

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

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# INTRODUCTION

## ***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 located 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 located 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 and, or recognised to provide any one or more services of the back-office administrative activities<sup>1</sup> established by the Pension Rules issued under 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 the Act. The Act also prohibits a person from providing, in or from within Malta, any back-office administrative activities detailed in the Pension Rules for Service Providers unless such a person is recognised by the MFSA to provide such activities.

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<sup>1</sup> Reference to back-office administrative activities and back-office administrators will be retained for a transitional period of one year from the date of coming into force of the amendments to the Retirement Pensions Act, in accordance with the Retirement Pensions (Transitional Provisions on Back-Office Administrators) Regulations, 2019.

## ***The MFSA and Pension Rules made 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 issue 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 others as may be specified therein.

In exercise of those powers, the MFSA has made these Pension Rules for Occupational Retirement Schemes.<sup>2</sup>

Breach of these Pension Rules may give rise to administrative penalties or any other measure against the offending person.

## ***Structure of Pension Rules for Occupational Retirement Schemes***

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

- Part A specifies the nature and licensing process, and criteria applicable to Occupational Retirement Schemes;
- Part B sets out the Standard Licence Conditions for Occupational 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 Occupational 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 Occupational Retirement Schemes can be downloaded from the MFSA's website ([www.mfsa.com.mt](http://www.mfsa.com.mt)).

The Pension Rules for Occupational 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>2</sup> There are separate Rules for Personal Retirement Schemes, Retirement Funds and for Service Providers. These 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 an Occupational Retirement Scheme**

### **A.1.1 Definition**

1.1.1 In terms of articles 2 of the Act, an Occupational Retirement Scheme means a retirement scheme, irrespective of its legal form, operating on a funded basis, established separately from any Sponsoring Undertaking or trade, for the purposes of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(a) individually or collectively between the employer or employers and the employees or their respective representatives; or

(b) with self-employed persons, individually or collectively,

and which carries out activities directly arising therefrom.

1.1.2 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, death or other circumstances.

1.1.3 Moreover, a scheme or arrangement does not constitute an Occupational 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 Occupational Retirement Schemes, except in those cases where the retirement scheme or arrangement provides that:

(i) the payment is made by reason of the disability or death of a Member; or

(ii) the payment is made to the Member as may be determined by Pension Rules for Occupational Retirement Schemes in the event that the Member is no longer employed by the employer;

Provided that a scheme or arrangement described in paragraph (a) may, by written notice to the MFSA, apply to be considered as an Occupational Retirement Scheme for purposes of the Act and such a scheme shall comply with the provisions of Articles 32 to 35 of the Occupational Pensions Directive.

1.1.3 If there is any doubt as to whether, for the purposes of the Act, a scheme or other arrangement is an Occupational 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 An Occupational 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 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.

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

- 1.3.1 An Occupational Retirement Scheme is established with the purpose of collecting contributions made by an employer(s), or by an employer(s) and employees, by employees through an employment relationship, or by an association representing employers, including self-employed persons, and investing these contributions in assets earmarked to provide Retirement Benefits to Members and Beneficiaries thereof. An Occupational Retirement Scheme operates 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.
- 1.3.2 An Occupational Retirement Scheme may be a *Defined Benefit Scheme* or a *Defined Contribution Scheme*. A Defined Benefit Occupational Retirement Scheme provides fixed or determinable Retirement Benefits and may take different forms (e.g. traditional defined benefit schemes, hybrid schemes etc.). In a Defined Contribution Occupational Retirement Scheme, Retirement Benefits are established 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. An Occupational Retirement Scheme may also provide cover against Biometrical Risk or investment risks subject to the conditions outlined in the Pension Rules for Occupational Retirement Schemes.
- 1.3.3 An Occupational Retirement Scheme may be established either as a *Closed Scheme* or as an *Open Scheme*. Closed Occupational Retirement Schemes are schemes established at the initiative of a single employer or a group of related employers or an association representing employers and membership of the scheme is limited thereto. Open Occupational Retirement Schemes are schemes usually established at the initiative of a Retirement Scheme or Retirement Scheme Administrator (as applicable), whose membership is open to a number of unrelated employers and self-employed persons acceptable to the Retirement Scheme Administrator.

#### **A.1.4 Governance Arrangements & Related Parties**

- 1.4.1 An Occupational Retirement Scheme, irrespective of its legal form, is required to appoint 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 Occupational 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>3</sup> The Retirement Scheme Administrator carries out the day-to-day administration duties and may also either carry out the investment management of the assets or provide custody services for the Occupational Retirement Scheme, if it is duly licensed to do so under the Act;
  - (b) an *Auditor* appointed 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 An Occupational Retirement Scheme is required to appoint 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 Occupational Retirement Scheme and its assets.

#### **A.1.5 Mandatory Functions**

- 1.5.1 An Occupational 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 Occupational 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 Occupational Retirement Scheme, a custodian separate from the Retirement Scheme Administrator may need to be appointed for the safe-keeping of assets and oversight duties. The Custodian shall also be responsible for monitoring the

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<sup>3</sup> Please refer to the Rules issued under the Act for Service-Providers for details regarding the licensing / recognition criteria and requirements as well as the operational conditions applicable to Service Providers.

extent to which the Investment Manager is abiding by the investment restrictions of the Scheme laid out in Part 4.2 of the Pension Rules for Occupational Retirement Schemes. Separation of the custody and investment management function is compulsory.

- 1.5.2 In delegating/outourcing functions to third parties, the *Retirement Scheme Administrator* retains responsibility for the overall operation, management and administration of the Occupational 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 Key Functions**

- 1.6.1 A Retirement Scheme Administrator of an Occupational Retirement Scheme, irrespective of its legal form, is required to have in place the following key functions: a risk-management function, an internal audit function, and where applicable, an actuarial function.

#### **A.1.7 Employee Representation**

- 1.7.1 Employee representation in an Occupational Retirement Scheme is optional. The arrangements for the provision of employee representation in an Occupational Retirement Scheme are subject to MFSA's approval and therefore should be discussed in advance with the MFSA.

#### **A.1.8 Funding**

- 1.8.1 Occupational Retirement Schemes are funded by the *Contributor(s)*, who may be either:
- (a) solely the Employer; or
  - (b) the Employer and the Employees
  - (c) Employees through an employment relationship; or
  - (d) association representing employers, including self-employed persons.

#### **A.1.9 Technical Provisions**

- 1.9.1 An Defined Benefit Occupational Retirement Scheme (and any other type of scheme providing cover against biometrical or investment risks) is required to comply with the technical provisions requirements as set out in the Retirement Pensions (Technical Provisions) Regulations, 2019 and Part B of these Pension Rules for Occupational Retirement Schemes.

#### **A.1.10 Investment of Contributions**

- 1.10.1 An Occupational 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 in Part B of the Pension Rules for Occupational Retirement Schemes issued in terms of the Act. An Occupational Retirement Scheme may opt to invest either directly or indirectly on the market.

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## **A.2 Licensing Requirements**

### **A.2.1 Licensing Requirement**

2.1.1 In terms of article 4 of the Act, an Occupational 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 the main administration of such retirement scheme is located 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 the main administration of such retirement scheme is located in Malta, and,

unless such scheme is duly licensed under the Act.

2.1.2 Article 4(6) of the Act permits the initial steps for the incorporation or establishment of an Occupational 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 Requirement of Fitness and Properness**

2.2.1 The Retirement Scheme Administrator of an Occupational Retirement Scheme shall ensure that persons who effectively run the Occupational Retirement Scheme and persons who carry out key functions are at all times “fit and proper”. In deciding whether a person is “fit and proper”, a Retirement Scheme Administrator shall be satisfied that the persons:

(a) who effectively runs the Occupational Retirement Scheme, have the qualifications, knowledge and experience which collectively are adequate to enable them to ensure a sound and prudent management of the Occupational Retirement Scheme;

(b) who carry out the actuarial or internal audit key functions have professional qualifications, knowledge and experience that are adequate to properly carry out their key functions;

(c) who carries out other key functions has the qualifications, knowledge and experience adequate to properly carry out their key functions; and

is of good repute and integrity.

2.2.2 Where an Occupational Retirement Scheme outsources a key function in accordance with Section 3.8 of Part B of the Pension Rules for Occupational Retirement Schemes,

such Occupational Retirement Scheme is to apply fit and proper procedures in assessing the entity performing the outsourced key function.

