions (Fees) Regulations, 2015. Where applicable, Application Fees are payable on submission of the Application Form and are not refundable. Annual Supervisory Fees are payable on the day the licence is granted and thereafter annually, upon the anniversary of that date. Details of the applicable fees can be downloaded from the MFSA's website.

### **A.2.6 Variation of a Licence**

- 2.6.1 Requests for a variation of a Licence should be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

## **A.3 Pension Rules for Personal Retirement Schemes licensed under the Act**

- 3.1 The Standard Licence Conditions which are to be satisfied by Personal Retirement Schemes licensed under the Act are stipulated in the Act itself, in Regulations made from time to time, and in these Pension Rules for Personal Retirement Schemes issued by the MFSA.

- 3.2 The Standard Licence conditions applicable are set out in Part B of these Pension Rules for Personal Retirement Schemes. While the Standard Licence Conditions should be sufficiently flexible to operate in a range of different situations, they may be supplemented or varied according to the particular nature of the Personal Retirement Scheme. A Personal Retirement Scheme licensed under the Act will be notified of the applicable Standard Licence Conditions which are to be applied under the Act or generally. The Standard Licence Conditions will be notified to the applicant prior to final licence.
- 3.3 The MFSA has the right, at any time and from time to time, to vary or revoke any Standard Licence Condition or impose new Standard Licence Conditions.

**PART B**

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**STANDARD LICENCE CONDITIONS  
FOR PERSONAL RETIREMENT SCHEMES**

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## **B.1 Constitution, Operation and Governance**

### **B.1.1 Constitution**

- 1.1.1 A Personal Retirement Scheme (“the Scheme”) shall be established in terms of Maltese Law. The Scheme may be established:
- (a) as an investment company with variable share capital (“SICAV”) in terms of the Companies Act (Chapter 386 of the Laws of Malta); or
  - (b) as a trust in terms of the Trust and Trustees Act (Chapter 331 of the Laws of Malta); or
  - (c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta); or
  - (d) in any other legal form approved by the MFSA.
- 1.1.2 The Constitutional Document of the Scheme shall contain, as a minimum, the information outlined in Appendix 1 in Part C of these Pension Rules. The contents of the Constitutional Document of a Scheme shall be approved by the MFSA in advance of the licensing of the Scheme.
- 1.1.3 The Scheme shall be established with the principal purpose of providing Retirement Benefits to Members and/or Beneficiaries.
- 1.1.4 The Scheme may be either a Defined Benefit Scheme or a Defined Contribution Scheme.

### **B.1.2 Operation of the Scheme**

- 1.2.1 The Scheme shall be operated in accordance with the Scheme’s Constitutional Document, Scheme Document, Scheme Particulars, the Standard Licence Conditions and with all applicable laws, regulations and rules, whether in Malta or elsewhere to which it is subject, including without limitation, the Act. Any changes in the activities which deflect from the information submitted in the application for licensing are subject to the prior approval of the MFSA.
- 1.2.2 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.
- 1.2.3 The Scheme shall only accept contributions from Contributor/s identified in the Scheme Document. Any contributions, other than in cash, shall be subject to the following requirements:
- (a) a report would need to be drawn-up by the Scheme’s auditor or Independent Qualified Valuer depending on the asset concerned. This report must describe each of the contributions as well as the methods of valuation used. The report shall state whether the values arrived at by these methods correspond at least to the number and par book value of the units to be issued in consideration

thereof and whether the Scheme remains in compliance with the applicable investment restrictions. The report, in which its conclusions shall be reproduced, shall be retained by the Retirement Scheme Administrator and made available to the MFSA upon request;

- (b) the Retirement Scheme Administrator would need to be satisfied that the investment restrictions of the Scheme will continue to be satisfied (if the contribution is accepted in the Scheme);
- (c) before accepting the asset in the Scheme, the Retirement Scheme Administrator must be satisfied that the legal process regarding the transfer of ownership of the assets to the Scheme has been completed;
- (d) the ownership of the assets passes to the Scheme.

1.2.4 The Scheme shall invest its Contributions in line with the Scheme Investment Objectives and Statement of Investment Principles outlined in the Scheme Document and Scheme Particulars and shall observe the investment restrictions in Part B.3.2 of the Pension Rules for Personal Retirement Schemes.

1.2.5 The commencement of payment of Retirement Benefits to a Member of the Scheme may not be made on a date that is earlier than that on which such Member has attained the age of fifty, or not later than that on which the Member attains the age of seventy-five.

1.2.6 The Scheme shall, taking into account the size, nature, scale and complexity of the said Scheme and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#).

### **B.1.3 Service Providers**

#### **Retirement Scheme Administrator**

- 1.3.1 The Scheme shall have a Retirement Scheme Administrator performing duties in connection with the overall operation and administration of the Scheme in accordance with the Pension Rules for Personal Retirement Schemes and the Pension Rules for Service Providers issued in terms of the Act.
- 1.3.2 The Retirement Scheme Administrator shall be an entity duly licensed to administer the operation of a retirement scheme under the Act, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Retirement Scheme Administrator.
- 1.3.3 The Retirement Scheme Administrator shall have a fiduciary role towards the members and beneficiaries, at all times, irrespective of the form in which the Scheme is established.
- 1.3.4 The Retirement Scheme Administrator shall have an established place of business in Malta.

#### **Investment Manager**

- 1.3.5 The Scheme may appoint an Investment Manager, to carry out the investment management function of the Scheme, independent from the entity carrying out the custody function in connection with the Scheme.
- 1.3.6 The Investment Manager of the Scheme may either be:
- (a) the Retirement Scheme Administrator if it is not undertaking the custody function for the Scheme itself and if duly licensed under the Act to carry out investment management services for a Scheme; or
  - (b) an entity licensed to carry out investment management services to Schemes under the Act; or
  - (c) an entity already licensed under the Investment Services Act, 1994, as a Category 2 or 3 Investment Services Licence Holder subject to an abridged application process; or
  - (d) an investment manager established in another Member State or EEA State and duly authorised for this activity in accordance with Directives 2009/65/EC, 2014/65/EU, 2013/36/EU, 2009/138/EC or 2011/61/EU, as amended from time to time, and carrying out its activities pursuant to the respective Directives, as applicable; or
  - (e) in the case of an entity established in a non-Member State or non-EEA State, an entity which the MFSA considers to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake investment management activities.



## **Custodian**

- 1.3.7 The Scheme may appoint a Custodian independent from the entity carrying out the investment management services in connection with the Scheme.
- 1.3.8 Where the assets of a Scheme are entrusted to a Custodian for safekeeping, the custodian shall, where applicable, be responsible to supervise the operation of a Scheme to monitor the extent to which the Investment Manager complies with the investment restrictions laid out in Part B.3.2 of the Pension Rules for Personal Retirement Schemes and in accordance with the Constitutional Document, Scheme Document, Scheme Particulars and these Licence Conditions. The Custodian in general shall ensure that the Scheme's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of Members of a Scheme have been received and that all cash of the Scheme has been booked in cash accounts opened in the name of the Scheme or of the Retirement Scheme Administrator, acting on behalf of the Scheme.
- 1.3.9 The Custodian of the Scheme shall either be:
- (a) the Retirement Scheme Administrator if it is not undertaking investment management function for the Scheme itself and if duly licensed under the Act to carry out custody services for a Scheme; or
  - (b) an entity licensed to carry out custody services to Schemes under the Act; or
  - (c) an entity already licensed under the Investment Services Act 1994 to act as a custodian subject to an abridged application process; or
  - (d) a credit institution licensed under the Banking Act, 1994 to act as a custodian subject to an abridged application process; or
  - (e) custodians or depositaries established in another Member State or EEA State and duly authorised for this activity in accordance with Directive 2014/65/EU or Directive 2013/36/EU, or accepted as a depository for the purposes of Directive 2009/65/EC or Directive 2011/61/EU, as amended from time to time, and carrying out its activities pursuant to the respective Directives, as applicable; or
  - (f) in the case of an entity established in a non-Member State or non-EEA State, an entity which the MFSA considers to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake custody services.

## **Investment Advisor**

- 1.3.10 A Scheme may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Scheme.
- 1.3.11 The Investment Advisor of a Scheme may either be:
- (a) an entity licensed to provide investment advice to Professional Clients under the Investment Services Act, (Cap.370); or

- (b) an investment advisor established in another Member State or EEA State and duly authorised for this activity in accordance with Directive 2014/65/EU and/or Directive 2016/97 (in the case of insurance-based investment products), as amended from time to time, and carrying out its activities pursuant to the respective Directives, as applicable; or
- (c) in the case of an entity established in a non-Member State or non-EEA State, an entity which the MFSA considers to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake investment advice.

