

PART I

AMENDMENTS TO THE RETIREMENT PENSIONS ACT, CAP.514

Amendment of the Retirement Pensions Act. Cap. 514.

1. This Part amends and shall be read and construed as one with the Retirement Pensions Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of article 2 of the principal Act.

2. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) in the definition “competent authority”, for the words, “established by article 3 of the Malta Financial Services Authority Act, which body shall act as the competent authority for the purposes of this Act and also for relevant purposes of the Occupational Pensions Directive;”, there shall be substituted the words, “established by the Malta Financial Services Authority Act;”;

(b) immediately after the definition “investor”, there shall be added the following new definition:

“ "key function" within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function;”;

(c) in the definition “Malta’s international commitments”:

(i) for the words, “arising out of membership of, or affiliation”, there shall be substituted the words, “arising out of membership of the European Union, and membership of, or affiliation”; and

(ii) for the words, “whether bilateral or multilateral, to which Malta is a party;”, there shall be substituted the words, “whether bilateral or multilateral, including Memoranda of Understanding, to which Malta is a party;”;

(d) in the definition “the Minister”, for the words, “Minister responsible for finance;”, there shall be substituted the words, “Minister responsible for the regulation of financial services;”;

(e) for the definition “Occupational Pensions Directive” there shall be substituted the following:

“ "Occupational Pensions Directive" means Directive (EU) 2016/2341 of the European Parliament and of the Council of the 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast), as may be amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;”;

(f) for the definition “occupational retirement scheme”, there shall be substituted the following new definition:

“ "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;”;

(g) immediately after the definition “occupational retirement scheme”, there shall be added the following new definition:

“ "officer", in relation to a licence holder, includes a director, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;”;

(h) in the definition “overseas regulatory authority”, for the words, “territory outside Malta which exercises any regulatory or supervisory function in relation to financial services”, there shall be substituted the words, “territory outside Malta, that is not a Member State or EEA State, which exercises any regulatory or supervisory function”;

(i) for the definition “Pension Rule”, there shall be substituted the following:

“ "Pension Rules" means rules issued by the competent authority in accordance with article 38(2), under various articles of this Act and under any regulations made thereunder;”;

(j) the definitions “recognition” and “recognised person” shall be deleted;

(k) in the definition “service”, for the words, “provided in relation to an instrument; and, or any back-office administrative activity as established by Pension Rules;”, there shall be substituted the words, “provided in relation to an instrument;”;

(l) in the definition “service provider”, for the words, “the services listed in the Schedule and, or recognised to provide any one or more of the back-office administrative activities established by Pension Rules;”, there shall be substituted the words, “the services listed in the Schedule;”;

(m) in the definition “Solvency II Directive”, for the words, “(Solvency II), as may be amended from time to time, and includes any implementing measures that may be issued thereunder;”, there shall be substituted the words, “(Solvency II) (recast), as may be amended from time to time and includes any delegated acts and any technical standards that have been or may be issued thereunder;”; and

(n) immediately after the definition “Solvency II Directive”, there shall be added the following new definition:

““sponsoring undertaking” means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which offers an occupational retirement scheme or pays contributions to an occupational retirement scheme;”.

Amendment of Part II of the principal Act.

3. In the heading of Part II of the principal Act, for the words, “Licensing and Recognition Requirements”, there shall be substituted the words, “Licensing Requirements”.

Amendment of article 3 of the principal Act.

4. Paragraph (b) of sub-article (2) of article 3 of the principal Act shall be amended as follows:

(a) for the words, “age of fifty, or not later than that specified in Pension Rules,”, there shall be substituted the words, “age of fifty, or later than that specified in Pension Rules,”; and

(b) for the proviso thereof, there shall be substituted the following:

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

Deletion of article 7 of the principal Act.

5. Article 7 of the principal Act shall be deleted.

Amendment of Part III of the principal Act.

6. In the heading of Part III of the principal Act, for the words, “Suspension, of Licences and Recognitions”, there shall be substituted the words, “Suspension of Licences”.

Amendment of article 8 of the principal Act.

7. Article 8 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words, “Application for a Licence and, or recognition.”, there shall be substituted the words, “Application for a licence.”;

(b) for the words, “a licence or recognition, as the case may be, shall be made in the form and manner”, there shall be substituted the words, “a licence shall be made in writing in such form and manner”;

(c) in paragraph (a) thereof, for the words, “may require or as may be prescribed;”, there shall be substituted the words, “may require by means of Pension Rules.”;

(d) in paragraph (b) thereof, for the words, “by the competent authority, or as may be prescribed.”, there shall be substitute the words, “by the competent authority as may be determined by means of Pension Rules.”.

Amendment of article 9 of the principal Act.

