

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

## **CONSULTATION DOCUMENT**

### **CONSULTATION ON AMENDMENTS TO THE PENSION RULES FOR PERSONAL RETIREMENT SCHEMES ISSUED UNDER THE RETIREMENT PENSIONS ACT**

**[MFSA REF: 15/2018]**

**16<sup>th</sup> November 2018**

**Closing Date: 30<sup>th</sup> November 2018**

**Note:** The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

## Note for Consultation

### 1. Purpose

- 1.1 On [6<sup>th</sup> December 2017](#), the MFSA issued for consultation various amendments to the Pension Rules for Personal Retirement Schemes issued under the Retirement Pensions Act (“the RPA”), (Cap.514), relating, in particular, to clarifications as to the applicability of the Pension Rules for Personal Retirement Schemes to member-directed Schemes and to material changes proposed to the regime of member-directed Schemes. The proposed Draft Pension Rules for Personal Retirement Schemes and Appendices 1 to 5 to the said Rules were issued for consultation together with the said Consultation Document. The said Consultation closed on 12<sup>th</sup> January 2018.
- 1.2 The MFSA received a substantial amount of feedback from the pensions market on the proposed Draft Pension Rules for Personal Retirement Schemes and a number of issues raised by market respondents merited further consideration by the MFSA. In addition, on 6<sup>th</sup> June 2018, the MFSA issued a [Circular](#) so as to advise that the time-frames which were specified in section 4 of the Consultation Document of 6<sup>th</sup> December 2017, relating in particular to the date when the new regime proposed in terms of the said Consultation was to come into force, were being postponed.
- 1.3 In order to address the feedback received by the pensions industry, the MFSA is proposing further amendments to the proposed Draft Pension Rules that have already been issued for consultation. Therefore, the MFSA is issuing for final consultation the proposed amendments to the Pension Rules for Personal Retirement Schemes, following feedback from the pensions market further to the consultation document issued on the 6<sup>th</sup> December 2017. Minor amendments were also carried to Appendices 2 and 3 of the said Pension Rules to reflect the proposed changes.
- 1.4 Any comments and feedback in relation to this Consultation Document are to be addressed to the Insurance and Pensions Supervision Unit and submitted in writing on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt), by not later than the **30<sup>th</sup> November 2018**. Any late submissions will not be taken into consideration by the MFSA. The amendments to the Pension Rules for Personal Retirement Schemes shall come into force on the **1<sup>st</sup> January 2019**.

### 2. Review of proposed Amendments to the Pensions Rules for Personal Retirement Schemes

After due consideration of the comments received by the market following the Consultation on 6<sup>th</sup> December 2017, the MFSA is proposing the following changes to

the amendments to the Pension Rules for Personal Retirement Schemes issued under the RPA:

### **Member-Directed Schemes**

## **2.1 The form of Member-Directed Schemes, the Mandatory Functions and Entitlement to become a Member of a Member-Directed Scheme**

- 2.1.1 In the Consultation of 6<sup>th</sup> December 2017, the MFSA proposed that a scheme had to be established either as a non-member directed or an entirely member directed scheme, thus excluding that schemes operate as *mixed schemes*. Bearing in mind the proposed amendments proposed in this consultation document, in particular the proposed changes to the entitlement to become a member of a member directed scheme, and confirmation from all Retirement Scheme Administrators (“RSAs”) licensed under the RPA that currently the Personal Retirement Schemes administered by them do not operate as “*mixed Schemes*”, the MFSA remains of the view that a Personal Retirement Scheme needs to be established, at the outset, as either a non-member directed Scheme or an entirely member-directed Scheme operating only member-directed accounts. It is to be pointed out that, if *mixed Schemes* were allowed, it would be necessary to re-introduce the mandatory functions (i.e. the Investment management Function and the Custody Function) at Scheme level, **at all times**, irrespective of whether such mixed Scheme has actually in place non-member-directed accounts or not.