## **Introducers**

- 1.3.12 A Personal Retirement Scheme may also appoint an Introducer as stated in Part D of the Pension Rules for Service Providers.

## **Independence Requirements**

### **General**

- 1.3.13 The entity undertaking the investment management of the Scheme shall, at all times, be a separate and independent entity from the entity undertaking the custody function, of the Scheme. Each of these entities shall act solely in the interests of the Members and Beneficiaries.
- 1.3.14 In the case of a Scheme incorporated as a SICAV, the Scheme shall at all times be independent from the entities undertaking the investment management and custody function of the Scheme.
- 1.3.15 In the instance that a Scheme is investing solely in a Retirement Fund, the Scheme and the Retirement Scheme Administrator, as applicable, shall be separate and independent from the Custodian and the Investment Manager of the Retirement Fund.
- 1.3.16 Any facts, relationships, arrangements or circumstances which may at any stage bring any required independence into question shall be declared to the MFSA as soon as the entity concerned becomes aware of any such matter.

### **Fitness and Properness**

- 1.3.17 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Service Provider and any related parties of the Scheme.
- 1.3.18 A Service Provider appointed by the Scheme shall, on a continuing basis, have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities.

## Appointments and Replacements of Service Providers

- 1.3.19 Where the Scheme or the Retirement Scheme Administrator, as applicable appoints any Service Provider:
- (a) the appointment must be effected and evidenced by a written agreement. The written agreement shall identify the terms of appointment and replacement including:
    - i. the services to be provided and any powers of the Service Provider to act on behalf of the Scheme or Retirement Scheme Administrator as applicable;
    - ii. the remuneration, fees, charges or expenses which are payable to such Service Provider including:
      - (aa) the basis of calculation and the proceedings for making changes in that calculation or changes to such remuneration, fees and charges;
      - (bb) the basis of payment (deduction or billing etc.);
      - (cc) the frequency of payment; and
      - (dd) whether the same are payable out of the Scheme's Assets;
  - (b) the Scheme or the Retirement Scheme Administrator, as applicable, shall ensure that it shall have a right of action against such Service Provider for any breach of its duties;
  - (c) the Scheme or the Retirement Scheme Administrator, as applicable, shall ensure, as a minimum, that it acts with due skill, care and diligence in:
    - i. selecting the Service Provider and assessing its suitability for the role contemplated ensuring that it has the appropriate skills and any necessary regulatory licence or approval to perform the tasks assigned to it;
    - ii. satisfying itself on an ongoing basis that the Service Provider remains suitable for the role contemplated and provides the relevant services to a proper and appropriate standard; and
    - iii. taking prompt and appropriate action if the Service Provider fails or reasonably appears likely to fail to provide its services to such standard.
- 1.3.20 The appointment, including the replacement, of any Service Provider, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of any Service Provider.
- 1.3.21 In the instance that the Scheme or Retirement Scheme Administrator, as applicable, outsources certain key functions (such as the Investment Management and Custody) in connection with the Scheme to a Service Provider, the MFSA has the right to information and to exercise powers of intervention to cover the provision of such outsourced functions by such Service Providers. This shall include the right by MFSA to relevant data held by the outsourcing service provider and the right for the MFSA to

carry out on-site inspections at the premises of an outsourcing service provider on any outsourced functions. The appointment of the Service Provider by the Scheme or Retirement Scheme Administrator, shall be subject to these conditions.

- 1.3.22 The provisions of SLC 1.3.19 to SLC 1.3.21 shall apply *mutatis mutandis* to the appointment of an Investment Advisor, where applicable.

#### **B.1.4 Auditor**

- 1.4.1 For the purposes of these Pension Rules, the Scheme shall appoint an auditor approved by the MFSA in terms of the Act. The appointment or replacement of an auditor of a Scheme shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of the auditor of a Scheme. The MFSA shall be entitled to be satisfied, on an on-going basis that the Scheme's auditor has the appropriate expertise and experience to carry out its functions.

- 1.4.2 An individual shall not be appointed as an auditor of the Scheme, nor an audit firm be appointed where the individual directly responsible for the audit or her/his firm is:

- (a) a director, partner, qualifying shareholder, officer, representative or employee of the Scheme, the Retirement Scheme Administrator or any Contributor;
- (b) a partner of, or in the employment of, any person in (a) above;
- (c) a spouse, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- (d) a person who is not otherwise independent of the Scheme, Retirement Scheme Administrator or any Contributor;
- (e) a person who is engaged under a contract of service to provide non-audit services to the Retirement Scheme Administrator or to any employer acting as Contributor;
- (f) a Contributor or Beneficiary to or of the Scheme;
- (g) a person disqualified by the MFSA from acting as an auditor of a Scheme;
- (h) an Affiliate of the Retirement Scheme Administrator.

- 1.4.3 The Scheme shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of the appointment. The letter of engagement shall contain at least the information in Appendix 9 in Part C of these Pension Rules for Personal Retirement Schemes. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

- 1.4.4 In respect of each annual accounting period, the auditor shall be required to include in the annual report of the Scheme, an audit report. The Scheme or the Retirement Scheme Administrator, as applicable, shall notify the MFSA immediately it becomes aware the Scheme's auditor intends to qualify the audit report.

- 1.4.5 On the appointment of an auditor, the MFSA shall be provided with the declaration referred to in Annex II to the Application Form for Licensing as a Personal Retirement Scheme.
- 1.4.6 If at any time, the Scheme fails to have an auditor in office for a period exceeding four weeks, the MFSA shall be entitled to appoint a person to fill the vacancy, the fees and charges so incurred being payable by the Scheme or Retirement Scheme Administrator.

### **B.1.5 Actuary**

- 1.5.1 A Defined Benefit Scheme shall appoint an Actuary in accordance with the Standard Licence Conditions outlined in Part B.6.3 of Part B of the Pension Rules for Personal Retirement Schemes. This requirement does not apply to a Defined Contribution Scheme for the purposes of SLC B.4.6 of Part B of the Pension Rules for Personal Retirement Schemes.

## **B.2 Documentation, Reporting & Records**

### **B.2.1 Scheme Document**

- 2.1.1 Each Scheme shall be operated in accordance with a “Scheme Document” which evidences or established the Scheme and which stipulates the Retirement Benefits and the conditions under which these are granted.
- 2.1.2 The Scheme Document shall at least contain the matters specified in Appendix 2 in Part C to these Pension Rules for Personal Retirement Schemes. The Scheme Document may be integrated as part of the Constitutional Document of the Scheme and the contents thereof included in the Constitutional Document or otherwise annexed to the Constitutional Document.
- 2.1.3 Without prejudice to any provisions of the Act, the Scheme Document and any amendments thereto shall require the prior approval of the MFSA before being effected.

### **B.2.2 Scheme Particulars**

- 2.2.1 In addition to the Scheme Document, the Scheme shall also prepare and maintain a document known as the “Scheme Particulars”. The Scheme Particulars shall describe the Scheme in sufficient detail for the Contributors, Members and Beneficiaries to make an informed judgement as to the nature of the Scheme and as to how the assets of the Scheme are being managed and invested and to be fully aware of the risks to which they will be exposed.
- 2.2.2 The Scheme Particulars shall, as a minimum, contain the matters specified in Appendix 3 in Part C of these Pension Rules for Personal Retirement Schemes. It shall be dated and maintained up-to-date and the section therein regarding the Statement of Investment Policy shall be revised at least every three years or more frequently where appropriate. This Statement is to be revised, without delay, after any significant change in the investment policy.
- 2.2.3 The Scheme Particulars and any amendments thereto shall require the prior approval of the MFSA before being effected.