### **A.2.3 Licensing Criteria**

- 2.3.1 An Occupational Retirement Scheme shall be constituted and structured in line with the requirements set out by the MFSA and shall have a Scheme Document as stipulated in Part B.2.1 of the Pension Rules for Occupational Retirement Schemes. Moreover, the MFSA shall refrain from licensing an Occupational Retirement Scheme unless it is satisfied that:
- (a) the Occupational Retirement Scheme is constituted and structured in line with any Pension Rules, as applicable;
  - (b) the activities of the Occupational Retirement Scheme are limited to retirement benefit related operations and activities arising therefrom;
  - (c) the Occupational Retirement Scheme and, or the Retirement Scheme Administrator shows evidence that it will comply with and observe the provisions of the Act and any regulations or Pension Rules made thereunder;
  - (d) the Occupational Retirement Scheme and the Retirement Scheme Administrator are fit and proper to carry out the functions required of them;
  - (e) where the Scheme is a Defined Benefit Scheme, the Sponsoring Undertaking has the necessary financial resources to meet its obligations;
  - (f) there is a Scheme Document which contains terms and conditions in line with any Pension Rules;
  - (g) the Occupational Retirement Scheme and, or the Retirement Scheme Administrator shows evidence that it will be in a position to comply with the system of governance provided for in article 13A of the Act;
  - (h) the Occupational Retirement Scheme and, or the Retirement Scheme Administrator shows evidence that, where the Sponsoring Undertaking guarantees the payment of the retirement benefits, the employer is committed to regularly financing;
  - (i) the name of the Occupational Retirement Scheme is one which, in the opinion of the MFSA, is not misleading; and
  - (j) any aspect of or related to the application does not raise any regulatory concerns.
- 2.3.2 When carrying out its functions under the Act, 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 Occupational Retirement Scheme, the persons responsible thereof, and all other parties connected therewith.

- 2.3.3 The MFSA will consider the nature of the Occupational Retirement Scheme and will need to be satisfied that appropriate governance structures and mechanisms, in particular, the systems of governance provided for in article 13A of the Act, 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 in place sound administrative and accounting procedures and adequate internal controls.
- 2.3.4 The MFSA will also need to be satisfied that the applicant, the Service Providers, key function holders 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 Occupational Retirement Scheme.

#### **A.2.4 Criteria of Fitness and Properness**

- 2.4.1 The "fit and proper" test is one which an Occupational Retirement Scheme, the Service Providers, the key function holders and its related parties must satisfy on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that the persons referred to in paragraph 2.3.4 of Part A of the Pension Rules for Occupational Retirement Schemes are fit and proper for the type of position the person holds or will hold, or the key function such person will perform, is on the Occupational Retirement Scheme, its Service Providers and its 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. The MFSA may conclude that an Occupational Retirement Scheme, the key function holders, its Service Providers, and/or its 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 an Occupational Retirement Scheme, the key function holders, its Service Providers, and its related parties are fit and proper, the MFSA will take account of all material facts whether such facts are disclosed or otherwise. It should be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.
- 2.4.2 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 Occupational Retirement Scheme, the key function holders, its Service Providers and its related parties are of good repute, act honestly and in a trustworthy fashion in relation to the Members and Beneficiaries.

Competence means that those persons who effectively run an Occupational Retirement Scheme, persons having other key functions and key function holders of such Occupational Retirement Scheme are able to demonstrate an acceptable amount of knowledge, qualifications, professional expertise and experience directly relevant to the

occupational retirement activities with which they are dealing. The MFSA will also look into the experience and track record of such persons to assess competence. The degree of competence required will depend on the role 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.

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

### **A.2.5 Application Documents**

- 2.5.1 A request for the licensing of an Occupational Retirement Scheme should be made by submitting a duly completed Application in the form set out in Schedule A in Part D to the Pension Rules for Occupational Retirement Schemes, supported by the documents requested in the Application Form. The MFSA may require any additional documents as deemed necessary.

### **A.2.6 The Licensing Process**

- 2.6.1 The Pension Rules for Occupational 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, 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.
- 2.6.2 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.
- 2.6.3 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.
- 2.6.4 Following submission, the Application and supporting documentation will be reviewed and comments provided to the Applicant directly 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.

- 2.6.5 The MFSA will analyse the submissions and on the basis of this, make a decision regarding the licensing application.
- 2.6.6 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 Occupational Retirement Schemes may not be applicable or be amended (where the circumstances justify such treatment) and supplementary conditions applied.
- 2.6.7 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.
- 2.6.8 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.
- 2.6.9 The Applicant may also be required to satisfy a number of post-licensing conditions prior to formal commencement of business.

#### **A.2.7 Fee**

- 2.7.1 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.2.8 Variation of a Licence**

- 2.8.1 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.3.1 Pension Rules for Occupational Retirement Schemes licensed under the Act**

- 3.1.1 The Standard Licence Conditions which are to be satisfied by Occupational 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 Occupational Retirement Schemes issued by the MFSA.
- 3.1.2 The detailed Standard Licence Conditions applicable are set out in Part B of the Pension Rules for Occupational 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 Occupational Retirement Scheme. An Occupational 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.
- 3.1.3 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.

### **A.4.1 Exercise of Cross Border Activities and Cross Border Transfers by Occupational Retirement Schemes**

#### **Cross Border Activities**

- 4.1.1 An Occupational Retirement Scheme licensed under the Act which qualifies as an Institution for Occupational Retirement Provision in terms of Directive 2016/2341/EC of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision, (IORPs) (recast), also referred to as the "Occupational Pensions Directive", may carry out cross border activity and accept sponsorship in terms of the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019. This means that such an Occupational Retirement Scheme duly licensed under the Act may receive contributions from employers (or "sponsoring undertakings" as defined in the Directive) located in other EU Member States or EEA States and provide benefits to employees of the contributing employers.
- 4.1.2 An Occupational Retirement Scheme which is entitled and wants to operate on a cross-border basis, not resulting from a cross border transfer is required to follow the procedure set out in the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019, comply with requirements stipulated therein, and to submit duly completed Applications in the form set out in Schedule B in Part D to the Pension Rules for Occupational Retirement Schemes, to the MFSA.

#### **Cross Border Transfer**

- 4.1.3 An Occupational Retirement Scheme licensed under the Act which qualifies as an Institution for Occupational Retirement Provision in terms of Directive 2016/2341/EC of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision, (IORPs) (recast), also referred to as the "Occupational Pensions Directive", may transfer all or part of its

liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalents in terms of the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019. This means that such an Occupational Retirement Scheme licensed under the Act may transfer pension schemes to another Institution for Occupational Retirement Provision, other than Malta, within the European Union.

- 4.1.4 An Occupational Retirement Scheme which is licensed under the Act, and wants to receive from a European IORP, all or part of the European IORP's liabilities, technical provisions, and other obligations and rights as well as corresponding assets or cash equivalent thereof, which may result or not in cross-border activity, is required to follow the procedure set out in the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019, comply with requirements stipulated therein, and to submit duly completed Applications in the form set out in Schedule C in Part D to the Pension Rules for Occupational Retirement Schemes, to the MFSA.

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## **PART B**

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### **STANDARD LICENCE CONDITIONS FOR OCCUPATIONAL RETIREMENT SCHEMES**

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

### **B.1.1 Constitution**

- 1.1.1 An Occupational 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 as may be 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.
- 1.1.5 The Scheme may also be a Closed Scheme or an Open Scheme:
- (a) in the case of a Closed Scheme sponsored by one or more Sponsoring Undertakings, approval of the Sponsoring Undertakings is needed for new sponsors to join the Scheme;
  - (b) in the case of an Open Scheme, there need not be any connection between those joining the Scheme and joining the Scheme is dependent upon acceptance by the Scheme or the Retirement Scheme Administrator.

### **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 administrative and accounting procedures and adequate internal 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 Occupational Retirement 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; and
  - (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.4.2 of the Pension Rules for Occupational 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 later than that on which the Member attains the age of seventy-five.
- 1.2.6 The Scheme is to have regard to the aim of having an equitable spread of risks and benefits between generations.
- 1.2.7 A Scheme wanting to carry out a cross-border activity or cross-border transfer shall comply with the provisions prescribed in the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019.
- 1.2.8 A Scheme shall comply with the minimum requirements relating to the acquisition and preservation of pension rights set out in Appendix 12 in Part C to the Pension Rules for Occupational Retirement Schemes.
- 1.2.9 Where a Scheme invests directly, or through an Investment Manager, in shares traded on a regulated market, it shall comply with the requirements set out in Appendix 13 in Part C to the Pension Rules for Occupational Retirement Schemes. An Investment Manager licensed under the Act to carry out investment management services for a Scheme, investing in shares traded on a regulated market, shall also comply with the requirements set out in Appendix 13 in Part C to the Pension Rules for Occupational Retirement Schemes.