In addition, following the feedback received from the market, the MFSA is also proposing that a Scheme which offers a pre-designed selection of investment options for the Member to choose from, approved by the Investment Manager of the Scheme, would also be considered as being a non-member-directed Scheme (rather than member-directed Schemes as is the case in terms of SLC 9.2(a) of the current Pension Rules for Personal Retirement Schemes).

### **The Mandatory functions**

- 2.1.2 The MFSA had also proposed that a Personal Retirement Scheme which is an entirely member-directed Scheme would not be required to establish these two mandatory functions at Scheme level (i.e. the Investment management Function and the Custody Function), since the investment manager and, or the custodian, where applicable, would be appointed or be present at each member account level.

As was proposed in the Consultation Document, the MFSA is proposing that an *entirely member-directed Scheme* will not be required to establish the two mandatory functions at Scheme level (i.e. the Investment Management Function and the Custody

Function), since the investment advisor and, or investment manager and, or the custodian, where applicable, will be appointed or be present at each member account level.

On the other hand, a *non-member directed Scheme* will be required to have in place the mandatory functions (i.e. the Investment Management Function and the Custody Function) at Scheme level and the investments of the members would be pooled.

### 2.1.3 Entitlement to become a Member of a Member-Directed Scheme

The MFSA had also proposed that **only high net-worth individuals** would be entitled to enter into entirely member directed Schemes (i.e. no new retail customers would be permitted to enter into such member-directed Schemes). This restriction had been proposed due to MFSA concerns that in some instances, members of member-directed Schemes (who are mostly retail investors and not necessarily high-net worth individuals) were being directed by their appointed investment advisor or investment manager to invest their life savings in risky and highly illiquid investments, without considering that these type of investments are not suited to the risk appetite or risk profile of the member concerned. In the market's view, in so far as the entitlement to become a member of a member-directed Scheme is concerned, such proposal did not properly address the risk of inappropriate advice.

After due consideration of the feedback received from the market, the MFSA is of the view that it may not be appropriate to restrict membership to entirely member directed schemes only to "high net-worth individuals", so that the MFSA is now proposing that the restriction is removed bearing in mind that the proposed amendments to the Pension Rules for Personal Retirement Schemes which were issued for Consultation introduced additional safeguards such as properly regulated advisors and investment managers, the conduct of appropriate due diligence, the diversification requirement which is to be achieved at the level of the member account, and enhanced Investment Restrictions.

## 2.2 **The Introduction of a new ground of Member-Direction – “Professional Member”**

Part B.9 of the current Pension Rules for Personal Retirement Schemes does not contemplate the possibility of “*professional investors*” self-directing their own investments in a member-directed Scheme. However, on a number of occasions the industry proposed the insertion of such a new ground for member-direction.

The MFSA is proposing to introduce an additional new ground of member-direction in SLC 9.2 and 9.3 of the Pension Rules, modelled on Directive 2014/65/EU on Markets in Financial Instruments (MIFID II), with some modifications, in view of the fact that schemes licensed under the RPA are ultimately pension schemes and not investment vehicles.

In terms of this new ground, a “*professional member*” would be permitted to direct himself the investments within his account, rather than using an intermediary, such as an investment manager or investment advisor. The proposed new SLC 9.3 of the draft Pension Rules provides for an interpretation of “a professional member”. A member will only be permitted to manage his/her own investments, where the RSA receives from the Member a request, in writing, that the Member wishes to be considered as a professional member, and the RSA is satisfied that the prospective member or member of the Scheme fulfils the criteria referred to in SLC 9.3. In addition, 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.

### **2.3 The Investment Restrictions in the case of Member-Directed Schemes**

In the Consultation Document of the 6<sup>th</sup> December 2017, it was proposed that in the case of entirely member-directed Schemes, in addition to the investment restrictions laid down in the amended SLC 3.2 of Part B of the draft Pension Rules, the RSA shall also ensure that:

- (i) 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 default risk; and
- (ii) a Member may only invest in a particular asset as long as the eligibility criteria of such an investment are met by that Member.