### **B.2.3 Scheme Records & Reports**

- 2.3.1 The Scheme shall keep such accounting and other records as are necessary to enable it to comply with the Pension Rules for Personal Retirement Schemes and to demonstrate that compliance has been achieved.
- 2.3.2 The Scheme shall at all times maintain proper and accurate accounting records to show and explain the transactions, and assets and liabilities of the Scheme in order to disclose with reasonable accuracy the Scheme’s financial position. It shall also, at all times, maintain proper and accurate records in relation to the following:

- (a) the net asset value of the Scheme and its Sub-funds (where applicable) in accordance with the Investment Companies with Variable Share Capital As Retirement Scheme or Retirement Funds Regulations, 2015 and the Scheme Document;
  - (b) the Scheme’s Members, Contributor(s) and Beneficiaries;
  - (c) the contributions paid by each Contributor and the dates on which they were paid;
  - (d) action taken to recover contributions not paid on the due date;
  - (e) the amount of any deficit identified in relation to a Defined Benefit Scheme and the action taken in regard thereto;
  - (f) accrued pension benefits of the Beneficiaries;
  - (g) transfers of Members’ pension benefits into and out of the Scheme, the terms of such transfers and related asset movements;
  - (h) payments made to Members leaving the Scheme other than on a pension benefit transfer;
  - (i) any other payments into and withdrawals from the Scheme assets and the reason for such payment(s);
  - (j) any resolutions passed by or proceedings of Contributor(s) and/or Beneficiaries.
- 2.3.3 The Scheme shall retain records relating to a particular Member, Beneficiary or Contributor for the period expiring ten years after such person has ceased to be a Member, Beneficiary or Contributor. The Scheme shall retain records, including accounting records, which relate to the Scheme as a minimum for ten years after the Scheme Year to which they relate.
- 2.3.4 As a minimum, the Scheme shall prepare annual and half-yearly reports (including annual audited financial statements) which shall at least contain the matters specified in Appendix 4 and 5 in Part C of these Pension Rules for Personal Retirement Schemes.
- 2.3.5 The half-yearly report is to be submitted to the MFSA within three months of the end of the period concerned or at any other time as may be authorised or directed in writing by the MFSA.
- 2.3.6 The Scheme’s annual report shall contain information sufficient to enable Contributors, Members and Beneficiaries to make an informed judgement on the development, management, operation and financial performance of the Scheme.
- 2.3.7 The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA.
- 2.3.8 The Scheme’s annual report shall be prepared in conformity with International Financial Reporting Standards. Where the Scheme invests in a Retirement Fund

licensed under the Act, accounting policies used shall be consistent where applicable with those adopted in the relevant Retirement Fund's annual financial statements and shall be consistently applied. Financial returns shall not be misleading as a result of the misrepresentation or omission of any material item.

- 2.3.9 The annual report, together with a copy of the auditor's management letter and the auditor's report, shall be produced and submitted to the MFSA within six months of the end of the period concerned, or at any other time as may be authorised or directed in writing by the MFSA.
- 2.3.10 The Scheme shall submit such other information, additional financial returns and reports as the MFSA may from time to time request.
- 2.3.11 The financial year-end of the Scheme (including any changes thereto) shall be agreed with the MFSA.

#### **B.2.4 Compliance Report for the Scheme**

- 2.4.1 The Compliance Officer of the Retirement Scheme Administrator shall prepare a Compliance Report for the Scheme at least on a six monthly basis. In the case of a Scheme established as a SICAV, the Compliance Report shall also be presented to the Scheme's Board of Directors.
- 2.4.2 The Compliance Report for the Scheme shall indicate the requirements found in SLC 4.2.5 and 4.2.6 of Part B.4 of the Rules for Services Providers issued in terms of the Retirement Pensions Act.
- 2.4.3 A copy of the Compliance Report for the Scheme should be held in Malta at the office of the Retirement Scheme Administrator (or of the Scheme in case of a Scheme established as a SICAV). The Compliance Report shall be made available to the MFSA upon specific request and also during Compliance Visits.

#### **B.2.5 Schedule of Payments for Defined Benefit Schemes**

- 2.5.1 The Scheme set up as a Defined Benefit Scheme shall maintain and from time to time revise a schedule of payments, in the form described in Appendix 7 of Part C of these Pension Rules, showing:
- (a) the rates of contributions payable towards the Scheme;
  - (b) the dates on or before which such contributions are to be paid; and
  - (c) such other matters as may be prescribed.



### **B.3 Conditions relating to the investments of the Scheme**

#### **B.3.1 General**

- 3.1.1 The Retirement Scheme Administrator or the Investment Manager, as applicable, shall observe the Investment Objective, Policies and Restrictions.
- 3.1.2 The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document.
- 3.1.3 In deciding the Scheme's investment allocation, consideration shall be made of the need to have sufficient liquid funds to pay Retirement Benefits.
- 3.1.4 The Retirement Scheme Administrator or the Investment Manager, as applicable shall invest the assets of the Scheme in accordance with the investment restrictions set out in Part B.3.2 of these Pension Rules for Personal Retirement Schemes.
- 3.1.5 The Retirement Scheme Administrator shall ensure the proper disclosure of the investment policy and awareness by Members of the applicable investment risks arising. The Retirement Scheme Administrator should retain on its records, evidence of agreement by client with the disclosed investment policy.
- 3.1.6 The Scheme may hold ancillary liquid assets irrespective of its Investment Objective and policy.

#### **B.3.2 Investment Restrictions of a Personal Retirement Scheme ("the Scheme")**

- 3.2.1 Personal Retirement Schemes shall comply with the following investment restrictions:
- i. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall invest the assets of the Scheme in the best interest of the Members and Beneficiaries. In the case of a potential conflict of interest, the Scheme Administrator, or the Investment Manager that may appointed to manage the Scheme's assets shall ensure that investment activity is carried out in the sole interest of the Members and Beneficiaries;
  - ii. the Retirement Scheme Administrator or the Investment Manager, as applicable shall ensure that the assets of a Scheme are properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole;
  - iii. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall ensure that the assets of the scheme are sufficiently liquid and/or generate sufficient retirement income to ensure that retirement benefits payments can be met closer to retirement date for commencement of retirement benefits;
  - iv. subject to paragraph (vi), a Scheme shall not engage, directly or indirectly, in transactions with, or grant loans to, any of its Members or connected persons thereto;

- v. a Scheme shall not engage, directly or indirectly, in borrowing in connection with property purchases on behalf of any of its Members or connected persons thereto, other than on fully commercial terms, provided that the Scheme may borrow up to 50% of the amount of property purchased which must be valued by an Independent Qualified Valuer;
  - vi. immovable property held by the Scheme may be used by the Members or connected persons thereto provided that it is on fully commercial terms which must be valued by an Independent Qualified Valuer;
  - vii. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall ensure that, with the exception of the embedded derivative component within structured notes, a Scheme shall not make use of derivative financial instruments for speculative purposes;
  - viii. the Retirement Scheme Administrator or the Investment Manager, as applicable, shall ensure that where structured notes are included in the Scheme's assets, these will be permitted up to a maximum of 15% of the portfolio's total value, with no more than 10% of the Scheme's assets to be subject to the same issuer default risk;
  - ix. the Retirement Scheme Administrator or the Investment Manager, as applicable shall ensure that the assets of a Scheme shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole.
- 3.2.2 The provisions set out in SLC 3.2.1 are to be complied with by the person responsible for the investment management function in the Personal Retirement Scheme, which is to be carried out by the Investment Manager appointed by the Scheme, unless such function is carried out by the Retirement Scheme Administrator itself as permitted in terms of SLC 1.4.2.
- 3.2.3 The investment policy shall be clearly specified or agreed, as the case may be, with the Member and there shall be clear disclosure to the Member of all applicable risks.

### **B.3.3 Failure to comply with Investment Restrictions**

- 3.3.1 The following shall be the rules applicable in the event of an inadvertent breach of the investment restrictions:
- (a) if one or more of the Scheme's Investment Restrictions are at any time contravened for reasons beyond the control of the Retirement Scheme Administrator or Investment Manager, if appointed, the Retirement Scheme Administrator shall take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Members and Beneficiaries and, in any event, within the period of three months beginning on the date of discovery of the contravention of such restriction(s) or such other period as may be approved by the MFSA.