- 1.2.10 A Scheme shall report the information regarding provision of occupational pensions to the MFSA, as set out in Appendix 14 in Part C to the Pension Rules for Occupational Retirement Schemes.

### **B.1.3 Employee/Employer Representation**

- 1.3.1 A Scheme may provide for employee / employer representation in its structure and governance. The appointment of employee / employer representation within the structure of a Scheme, shall be agreed in advance with the MFSA and requires MFSA's prior approval and may be subject to any conditions as the MFSA may deem applicable.

### **B.1.4 Service Providers**

#### ***Retirement Scheme Administrator***

- 1.4.1 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 Occupational Retirement Schemes and the Pension Rules for Service Providers issued in terms of the Act.
- 1.4.2 The Retirement Scheme Administrator shall be an entity duly licensed to administer the operation of a Scheme, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Retirement Scheme Administrator.
- 1.4.3 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.
- 1.4.4 The Retirement Scheme Administrator shall be responsible for the compliance by the Scheme of the Act, regulations and Pensions Rules.
- 1.4.5 The Retirement Scheme Administrator shall have an established place of business in Malta.

#### ***Investment Manager***

- 1.4.6 The function relating to the investment management is mandatory. 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. In the case of an open scheme, the Scheme may appoint an investment manager for every Sponsoring Undertaking within the Scheme.
- 1.4.7 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 and 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**

1.4.8 The function relating to the custody of assets is mandatory. The Scheme may appoint a Custodian, independent from the entity carrying out the investment management services in connection with the Scheme. 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.4.2 of the Pension Rules for Occupational Retirement Schemes and in accordance with the Constitutional Document, Scheme Document, and Scheme Particulars. 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. In the case of an open scheme, the Scheme may appoint a Custodian for every Sponsoring Undertaking within the Scheme.

1.4.9 Where the assets of a Scheme are entrusted to a Custodian for safekeeping of assets and oversight duties, the Custodian of the Scheme shall either be:

(a) the Retirement Scheme Administrator if it is not undertaking the 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 2011/65/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.

1.4.10 Where a Scheme appoints a Custodian, such Custodian shall:

(a) be appointed by means of a written agreement which shall stipulate the transmission of the information necessary for the Custodian to perform its duties in line with the requirements stipulated in the Act, regulations and Pension Rules issued thereunder;

(b) act honestly, fairly, professionally, independently and in the interest of the Members and Beneficiaries, when carrying out the tasks laid down in S.L.C. 1.4.11 and 1.4.12 of the Pension Rules for Occupational Retirement Schemes;

(c) not carry out any activities which may create conflicts of interest between the Retirement Scheme Administrator, the Scheme, the scheme's Members and Beneficiaries and itself, unless the custodian has functionally and hierarchically separated the performance of its custody tasks from its other potentially conflicting tasks;

(d) ensure that the potential conflicts of interest are properly identified, managed, monitored and disclosed to the Scheme's Members, Beneficiaries and to the Board of Directors of the Retirement Scheme Administrator, or when the Scheme is set up as a SICAV, the Board of Directors of the Scheme.

### ***Safekeeping Duties***

1.4.11 Where the Retirement Scheme Administrator undertakes the function of a Custodian for the safe-keeping of assets, the Scheme shall at least be required to:

(a) ensure that financial instruments are subject to due care and protection;

(b) keep records that enable the Scheme to identify all the assets at all times without delay;

(c) take the necessary measures to avoid conflicts of interest in relation to the safe-keeping of assets;

(d) inform the MFSA, upon request, about the manner in which assets are kept.

### ***Oversight Duties***

1.4.12 In addition to the duties identified above, and those referred to in Part 4.7 of the Pension Rules for Service Providers, the Custodian appointed for oversight shall:

(a) carry out instructions of the Scheme, unless they conflict with the Retirement Pensions Act, regulations and any Pension Rules issued thereunder, or the Constitutional Document, the Scheme Document and the Scheme Particulars;

(b) ensure that in transactions involving the assets of a Scheme, any consideration is remitted to the Scheme within the usual time limits;

(c) ensure that the income produced by assets is applied in accordance with the Constitutional Document, the Scheme Document and the Scheme Particulars.

### **Investment Advisor**

1.4.13 A Scheme may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Scheme.

1.4.14 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.

### **Back-Office Administrator<sup>4</sup>**

1.4.15 A Scheme may appoint a Back-Office Administrator responsible for back-office administrative activities in accordance with the Pension Rules for Service Providers issued in terms of the Act. Where a Back-Office Administrator is not appointed, the Retirement Scheme Administrator shall be responsible for the back-office administrative function and is required to have the appropriate systems and expertise to provide back-office administrative services.

1.4.16 The Back-Office Administrator of a Scheme may either be:

(a) the Retirement Scheme Administrator itself; or

(b) an entity/person recognised to provide back-office administration services to Schemes under the Act; or

<sup>4</sup> The provisions related to back-office administrators and back-office administrative activities will continue to be valid for a transitional period of one year from the date of coming into force of the amendments to the Retirement Pensions Act, in accordance with the Retirement Pensions (Transitional Provisions on Back-Office Administrators) Regulations, 2019.

(c) any other entity which is considered by the MFSA to be of sufficient standing and repute and has the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake back office administrative services and which satisfies any additional criteria which may be set out in the Pension Rules issued under the Act.

### ***Independence Requirements***

#### ***General***

- 1.4.15 The Scheme and the Retirement Scheme Administrator, as applicable, shall be separate and independent entities from the Sponsoring Undertaking of the Scheme, in order that the assets of the Scheme are safeguarded in the interest of Members and Beneficiaries in the event of insolvency of the Sponsoring Undertaking.
- 1.4.16 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.
- 1.4.17 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.
- 1.4.18 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.
- 1.4.19 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***

- 1.4.20 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Service Provider, key function holders and related parties of the Scheme.
- 1.4.21 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***

- 1.4.22 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.

1.4.23 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.

1.4.24 In the instance that the Scheme or Retirement Scheme Administrator, as applicable, outsources certain functions (such as the Investment Management and Custody and the back-office administration) 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 services provider of any outsourced functions. The appointment of the Service Provider by the Scheme or the Retirement Scheme Administrator shall be subject to these conditions.

1.4.25 The provisions of SLC 1.4.22 to SLC 1.3.24 of the Pension Rules for Occupational Retirement Schemes, shall apply *mutatis mutandis* to the appointment of an Investment Advisor, where applicable.

### **B.1.5 Auditor**

- 1.5.1 For the purposes of these Pension Rules, the Scheme shall appoint an auditor approved by the MFSA. 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.
- 1.5.2 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, Sponsoring Undertaking 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.
- 1.5.3 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 the Pension Rules for Occupational Retirement Schemes. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.
- 1.5.4 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.
- 1.5.5 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 an Occupational Retirement Scheme.
- 1.5.6 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.1.6 Actuary**

- 1.6.1 A Defined Benefit Scheme shall appoint an Actuary in accordance with the Standard licence Conditions outlined in Part B.3 of the Pension Rules for Occupational Retirement Schemes. This requirement does not apply to SLC B.5.6 of Part B of the Pension Rules for Occupational 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 establishes 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 Occupational 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.
- 2.1.4 The Scheme Document shall be signed by the persons who are bound by the terms of its provisions, including the Contributor(s) and where applicable the persons underwriting the liability of the Scheme providing cover against biometric risk, or guaranteeing a given level of investment performance or a given level of benefits.

### **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 the Pension Rules for Occupational Retirement Schemes and shall be dated and shall be 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, and such statement is to be made publicly available, and communicated to the Contributors, Members and Beneficiaries.
- 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 Pensions Rules for Occupational Retirement Scheme 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 Companies Act (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) partial transfer by the Scheme of part of its liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof in accordance with the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2019;
  - (i) payments made to employers and to Members leaving the Scheme other than on a pension benefit transfer;
  - (j) payments made in respect of Contributor-Related Investments;
  - (k) any other payments into and withdrawals from the Scheme assets and the reason for such payment(s);
  - (l) any resolutions passed by or proceedings of Contributor(s) and/or Beneficiaries;
  - (m) any vested pension rights of outgoing employees which the Scheme has retained as dormant in accordance with Appendix 12 of Part C to the Pension Rules for Occupational Retirement Schemes.
- 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 the Pension Rules for Occupational Retirement Schemes. The annual accounts and the annual reports shall be publicly disclosed.
- 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 be reported 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 Pensions 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 during Compliance Visits.