The pensions market submitted its concerns as to the generality of the proposed requirement that a member may only invest in a particular asset as long as *the eligibility criteria* of such an investment are met by that member. In their view, investment eligibility criteria for a particular investment may also be based on the specific regulations or code of conduct rules in the jurisdiction of the member, at the time of the promotion of investment to the member, and possibly also on further rules in the jurisdiction or contract restrictions of the product producer. Therefore, such an assessment would require specialist knowledge, at member level, of regulatory requirements in the relevant jurisdiction and at product level, relating to the eligibility

criteria and client classification rules, which, in their view, an RSA cannot be expected to hold.

Taking into account the industry's feedback, the MFSA proposes to amend and clarify the proposed investment restriction laid down in SLC 9.5(c)(ii)(bb) of the draft Pension Rules, so that this paragraph is amended to read "*...a member may only invest in investments which can be classified as suitable for a retail member*".

With regards to the investments already placed prior to the entry into force of the new investment restrictions, and taking into account the market feedback, the MFSA proposes that, in order for members not to suffer any charges and exit fees, the said investment restrictions would be applicable to such members only 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 onwards.

## **2.4 The Role of the Retirement Scheme Administrator in the context of member-direction**

### **2.4.1 Enhancing the role and responsibilities of the RSA**

Section 2.7 of the Consultation Document provided that in the case of member-directed Schemes (irrespective of the form in which the Scheme is established), the RSA is expected to have adequate knowledge of the risk profile of the member so as to ensure that the proposed investments are in line with the investment strategy and investment restrictions of the member-directed Scheme and with the risk-profile of the member, in order to approve proposed transactions in a member's account. Moreover, in the said section it was stated that, in this respect, the RSA is expected to "*vet and approve the investment advice provided by the investment manager or the investment advisor, and raise certain queries, when necessary.*"

MARSP and other industry respondents were of the view that there are sufficient safeguards in ensuring that the advice given is adequate and professional enough for such member. In fact, it was pointed out that in terms of the draft Pension Rules, the investment advisors and investment managers appointed at member level need to be properly regulated and qualified and that an agreement is to be entered into between the RSA and the investment advisor, thus placing the contractual responsibility for the advice being given to the RSA.

In addition, it was noted that where a discretionary investment manager is appointed at member-level, such manager does not give advice but manages the member's account on a discretionary basis under an agreed mandate. In such a case, as long as such manager remains within the parameters given to him by the RSA, the RSA would not

be consulted on each transaction and with regard to any changes in the investments. Therefore, the RSA would only obtain confirmation from that manager that the investment portfolio of the member will be managed in line with the client's risk profile and the investment restrictions and would not have to approve all investments.

The MFSA is of the view that as specified in SLC 1.3.1 of Part B.1 (Pension Rules for Retirement Scheme Administrators) of the Pension Rules for Service Providers, the RSA, in carrying out his functions, shall act in the best interests of the Scheme members and beneficiaries. The MFSA expects the RSA to be diligent and to take into account his fiduciary role towards the members and beneficiaries, at all times, irrespective of the form in which the Scheme is established. The RSA is expected to approve transactions and to ensure that these are in line with the investment restrictions and the risk profile of the member in relation to his individual member account within the Scheme.

#### 2.4.2 Specific Information to be provided to the Member

In the Consultation Document, it was proposed to insert new provisions whereby a RSA is required to ensure that the member is kept updated and informed in relation to his account within the member-directed Scheme, by means of a statement of information which is to be provided to the member, at least every six months. In this regard, some market participants submitted that the requirement to provide the minimum information specified in SLC 9.5(d) of the draft Pension Rules to Members, at least every six months, is impractical and onerous. Therefore, it was suggested that the member is to be provided with the relevant information on an annual basis, instead of six months. Moreover, it was also suggested to introduce the provision of ad-hoc valuations to members, upon request, through the RSA or via the investment manager or investment advisor.