8. Article 9 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words, “to refuse or grant a licence or recognition.”, there shall be substituted the words, “to refuse or grant a licence.”;

(b) in sub-article (1) thereof, for the words, “grant a licence or recognition, as the case may be, applied for under”, there shall be substituted the words, “grant a licence applied for under”;

(c) in sub-article (2) thereof:

(i) for the words, “grant a licence or recognition, as the case may be, applied for under”, there shall be substituted the words, “grant a licence applied for under”;

(ii) in paragraph (a) thereof:

(aa) sub-paragraphs (ii), (iii), (iv), (v) and (vi) thereof shall be renumbered as sub-paragraphs (iii), (iv), (v), (vi) and (vii) ;

(bb) immediately after sub-paragraph (i) thereof, there shall be added the following new sub-paragraph (ii):

“(ii) the activities of the retirement scheme are limited to retirement benefit related operations and activities arising therefrom;”;

(cc) in sub-paragraph (iv) thereof, as renumbered, for the words “fit and proper persons” , there shall be substituted the words “fit and proper”;

(dd) in sub-paragraph (vii) thereof, as renumbered, for the words “does not raise any regulatory concerns;”, there shall be substituted the words “does not raise any regulatory concerns; and”;

(iii) paragraphs (b) and (c) thereof, shall be renumbered as paragraphs (c) and (d) respectively;

(iv) immediately after sub-paragraph (vii) of paragraph (a) thereof, there shall be added the following new paragraph (b):

“(b) in addition to the requirements in paragraph (a), in the case of an occupational retirement scheme:

(i) the occupational retirement scheme or the Retirement Scheme Administrator of such scheme, as the case may be, show evidence that it will be in a position to comply with the system of governance provided for in article 13B;

(ii) the occupational retirement scheme or the Retirement Scheme Administrator of such scheme, as the case may be, show evidence that, where the employer guarantees the payment of the retirement benefits in the case of an occupational retirement scheme which is a defined benefit scheme, the employer is committed to regularly financing;”;

(d) in sub-article (3) thereof, for the words, “a licence or recognition granted by the competent authority”, there shall be substituted the words, “a licence granted by the competent authority”;

(e) in sub-article (4) thereof:

(i) for the words, “When considering whether to grant or refuse to grant a licence and, or recognition as the case may be, the competent authority shall,” there shall be substituted the words, “When carrying out its functions under the Act, the competent authority shall,”

(ii) in paragraph (c) thereof, for the words, “or retirement fund, the persons responsible thereof,” there shall be substituted the words, “or retirement fund, the Retirement Scheme Administrator and, or the persons responsible thereof,”; and

(f) sub-article (6) thereof shall be deleted;

(g) sub-articles (7), (8), (9), (10), and (11) thereof shall be renumbered as sub-articles (6), (7), (8), (9), and (10) respectively;

(h) in sub-article (6) thereof, as renumbered:

(i) for the words, “the Rules to which the competent authority shall subject a licence and, or recognition may be made”, there shall be substituted the words, “the Pension Rules to which the competent authority shall subject a licence, may be made”; and

(ii) for paragraph (a) thereof, there shall be substituted the following:

“(a) all licences granted;”;

(i) in sub-article (7) thereof, as renumbered, for the words, “grant a licence or recognition; and in the case of a refusal it shall inform the applicant of the reasons”, there shall be substituted the words, “grant a licence; and in the case of a refusal it shall inform the applicant in writing of the reasons”;

(j) in paragraph (b) of sub-article (9) thereof, as renumbered, for the words, “by means of a Pension Rule issued”, there shall be substituted the words, “by means of Pension Rules issued”; and

(k) in sub-article (10) thereof, as renumbered, for the words, “a register of all holders of a licence and, or recognition. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence and, or recognition was issued.”, there shall be substituted the words, “a register of all holders of a licence. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence was issued.”.

Amendment of article 10 of the principal Act.

9. Article 10 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words, “to cancel or suspend a licence or recognition.”, there shall be substituted the words, “to cancel or suspend a licence.”;

(b) in sub-article (1) thereof, for the words, “suspend a licence and, or recognition in accordance with”, there shall be substituted the words, “suspend a licence in accordance with”;

(c) in sub-article (2) thereof:

(i) in paragraph (c) thereof, for the words, “false, inaccurate or misleading, or if the Retirement Scheme Administrator”, there shall be substituted the words, “false, inaccurate or misleading in any material particular, or if the Retirement Scheme Administrator”; and

(ii) in paragraph (d) thereof, for the words, “licensed to carry on within the time provided for in the licence or has ceased to”, there shall be substituted the words, “licensed to carry on within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to”;

(d) in paragraph (d) of sub-article (3) thereof, for the words, “not commenced the activities it has been licensed to carry on within the time provided for in the licence or has ceased to”, there shall be substituted the words, “not commenced to provide the activities within the time

provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to”; and

(e) in sub-article (4) thereof:

(i) for the words, “cancel or suspend a licence and, or recognition as the case may be:”, there shall be substituted the words, “cancel or suspend a licence:”;

(ii) in paragraph (a) thereof, for the words, “he is licensed and, or recognised to provide; or”, there shall be substituted the words, “he is licensed to provide; or”;

(iii) in paragraph (d) thereof, for the words, “has been licensed and, or recognised to provide within the time provided for in the licence and, or recognition or has ceased to”, there shall be substituted the words, “has been licensed to provide within the time provided for in the licence, or if no such time is specified, within twelve months of its issue, or has ceased to”;

(iv) in paragraph (e) thereof, for the words, “suspend the licence and, or recognition for the protection of beneficiaries,”, there shall be substituted the words, “suspend the licence for the protection of beneficiaries,”; and

(v) in paragraph (g) thereof, for the words, “precluded from issuing the licence and, or recognition as the case may be, or where”, there shall be substituted the words, “precluded from issuing the licence, or where”.