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

- 2.5.1 Every 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 the Pension Rules, showing –

- (a) the rates of contributions payable towards the Scheme by or on behalf of the employer(s) and, or where applicable, by any other Contributors of 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 Governance Requirements**

### **B.3.1 General**

3.1.1 Pursuant to Article 20(1) of the Occupational Pensions Directive;

(a) the Retirement Scheme Administrator; or

(b) where the Scheme is set up as a SICAV, the Retirement Scheme Administrator and the Board of Directors of the Scheme,

shall be ultimately responsible overall operation of the Scheme. The Retirement Scheme Administrator shall be responsible for compliance by the Scheme with the Act, regulations, and Pension Rules issued thereunder, including any other obligations pursuant to the Occupational Pensions Directive.

3.1.2 In terms of article 13A of the Act, the Retirement Scheme Administrator of a Scheme is required to have in place an effective system of governance which provides for the sound and prudent management of their activities and which shall be proportionate to the nature, scale and complexity of the activities of the Scheme. That system of governance shall include:

(a) an adequate and transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;

(b) an effective system for ensuring the transmission of information in a timely manner;

(c) an effective internal control system, which shall include administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements at all levels;

(d) reasonable steps to ensure continuity and regularity in the performance of the its activities, including the development of contingency plans, and the establishment of appropriate and proportionate systems, resources and procedures;

(e) consideration of environmental, social and governance factors related to investment assets in investment decisions;

(f) a regular internal review.

3.1.3 The Retirement Scheme Administrator shall at least have written policies in relation to risk management, internal audit and, where relevant, actuarial and outsourced activities, and shall;

(a) approve such policies;

(b) ensure that those policies are implemented;

(c) review those policies at least every three years; and

(d) adapt those policies in view of any significant change in the system or area concerned.

### **B.3.2 Remuneration policy**

3.2.1 The Retirement Scheme Administrator shall establish and apply a sound remuneration policy for all those persons who effectively run the Scheme, carry out key functions and other categories of staff whose professional activities have a material impact on the risk profile of the Retirement Scheme in a manner that is proportionate to their size and internal organisation, as well as to the size, nature, scale and complexity of their activities.

3.2.2 Unless otherwise provided for in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the Retirement Scheme Administrator shall regularly disclose publicly relevant information regarding its remuneration policy.

3.2.3 When establishing and applying the remuneration policy referred to in SLC 3.2.1 of Part B of the Pension Rules for Occupational Retirement Schemes, the Retirement Scheme Administrator shall comply with the following principles:

(a) the remuneration policy shall be established, implemented and maintained in line with the activities, risk profile, objectives, and the long-term interest, financial stability and performance of the Retirement Scheme Administrator and the Scheme as a whole, and shall support the sound, prudent and effective management of the Retirement Scheme Administrator and the Scheme;

(b) the remuneration policy shall be in line with the long-term interests of Members and Beneficiaries of the Scheme;

(c) the remuneration policy shall include measures aimed at avoiding conflicts of interest;

(d) the remuneration policy shall be consistent with sound and effective risk management and shall not encourage risk-taking which is inconsistent with the risk profile of such Scheme, in terms of the Scheme Document and Scheme Particulars;

(e) the remuneration policy shall apply to the Scheme, its Service Providers and to the third party service providers to whom functions have been outsourced;

(f) the Retirement Scheme Administrator shall establish the general principles of the remuneration policy, and shall review and update it at least every three years, or immediately, if there are material changes to the information referred to in paragraph 3.2.3(a), and shall be responsible for its implementation;

(g) there shall be clear, transparent and effective governance with regard to remuneration and its oversight.

### **B.3.3 Key Functions**

- 3.3.1 A Retirement Scheme Administrator shall have in place the following key functions: a risk-management function, an internal audit function, and, where applicable, an actuarial function for the Scheme administered by it. A Retirement Scheme Administrator shall enable the holders of key functions to undertake their duties effectively in an objective, fair and independent manner.
- 3.3.2 A Retirement Scheme Administrator may allow a single person or organisational unit to carry out more than one key function, with the exception of the internal audit function referred to in Section 3.5 of Part B of the Pension Rules for Occupational Retirement Schemes, which shall be independent from the other key functions.
- 3.3.3 The single person or organisational unit carrying out the key function within the Retirement Scheme Administrator shall be different from the one carrying out a similar key function in the Sponsoring Undertaking.
- 3.3.4 Where the holders of a key function report any material findings and recommendations in the area of their responsibility to the Retirement Scheme Administrator, the Retirement Scheme Administrator shall determine what actions are to be taken with respect to each findings and recommendations and ensure that those actions are carried out. In the case of Scheme set up as a SICAV, any findings and recommendations are to be reported to the Board of Directors.
- 3.3.5 Without prejudice to the privilege against self-incrimination, where the Retirement Scheme Administrator, does not take appropriate and timely remedial action, a key function holder of the Retirement Scheme Administrator, shall inform the MFSA in the following cases:
- (a) where the person or organisational unit carrying out the key function has detected a substantial risk that the Retirement Scheme Administrator will not comply with a materially significant provision found in the Act, Regulations and Pension Rules, and reported it to the Retirement Scheme Administrator, and where this could have a significant impact on the interests of Members and Beneficiaries; or
  - (b) where the person or organisational unit carrying out the key function has observed a significant material breach of the Act, regulations or Pension Rules and its activities in the context of the key function of that person or organisational unit and reported it the Retirement Scheme Administrator.
- 3.3.6 The MFSA shall ensure the legal protection of persons informing it in accordance with SLC 3.3.5 of the Pension Rules for Occupational Retirement Schemes.

### **B.3.4 Risk management**

- 3.4.1 In terms of Article 13A of the Act, the Retirement Scheme Administrator shall have in place an effective risk-management function that is proportionate to the size and internal organisation, as well as to the size, nature, scale and complexity of the activities of the Retirement Scheme Administrator and the Scheme. That function shall be

structured in such a way as to facilitate the functioning of a risk-management system for which the Retirement Scheme Administrator shall:

(a) adopt strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report regularly the risks at an individual and at an aggregated level, to which the Schemes are or could be exposed, and their interdependencies; and

(b) where the Scheme is set up as a SICAV, report to the Board of Directors, regularly the risks, at an individual and at an aggregated level, to which the Schemes are or could be exposed, and their interdependencies.

3.4.2 The risk-management system shall:

(a) be effective and well integrated into the organisational structure and in the decision-making processes of the Retirement Scheme Administrator;

(b) cover, in a manner that is proportionate to the size and internal organisation of the Retirement Scheme Administrator, as well as to the size, nature, scale and complexity of its activities, risks which can occur in the Retirement Scheme Administrator, the Scheme or in the third party service provider to which tasks or activities have been outsourced; and

(c) cover at least the following areas, where applicable:

(i) underwriting and reserving;

(ii) asset-liability management;

(iii) investment, in particular derivatives, securitisations and similar commitments;

(iv) liquidity and concentration risk management;

(v) operational risk management;

(vi) insurance and other risk-mitigation techniques;

(vii) environmental, social and governance risks relating to the investment portfolio and the management thereof.

3.4.3 In the case of a defined contribution scheme, the risk management system shall also consider those risks from the perspective of Members and Beneficiaries.

### **B.3.5 Internal Audit**

3.5.1 A Retirement Scheme Administrator shall provide for an effective internal audit function in a manner that is proportionate to its size and internal organisation, as well as to the size, nature and complexity of the activities of the Scheme administered by the Retirement Scheme Administrator.

- 3.5.2 The internal audit function of a Retirement Scheme Administrator shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the systems of governance, including, where applicable, outsourced activities of the Retirement Scheme Administrator and the Scheme.

### **B.3.6 Actuarial Function**

- 3.6.1 Where a Scheme is set up as a Defined Benefit Scheme, the Retirement Scheme Administrator shall provide for an effective actuarial function to:

- (a) coordinate and oversee the calculation of technical provisions;
- (b) assess the appropriateness of the methodologies and underlying models used in the calculation of technical provisions and the assumptions made for this purpose;
- (c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
- (d) compare the assumptions underlying the calculation of the technical provisions with the experience;
- (e) inform its Board of Directors, or where the Scheme is set up as a SICAV, the Board of Directors of the Scheme of the reliability and adequacy of the calculation of technical provisions;
- (f) where the Scheme has an underwriting policy, express an opinion on the overall underwriting policy;
- (g) where the Scheme has insurance arrangements, express an opinion on the adequacy of such arrangements; and
- (h) contribute to the effective implementation of the risk management system.

- 3.6.2 The actuarial function shall be carried out by at least one independent person, inside or outside the Retirement Scheme Administrator who is responsible for the actuarial function.