SLC 9.5(d) of the draft Pension Rules contains the minimum information to be provided to the Member in relation to the member's account during the relevant reporting period, which includes information in relation to the underlying investments and their respective value, as well as information on all applicable charges incurred. However, in this regard, some industry respondents argued that, in practice, the charges incurred on the investments of life bond providers are held on the Investment Provider platforms and not on the RSA System. It was also suggested that the RSA may instead be required to provide the Member with information on the current value of the Members investments, information on all applicable scheme charges, and confirmation to the Member that respective values of their underlying investment and charges applied on their investment can be accessed through their investment providers' online access or directly from the investment provider, on request.

In addition, it was also proposed that the RSA is to immediately disclose to the member any material information as well as any material changes, relating to the member's account (*vide SLC 9.5(e) of Part B.9 of the Draft Pension Rules for Personal Retirement Schemes*). In this regard, some market participants argued that the RSA does not have the authority or qualifications to provide investment advice and therefore, is not the best suited person to advise members about the status of the performance of their investment portfolio. In their view, it is the role of the advisor to monitor and service the member investment account, on a regular basis, as well as to advise both the RSA and the member of any material information or material changes to the portfolio.

Following the feedback from market, the MFSA has agreed to amend this provision so that members are to be provided with the minimum information as laid down in SLC 9.5(d) of the draft Pension Rules, annually, and also upon request of the Member. The RSA is also to provide information of the availability of online access, which provides real time information of the investments held in the member account.

Moreover, in so far as the requirement in SLC 9.7(e) to disclose to the member any material information as well as any material changes, relating to the member's account, the MFSA is of the view that such requirement is to be retained since the RSA is to be responsible to inform the member of any material changes in the investments, in particular changes to the detriment of the account, such as the suspension of funds.

#### 2.4.3 Compliance with the diversification requirement at member-level

In the Consultation Document, the MFSA sought to clarify that the diversification requirement should be limited to the assets held by the Member in the member-directed Scheme, and is not to be extended to take into account the whole personal wealth of the member. It follows that diversification is deemed to be satisfied only by taking into account the assets in the individual Member account, and not taking into consideration any other savings or free investable assets which that member may possess in his estate. Therefore, in terms of SLC 9.5(c)(i) of the draft Pension Rules, the investment restrictions, including the requirement of diversification, 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.

However, some market participants are of the view that it would be more appropriate if the determination of diversification appropriate to the individual member is considered to be the primary responsibility of the investment advisor and, or investment manager appointed at the level of the member account, who are better placed to determine a member's attitude to investment risk and tolerance for loss in view of the fact that these are appointed by the member.



In so far as compliance with the diversification requirement at member-level is concerned, the MFSA is of the view that the investment advisor and, or investment manager appointed at the level of the member account, are to ensure that diversification requirement is satisfied prior to providing the advice. However, the MFSA also remains of the view that the RSA is to be considered responsible to verify and monitor that investments in the individual member account are diversified, and the RSA is not to merely accept the proposed investments, but it should acquire information and assess such investments. The RSA should give his agreement prior to the investments being executed by the investment manager. Therefore, the MFSA would like to emphasise that the RSA is responsible to ensure that the diversification requirement in relation to the member account is complied with.

## **2.5 The Retirement Scheme Administrator’s approval of the investment manager and investment advisor**

### **2.5.1 Due diligence on the investment advisor /investment manager at member level**

As part of this due diligence, the RSA will be required to ensure that the investment advisor and the investment manager appointed in relation to the member account is “*qualified and competent*” to provide such investment advice or to manage such investments (*vide SLC 9.6(a) and (b) and SLC 9.7 (a) and (b) of Part B.9 of the Draft Pension Rules for Personal Retirement Schemes*). The market sought clarification as to what is meant by “*competent*”.