Amendment of article 11 of the principal Act.

10. Article 11 of the principal Act shall be amended as follows:

(a) in the marginal note thereof, for the words, “suspension of a licence and, or recognition.”, there shall be substituted the words, “suspension of a licence.”;

(b) in sub-article (1) thereof:

(i) in paragraph (a) thereof, for the words, “to which a licence and, or recognition is subject”, there shall be substituted the words, “to which a licence is subject”;

(ii) for paragraph (b) thereof, there shall be substituted the following:

“(b) to refuse an application for a licence or to cancel or to suspend a licence,”;
and

(iii) in the paragraph immediately following paragraph (b) thereof:

(aa) for the words, “to the licence holder and, or recognised person, or in the case of a retirement scheme”, there shall be substituted the words, “to the licence holder, or in the case of a retirement scheme”; and

(bb) for the words, “setting out the reasons for its proposed action.”, there shall be substituted the words, “setting out detailed reasons for its proposed action.”;

(c) in sub-article (3) thereof, for the words, “The competent authority shall as soon as practicable notify its final decision”, there shall be substituted the words, “The competent authority shall notify its final decision”; and

(d) for sub-article (4) thereof, there shall be substituted the following:

“(4) The competent authority shall notify EIOPA of any cancellation of a licence of an occupational retirement scheme under article 10.”.

Amendment of article 13 of the principal Act.

11. In article 13 of the principal Act, for the words, “the best interests of the retirement scheme, and may not use the assets”, there shall be substituted the words, “the best interests of the retirement scheme, its members and beneficiaries, and may not use the assets”.

Addition of articles 13A to the principal Act.

12. Immediately after article 13 of the principal Act, there shall be added the following new article 13A:

“System of Governance for occupational retirement schemes.

13A. (1) An occupational retirement scheme shall be required to have in place an effective system of governance which provides for sound and prudent management of its activities in connection with the overall operation and administration of such scheme. The system of governance requirements shall be laid down in Pension Rules.

(2) An occupational retirement scheme shall:

(a) ensure that persons carrying out a key function, and where applicable, persons or entities to which a key function has been outsourced, are the fit and proper, as may be established by Pension Rules;

(b) have in place the following key functions:

(i) an effective risk management system, including a risk management function;

(ii) an effective internal audit function; and

(iii) where applicable, an effective actuarial function.

(c) as part of its risk management system, conduct its own risk assessment;

(d) have in place an effective internal control system.

(e) if it outsources any of its functions or activities, remain fully responsible for discharging all of its obligations under this Act.

(3) The systems and functions referred to in sub-article (2) shall be determined by Pension Rules.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the occupational retirement scheme.”.

Amendment of article 16 of the principal Act.

13. Article 16 of the principal Act shall be amended as follows:

(a) for sub-article (1) thereof, there shall be substituted the following:

“**16.** (1) Every retirement scheme or retirement fund, shall appoint an auditor; and every retirement scheme shall also appoint an actuary to carry out the duties as may be specified by Pension Rules.”; and

(b) in sub-article (2) thereof:

(i) for the words, “a licence holder or recognised person, as the case may be, shall have the right”, there shall be substituted the words, “a licence holder shall have the right”; and

(ii) for the words, “from that licence holder or recognised person as the case may be.”, there shall be substituted the words, “from that licence holder.”.

Amendment of Part V of the principal Act.

14. In the heading of Part V of the principal Act, for the words, “Other Requirements and General Provisions”, there shall be substituted the words, “Other Requirements”.

Amendment of article 18 of the principal Act.

15. Paragraph (a) of article 18 of the principal Act, shall be substituted by the following:

“(a) the rates of contributions payable towards the retirement scheme as may be prescribed;”.

Amendment of article 20 of the principal Act.

16. Article 20 of the principal Act shall be substituted with the following:

“**20.** Every retirement scheme and Retirement Scheme Administrator shall forward to the competent authority a copy of its audited financial statement within the periods stipulated in the Pension Rules and shall comply with any reporting requirements as may be required by Pension Rules.”

Amendment of heading of Defined Benefit Occupational Retirement Schemes of the principal Act.

17. For the words, “Defined Benefit Occupational Retirement Schemes”, there shall be substituted the words, “Quantitative Requirements”.

Amendment of article 26 of the principal Act.

18. **26.** For article 26 of the principal Act, there shall be substituted the following:

“ Technical provisions for occupational retirement schemes

26. (1) Every occupational retirement scheme shall:

(a) establish at all times an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts;

(b) where an occupational retirement scheme is a defined benefit scheme, it shall establish sufficient technical provisions in respect of the total range of such schemes.