### **B.3.7 Own-risk assessment**

- 3.7.1 A Retirement Scheme Administrator shall carry out and document an own-risk assessment of its activities, in a manner that is proportionate to the size and internal organisation, as well as to the size, nature and complexity of the activities of its Scheme.
- 3.7.2 The own-risk assessment referred to in S.L.C. 3.7.1 of Part B of the Pension Rules for Occupational Retirement Schemes shall include the following:
- (a) a description of how own-risk assessment is integrated into the management process and into the decision-making processes of the Retirement Scheme Administrator;

(b) an assessment of the effectiveness of the risk-management system of the Retirement Scheme Administrator;

(c) how the Retirement Scheme Administrator assesses the overall funding needs of its Scheme, including a description of the recovery plan, where applicable;

(d) how the Retirement Scheme Administrator assesses the risks to the Members and Beneficiaries relating to the paying out of their Retirement Benefits and the effectiveness of any remedial action, taking into account, where applicable:

(i) indexation mechanisms;

(ii) benefit reduction mechanisms, including the extent to which accrued Retirement Benefits can be reduced, under which conditions and by whom;

(e) how the Retirement Scheme Administrator assesses the mechanisms protecting Retirement Benefits, including, as applicable guarantees, covenants or any other type of financial support by the Sponsoring Undertaking, in favour of the Scheme, or the Members or Beneficiaries;

(f) how the Retirement Scheme Administrator assesses the operational risks;

(g) where the environmental, social and governance factors are considered in investment decisions, how the Retirement Scheme Administrator assesses new or emerging risks, including risks related to climate change, use of resources and the environment, social risks, and risks related to the depreciation of assets due to regulatory change.

3.7.3 For the purposes of S.L.C. 3.7.1 of Part B of the Pension Rules for Occupational Retirement Schemes, the Retirement Scheme Administrator shall have in place methods:

(a) to identify and assess the risks there are or could be exposed to in the short and in the long term and that may have an impact on the Scheme's ability to meet its obligations;

(b) which are proportionate to the size, nature, scale and complexity of the risks inherent in the Scheme's activities;

(c) which shall be described in the own-risk assessment.

3.7.4 The own-risk assessment of the Scheme shall be taken into account by the Retirement Scheme Administrator in the strategic decisions of the Scheme.

3.7.5 The own-risk assessment of the Scheme shall be performed at least:

(a) every three years, or

(b) without delay, following any significant change in the risk profile of the Retirement Scheme Administrator and the Scheme.

- 3.7.6 Where the Retirement Scheme Administrator notices a significant change in the risk profile of a Scheme, the risk assessment may be limited to that Scheme.

### **B.3.8 Outsourcing**

- 3.8.1 In the event that a Retirement Scheme Administrator outsources any activities, including key functions to a third party service provider, the Retirement Scheme Administrator is required to comply with the requirements found in Section 4.4 of Part B.4 of the Pension Rules for Service Providers issued in terms of the Retirement Pensions Act.
- 3.8.2 Where a Retirement Scheme Administrator outsources any activities, including key functions to third party service providers, the Retirement Scheme Administrator shall remain fully responsible for the compliance with the obligations set out in these Pension Rules.
- 3.8.3 The Retirement Scheme Administrator shall not undertake the outsourcing of key functions or any other activities in such a way as to lead to any of the following:
- (a) impairing the quality of its system of governance;
  - (b) unduly increasing its operational risk;
  - (c) impairing the ability of the MFSA to monitor the compliance of the Scheme with its obligations;
  - (d) undermining the continuous and satisfactory service to Members and Beneficiaries.
- 3.8.4 Where the Retirement Scheme Administrator outsources key functions, and, or any other activities to third parties, it shall:
- (a) ensure the proper functioning of the outsourced activities by:
    - (i) going through the process of selecting a suitable third party service provider, as required by S.L.C. 4.4.3 of Part B.4 of the Pension Rules for Service Providers issued in terms of the Retirement Pensions Act and
    - (ii) placing adequate monitoring arrangements of the activities of such third party provider;
  - (b) enter into a service level written agreement with the third party service provider, which agreement shall be legally enforceable and shall clearly define the respective rights and obligations of the Retirement Scheme Administrator, the Scheme and the third party provider;
  - (c) obtain the MFSA's consent prior to outsourcing any of its functions;
  - (d) notify the MFSA of any subsequent important developments with respect to any outsourced activities.

- 3.8.5 In the instance where the Retirement Scheme Administrator of a Scheme, outsources certain key functions to a third party service provider, the MFSA has the right to information and to exercise powers of intervention to cover the provision of such outsourced functions. This shall include the right by MFSA to relevant data held by the outsourced third party service provider, and the right for the MFSA to carry out on-site inspections at the premises of a third party service provider of any outsourced functions. The appointment of a third party service provider by the Retirement Scheme Administrator shall be subject to those conditions as required by SLC 4.4.3 of Part B4 of the Pension Rules for Services Providers issued in terms of the Retirement Pensions Act.

## **B.4 Conditions relating to the investments of the Scheme**

### **B.4.1 General**

- 4.1.1 The Scheme shall observe its Investment Objective, Policies and the “prudent person” rule in accordance with this Section.
- 4.1.2 The Scheme’s assets shall be invested in a prudent manner and in the best long-term interests of Members and Beneficiaries as a whole, and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document. In the case of a potential conflict of interest, the Retirement Scheme Administrator or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of Members and Beneficiaries.
- 4.1.3 In deciding the Scheme’s investment allocation, consideration shall be made of the need to have sufficient liquid funds to pay Retirement Benefits.
- 4.1.4 The assets of the Scheme shall:
- (a) within the prudent person rule, take into account the potential long-term impact of investment decisions on environmental, social and governance factors;
  - (b) be invested in such a manner to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
  - (c) be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole and to avoid excessive exposure to any particular asset, class or country, issuer or group of undertakings. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose a Scheme to excessive risk concentration;
  - (d) be predominantly invested on regulated markets. Investment in assets which are not admitted to trading on a regulated financial market must in any event be kept to prudent levels.
- 4.1.5 The assets held to cover the technical provisions shall be:
- (a) invested in a manner appropriate to the nature, currency and duration of the future Retirement Benefits;

(b) held in assets denominated in the currency of the liabilities. Not more than 30% of the assets covering the technical provisions shall be denominated in currencies other than those in which the liabilities are expressed.

#### **B.4.2 Investment Restrictions of an Occupational Retirement Scheme**

4.2.1 The following Investment Restrictions shall apply in relation to the assets of the Scheme:

(a) investment in the Sponsoring Undertaking shall be not more than 5% of the Scheme's assets, and when the Sponsoring Undertaking belongs to a group, investment in undertakings belonging to the same group as the Sponsoring Undertaking shall not be more than 10% of the Scheme's assets. Where the Scheme is sponsored by a number of undertakings, investment in those Sponsoring Undertakings shall be made prudently, taking into account the need for proper diversification.

Provided that, the above limits shall not apply to investment in government bonds;

(b) not more than 30% of a Scheme's assets should be invested in assets (such as shares and debt securities; movable and immovable assets) which are not traded in or dealt on a market which is regulated, operates regularly, is recognised and is open to the public, and has adequate liquidity and adequate arrangements in respect of the transmission of income and capital. The Scheme, Retirement Scheme Administrator or Investment Manager (as applicable), shall determine the mix of assets within the 30% limit, subject to the following:

- i. investments in such assets should always be carried out on an arms' length basis;
- ii. the Scheme's assets may be directly or indirectly invested in commercial or residential Immovable Property, provided that:
  - (aa) direct investments in *commercial or residential immovable property* are effected as follows:
    - not more than 10% of a Scheme's assets shall be invested in a single property;
    - before a property is acquired, it must be valued by an Independent Qualified Valuer(s)
    - the property must be acquired within 6 months from the date of the report and at a price which is within 5% of the valuation price;
    - not more than 5% of a scheme's assets should be invested in residential property;
    - any *residential property* acquired by the Scheme is not for the direct or indirect use of Members or Contributors or Beneficiaries (for example: the property may not be leased

back or rented out to a Member or a Member's employer or Beneficiary, or constitute a holiday home purchased for the Member's or a Beneficiary's own use or used as a residence by Members or Beneficiaries etc. examples provided should not be considered as exhaustive);

(bb) indirect investments in *commercial or residential immovable property* are effected as follows:

- may be effected through the purchase of Property Related Assets;
- not more than 10% of a scheme's assets shall be invested in a single issuer or a single issue of Property Related Assets;
- in the case of investment in bonds issued by property management or financing companies or property owning companies, reasonable steps shall be taken to ensure to the extent possible, that the issuer has made sufficient provision for the repayment of the bond at maturity;

(cc) The Scheme's percentage (direct or indirect) investment in immovable property is subject to reporting to the MFSA in the annual audited financial statements to ensure that the immovable property exposure limit is satisfied on an on-going basis.