In relation to the term “*competent*”, the MFSA would like to clarify that this refers to the fact that it is not sufficient for an investment advisor and an investment manager to be licensed, but it is also vital that within the terms of such licence such advisor or manager can provide the management or investment advice which is actually being given to the Member. This will be clarified in proposed amendments to the Pensions Rules.

In so far as the requirement to have properly regulated advisors is concerned, the MFSA proposes to take on board the recommendation of some industry respondents, so that a transitional period of six months after the implementation date of the proposed amendments to the Pension Rules for Personal Retirement Scheme (until 1st July 2019) is granted, in order to allow investment advisors of current members to take any necessary actions to comply with the requirements SLC 9.6(b)(i), in order to obtain the appropriate authorisations or licence and passporting permissions.

In relation to due diligence to be carried out on the investment advisor, it is to be noted that the MFSA is also proposing to amend SLC 9.6(c) of the draft Pension Rules so as to clarify that the agreement to be entered into between the RSA and the investment advisor is to include provisions clearly stating 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.

#### 2.5.2 Due diligence to be carried out “at all times”

In the Consultation Document, the MFSA proposed that the RSA is to be required to carry out the appropriate due diligence on the investment advisor and, or investment manager appointed by the Member, at all times.

Some industry respondents noted that it will be difficult for RSAs to comply, in practice, with the requirement to carry out the appropriate due diligence on the investment advisor and, or investment manager appointed by the Member, “*at all times*”. Therefore, the said respondents argued that the burden is to be shifted on the appointed investment manager and, or investment advisor, so that the RSA would need to ensure that the agreements between the RSA and the member-appointed investment advisor and, or investment manager include an on-going obligation on such advisor and manager to confirm that they meet the minimum competency and permission requirements in their respective jurisdiction where they are advising the member and/or in the member's country of residence. Moreover, these industry respondents also suggested that the initial due diligence may instead be revisited on a regular basis (for instance annually) in order to ensure minimum regular monitoring of proper due diligence records by the RSA.

The MFSA is of the view that the RSA is to ensure that the due diligence requirements of the member-appointed investment advisor and, or investment manager are to be satisfied on an ongoing basis.

#### 2.5.3 Due diligence on custodians at member level

In terms of SLC 9.9 of the draft Pension Rules, the RSA is required to carry out due diligence on the custodian at member-level, where applicable. In this respect, some market respondents were of the view that it is impossible and impractical for RSAs to carry out due diligence on custodians appointed by investment managers appointed by the member and, or investment platforms, and on sub-custodians appointed by such managers or platforms. Therefore, it was submitted that due diligence checks are to be maintained only on Custodians appointed at Scheme level.

The MFSA is of the view that the due diligence checks are to be applied also to custodians appointed by members of member directed schemes.

### **Amendments applicable to all Personal Retirement Schemes**

## **2.6 Introducing an oversight and monitoring role for the Custodian Function at Scheme level**

In the Consultation Document, the MFSA proposed that, in the case of Personal Retirement schemes (non-member directed), the entities responsible for carrying out the custody function, besides being responsible for the safe-keeping of assets, are also to be made responsible for carrying an oversight function over the investment management function. In this respect it was also proposed that the Pension Rules for Personal Retirement Schemes would need to be amended to reflect the oversight function.

In so far as the proposed introduction of an “*oversight function to oversee the Investment Management Function*” on the custody function of non-member directed schemes is concerned, some market respondents were of the view that it is not necessary to introduce such a requirement since in their view the oversight function is already being carried out by RSAs and Investment Managers appointed at Scheme level. Therefore the said respondents submitted that they would prefer having the option for a custodian to be appointed without an oversight function.

Notwithstanding the feedback received, the MFSA is still of the view that the entities responsible for carrying out the custody function are to carry out “*an oversight function*” over the investment management function, besides being responsible for the safekeeping of assets in the interest of the scheme.