(2) The competent authority may, by regulations, made for the purposes of this article, determine the manner in which technical provision shall apply.”

Amendment of article 28 of the principal Act.

19. In article 28 of the principal Act, for the words, “as the case may be, shall produce such annual accounts,”, there shall be substituted the words, “as the case may be, and comply with any reporting requirements such as annual accounts,”.

Amendment of article 30 of the principal Act.

20. In article 30 of the principal Act, for the words, “Every licence holder and recognised person under this Act”, there shall be substituted the words, “Every licence holder under this Act”.

Amendment of article 31 of the principal Act.

21. Article 31 of the principal Act shall be amended as follows:

(a) for the words, “A licence holder or recognised person, or any person having responsibility”, there shall be substituted the words, “A licence holder or any person having responsibility”; and

(b) for the words, “the information provided under this Act as soon as such person or its delegate”, there shall be substituted the words, “the information provided under this Act, and any regulations made thereunder, or any Pension Rules, as soon as such person or its delegate”.

Amendment of article 32 of the principal Act.

22. Article 32 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words, “No person shall acquire, ”, there shall be substituted the words, “Notwithstanding, anything contained in any other law, no person shall acquire,”;

(b) in sub-article (4) thereof, for the words, “mentioned in sub-article (1)(b) shall state the reasons”, there shall be substituted the words, “mentioned in sub-article (1)(c) shall state the reasons”;

(c) for sub-article (10) thereof, there shall be substituted the following:

“(10) Without prejudice to the provisions of articles 46 and 48, where a shareholding in a service provider is acquired despite the objection of the competent authority, the competent authority shall have the power to make an order:

(a) restraining such person or service provider from taking, or continuing with, such action;

(b) declaring such action to be void and of no effect;

(c) requiring such person or service provider to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(d) restraining such person or service provider from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(e) restraining such person or service provider from taking any similar action or any other action within the categories set out in sub-articles (1) and (6).” and

(d) immediately after sub-article (11) thereof, there shall be added the following new sub-article:

“(12) The requirements set out in the said article shall apply to a retirement scheme set up as an investment company with variable share capital (“SICAV”) under the Companies Act.”.

Amendment of article 33 of the principal Act.

23. In article 33 of the principal Act, for the words, “from time to time by the Commissioner of Inland Revenue”, there shall be substituted the words, “from time to time by the Commissioner for Revenue”.

Amendment of article 34 of the principal Act.

24. In article 34 of the principal Act, for the words, “The competent authority may, by a Pension Rule made for”, there shall be substituted the words, “The competent authority may, by Pension Rules made for”.

Amendment of article 35 of the principal Act.

25. Article 35 of the principal Act shall be amended as follows:

(a) for sub-article (1) thereof:

(i) for the words, “a licence holder or recognised person, as applicable, shall have the duty”, there shall be substituted the words, a licence holder shall have the duty”;

(ii) for the words, “any fact or decision of which it becomes aware”, there shall be substituted the words, “any fact or decision concerning that licence holder of which it becomes aware”;

(iii) for the words, “such licence holder or recognised person which –“, there shall be substituted the words, “such licence holder which relates to any matter which may be prescribed or is likely to bring about the following –”; and

(iv) for paragraphs (a), (b) and (c) thereof, there shall be substituted the following:

“(a) a serious qualification, or refusal, of the auditor’s or actuary’s report on the accounts of such licence holder; or

(b) a material breach of the provisions of this Act, regulations or any Pension Rules which lay down the legal or regulatory requirements applicable to a licence holder in or under this Act; or

(c) a grave impairment of the licence holder’s ability to meet the current or future liabilities attributable to it; or”;

(b) for sub-article (2) thereof:

(i) for the words, “a licence holder or recognised person, as applicable, shall report”, there shall be substituted the words, “a licence holder shall report”;

(ii) for the words, “any facts or decisions as specified in sub-article (1)”, there shall be substituted the words, “any facts or decisions of which he becomes aware of in the course of carrying out his duties which relate to or have a serious adverse effect upon the members or beneficiaries as specified in sub-article (1),”; and

(iii) for the words, “of the licence holder or recognised person or of the person having such close links.”, there shall be substituted the words, “of the licence holder or of the person having such close links.”;

(c) in sub-article (3) thereof, for the words, “the services listed in the Schedule and, or back-office administrative activities as established by Pension Rules.”, there shall be substituted the words, “the services listed in the Schedule.”;

(d) sub-article (4) thereof shall be renumbered as sub-article (5);

(e) immediately after sub-article (3) thereof, there shall be added the following new sub-article (4):

“(4) Without prejudice to any provision contained in this Act, the competent authority may request the auditor or the actuary, as the case may be, to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (1) or (2) concerning the licence holder.”; and

(f) in sub-article (5) thereof, as renumbered, for the words, “a licence holder or recognised person, as applicable, to change its appointed auditor”, there shall be substituted the words, “a licence holder to change its appointed auditor”.

Amendment of article 37 of the principal Act.