- iii. any investments in unlisted alternative assets (e.g. hedge funds) shall be permitted, subject that not more than 10% of the Scheme's assets is invested in any single asset of this type;
- iv. investments in tangible movable assets are not permissible.

(c) the assets of the Scheme shall be invested in derivative instruments only insofar as they contribute to a reduction of investment risks or facilitate "Efficient Portfolio Management". They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the Scheme's assets. Excessive risk exposure to a single counterparty and to other derivative operations shall be avoided. The Scheme shall not be leveraged or geared in any way through the use of futures, options or other derivatives;

(d) in particular, the Scheme assets shall be invested as follows:

- i. not more than 10% of assets shall be invested in securities issued by the same body;
- ii. not more than 10% of the assets shall be kept on deposit with any one body. This limit may be increased to 30% in respect of money deposited with a credit institution licensed in Malta or in any other Member State or EEA State, or with any other credit institution which has been approved by the MFSA;

- iii. the Scheme shall not hold more than 10% of any class of security issued by any single issuer:

Provided that, the above limits shall not apply to investment in government bonds;

(e) subject to the provisions of the Scheme Document, the Scheme may borrow as long as the borrowings do not exceed 10% of the value of the Scheme and provided such borrowing is temporary and for liquidity purposes;

(f) a Scheme shall not grant loans or act as guarantor on behalf of a third party. This is without prejudice to the right of the Scheme to acquire debt securities;

(g) the Scheme may invest up to 100% of its assets in a Retirement Fund licensed under the Act. In the case where the Retirement Fund is managed or advised by the same Investment Manager or Advisor or by an associate of the Scheme's Investment Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges;

(h) the Scheme may acquire the units in adequately regulated Collective Investment Schemes subject to the following:

- i. where a Scheme invests in the units of a Collective Investment Scheme managed or advised by the same Investment Manager or Advisor or by an associate of the Scheme's Investment Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges;
- ii. where commission is received by the Investment Manager of the Scheme by virtue of an investment in the units of a Collective Investment Scheme, that commission shall be paid into the Scheme;
- iii. any underlying Collective Investment Scheme must be properly diversified and predominantly invested on regulated markets;
- iv. the Scheme shall not invest in a feeder fund or, in a fund of funds;
- v. not more than 20% of the Scheme's assets shall be invested in total in any one Collective Investment Scheme which is properly diversified and predominantly invested in regulated markets;

(i) the Scheme and its Investment Manager, taking into account all of the Schemes and other Collective Investment Schemes which the latter manages, shall not acquire sufficient instruments to give it the right to exercise control over 20% or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.

- 4.2.2 The MFSA may require a Scheme to adopt specific Investment Restrictions. Such restrictions may vary depending on the nature, scale, complexity and purpose of the Scheme.

- 4.2.3 The Scheme shall comply with the Investment Restrictions specified in this section within six months from the launch of the Scheme or upon reaching a value equivalent to €2,500,000, whichever is sooner.

#### **B.4.3 Failure to comply with Investment Restrictions**

- 4.3.1 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 with 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 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 requirements 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. 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.5 General Conditions**

### **B.5.1 General**

- 5.1.1 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 an Occupational Retirement Scheme by the Malta Financial Services Authority"*.
- 5.1.2 The Scheme 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.
- 5.1.3 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.
- 5.1.4 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 the 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")***

- 5.1.5 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.
- 5.1.6 Units in a Scheme are not transferable other than from the Member to the Scheme in the case of cessation of employment or retirement or any other circumstance as set out in the Scheme's Constitutional Document and Scheme Document.
- 5.1.7 No bearer units may be issued by the Scheme.
- 5.1.8 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.
- 5.1.9 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 to 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.

- 5.1.10 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.5.2 Notifications to the MFSA**

- 5.2.1 The Scheme or the 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 of the Pension Rules for Occupational 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 S.LC. 5.5.1 and 5.5.2 of Part B of the Pension Rules for Occupational Retirement Schemes;

- (k) of any new Sponsoring Undertaking that intends to contribute to the Scheme;
- (l) 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 the SLC 1.5.6 and 7.3.7 of Part B of the Pension Rules for Occupational Retirement Schemes, respectively;
- (m) of the resignation or removal of a Director or Trustee or other individual in accordance with the SLC 8.2.4 and 10.14 of Part B of the Pension Rules for Occupational Retirement Schemes, respectively;
- (n) 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;
- (o) of the cessation of any appointment of a key function holder of a Retirement Scheme Administrator of a Scheme, the reasons thereof and any circumstances connected therewith which significantly affects the interests of the Scheme's Members or Beneficiaries;
- (p) of any material changes in the information supplied to the MFSA in relation to the Scheme whether under the Act or otherwise;
- (q) in the instance that the number of Members of the Scheme is five or less;
- (r) if the Scheme fails to commence to provide the activities it has been licensed to carry on within the time-frame provided for in the licence, or if no time frame is specified, within twelve months of its issue, or if the Scheme has ceased to carry out such activities.

### **B.5.3 Amendments to Documents**

5.3.1 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, and any agreement between the Retirement Scheme Administrator and a person or organisational unit carrying on key functions, or Back-Office Administrator, as applicable.

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

#### **B.5.4 Standard Licence Conditions and Licence Fees**

- 5.4.1 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.
- 5.4.2 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.
- 5.4.3 The fees payable to the MFSA are those specified in Retirement Pensions (Fees) Regulations, 2015. The Scheme shall pay promptly all amounts due to the MFSA.

#### **B.5.5 Termination of the Scheme**

- 5.5.1 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.
- 5.5.2 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 immediately 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.5.6 Retirement Benefits for a Defined Contribution Retirement Scheme**

- 5.6.1 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

- 5.6.2 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 throughout the Member's lifetime.

Programmed Withdrawals and/or Life Annuity

5.6.3 The remaining assets of a Member which are not paid in the form as outlined in SLC 5.6.2 of Part B of the Pension Rules for Occupational Retirement Schemes, 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

5.6.4 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.

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

5.6.6 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.

5.6.7 In the case where a Member is domiciled in Malta the conditions in SLC 5.6.4 of Part B of the Pension Rules for Occupational Retirement Schemes, 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.

## **B.6 Information for Scheme Members, Beneficiaries and Contributors**

### **B.6.1 Principles on the Information to be provided**

- 6.1.1 A Scheme shall be required to provide information to prospective members, Members and Beneficiaries in the following manner:
- (a) prospective members are to be provided with at least the information provided in Section 6.7 of Part B of the Pension Rules for Occupational Retirement Schemes;
  - (b) Members are to be provided with at least the information found in Section 6.2 to Section 6.5, Section 6.6 and Section 6.8 of Part B of the Pension Rules for Occupational Retirement Schemes; and
  - (c) Beneficiaries are to be provided with at least with the information found in Sections 6.2, Section 6.7 and Section 6.8 of Part B of the Pension Rules for Occupational Retirement Schemes.
- 6.1.2 The information referred to in S.L.C. 6.1.1 of Part B of the Pension Rules for Occupational Retirement Schemes shall be:
- (a) regularly updated;
  - (b) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
  - (c) not misleading, and consistency shall be ensured in the vocabulary and content;
  - (d) presented in a way that is easy to read;
  - (e) available in the Maltese and English language and
  - (f) made available to prospective members, Members and Beneficiaries, free of charge through electronic means, including on a durable medium, or by means of a website or on paper.

### **B.6.2 General information on the Scheme to be given to Members and Beneficiaries**

- 6.2.1 Every Scheme Member shall be notified of the entry of his details in the Scheme's register of Members as well as provided with a copy of the Scheme Document and Scheme Particulars, within one month of his registration as Member to the Scheme.
- 6.2.2 Members, Beneficiaries, Contributors and any other relevant party shall be notified in writing, within a reasonable time, of any amendments to the Scheme Document and Scheme Particulars and at the same time be provided with the amended text or an updated version of the document concerned. This notification process is without prejudice to the rights of the Members or Beneficiaries or others regarding changes to the Scheme, as may be applicable under the Act.

- 6.2.3 In addition, the Scheme shall make available to them an explanation of the impact on Members and Beneficiaries of significant changes to technical provisions.
- 6.2.4 Any material information as well as any material changes, to the information provided by the Retirement Scheme Administrator shall be immediately disclosed to the Member.
- 6.2.5 Any Scheme Member, Beneficiary, Contributor or their representatives, shall be provided, upon request, with an up-dated version of the Scheme's Constitutional Document, Scheme Document and Scheme Particulars. The text and format of the Constitutional Document, Scheme Document and Scheme Particulars made available shall, at all times, be identical to the latest version approved by the MFSA.
- 6.2.6 Persons who are bound by the acceptance of the Constitutional Document (including the Contributor(s) and where applicable, the persons underwriting the liability of the Scheme providing cover against biometric risk, or guaranteeing a given level of investment performance or a given level of benefits) the Scheme Document and the Scheme Particulars, shall be provided, within a reasonable time, with a copy of these documents, as well as with any amendments to them.