## **2.7 Schemes which qualify as Recognised Overseas Pension Schemes (“ROPS”)**

### **2.7.1 Proposed amendments to SLC 4.6.8 of Part B of the draft Pension Rules**

In the Consultation Document, the MFSA suggested that SLC 4.6.8 of Part B of the current Pension Rules for Personal retirement Schemes is to be amended in order to be made applicable only to UK tax relieved funds belonging to transfer Members within a Maltese ROPS. However, some industry respondents submitted that SLC 4.6.8 needs to be further amended in order to address certain concerns, such as the fact that not all members transfer directly from their scheme in the UK.

The MFSA proposes to carry out amendments to SLC 4.6.8 in order to address the fact that not all members transfer directly from their scheme in the UK, since, as pointed out by some industry respondents, Members may, have first transferred their UK scheme to another QROPS in another alternative jurisdiction and subsequently transfer to a Maltese retirement scheme. Therefore, in order to address the said concerns, it is proposed to amend further SLC 4.6.8.

2.7.2 *The initial cash lump sum of 30% in terms of SLC 4.6.2*

It was suggested that SLC 4.6.8 is to be amended so that Part B.4.6 relating to Retirement Benefits is disapplied for ROPS, with the exception of SLC 4.6.2 relating to the initial cash lump sum, which provides that on the retirement date, a Member may elect to take up to 30% of his assets in the Retirement Scheme. The said respondents submitted that UK legislation allows for a maximum of 25% as a pension commencement lump sum for Members who have more recently left the UK or transferred their pension benefit outside the UK within a prescribed timeline.

Pension funds transferred from Pension Schemes registered in the United Kingdom (“UK”) to Retirement Schemes licensed under the Act which qualify as ROPS, are made subject to the applicable UK legislation relating to retirement benefits. Therefore, the cash lump sum of 30% of the member’s assets in the Scheme in terms of SLC 4.6.2 of the current Pension Rules is not to apply to such Schemes.

2.7.2 *Commencement of payment of Retirement Benefits not later than age 75*

In terms of SLC 1.2.5, the commencement of payment of retirement benefits may not be made on a date later than that on which the member attains the age of seventy-five (75). Some industry respondents argued that the said requirement should not to be made applicable to Maltese ROPS, since, in their view, applying the said requirement to ROPS would contrast with the provisions of the proposed SLC 4.6.8 of the draft Pension Rules, which applies the “*applicable UK legislation relating to the withdrawal of retirement benefits.*” In this regard, UK legislation allows benefit withdrawals indefinitely, and thus, there are no restrictions as to the age limit.

However, the MFSA would like to point out that if the age limit of 75 had to be disapplied for ROPS, as suggested by some market respondents, it would jeopardise the position of the Maltese Personal Retirement Scheme (which qualifies as ROPS) to continue be considered as a licenced entity under the RPA. Since, in terms of article 3(2)(b) of the RPA and the Pensions Rules for Personal Retirement Scheme, a personal retirement scheme or arrangement shall not constitute a retirement scheme under the RPA if it provides for 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 50, or

not later than the age of 75 (except in specific cases where the scheme or arrangement provides that the payment is made by reason of the disability or death of a member). As a consequence, the MFSA is of the view that the payment of retirement benefits to the member is to commence by age 75, for all Personal Retirement Schemes licenced under the RPA.

## **2.8 Amendments to Part B.5 on Conditions relating to information for Scheme Members and Beneficiaries**

### **2.8.1 Right of Withdrawal**

In the Consultation Document, the MFSA proposed that the RSA is to inform the member of his/her right to opt out of the Scheme within 30 days of the member receiving a welcome letter, together with a copy of the Scheme Document and Scheme Particulars. The member is also to be provided with a cancellation notice on a durable medium (which 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.