26. Article 37 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof,

(i) in paragraph (f) thereof, for the words, “other licence holders or recognised persons, or advertisement from”, there shall be substituted the words, “other licence holders or advertisement from”;

(ii) in paragraph (k) thereof, for the words, “as the case may be, of licence or recognition fees or other fees”, there shall be substituted the words, “as the case may be, of licence fees or other fees”;

(iii) paragraphs (n) and (o) thereof shall be deleted;

(iv) immediately after paragraph (m), there shall be added the following new paragraph (n):

“ (n) provide for the application of specific provisions of the Occupational Pensions Directive to the occupational pensions provision business carried out by insurance undertakings authorised under the Insurance Business Act carrying on long term business;”;

(v) paragraphs (p) and (q) shall be renumbered as paragraphs (o) and (p) respectively;

(b) sub-article (2) thereof shall be deleted; and

(c) sub-articles (3), (4) and (5) shall be renumbered to sub-articles (2), (3) and (4) respectively.

Amendment of article 38 of the principal Act.

27. Sub-article (2) of article 38 of the principal Act shall be amended as follows:

(a) for the words, “binding on licence holders and, or recognised persons under this Act”, there shall be substituted the words, “binding on licence holders under this Act”;

(b) for the words, “may relate to a particular class of retirement scheme and, or retirement fund”, there shall be substituted the words, “to a particular category of retirement scheme and, or retirement fund”;

(c) for the words, “activities of that licence holder or recognised person, the conduct of”, there shall be substituted the words, “activities of that licence holder, the conduct of”;

(d) for paragraph (g) thereof shall be substituted with the following:

“(g) providing specific requirements for personal retirement schemes;”

(e) in paragraph (h) thereof, for the words, “for licensing or recognition or other purposes”, there shall be substituted the words, “for licensing or other purposes”;

(f) paragraph (i) thereof shall be deleted;

(g) paragraphs (j), (k), (l), (m), (n), (o), (p), (q), (r), (s) and (t) shall be renumbered as paragraphs (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s), respectively;

(h) in paragraph (i) thereof, as renumbered, for the words, “applicable to licence holders and, or recognised persons as the case may be;”, there shall be substituted the words, “applicable to licence holders;”;

(i) for paragraph (n) thereof, as renumbered, there shall be substituted the following:

“(n) establishing conditions and requirements regarding the payment to a member, in the event that the member is no longer employed by the employer;”;

(j) in paragraph (o) thereof, as renumbered:

(i) for the words, “licence holders and, or recognised persons or providing that the persons”, there shall be substituted the words, “licence holders or providing that the persons”; and

(ii) for the words, “licence holders and, or recognised persons as applicable and the duty of a licence holder or recognised person to make documents available to the auditors of such licence holder or recognised person as applicable;”, there shall be substituted the words, “licence holders and the duty of a licence holder to make documents available to the auditors of such licence holder;” and,

(k) immediately after paragraph (s) thereof, as renumbered, there shall be added the following new paragraphs:

“(t) issuing Pension Rules in relation to occupational retirement schemes transferring all or part of their liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent to another retirement scheme;

(u) issuing Pension Rules to enable a member, beneficiary, contributor and generally any person who has entered, or offered to enter, into a retirement scheme, to rescind the agreement or withdraw the offer within such period and in such manner as stipulated in the said Rules.”.

Amendment of article 39 of the principal Act.

28. Article 39 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) for the words, “The competent authority may,”, there shall be substituted the words, “Without prejudice to anything contained in any other provision of this Act which requires a Retirement Scheme Administrator, a retirement scheme and a retirement fund to furnish to the competent authority any information or documentation, the competent authority may,”;

(ii) in sub-paragraph (i) thereof, for the words, “as it may require, with respect to any service,”, there shall be substituted the words, “as it may require, including existing telephone and existing data traffic records, with respect to any service,”; and

(iii) in sub-paragraph (ii) thereof, for the words, “verified in such manner as it may specify; or”, there shall be substituted the words, “verified in such manner and in such language as it may specify; or”;

(b) in sub-article (2) thereof, for the words, “under this article.”, there shall be substituted the words, “under this article or extracts from them.”;

(c) in sub-article (8) thereof, for the words, “a holder of a licence or recognition may be required to submit”, there shall be substituted the words, “a holder of a licence may be required to submit”; and

(d) immediately after sub-article (8) thereof, there shall be added the following new sub-article (9):

“(9) The powers to obtain information available to the competent authority pursuant to this article with regard to the persons listed in sub-article (1) shall also be available with regard to the service providers of outsourced key functions or any other activities at any time.”.

Amendment of article 40 of the principal Act.

29. In sub-article (1) of article 40 of the principal Act, for the words, “referred to in article 39(1)(a) to (c).”, there shall be substituted the words, “referred to in article 39(1)(a) to (c) and to report thereon to it.”.

Amendment of article 41 of the principal Act.