The above is aimed at addressing circumstances which may arise following acquisition of the Scheme's assets and include market price movements of the

Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Retirement Scheme Administrator or Investment Manager, as applicable, to comply with the Scheme's Investment Restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets;

- (b) forthwith upon the Custodian becoming aware that circumstances of a kind described above have arisen, the Custodian shall take such steps as are necessary to ensure that the Retirement Scheme Administrator or the Investment Manager comply with the requirement imposed by paragraph (a) above;
- (c) failure to comply with an Investment Restriction which may arise due to the circumstances outlined in (a) above shall not be considered as a breach of a Licence Condition and will therefore not be subject to the MFSA's notification requirements referred to in B.4.2. However, where the contravention is not remedied within the maximum three month period stipulated in (a) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

## **B.4 General Conditions**

### **B.4.1 General**

- 4.1.1 The Scheme shall state that it is licensed and regulated by the MFSA in all correspondence, advertisements and other documents. Wording similar to the following shall be used: *“Licensed and regulated as a Personal Retirement Scheme by the Malta Financial Services Authority”*.
- 4.1.2 The Retirement Scheme Administrator shall cooperate fully with any compliance test, inspection or other enquiry carried out by, or on behalf of, the MFSA. The Scheme shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information.
- 4.1.3 When requested to do so by the MFSA, the Scheme shall submit to arbitration in respect of any dispute between itself and a Contributor, Member or Beneficiary. Under such circumstances the MFSA shall be entitled to appoint an Arbitrator.
- 4.1.4 The Retirement Scheme Administrator shall make available to any Service Provider, auditor and actuary of the Scheme, the information and explanations needed to discharge the responsibilities arising from the respective role of Service Provider, auditor or actuary of the Scheme and in order to meet the MFSA’s requirements.

### **Additional conditions for Schemes established as Investment Companies with Variable Share Capital (“SICAV”)**

- 4.1.5 The Scheme must repurchase the shares of a Member on the retirement or death of that Member. The repurchased shares shall by right be cancelled and the capital of the company reduced as a consequence.

Subject to any contrary provisions in its Constitutional Document or Scheme Document, a Scheme may issue shares at any time. On the other hand, it may only repurchase its shares in accordance with the conditions and limits set by the applicable law, the Constitutional Document and the Scheme Document of the retirement plans it operates.

- 4.1.6 Units in a Scheme are not transferable other than from the Member to the Scheme in the case of retirement or any other circumstance as set out in the Scheme’s Constitutional Document and Scheme Document.
- 4.1.7 No bearer units may be issued by the Scheme.
- 4.1.8 The MFSA has the right to require the suspension of the issue or repurchase or redemption or cancellation of units. Where the Scheme suspends temporarily the repurchase or redemption or cancellation of units, it shall inform the MFSA immediately and in any event within the working day.
- 4.1.9 Any variation of the fees and charges by which the issue or sale price of units is increased or by which the redemption or repurchase price of units is decreased shall be notified to the MFSA, the Custodian and the Member. Such variation shall be

published in revised Scheme Particulars at least 90 days before becoming effective. An increase in fees and charges applied to the redemption or repurchase price shall be applied only to units issued or sold after the date on which the increase takes effect.

- 4.1.10 The Scheme shall be liable to unit holders for any loss or prejudice suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.

#### **B.4.2 Notifications to the MFSA**

- 4.2.1 The Scheme or Retirement Scheme Administrator, as applicable, shall inform the MFSA of any material information concerning the Scheme or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing:

- (a) of a change in the registered address of a Scheme;
- (b) of a proposed change to its Investment Policies;
- (c) of any breach of the Act, the regulations issued thereunder, these Pension Rules or of any breach of the provisions of the Constitutional Document, Scheme Document or Particulars as soon as the Scheme becomes aware of the breach;
- (d) of payments owed to the Scheme which are not made in accordance with the Schedule of Payments (referred to in SLC 2.5.1 of Part B for the Pension Rules for Personal Retirement Schemes) and which are not received within 30 days of their due date. In addition, the Scheme shall take action to obtain payment as described in article 19 of the Act. Members shall also be notified if the payment is not received within 30 days of their due date;
- (e) of any actual or intended legal proceedings relating to the Scheme which might adversely impact on the operation of the Scheme or its compliance with the Scheme's Constitutional Document, the Scheme Document or the Act upon becoming aware of the same;
- (f) of any facts, relationships, arrangements or circumstances which may at any stage bring the independence of any Service Provider, auditor or actuary of the Scheme into question;
- (g) if the Scheme is informed that its auditor intends to qualify the audit report;
- (h) of any intended variation of charges imposed by the Service Providers of the Scheme on the Members;
- (i) of any evidence of fraud or dishonesty by anyone connected with the operation of the Scheme immediately upon becoming aware thereof;
- (j) of any intended termination of the Scheme in accordance with the Standard Licence Conditions 4.5.1 and 4.5.2 of Part B of the Pension Rules for Personal Retirement Schemes;

- (k) if the Scheme fails to have an auditor and in the case of a Defined Benefit Scheme, if the Scheme fails to have an actuary in office for a period exceeding four weeks in accordance with SLC 1.4.6 and 6.3.7 of Part B of the Pension Rules for Personal Retirement Schemes, respectively;
- (l) of the resignation or removal of a Director or Trustee or other individual in accordance with the Standard Licence Conditions 7.2.4 and 8.4 of Part B of the Pension Rules for Personal Retirement Schemes, respectively;
- (m) of the cessation of any appointment of a Service Provider, auditor or actuary of the Scheme, the reasons thereof and any circumstances connected therewith which significantly affects the interests of the Scheme's Members or Beneficiaries;
- (n) of any material changes in the information supplied to the MFSA in relation to the Scheme whether under the Act or otherwise;
- (o) in the instance that the number of Members of the Scheme is five or less;
- (p) if the Scheme fails to commence to provide the activities it has been licenced to carry on within the time-frame provided for in the licence or if no such time frame is specified, within twelve months of its issue, or if the Scheme has ceased to carry out such activities.

### **B.4.3 Amendments to Documents**

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

- (a) Constitutional Document;
- (b) Scheme Document;
- (c) Scheme Particulars;
- (d) any other document affecting the rights of the Members, Beneficiaries and /or Contributors of the Scheme;
- (e) a business plan submitted to the MFSA;
- (f) any agreement between the Scheme or the Retirement Scheme Administrator and the Investment Manager, Custodian or Investment Advisor, as applicable.

The Constitutional Document shall establish the procedures for amending the documents listed above.

### **B.4.4 Standard Licence Conditions and Licence Fees**

4.4.1 A request for a variation of any Standard Licence Conditions of the Scheme shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

- 4.4.2 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Standard Licence Condition or to impose any new conditions.
- 4.4.3 The fees payable to the MFSA are those specified in the Retirement Pensions (Fees) Regulations, 2015. The Scheme shall pay promptly all amounts due to the MFSA.

#### **B.4.5 Termination of the Scheme**

- 4.5.1 In the event of termination of the Scheme, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Contributor(s), Members and/ or Beneficiary(ies) and the Retirement Scheme Administrator shall use their best endeavours to delay the termination of the Scheme or to proceed with the termination in accordance with conditions imposed by the MFSA.
- 4.5.2 In the event of termination of the Defined Benefit Scheme during a period where an actuarial valuation reveals an under-provision relative to the minimum Technical Funding Requirement, the Scheme shall inform the MFSA. The Scheme shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the MFSA and a general outline of the procedure shall be made available to Members or, where applicable, to their representatives in accordance with the principle of confidentiality.

#### **B.4.6 Retirement Benefits for a Defined Contribution Retirement Scheme**

- 4.6.1 Retirement Benefits, other than any benefits paid on death or permanent invalidity of the Member, shall be paid in the following forms:
- (a) Initial cash lump sum (optional);
  - (b) Programmed Withdrawals and/or Life Annuity (mandatory);
  - (c) Additional cash lump sum (optional).

Retirement Benefits shall be provided for in the Scheme Document.

##### Initial cash lump sum

- 4.6.2 On the retirement date, a Member may elect to take up to 30 per centum of the assets of the Member in a Retirement Scheme as a cash lump sum. The sum which is determined on retirement date shall be paid either as one lump sum or a series of tranches within one year from retirement date.

Provided that any remaining assets of the Member which are not paid in the form of a cash lump sum generate sufficient retirement income to a Member as outlined in SLC 4.6.3.

Programmed Withdrawals and/or Life Annuity

4.6.3 The remaining assets of a Member which are not paid in the form as outlined in SLC 4.6.2 above shall:

- (a) be used towards programmed withdrawals. Programmed withdrawals shall be based on publically available annuity/drawdown rates. The Retirement Scheme Administrator shall ensure that the said annuity/drawdown rates are based on sound and prudent actuarial principles; or
- (b) be used to purchase a life annuity; or
- (c) be a combination of programmed withdrawals and life annuity.