These persons must accept these documents, as well as any amendments to them, in writing, if they have not signed them in any other capacity, and must send their statement to the Retirement Scheme Administrator of the Scheme.

- 6.2.7 The Scheme Document may be opposed by the Members and shall be deemed to have been accepted by them if they have not made their opposition known within two months from the date of receipt of the information referred to in SLC 6.2.1 of Part B of the Pension Rules for Occupational Retirement Schemes.

In the case where a Member who is not also a Contributor to the Scheme refuses to accept the Scheme Document, or a clause therein, s/he shall forfeit his/her status as a Member unless the Scheme Document reduces the benefits due to him/her under a previously accepted Scheme Document and unless s/he is subject to more restrictive provisions making his affiliation to the Scheme compulsory. By way of the relevant provisions of the Scheme Document, affiliation may be summarised as the maintenance of existing acquired rights or may take the form of continued accumulation of rights in the future.

However, if the Member is also a Contributor, or if his acceptance makes him in some way a debtor of the Scheme, he must accept the Constitutional Document, the Scheme Document and the Scheme Particulars, as well as any amendments to them, in writing, save where the Scheme Document is set up by way of a collective agreement or by a law.

- 6.2.8 Members and Beneficiaries shall be sufficiently informed about the Scheme operated by the Retirement Scheme Administrator, in particular with the following:
- (a) the name of the Scheme, the contact details of the Retirement Scheme Administrator, and that it is regulated by the MFSA;

- (b) the contractual rights and obligations of the parties to the Scheme;
  - (c) information on the investment profile;
  - (d) the nature of financial risks borne by Members and Beneficiaries;
  - (e) the conditions regarding full or partial guarantees under the Scheme or of a given level of benefits or, where no guarantee is provided under the Scheme, a statement to that effect;
  - (f) full disclosure of the structure of all costs, commissions and fees whether investment or transaction costs (including one-off and recurring costs) which a Member or Beneficiary is, or will be expected to bear;
  - (g) mechanisms protecting accrued entitlements or the benefit reduction mechanism, if any;
  - (h) in the case of a Defined Contribution Scheme, information on the past performance of investments related to the Scheme for a minimum of five years, or for all the years that the Scheme has been operating, where this is less than five years;
  - (i) the options available to Members and Beneficiaries in receiving their Retirement Benefits;
  - (j) the arrangements relating to the transfer of pension rights to another Scheme in the event of termination of the employment relationship.
- 6.2.9 In the case of a Scheme investing in a Retirement Fund, Contributors, Members and Beneficiaries in the Scheme shall be given the opportunity to receive, upon request, copies of the Offering Document (Prospectus) for each underlying fund.
- 6.2.10 In the case of a Defined Contribution Scheme which provides for more than one option with different investment profiles, the Members shall be informed of the conditions regarding the range of investment options available, and where applicable, the default investment option and, the Constitutional Document, Scheme Document and Scheme Particulars to allocate a particular Member to an investment option.
- 6.2.11 The Scheme shall make available the information set out in Section B.6.2 of Part B of the Pension Rules for Occupational Retirement Schemes, on the Scheme set out in Section 6.2 of Part B of the Pension Rules for Occupational Retirement Schemes.

### **B.6.3 Pension Benefit Statement**

- 6.3.1 The Retirement Scheme Administrator shall in relation to a Scheme, draw up a concise document, containing key information, for each Member, taking into consideration the Act, Regulations and Pension Rules issued thereunder, and relevant social, labour and tax law. The title of the document shall contain the words "Pension Benefit Statement".
- 6.3.2 The Pension Benefit Statement shall prominently indicate the exact date to which the information refers to.

- 6.3.3 The information contained in the Pension Benefit Statement shall be accurate, updated and made available to every Member free of charge, through electronic means, including on a durable medium or by means of a website or on paper. In addition, a paper copy shall be provided to Members upon request, in addition to any information through electronic means. The Pension Benefit Statement shall be provided to every member annually.
- 6.3.4 The Pension Benefit Statement shall clearly indicate any material change to the information compared to the previous year.
- 6.3.5 A Scheme shall apply, as a minimum, the following economic deterministic assumptions when calculating the pension benefit projections required to be disclosed S.L.C. 6.4.1(d) of Part B of the Pension Rules for Occupational Retirement Schemes:
- (a) asset allocation;
  - (b) costs;
  - (c) member contributions;
  - (d) employer contributions;
  - (e) individual salary;
  - (f) age;
  - (g) retirement age;
  - (h) number of years of participation.
- 6.3.6 Where a Scheme is a Defined Benefit Scheme, in addition to applying the economic deterministic assumptions identified in S.L.C. 6.3.5 of Part B of the Pension Rules for Occupational Retirement Schemes, when calculating the pension benefit projections required to be disclosed in S.L.C. 6.4.1(d) of Part B of the Pension Rules for Occupational Retirement Schemes, such Scheme shall also apply:
- (a) interest rate;
  - (b) inflation;
  - (c) biometric assumptions.

#### **B.6.4 Contents of the Pension Benefit Statement and Supplementary Information**

- 6.4.1 The Pension Benefit Statement shall provide the following key information for Members:
- (a) personal details of the Member, including a clear indication of the statutory retirement age required by these Pension Rules, the retirement age laid down in the Scheme or estimated by the Scheme, or the retirement age set by the Member, as applicable;
  - (b) the name of the Retirement Scheme Administrator and its contact details and identification of the Scheme of the Member;
  - (c) where applicable, information on full or partial guarantees under the Scheme and if relevant, where further information can be found;

(d) information on pension benefit projections, in accordance with S.L.C. 6.3.5 and S.L.C. 6.3.6 of Part B of the Pension Rules for Occupational Retirement Schemes, based on the retirement age as specified in S.L.C. 6.4.1(a) of Part B of the Pension Rules for Occupational Retirement Schemes, and a disclaimer that those projections may differ from the final value of the benefits received. Pension benefit projections based on economic scenarios, shall include a best estimate scenario and an unfavorable scenario, taking into consideration the specific nature of the pension scheme. Such information should provide the Member with an estimate of the income he or she can expect at retirement;

(e) information on the accrued entitlements or accumulated capital taking into consideration the specific nature of the Scheme;

(f) information on the contributions paid by the contributor and the member into the pension scheme, at least over the last twelve (12) months, taking into consideration the specific nature of the Scheme. Such information should be able to provide members with an overview of the current retirement savings that is accrued entitlements or accrued capital;

(g) a breakdown of the costs deducted by the Retirement Scheme Administrator in relation to the Member, at least over the last twelve (12) months. The disclosure should be simple, comprehensive, accurate and consistent with the pension plan design and the cost-structure of the plan. The information provided to the Member should be presented in a way that is easily understandable by a Member, and give the Member insight on the costs deducted from the contributions or from his account or assets value. Both direct costs, such as charges and fees and indirect costs, such as those on the level of the Scheme which lead to lower returns, are to be disclosed. Moreover, the Retirement Scheme Administrator is to ensure that both direct investment costs and the costs of underlying investment layers are disclosed;

(h) information on the funding level of the Scheme as a whole<sup>5</sup>.

6.4.2 The Pension Benefit Statement shall also specify where and how to obtain supplementary information including:

(a) further practical information about the Member's options provided under the Scheme

(b) the information specified in S.L.C. 2.3.4 and 2.3.7 of Part B of the Pension Rules for Occupational Retirement Schemes and Appendix 2 and Appendix 3 of Part B of the Pension Rules for Occupational Retirement Schemes;

(c) where applicable, information about the assumptions used for amounts expressed in annuities, in particular with respect to the annuity rate, the type of provider and the duration of the annuity;

(d) information on the level of benefits in case of cessation of employment.

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<sup>5</sup> Where the Scheme is a Defined Contribution Scheme, the Scheme is always fully funded.

- 6.4.3 In the case of Defined Contribution Schemes, where an investment option is imposed on a Member, as specified in the Scheme Document, Scheme Particulars or the Constitutional Document, the Pension Benefit Statement shall indicate where additional information is available.