In the feedback received, concerns were submitted in relation to applying the right of withdrawal. Some market respondents were of the view that the cooling off period is not to apply to the transfer of funds from other ceding pension schemes into the receiving scheme members' account, since a cooling off period would have already been observed at contribution stage with the outgoing scheme. The said respondents were also of the view that in the case of an in-specie transfer or contribution, the cooling off period in relation to whether the member wants to join the scheme or not, is to be permitted after being accepted as a member, but before funds are transferred, thereby allowing the member to withdraw before the money is actually received. Another market respondent pointed out its disagreement in relation to the fact that the Member is not to incur any penalty, fees or charges when exercising the right of withdrawal.

The MFSA would like to emphasise that pursuant to regulation 7 of the *Distance Selling (Retail Financial Services) Regulations (S.L. 330.07)*, where the distance contract relates to personal pension arrangements, the member is to be given a period of thirty (30) calendar days to withdraw from the said contract, without incurring any penalty and without having to give any reason. Therefore, the MFSA remains of the view that, the right of withdrawal from the Scheme may be exercised by every Member joining a Personal Retirement Scheme licenced under the RPA (including new members which would transfer funds from other ceding pension schemes). Moreover,

it is also to be pointed out that, for that period of thirty days, the funds would not be invested and withdrawn. However, the member will be given the choice to waive the cancellation period in terms of SLC 5.1.2 of the draft Pension Rules.

In addition, in relation to the requirement that the withdrawal from membership within the Scheme is at no cost, it is to be noted that in terms of regulation 7(1) of the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07), members are entitled to withdraw from the contract without incurring any penalty and without having to give any reason.

#### 2.8.2 Information Disclosures to the Members and Beneficiaries

In the Consultation, it was proposed to insert a new requirement so that a member who opts to transfer the assets out of the Scheme shall, as a minimum, be notified with the information about the applicable fees and charges relating to the transfer, details of the new RSA, as well as details of the new Retirement Scheme. Some market respondents requested clarification of the said provision and pointed out that while the retiring RSA of a member transferring out of its scheme should provide details of its transfer out charges, it would be very difficult for the retiring RSA to provide details of the new RSA's scheme and charges.

The MFSA would like to point out that the purpose of the said provision is mainly to ensure that confirmation of the transfer is given to the Member by the (previous) RSA, and that the said provision refers to the disclosure of charges imposed by the (previous) RSA (and not by the new RSA). Therefore, the MFSA proposes to amend the said provision, so that following the completion of any transfer of entitlements out of the Scheme, the Member shall, as a minimum, be notified with the information about the applicable fees and charges imposed by the current Scheme relating to the transfer and confirmation that the transfer has been made to another retirement scheme, as well as details of the new Retirement Scheme Administrator and the new Retirement Scheme.

## 2.9 **ROPS vs QROPS**

The pensions industry requested clarity around ROPS (*A Registered Overseas Pension Scheme*) instead of QROPS in the proposed amendments to the Pension Rules it is important to ensure that schemes which are not a QROPS do not end up having to comply with rules not intended for them.

A ROPS has taken the place of QROPS on most HM Revenue & Customs (HMRC) guidance. ROPS were established on April 6, 2015, when HMRC introduced a new qualifying test for all pensions in the UK and overseas – the pensions age test (which bars any pension from paying out benefits to any retirement saver aged under 55 years

old except in exceptional circumstances, such as terminal illness). ROPS also have to pass a benefits tax relief test, which essentially requires a non-resident pension saver to pay tax on pension payments at the same rate as a resident receiving payments from the same scheme. ROPS also have to pass some [extra technical tests](#). Schemes licensed under the RPA now fall under the ROPS list as evidenced in this link: <https://www.gov.uk/guidance/check-the-recognised-overseas-pension-schemes-notification-list>. A ROPS can also be a QROPS, if additional tests are satisfied.

### **3. Way Forward**

Taking into account any necessary amendments following any feedback received in relation to this Consultation, the MFSA proposes that the new regime is to come into force by the **1<sup>st</sup> January 2019**.

**Communications Unit  
Malta Financial Services Authority  
MFSA Ref: 15-2018**