30. Sub-article (2) of article 41 of the principal Act, shall be amended as follows:

(a) in paragraph (a) thereof, for the words, “or any other requirement, and confer powers,”, there shall be substituted the words, “or any other requirement, including any requirement emanating from European Union legislation, and confer powers,”; and

(b) for paragraph (c) thereof, there shall be substituted the following:

“(c) require that any officer or any person having functions in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or be removed, or removed and replaced by another person acceptable to the competent authority;”.

Addition of articles 41A and 41B to the principal Act.

31. Immediately after article 41 of the principal Act, there shall be added the following new articles 41A and 41B:

“Supervisory Review Process of occupational retirement schemes.

41A. (1) The competent authority shall review the strategies, processes and reporting procedures which are established by an occupational retirement scheme to comply with

this Act, regulations made and Pension Rules issued thereunder taking into account the size, nature, scale, complexity and activities of the scheme.

(2) The review carried out by the competent authority shall take into account the circumstances in which the occupational retirement scheme is operating, and where relevant, the parties carrying outsourced key functions or any other activities for them. The review shall comprise of an assessment of the following elements:

(a) an assessment of the qualitative requirements relating to the system of governance;

(b) an assessment of the risks the occupational retirement scheme faces;

(c) an assessment of the ability of the occupational retirement scheme to assess and manage those risks.

(3) Where the competent authority identifies any weakness or deficiency as a consequence of the supervisory review process, it shall request the Retirement Scheme Administrator of an occupational retirement scheme to remedy such weakness or deficiency within such period and in such manner as it may deem necessary or appropriate in the circumstances.

(4) The reviews, evaluations and assessments referred to sub articles (1) to (2), shall be conducted regularly and the competent authority shall establish the minimum frequency and the scope of the review referred to in sub-article (1) having regard to the nature, scale and complexity of the activities of the occupational retirement scheme.

Information to be provided for supervisory purposes.

41B. Without prejudice to the provisions of the Act, an occupational retirement scheme shall submit to the competent authority the information which is necessary for the purposes of supervision, as may be specified by means of regulations or Pension Rules which shall also specify the period within which this information is to be submitted.”.

Amendment of article 42 of the principal Act.

32. Article 42 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words, “Any officer, employee or agent ”, there shall be substituted the words, “Without prejudice to the provisions of the Companies Act, relating to the entry and search of premises, any officer, employee or agent”;

(b) in sub-article (2) thereof, for the words, “on producing, if required, evidence of his authorisation, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents, being information or documents”, there shall be substituted the words, “on producing if required, evidence of his authority, enter any premises referred to in sub-

article (1) for the purpose of obtaining there any information or documents specified in the authority, being information or documents”; and

(c) in sub-article (3) thereof, for the words, “enforcement of law and order.” there shall be substituted the words “enforcement of law and order:”, and immediately thereafter there shall be added the following new proviso:

“Provided that, where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.”.

Amendment of article 43 of the principal Act.

33. Sub-article (1) of article 43 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words, “on the licence or recognition granted”, there shall be substituted the words, “on the licence granted”; and

(b) in paragraph (b) thereof, for the words, “suspend a licence or recognition under article 10(1);”, there shall be substituted the words, “suspend a licence under article 10(1);”.

Amendment of article 44 of the principal Act.

34. Article 44 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) paragraphs (b), (c), (d), (e) and (f) thereof, shall be renumbered as paragraphs (c), (d), (e), (f) and (g) respectively;

(ii) immediately after paragraph (a) thereof, there shall be added the following new paragraph (b):

“(b) any condition imposed in a licence in terms of article 9(3);”;

(iii) in paragraph (c) thereof, as renumbered, for the words, “of article 9(8)”, there shall be substituted the words “of article 9(7)”; and

(iv) in paragraph (d) thereof, as renumbered, for the words, “suspension of a licence or recognition under articles”, there shall be substituted the words, “suspension of a licence under articles”;

(b) in the proviso to sub-article (2) thereof, for the words, “a licence or recognition shall not become operative”, there shall be substituted the words, “a licence shall not become operative”; and

(c) immediately after sub-article (3) thereof, there shall be added the following new sub-article (4):

“(4) The Financial Services Tribunal shall have exclusive competence to hear appeals on the matters listed in sub-article (1).”.

Amendment of article 46 of the principal Act.

35. Article 46 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof:

(i) for the words, “where a licence holder or recognised person or the manager, secretary, director or any other person responsible for a licence holder or recognised person contravenes or fails to comply with any of the conditions imposed in a licence or recognition, and, or where the competent authority”, there shall be substituted the words, “where a licence holder or an officer, or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence, and, or where the competent authority”;

(ii) for the words, “impose on the licence holder, or recognised person, manager, secretary, director, and, or any other person as the case may be, an administrative penalty which may not exceed ninety-three thousand and two hundred euro.”, there shall be substituted the words, “impose on the licence holder, officer, and, or any other person as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues.”;

(b) in sub-article (2) thereof, for the words, “on licence holders, recognised persons or others, as may be specified, whether in the form of a fixed penalty a daily penalty, or both, for any breach of the rules.”, there shall be substituted the words, “on licence holders or others, as may be specified, whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the said Pension Rules.”;