Additional cash lump sum

4.6.4 Where subsequent to a valuation of a Member's remaining assets in the Scheme it is established that the assets are more than adequate to generate sufficient retirement income throughout the Member's lifetime at valuation date, then 50 per centum of the excess value of such assets as determined by the valuation may be withdrawn as an additional cash lump sum.

4.6.5 The additional lump sum may only be opted for after three years from commencement of the Member's retirement benefits, and every year thereafter.

4.6.6 The above shall be without prejudice to any other limitations on withdrawal of retirement assets as specified by any other pensions or taxation legislation to which a retiree is subject to.

4.6.7 In the case where a Member is domiciled in Malta the conditions in SLC 4.6.4, shall only apply where the annual retirement benefit from an annuity exceeds €50,000. This value shall be adjusted annually to take account of changes in the index of inflation as published by the National Statistics Office in the Government Gazette of Malta.

**Schemes which qualify as Qualifying Recognised Overseas Pension Schemes ("QROPS")**

4.6.8 The rules referred to under Part B.4.6 relating to Retirement Benefits for a Defined Contribution Retirement Scheme shall not apply to pension funds transferred directly or indirectly from Pension Schemes registered in the United Kingdom ("UK Transfer Funds") or UK Tax Relieved Funds as defined by Her Majesty's Revenue and Customs ("UK HMRC") to Retirement Schemes licensed under the Act, which qualify as Qualifying Recognised Overseas Pension Schemes as determined by UK HMRC. In respect of such UK Transfer Funds or UK Tax Relieved Funds, Members shall take benefits in a manner consistent with those provided for under UK Rules provided for under UK Authorised Member payments for pension income under UK legislation.



#### **B.4.7 Transfer of Assets for Defined Contribution Retirement Schemes**

4.7.1 In the case of Personal Retirement Schemes, established as a Defined Contribution Scheme, *in specie* transfers of assets, into or out of a Scheme, are permitted. In the case of *in specie* transfers into a Scheme, the Retirement Scheme Administrator is required to obtain an independent valuation of that asset, unless the assets are traded on a regulated market.

## **B.5 Conditions relating to information for Scheme Members and Beneficiaries**

### **B.5.1 General**

- 5.1.1 Every Scheme Member shall be notified by the Retirement Scheme Administrator, upon acceptance by the Retirement Scheme Administrator of the Member's application as well as provided with a copy of the Scheme Document and Scheme Particulars. The Retirement Scheme Administrator shall keep evidence of its compliance with this requirement.
- 5.1.2 Upon acceptance by the Retirement Scheme Administrator of the Member's application, the Member, shall have a period of thirty calendar days within which the Member may, by written notice, cancel his application to join the Scheme, without incurring any penalty and without having to give any reasons. The Retirement Scheme Administrator shall inform the Member of his right to opt out of the Scheme within thirty calendar days from when the Member is notified by the Retirement Scheme Administrator in accordance with SLC 5.1.1 above.
- 5.1.3 The notification in terms of SLC 5.1.1 shall include, at least, the following:
- (a) the date of acceptance;
  - (b) information to the Member on his right of withdrawal referred to in SLC 5.1.2 above, together with a cancellation notice on a durable medium;
  - (c) the contact details of the Retirement Scheme Administrator;
  - (d) full disclosure of all costs, commissions and fees whether investment or transaction costs (including one-off and recurring costs) which a Member is, or will be expected, to bear;
  - (e) details of the contributions or transfers-in received or to be received within the Scheme;
  - (f) in the case of a defined benefit Scheme, details of the applicable target level of benefits and guarantees applicable to the Scheme;
  - (g) in the case of an investment by the Retirement Scheme in a Retirement Fund, a copy of the offering Document (Prospectus) for each underlying fund;
  - (h) the statement of investment policy (which is included in the Scheme Particulars);
  - (i) for the purposes of exercising the right of withdrawal in terms of SLC 5.1.2 above, the Retirement Scheme Administrator is to provide the Member with a cancellation notice on a durable medium (if not provided, the contract remains cancellable), which shall include information on the conditions for exercising the right of cancellation, the consequences of not exercising the cancellation period and the practical instructions for exercising the cancellation period, indicating the address to which the notification of cancellation or withdrawal is to be sent. For the avoidance of doubt, during the said period the assets of the Member would not be invested or withdrawn, however, the Retirement Scheme

Administrator may provide the Member, in a clear and unequivocal manner, with the choice to waive the exercise of his right of withdrawal from the Scheme.

- 5.1.4 The Retirement Scheme Administrator shall provide a statement to the Member, on an annual basis and upon ad-hoc request of the Member, noting his individual entitlements, and also provide the Member with brief particulars of the situation of the Scheme. The statement shall contain, as a minimum, the following information:
- (a) any contributions into the Scheme, if applicable;
  - (b) any retirement benefits paid, if applicable; and
  - (c) all applicable charges incurred.
- 5.1.5 Notwithstanding the submission of the statement referred to in SLC 5.1.4, any material information as well as any material changes, shall be immediately disclosed to the Member.
- 5.1.6 The Retirement Scheme Administrator shall, upon request, provide any Member or Beneficiary with a copy of the Scheme's Annual Report free of charge. In the case of an Umbrella fund, they may receive those accounts related to their specific Scheme.
- 5.1.7 Where any amendments are carried out to the Scheme Document and Scheme Particulars, Members and Beneficiaries shall be notified in writing, within a reasonable time, of any such amendments, as approved by the MFSA, and at the same time be provided with the amending text or an up-dated version of the documents concerned. This notification process is without prejudice to the rights of the Members or Beneficiaries regarding changes to the Scheme, as may be applicable under the Act.
- 5.1.8 The Retirement Scheme Administrator shall provide any other relevant information, upon request by Members and Beneficiaries.
- 5.1.9 All documentation and information provided to the Members and Beneficiaries should be accurate and complete and presented in a transparent and clear manner.

## **B.5.2 Changes to Investment Policy**

- 5.2.1 Members and Beneficiaries are to be notified of any material changes to the Scheme's Investment Policy in advance of the change being implemented.

## **B.5.3 Transfer out of the Retirement Scheme**

- 5.3.1 The Retirement Scheme Administrator shall ensure that the Members of the Scheme who opt to transfer their entitlements to another retirement scheme are to be provided, prior to any transfer, with adequate information as to their pension rights and choices which are available to them under the Scheme (such as retirement rights, choices, or any applicable charges or fees), to enable the Members concerned to make an informed decision.
- 5.3.2 Following the completion of any transfer of entitlements out of the Scheme, the Member shall, as a minimum, be notified with the following information:

- (a) information about the applicable fees and charges imposed by the current Scheme relating to the transfer;
- (b) confirmation that the transfer has been made to another retirement scheme and the details of the new Retirement Scheme Administrator and the new Retirement Scheme.

#### **B.5.4 On retirement or payment of benefits**

- 5.4.1 The Retirement Scheme Administrator shall notify the Member, on retirement or when other benefits become due, about the right of commencement of payment of Retirement Benefits, and provide such Member with appropriate information on the Benefits due to her/him and the corresponding payment options, including any applicable charges incurred when such benefits fall due. Confirmation that Retirement Benefits are paid out should also be provided.

## **B.6 Supplementary Conditions for Defined Benefit Schemes**

### **B.6.1 Schedule of Payments**

6.1.1 Apart from the requirements in SLC B.2.5 of the Pension Rules for Personal Retirement Schemes, a Defined Benefit Scheme shall also comply with the requirements regarding the maintenance of a Schedule of Payments as prescribed in regulation 8 of the Retirement Pensions (Retirement Defined Benefit Schemes) Regulations, 2015.

### **B.6.2 Technical Provisions**

6.2.1 A Defined Benefit Scheme shall comply with technical, financial and actuarial management requirements as well as requirements regarding the under-provision or overprovision of Technical Funding Requirement as prescribed in regulation 4 of the Retirement Pensions (Retirement Defined Benefit Schemes) Regulations, 2015.