**B.6.5 Information to be given to prospective members**

- 6.5.1 The Scheme shall ensure that prospective members *who are not automatically* enrolled in the Scheme are to be informed, before they join the Scheme about:
- (a) any relevant options available to them, including investment options;
  - (b) the relevant features of the Scheme including the kind of benefits;
  - (c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach; and
  - (d) where further information is available.
- 6.5.2 The Retirement Scheme Administrator shall ensure that prospective members of Defined Contribution Schemes are provided with information on past performance of investments related to the Scheme for a minimum of five years, or for all the years that the Scheme has been operating, where this is less than five years and information on the structure of costs borne by Members and Beneficiaries.
- 6.5.3 Further to S.L.C. 6.5.2 of Part B of the Pension Rules for Occupational Retirement Schemes, information provided to a Member, containing a statement relating to past performances shall take into account the following -
- (a) in order not to be misleading, information on past performance of the Scheme should be clear, correct and balanced;
  - (b) information on past performance should go together with a clear warning that the shown past performance does not imply an indication for future returns;
  - (c) past performance should be shown as an appropriate combination of annual returns and cumulative returns;
  - (d) information on past performance should be provided for an appropriate time period;
  - (e) in case of a lifecycle investment policy, information on past performance should be shown in different age cohorts;
  - (f) information on past performance shall assist prospective members in determining the suitability of an investment option to their own risk and return profile;
  - (i) past performance information should be comparable;

- (j) past performance should be presented net of all costs, on the basis of clear methodologies; where this is not yet possible, very clear disclosures of costs not included should be provided.
- 6.5.4 The Retirement Scheme Administrator shall ensure that prospective members who are automatically enrolled in a Scheme are after their enrolment, promptly informed about:
- (a) any relevant options available to them including investment options;
  - (b) the relevant features of the Scheme including the kind of benefits;
  - (c) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach; and
  - (d) where further information is available.

**B.6.6 Information to be given to Members during the pre-retirement phase**

- 6.6.1 The Retirement Scheme Administrator shall provide each Member, starting five years before the retirement age specified in the Pension Benefit Statement, or at the request of the Member, with information about the benefit pay-out options available in taking their Retirement Benefits.

**B.6.7 Information to be given to Beneficiaries during the pay-out phase**

- 6.7.1 The Retirement Scheme Administrator shall notify the Beneficiaries, on retirement or when other benefits become due, about the right of commencement of payment of Retirement Benefits, and periodically provide such Beneficiaries with appropriate information on the Benefits due to her/him and the corresponding pay out options, including any applicable charges incurred when such benefits fall due. Confirmation that such Retirement Benefits are paid out should also be provided. Pay-out information should be provided to beneficiaries in the most reliable medium, paper, on a durable medium or a combination of both - to ensure that the information is received by the Member. Pay-out information is to be provided to beneficiaries on annual basis after retirement.
- 6.7.2 Beneficiaries shall be informed without delay, after a final decision has been taken resulting in any reduction in the level of benefits due, and three months before that decision is implemented. This information should be provided in a way that shows the effect of the benefit reduction for the individual member.
- 6.7.3 When a significant level of investment risk is borne by Beneficiaries in the pay-out phase, Beneficiaries of a Scheme shall be provided with appropriate information, regularly.

### **B.6.8 Additional information to be given on request to Members and Beneficiaries**

- 6.8.1 The Retirement Scheme Administrator shall, upon request, provide any Member, Beneficiary or their representatives with the following additional information:
- (a) 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;
  - (b) the statement of investment policy (which is included in the Scheme Particulars);
  - (c) any further information about the assumptions used to generate the projections referred to in S.L.C. 6.4.1(d) of Part B of the Pension Rules for Occupational Retirement Scheme.

### **B.6.9 Changes to Investment Policy**

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

### **B.6.10 Transfer out of the Scheme**

- 6.10.1 The Members of the Scheme who opt to transfer their entitlements to another retirement scheme are to be provided with adequate information (such as retirement rights, choices, or any applicable charges or fees) to enable the Members concerned to make an informed decision.
- 6.10.2 The Retirement Scheme Administrator shall ensure that the Scheme's Contributors and Beneficiaries and Members who move to another EU Member State or EEA State, are provided with adequate information as to their pension rights and choices which are available to them under the Scheme.

## **B.7 Supplementary Conditions for Defined Benefit Schemes**

### **B.7.1 Schedule of Payments**

- 7.1.1 Apart from the requirements in SLC B.2.5 of the Pension Rules for Occupational 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 (Technical Provisions) Regulations, 2019.

### **B.7.2 Technical Provisions**

- 7.2.1 A Defined Benefit Scheme shall comply with technical, financial and actuarial management requirements as well as requirements regarding the under-provision or over-provision of Technical Funding Requirement as prescribed in regulation 4 of the Retirement Pensions (Technical Provisions) Regulations, 2019.

- 7.2.2 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, taking account all commitments for benefits and for contributions in respect to pensions arrangements of the Scheme. It must be sufficient both for pensions and benefits already in payment to Beneficiaries to continue to be paid, and to reflect the commitments which arise out of the Member's accrued pension rights and provide Beneficiaries with an actuarial value of their accrued pensions rights. The economic and actuarial assumptions chosen for the valuation of the liabilities shall also be chosen prudently taking into account, if applicable, of an appropriate margin for adverse deviation;

(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 there is no sponsoring employer to underwrite biometrical risks or guarantees on investment performance or a given level of benefits, then the minimum Technical Funding Requirement shall be increased by an amount calculated in accordance with Appendix 10 of Part C of the Pension Rules for Occupational Retirement Schemes;

- (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 group of Members 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 maximum prudent rates of interest shall be determined by taking into account:
  - i. the yield on the corresponding assets held by the Scheme and the projected future investment returns; and/or
  - ii. the market yields of high quality government bonds, European Stability Mechanism bonds, European Investment Bank (EIB) bonds, or European Financial Stability Facility bonds; or
  - iii. a combination of (i) and (ii).
- (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, demographic or economic circumstances underlying the assumptions.

### **B.7.3 Appointment of an actuary**

- 7.3.1 A Defined Benefit Scheme shall appoint an actuary approved by the MFSA.
- 7.3.2 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.
- 7.3.3 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.

- 7.3.4 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.
- 7.3.5 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 Occupational Retirement Schemes. The Scheme shall confirm in writing to its actuary its agreement to the terms in the letter of engagement.
- 7.3.6 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 an Occupational Retirement Scheme in Schedule A of Part D of these Pension Rules for Occupational Retirement Schemes.
- 7.3.7 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.7.4 Duties of an actuary**

- 7.4.1 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 the Pension Rules for Occupational Retirement Schemes) 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 and every third Scheme year thereafter in respect of such year, or on an annual basis if required by SLC 7.5.37 of Part B of the

Pension Rules for Occupational Retirement Schemes , 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 Occupational 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.7.5 Actuarial valuation - General**

- 7.5.1 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.
- 7.5.2 The actuarial valuation report and accompanying certificate must relate to the position of the Scheme at the date 14 days before it is signed.
- 7.5.3 Where an actuarial valuation shows that the Scheme's assets are below the minimum Technical Funding Requirement, then annual valuations and certificates will be required until the funding position is restored.

#### **B.7.6 Transfer of benefits**

- 7.6.1 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 Occupational Requirement Schemes) that the method used to calculate this value is appropriate. Such an actuarial value shall be assessed using market rates of interest.
- 7.6.2 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.8 Supplementary Conditions for Schemes established as Investment Companies with Variable Share Capital (“SICAVs”)**

### **B.8.1 General**

- 8.1.1 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.8.2 Board of Directors**

- 8.2.1 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.
- 8.2.2 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.
- 8.2.3 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 of Part D of 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.
- 8.2.4 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 days beginning with the 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.
- 8.2.5 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.
- 8.2.6 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.8.3 Sale or Repurchase of Units**

- 8.3.1 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 Section 4.6 of Part B of the Pension Rules for Occupational Retirement Schemes, in the circumstances allowable by law where the Member has access to such benefits.
- 8.3.2 The Scheme investing solely in Retirement Funds shall, as far as practicable, be valued with the same frequency as the Retirement Fund.

**B.9.1 Additional Conditions for a Scheme set up as an Umbrella Fund**

- 9.1 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.
- 9.2 Each Sub-Fund of the Scheme shall constitute a distinct and separate patrimony.
- 9.3 A Sub-fund may not invest in another Sub-fund of the same Scheme.

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**B.10 Supplementary Conditions for Schemes established as a trust**

- 10.1 Schemes in the form of trusts shall be established by written instrument and shall not be subject to any limits on their duration.
- 10.2 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.
- 10.3 The Scheme shall have the Retirement Scheme Administrator (who shall be licensed to provide trustee services under the Act) as its sole Trustee.
- 10.4 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.
- 10.5 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.

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