(c) for sub-article (4) thereof, there shall be substituted the following:

“(4) The competent authority shall publish on its official website, without undue delay, any administrative penalty or other measure which is imposed for breaches of the provisions of this Act, regulations or Pension Rules made thereunder, and against which no appeal was lodged in time. Such publication shall include information on the type and nature of the breach and the identity of the natural or legal person responsible for the breach.”; and

(d) sub-article (5) thereof shall be renumbered as sub-article (6) thereof;

(d) immediately after sub-article (4) thereof, there shall be added the following new sub-article (5):

“(5) Notwithstanding sub-article (1), the competent authority may decide to defer publication, not to publish, or to publish on an anonymous basis, any administrative penalty or other measure imposed, in any of the following circumstances:

(a) where the publication of the identity of legal persons, or the identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data; or

(b) where the publication jeopardises the stability of financial markets or an ongoing investigation.”.

Amendment of article 48 of the principal Act.

36. For article 48 of the principal Act, there shall be substituted the following:

“Offences.

48. Any person who:

(a) for the purposes of obtaining a licence under this Act, or pursuant to, any of the provisions of this Act or of any regulations or Pension Rules made thereunder, or any condition, obligation, requirement or Pension Rules or directive made or given as aforesaid, furnishes information or makes a statement or a declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement or a declaration which is inaccurate, false or misleading in any material respect; or

(b) is knowingly a party to the carrying on of any retirement scheme or retirement fund or licensable activity with an intent to defraud or for a fraudulent purpose;

(c) by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a retirement scheme or retirement fund; or

(d) with intent to avoid detection of the commission of an offence under this Act, any regulations or Pension Rules issued thereunder removes, destroys, conceals or fraudulently alters any book, document or other paper, or;

(e) intentionally obstructs a person exercising rights conferred by this Act or any regulations or Pension Rules made thereunder,

shall be guilty of an offence.”.

Amendment of article 49 of the principal Act.

37. In article 49 of the principal Act, for the words, “of article 48 shall, unless another penalty is prescribed, be liable on conviction to a fine (multa) not exceeding four hundred and sixty-six thousand euro or to”, there shall be substituted the words, “of article 48 shall, be liable on conviction to a fine (multa) not exceeding four hundred and sixty-six thousand euro (€ 466,000) or to”.

Amendment of article 50 of the principal Act.

38. Article 50 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words, “under this Act shall be commenced without the consent of”, there shall be substituted the words, “under this Act and any regulations made thereunder, shall be commenced without the sanction of”; and

(b) in sub-article (2) thereof, for the words, “this Act shall not affect any criminal liability that may be incurred by any person under any other law.”, there shall be substituted the words, “this Act and any regulations made thereunder shall not affect any criminal proceedings that may be competent under any other law.”.

Deletion of article 51 of the principal Act.

39. Article 51 of the principal Act shall be deleted.

Amendment of article 52 of the principal Act.

40. For article 52 of the principal Act there shall be substituted the following:

“Confidentiality.

52. (1) Information obtained by the competent authority or by its officers, employees, agents, including former officers, employees or agents, as well as by inspectors, auditors, actuaries and experts acting on behalf of the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations or Pension Rules made thereunder, or in the discharge of any

functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy.

(2) Without prejudice to cases covered by criminal law, the persons referred to in sub article (1) shall not disclose information obtained, from a retirement scheme licensed under the Act unless such disclosure of information be done in summary or aggregate form, so as not to enable the identity of such scheme, to whom such information relates, to be ascertained:

Provided that, such persons may disclose confidential information in civil or commercial proceedings where an occupational retirement scheme is being compulsorily wound up.

(3) The competent authority, when processing personal data for the purposes of the Act and any regulations, and Pension Rules issued thereunder, shall do so in accordance with 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), as amended from time to time.

Addition of articles 52A, 52B, 52C, 52D and 52E to the principal Act.

41. Immediately after article 52 of the principal Act, there shall be added the following new articles 52A, 52B, 52C, 52D and 52E:

“Use of confidential information of occupational retirement schemes.

52A. Where the competent authority receives confidential information, it may only use such confidential information in the course of its duties for the following purposes:

- (a) to check that conditions for taking up the activity for the provision of retirement benefits are met by the occupational retirement scheme before commencing its activities;
- (b) to facilitate the monitoring of activities of the occupational retirement scheme, including the monitoring of technical provisions, the solvency, the system of governance, and the information provided to members and beneficiaries, as applicable;
- (c) to impose corrective measures, including administrative sanctions;
- (d) to publish key performance indicators for all individual occupational retirement schemes, which may assist members and beneficiaries in taking financial decisions regarding their pension where permitted by national law;

- (e) in appeals against decisions of the competent authority under article 44;
- (f) in judicial proceedings in accordance with the Act, regulations and Pension Rules issued thereunder.

Co-operation in supervisory duties and sharing of information.

52B. (1) Notwithstanding the provisions of articles 52 and 52A, the competent authority shall exchange information:

- (a) with overseas regulatory authorities in the discharge of their supervisory functions;
- (b) with authorities or bodies, or persons listed in sub-article (2).