6.2.2 The calculation of the technical provisions shall be carried out according to the following principles:

- (a) the minimum Technical Funding Requirement shall be calculated by a sufficiently prudent actuarial valuation. It must be sufficient both for pensions and benefits already in payment to Beneficiaries to continue to be paid, and to provide Beneficiaries with an actuarial value of their accrued pensions rights;
- (b) the minimum Technical Funding Requirement shall be assets that, had the Scheme wound up on the valuation effective date, the assets would have provided for:
  - i. benefits in course of payment;
  - ii. benefits, other than those referred to in (i), which consist of additional benefits secured or granted under the Scheme on behalf of the Beneficiary concerned by way of additional voluntary contributions or a transfer of rights from another Scheme;
  - iii. benefits with at least uniform attribution, other than those referred to in (i) or (ii), payable in respect of reckonable service completed up to the effective date; and
  - iv. the estimated expenses of administering the winding up of the Scheme;
- (c) where the Scheme underwrites biometrical risks or guarantees any investment performance or a given level of benefits, the MFSA may require the scheme to hold additional assets above the technical provisions to serve as a buffer;
- (d) in calculating the minimum Technical Funding Requirement the actuary may assume that the liabilities of the Scheme could have been provided on winding up by paying assets of equivalent actuarial value to the above benefits to another Scheme or purchasing of appropriate insurance contracts to provide the same benefits;

- (e) any maximum Technical Funding Requirement which may be prescribed;
- (f) the biometrical tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the Beneficiaries and the Scheme, in particular the expected changes in the relevant risks;
- (g) the rate of interest used shall be chosen prudently taking into account, if applicable, an appropriate margin for adverse deviation and determined in accordance with any conditions of the MFSA including other provisions of these Pension Rules;
- (h) the prudent rates of interest shall be determined by taking into account:
  - i. the yield on the corresponding assets held by the Scheme and the future investment returns and/or
  - ii. the market yields of high quality or government bonds;
- (i) the method and basis of calculation shall in general remain constant from one Scheme Year to the other. However, modifications may be justified due to a change in legal or economic circumstances underlying the assumptions.

### **B.6.3 Appointment of an actuary**

- 6.3.1 A Defined Benefit Scheme shall appoint an actuary approved by the MFSA.
- 6.3.2 The appointment, including the replacement, of an actuary of a Scheme shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of the actuary of a Scheme. The MFSA shall be entitled to be satisfied, on an on-going basis, that the actuary of the Scheme has the appropriate expertise and experience to carry out its functions.
- 6.3.3 An actuary of a Scheme shall be a Member of a recognised professional actuarial association or have a recognised actuarial degree and holds a minimum of three years practical experience in advising Defined Benefit Schemes.
- 6.3.4 The Scheme shall not appoint an individual as an actuary to the Scheme, nor appoint an actuarial firm where the individual directly responsible for the actuarial duties or her/his firm is:
  - (a) employed under a contract of service by the Retirement Scheme Administrator or any Contributor or is a Contributor, Member or Beneficiary to or of the Scheme;
  - (b) an Affiliate of the Retirement Scheme Administrator.
- 6.3.5 The Scheme shall obtain from its actuary a signed letter of engagement defining clearly the extent of the actuary's responsibilities and the terms of his/her appointment. The letter of engagement shall contain at least the information in Appendix 9 in Part C of

these Pension Rules for Personal Retirement Schemes. The Scheme shall confirm in writing to its actuary its agreement to the terms in the letter of engagement.

6.3.6 On the appointment or a change in actuary the MFSA shall be provided with the declaration referred to in Annex III of the Application Form for Licensing as a Personal Retirement Scheme in Part D of these Pension Rules for Personal Retirement Schemes.

6.3.7 If at any time when the Scheme is required to have an actuary, the Scheme fails to have an actuary in office for a period exceeding four weeks, the MFSA shall be entitled to appoint a person to fill the vacancy, the fees and charges so incurred being payable by the Scheme or Retirement Scheme Administrator.

#### **B.6.4 Duties of an actuary**

6.4.1 The actuary of a Defined Benefit Scheme shall:

- (a) advise the Scheme and/or the Retirement Scheme Administrator (on an on-going basis) on the appropriate rates of Scheme contributions;
- (b) calculate the technical provisions for any Biometrical Risks or investment risks or level of benefits for which the Scheme provides cover in accordance with recognised actuarial methods and complete and certify such calculations at least as frequently as the prescribed intervals;
- (c) prior to the commencement of the Scheme, provide the Scheme Administrator with a certificate (in the form of that in Appendix 6 in Part C of these Pension Rules) setting out whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments in the form of Appendix 7 in Part C of these Pension Rules) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule of Payments relates;
- (d) provide the Scheme and/or the Retirement Scheme Administrator, following the end of the first Scheme Year on an annual basis thereafter, with an actuarial report containing the following:
  - i. an actuarial valuation of the assets and liabilities of the Scheme as at the end of the relevant Scheme Year including a note of the assumptions and methods of valuation used and expressed so as to enable the expected future course of the Scheme's contribution rates and funding level to be understood;
  - ii. a certificate (in the form of that in Appendix 6 in Part C of the Pension Rules for Personal Retirement Schemes) setting out the position of the Scheme with respect to the minimum Technical Funding Requirement and whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule relates or is expected to restore the funding position over this

period and indicating any relevant changes that have occurred since the most recent actuarial valuation was prepared.

### **B.6.5 Actuarial valuation - General**

- 6.5.1 An actuarial valuation is required with an effective date no later than the first anniversary of the date on which the Scheme commenced and on an annual basis thereafter.
- 6.5.2 The actuarial valuation report and accompanying certificate must relate to the position of the Scheme at the date 14 days before it is signed.

### **B.6.6 Transfer of benefits**

- 6.6.1 Where a Member wishes to transfer the value of her/his accrued benefits to another Scheme, such Member shall request the Scheme or the Retirement Scheme Administrator to obtain the actuarial value of these benefits. The actuary shall certify (in the form of that in Appendix 8 in Part C of the Pension Rules for Personal Retirement Schemes) that the method used to calculate this value is appropriate. Such an actuarial value shall be assessed using market rates of interest.
- 6.6.2 The calculations of actuarial values for transfer to another Scheme shall be carried out according to the following principles:
- (a) market rates of interest used to calculate the actuarial value of accrued benefits shall be determined on the basis of market redemption yields on Government bonds of appropriate currency, duration and type at the time of transfer with allowance for investment of future interest/redemption receipts at such rates as the actuary considers reasonable;
  - (b) guaranteed or statutory increases, both in deferment and after payment commences, should be valued as part of the accrued benefit;
  - (c) the actuary should first advise and then establish with the Scheme and/or the Retirement Scheme Administrator whether and to what extent it is considered appropriate to make any addition for future discretionary increases to the accrued benefits or for any other benefits that may be granted on a discretionary basis;
  - (d) in general it would be inappropriate to allow for discretionary benefits in the calculation of transfer values unless the Scheme could satisfy the minimum Technical Funding Requirement with allowance made for such benefits for all Beneficiaries or Members;
  - (e) the method and assumptions used for calculating the actuarial value of benefits to be transferred out of the Scheme should be consistent with the method and assumptions used to calculate benefits for a person acquiring transfer credits in the Scheme.



## **B.7 Supplementary Conditions for Schemes established as Investment Companies with Variable Share Capital (“SICAVs”)**

### **B.7.1 General**

7.1.1 Without prejudice to the responsibility of the Board of Directors for the management and operation of the Scheme, the Directors shall appoint a Retirement Scheme Administrator who shall be entrusted and assigned with the duties specified in the Pension Rules for Service Providers.

### **B.7.2 Board of Directors**

7.2.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme. The concept of fit and proper requires directors to be honest, competent and solvent persons.

7.2.2 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director. The Directors of the Scheme shall be individuals. The request for consent of the appointment or replacement of a Director shall reach the MFSA prior to the proposed date of appointment or replacement.

7.2.3 The request for consent of the appointment or replacement of an individual as Director shall be accompanied by a Personal Questionnaire in the form set out in Schedule B attached to these Pension Rules duly completed by the person proposed. The proposed Director shall not assume any powers or commence any duties as a Director unless and until the MFSA has approved her/his appointment. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.

7.2.4 If any person shall for whatever reason cease to be a Director, the Scheme shall notify the MFSA of this, including the reasons for such cessation, and any circumstances connected therewith which in its opinion significantly affects the interests of the Members or Beneficiaries. The notification should be made before the expiration of the period of 14 days beginning with the day next following that on which the person concerned ceases to be a director. The Scheme shall also request the Director to confirm to MFSA that his resignation or removal had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme’s notification of resignation or removal.

7.2.5 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

7.2.5 The Board of Directors shall act honestly, fairly and with integrity and in the best interests of the Members and Beneficiaries. Such action shall include:

- (a) avoiding conflicts of interest at all times and, where he/she is aware of an actual conflict of interest, ensuring, by way of disclosure, internal procedures or otherwise, that Members and Beneficiaries are treated fairly. The following procedures should be followed during Board Meetings, where a director considers that he/she has or may have a conflict of interest:

- i. that person should declare that interest to the other directors either at the Meeting at which the issue in relation to which he/ she has an interest first arises, or if the director was not at the date of the Meeting interested in the issue, at the next Meeting held after he/ she became so interested;
  - ii. unless otherwise agreed to by the other directors, a director shall avoid entering into discussions in respect of any contract or arrangement in which he/ she is interested and should withdraw from the meeting while the matter in which he/ she has an interest is being discussed;
  - iii. the interested director should not vote at a Meeting in respect of any contract or arrangement in which he/ she is interested, and if he/ she shall do so, his/ her vote shall not be counted in the quorum present at the Meeting; and
  - iv. the minutes of the meeting should accurately record the sequence of such events;
- (b) abiding by all relevant laws and regulations;
  - (c) avoiding any claim of independence or impartiality which is untrue or misleading; and
  - (d) avoiding making misleading or deceptive representations to Members or Beneficiaries.

### **B.7.3 Sale or Repurchase of Units**

- 7.3.1 Price quotation and sale and repurchase arrangements for shares/Units in the Scheme in the circumstances allowed by the law and the Constitutional Document and Scheme Document, shall ensure that:
- (a) a Member is allocated shares /Units in the Scheme at a price based on the most recent underlying fund/s prices;
  - (b) the issuing of the Scheme's shares/Units of the purchase proceeds to the underlying fund/s is achieved as soon as is practicable;
  - (c) a Scheme is able to repurchase its shares/Units at a price based on the most recent underlying fund/s prices;
  - (d) the cancellation of the Units and the remitting of the proceeds to the Member or Beneficiary are achieved as soon as is practicable in line with Part 4.6 of these Pension Rules, in the circumstances allowable by law where the Member has access to such benefits.
- 7.3.2 The Scheme investing solely in Retirement Funds shall, as far as practicable, be valued with the same frequency as the Retirement Fund.

#### **B.7.4 Additional Conditions for a Scheme set up as an Umbrella Fund**

- 7.4.1 Where the Scheme is set up as an Umbrella Fund, in addition to approval being obtained for the Scheme, each Sub-Fund shall be approved by the MFSA, following the submission of an application form and supporting documentation. The latter approval shall not be required where the offering Memorandum and offering supplements are the same with respect to the said Sub-Fund.
- 7.4.2 Each Sub-Fund of the Scheme shall constitute a distinct and separate patrimony.
- 7.4.3 A Sub-fund may not invest in another Sub-fund of the same Scheme.

## **B.8 Supplementary Conditions for Schemes established as a trust**

- 8.1 Schemes in the form of trusts shall be established by written instrument (trust deed) and shall not be subject to any limits on their duration.
- 8.2 Schemes shall not be in the form of discretionary trusts which allow the trustee to decide which beneficiaries are to benefit in terms of the trust deed.
- 8.3 The Scheme shall have the Retirement Scheme Administrator as its sole Trustee.
- 8.4 If any person shall for whatever reason cease to be a Trustee, the Scheme shall notify the MFSA of this, including the reasons for such cessation, and any circumstances connected therewith which in its opinion significantly affects the interests of Members and Beneficiaries. The notification should be made promptly and in any case not later than 14 days from the resignation or removal. The Scheme shall also request such a trustee to confirm to MFSA that his/her resignation or removal had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of resignation or removal.
- 8.5 In terms of Article 1(2) of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta), the provisions of the said Act, except as otherwise provided in the said Act, shall apply to a Retirement Scheme Administrator acting as a sole trustee of the Scheme, whether such trustee is authorised under the said Act, or is not required to obtain authorisation in terms of the said Act.

## **B.9 Supplementary Conditions in the case of entirely Member Directed Schemes**

9.1 A Personal Retirement Scheme which provides for member-direction under any of the grounds provided in SLC 9.2, shall be established solely as a member directed Scheme (i.e. the Scheme is not permitted to have a mix of member directed accounts and non-member directed accounts).

9.2 In the case of a Scheme which is entirely member-directed, such Scheme may permit a Member to direct the investments of their individual accounts (member directed schemes), based on one or more of the following grounds, and such direction shall be provided for in the Scheme Document. The Scheme shall:

- (a) allow the Member to appoint an investment advisor to be approved by the Retirement Scheme Administrator to advise the Member on the choice of investments; and/or
- (b) allow the Member to appoint an investment manager to be approved by the Retirement Scheme Administrator to manage the Member's investments on a discretionary basis; or
- (c) allow the Member who qualifies as a "professional member" to manage/direct his/her investments in their account.

9.3 For the purposes of SLC 9.2(c) a member may only be permitted to manage his/her own investments, when the Retirement Scheme Administrator receives a request from the Member, in writing, that the said Member wishes to be considered as a professional member.

A Member or a prospective member may qualify as a "professional member" following an assessment by the Retirement Scheme Administrator. The Retirement Scheme Administrator shall assess the level of expertise, experience and knowledge of such Member and is to be satisfied that such Member is capable of making his own investment decisions and of understanding the risks involved. In the course of the assessment, the Retirement Scheme Administrator is to ensure that such Member, as a minimum satisfies two of the following criteria:

- (i) works or has worked in the financial services sector for at least three years in the last ten years, in a professional position, which requires knowledge of the transactions envisaged;
- (ii) the size of the Member's account within the Scheme, defined as including cash deposits and financial instruments exceeds EUR 500 000;
- (iii) the Member has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.

The assessment carried out by the Retirement Scheme Administrator for the purposes of SLC 9.2(c) is to be properly documented. Following such assessment, a written declaration is to be signed by the Member which is to include a statement that such

member is aware that he or she is responsible for the investment decisions taken with respect to the member's individual account within the Scheme.

- 9.4 The Retirement Scheme Administrator shall retain ultimate responsibility to ensure compliance by the Member, or any person acting on his behalf, with the objective of the retirement scheme and with any applicable licence conditions and provisions of the law.
- 9.5 In cases where the Scheme, in its Scheme Document, allows member-direction in terms of SLC 9.2(a) to (c), the following conditions shall be complied with by the Retirement Scheme Administrator:
- (a) Members have the right to timely and fair execution of their investment decisions and to written confirmation of these transactions. The right (or responsibility) to make and execute investment decisions should not be inhibited by the assessment of any unreasonable charges or fees;
  - (b) unless a Member requests to be classified as a professional member, or where the member appoints an investment manager in relation to all investments in their account, before executing the Member's investment decisions, the Retirement Scheme Administrator must ensure that the Member has been provided with a full disclosure of all costs payable under the terms of any investment selected in the form of an information document and a full disclosure of commissions payable to the Investment Advisor both initially and on an on-going basis. In this respect, the Retirement Scheme Administrator is to retain a copy of the information document provided to the Member in their records;
  - (c) the assets of each Member in the Scheme are to be ring-fenced from the assets of other Members of the Scheme;
  - (d) in relation to the investments<sup>3</sup>:
    - (i) the investment restrictions (Part B.3.2 of the Pension Rules for Personal Retirement Schemes), other than SLC 3.2.1(viii) and (ix), and the investment policy applicable to the Scheme are to be applied at the level of the member account, taking into account the risk profile of the Member in relation to his individual member account within the Scheme; and
    - (ii) in addition to the applicable investment restrictions referred to in indent (i), the Retirement Scheme Administrator shall also ensure that:
      - (aa) where structured notes are included in a Member's account, these will be permitted up to a maximum of 30% of the Member's account total value, with no more than 20% of the Member's account to be subject to the same issuer / guarantor default risk;

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<sup>3</sup> The said investment restrictions shall apply to the current investments of members in a member directed scheme once any movements occur within the member's pension account or in the case of new investments entered into, as from 1<sup>st</sup> January 2019.

- (bb) unless a Member requests to be classified as a professional member, a Member may only invest in investments which can be classified as suitable for a retail member:

Provided that the responsibility of the Retirement Scheme Administrator in assessing the investments chosen shall be limited to carrying out due diligence on the proposed investment, following which the Retirement Scheme Administrator is satisfied on reasonable grounds that the investment can be classified as suitable for a retail member.

- (e) as a minimum, provide the Member with the following information in relation to the member's account on an annual basis, and upon ad-hoc request of the member, during the relevant reporting period:
  - (i) the underlying investments and their respective value;
  - (ii) any contributions into the Scheme, if applicable;
  - (iii) any retirement benefits paid, if applicable;
  - (iv) the name of the investment manager and/or investment advisor, if applicable;
  - (v) all applicable charges, commissions and fees incurred by the member;
  - (vi) in addition to paragraphs (i) to (v), the Member is to be informed of the availability of online access, which provides real time information of the investments held in the member account;
- (f) notwithstanding the submission of the information referred to in paragraph (d), any material information as well as any material changes including suspension of funds, drastic fall in the investments, relating to the member's account, shall immediately be disclosed to the Member, upon the Retirement Scheme Administrator first becoming aware of such material change.

The investment advisor and/or the investment manager of the Member in Member Directed Schemes

9.6 Where the Scheme allows the Member to opt for the scenario in SLC 9.2(a), the Retirement Scheme Administrator shall:

- (a) carry out due diligence on the investment advisor and approve such advisor. This due diligence should be documented; and
- (b) ensure that, as part of the due diligence referred to in paragraph (a):
  - (i) the investment advisor may either be:
    - (aa) a person licensed to provide investment advice under the Investment Services Act, 1994;

(bb) a person established in a Member State or EEA State and duly authorised for this activity in that Member State or EEA State and where the services related to this activity are being provided in another Member State or EEA State, the person is duly authorised to provide such services in accordance with Directive 2014/65/EU and/or Directive 2016/97 (in the case of insurance-based investment products), as amended from time to time, and is carrying out its activities in relation to the Member pursuant to the respective Directives, as applicable; or

(cc) in the case of a person established in a non-Member State or non-EEA State, a person who is considered by the Retirement Scheme Administrator to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake investment advice;

(ii) the investment advisor is authorised and regulated to provide such investment advice;<sup>4</sup> and

(iii) the requirements listed in paragraphs (a) and (b)(i) and (ii) above are satisfied by the investment advisor, on an ongoing basis; and

(c) enter into an agreement with the investment advisor on behalf of the Member in relation to the member account, setting out the services, roles and responsibilities of such person/s. The Retirement Scheme Administrator should ensure that the agreement includes provisions which clearly state whether the investment advisor is acting only as an introducer, or whether the investment advisor is providing investment advice to the Member or whether the investment advisor is carrying out both roles, and provisions which allow the Retirement Scheme Administrator to perform its functions effectively, including provisions for the regular reporting. The Retirement Scheme Administrator should ensure that the Member clearly appoints the investment advisor to provide investment advice and no appointment is permitted until the agreement is in place.

9.7 Where the Scheme allows the Member to opt for the scenarios in SLC 9.2(b), the Retirement Scheme Administrator shall:

(a) carry out due diligence on the investment manager and approve such manager. This due diligence should be documented;

(b) ensure that, as part of the due diligence referred to in paragraph (a):

(i) the investment manager may either be:

(aa) a person licensed under the Investment Services Act, 1994, as a Category 2 or 3 Investment Services Licence Holder;

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<sup>4</sup> It is not sufficient for such person to be licensed, but such licence permits the person to provide the investment advice being given to the Member.



(bb) a person established in another Member State or EEA State and duly authorised for this activity in accordance with Directives 2009/65/EC, 2014/65/EU, 2013/36/EU, 2009/138/EC or 2011/61/EU, as amended from time to time, and carrying out its activities relation to the Member pursuant to the respective Directives, as applicable; or

(cc) in the case of a person established in a non-Member State or non-EEA State, a person who is considered by the Retirement Scheme Administrator to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake investment management;

(ii) the investment manager is authorised and regulated to manage such investments<sup>5</sup>; and

(iii) the requirements listed in paragraphs (a) and (b)(i) and (ii) above are satisfied by the investment manager on an ongoing basis; and

(c) enter into an agreement with the investment manager on behalf of the Member in relation to the member account, setting out the services, roles and responsibilities of such person/s. The Retirement Scheme Administrator should ensure that the agreement includes provisions which allow it to perform its functions effectively, including provisions for the regular reporting, as well as provisions to ensure that the investment manager provides any necessary information requested by the Retirement Scheme Administrator in the performance of its duties. The Retirement Scheme Administrator shall also ensure that the agreement includes provisions which requires the Investment Manager to fully disclose all commissions, costs and fees whether service or investment related costs (including one-off and recurring costs) to the member.

### Custody

9.8 Where in terms of SLC 9.2(b) an investment manager is appointed on a discretionary basis over a member's investments, the appointment of a custodian by the investment manager is permissible, provided that the Retirement Scheme Administrator has effective access to information relating to the member's investments held by the custodian, so that the Retirement Scheme Administrator can effectively monitor the Scheme in aggregate and as a whole and retain overall control.

9.9 The Retirement Scheme Administrator shall, where applicable:

(a) carry out due diligence on the custodian. This due diligence should be documented;

(b) ensure that, as part of the due diligence referred to in paragraph (a):

(i) the custodian may either be:

(aa) a person licensed under the Investment Services Act, 1994, to act as a custodian;

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<sup>5</sup> It is not sufficient for such person to be licensed, but such licence permits the person to provide the investment advice being given to the Member.

(bb) a credit institution licensed under the Banking Act, 1994;

(cc) a person established in another Member State or EEA State and duly authorised for this activity in accordance with Directive 2014/65/EU or Directive 2013/36/EU, or accepted as a depositary for the purposes of Directive 2009/65/EC or Directive 2011/61/EU, as amended from time to time, and carrying out its activities in relation to the Member pursuant to the respective Directives, as applicable; or

(dd) in the case of a person established in a non-Member State or non-EEA State, a person who is considered by the Retirement Scheme Administrator to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake custody services;

(ii) the custodian is authorised and regulated to provide such custody services; and

(iii) the requirements listed in paragraphs (a) and (b)(i) and (ii) above are satisfied by the custodian, on an ongoing basis.

#### Application of the Pension Rules for Personal Retirement Schemes

9.10 The Pension Rules for Personal Retirement Schemes shall apply to a member directed Scheme, in the same manner and to the same extent, unless specified otherwise, as they apply to a Retirement Scheme which is not a member-directed Scheme, subject to the following:

- (a) paragraphs 1.4.2 and 1.5.1 (*mandatory functions*) of Part A of these Pension Rules shall not apply;
- (b) SLC 1.3.5 to SLC 1.3.11 of this Part of these Pension Rules (*Investment Manager, Custodian, Investment Advisor*) shall not apply;
- (c) SLC 1.3.12 to SLC 1.3.16 of this Part of these Pension Rules (*Introducers, Independence Requirements*) shall not apply;
- (d) SLC 3.1.3 of this Part of the Pension Rules shall apply as if for the words “*the Scheme’s investment allocation*”, there shall be substituted the words “*the member account investment allocation*”;
- (e) in SLC 4.2.1(f), (h) and (m) of this Part of these Pension Rules, the term “*Service Provider*” shall apply only to the Retirement Scheme Administrator;
- (f) in SLC 5.1.2 of this Part of these Pension Rules shall apply as if for the words “*without incurring any penalty and without having to give any reasons.*”, there shall be substituted the words “*without incurring any penalty by the Member in relation to the charges of the Retirement Scheme Administrator and without having to give any reasons;*”;
- (g) in addition to the information listed in SLC 5.1.3 of this Part of these Pension Rules, the Member shall also be provided with information on the investments to be made in relation to the member account;

- (h) SLC 5.1.3(c) of this Part of these Pension Rules shall also include the contact details of the investment advisor and/ or the investment manager appointed in relation to a member's account;
- (i) SLC 5.1.3(d) of this Part of these Pension Rules shall apply as if for the words *"which a Member is or will be expected to bear;"*, there shall be substituted the words *"which a Member is or will be expected to bear in relation to his member account. For the better execution of this obligation, the Retirement Scheme Administrator shall ensure that it receives from the investment advisor appointed by the Member, a Fee Disclosure Sheet, signed by the Member, which details all costs, commissions or fees payable to the Investment Advisor and investment company. In the event of any changes in the costs, commissions or fees of an investment advisor or an investment company, the Retirement Scheme Administrator shall ensure that a notification is sent to the Member;"*
- (j) SLC 5.1.3(e) of this Part of these Pension Rules shall apply as if for the words *"received within the Scheme"*, there shall be substituted the words *"received within the member account;"*
- (k) SLC 5.1.4 and SLC 5.1.5 of this Part of the Pension Rules shall not apply.

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