(2) The competent authority shall co-operate and exchange information with:

- (a) authorities responsible for the supervision of the financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;
- (b) authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macro-prudential rules;
- (c) bodies involved in the winding up of retirement schemes and in other similar procedures and bodies which administer the winding-up of retirement schemes for the performance of their duties;
- (d) reorganisation bodies or authorities aiming at protecting the stability of the financial system;
- (e) persons responsible for carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;
- (f) authorities responsible for overseeing the bodies involved in the winding up of retirement schemes and other similar procedures ;
- (g) authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;

(h) independent actuaries of retirement schemes carrying out supervision of those schemes and the bodies responsible for overseeing such actuaries.

(3) For the purposes of the exchanges of information referred to in sub-article (1) and sub-article (2)(a)(b)(c)(d) and (e), the information received by such authorities, bodies or persons shall be subject to the duty of professional secrecy.

(4) Without prejudice to the provisions of articles 52 and 52A, the competent authority may transmit information intended for the performance of their tasks to the following:

(a) the Central Bank of Malta, the central banks of the European System of Central Banks (including the European Central Bank) and other bodies with a similar function in their capacity as monetary authorities;

(b) where appropriate, other national public authorities responsible for overseeing payment systems; and

(c) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

(5) Without prejudice to the provisions of this article and articles 52C and 52D, the authorities or bodies referred to in sub-article (4), shall communicate to the competent authority any information the competent authority requires for the purposes of article 52A.

(6) Any information received pursuant to sub-articles (4) and (5) of this article, shall be subject to professional secrecy.

Disclosure of confidential information in relation to occupational retirement schemes.

52C. (1) Without prejudice to articles 52(1), 52(2), 52A and 52D(1), the competent authority may exchange information with other departments of central government administration responsible for the enforcement of legislation on the supervision of occupational retirement schemes, credit institutions, financial institutions, investment services and insurance undertakings, or inspectors acting on behalf of those departments, provided that:

(a) such disclosures may be made only where necessary for reasons of prudential control and prevention and resolution of failing of occupational retirement schemes; and

(b) without prejudice to sub-article (3) of this article, persons having access to such information shall be subject to professional secrecy.

(2) Any information obtained by means of an on-site verification may be disclosed only with the express consent of the competent authority from which the information originated from or the overseas regulatory authority of the country in which the on-site verification was carried out.

(3) The competent authority may authorise the disclosure of confidential information relating to the prudential supervision of an occupational retirement scheme to national parliamentary enquiry committees or national courts of auditors and other national entities in charge of enquiries, where all the following conditions are fulfilled:

(a) the entities have competence under national law to investigate or scrutinise the actions of authorities responsible for the supervision of occupational retirement schemes or for laws on such supervision;

(b) the information is strictly necessary for fulfilling the competence referred to in paragraph (a);

(c) the persons with access to the information are subject to professional secrecy requirements;

(d) if the information originates from another Member State, that information is disclosed with the explicit agreement of the originating overseas regulatory authorities and solely for the purposes for which those authorities gave their agreement.

Conditions for the exchange of information.

52D. (1) The competent authority shall require that for exchanges of information under articles (1) to (3) of article 52B of the Act, transmission of information under sub-articles (4), (5) and (6) of article 52B, and the disclosure of information under article 52C:

(a) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;

(b) the information received shall be subject to the obligation of professional secrecy laid down in sub-articles (1) and (2) of article 52;

(c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and where appropriate, solely for the purposes for which that authority gave its agreement.

(2) Without prejudice to article 52A, the competent authority shall exchange information with authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings, for the purposes of strengthening the stability and integrity of the financial system, provided that:

(a) the information must be intended for the purpose of detection, investigation and scrutiny as referred to in article 52C(3)(a);

(b) the information received shall be subject to the obligation of professional secrecy laid down in sub-articles (1) and (2) of article 52;

(c) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(3) Where the authorities or bodies referred to in subarticle (2) perform their tasks of detection or investigation with the aid of persons appointed, in view of their specific competence and for that purpose, the possibility of exchanging information provided for in article 52C(3), shall apply.

Co-operation with EIOPA and European Commission.

52E (1) The competent authority shall cooperate with EIOPA in accordance with Regulation (EU) No 1094/2010 and with the European Commission for the purposes of the Occupational Pensions Directive and to facilitate supervision of the operations of retirement schemes.

(2) The competent authority shall provide EIOPA with all information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

(3) The competent authority shall inform EIOPA and the European Commission of any major difficulties which the application of the Occupational Pensions Directive gives rise.

Amendment of article 53 of the principal Act.

42. In article 53 of the principal Act, for the words, “any officer or employee of the competent authority,”, there shall be substituted the words, “any member, officer or employee of the competent authority,”.

Amendment of article 54 of the principal Act.

43. Article 54 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words, “Notices.”, there shall be substituted the words, “Services of notices.”;

(b) in paragraph (a) thereof, for the words, “delivered to it;”, there shall be substituted the words, “delivered to him;”;

(c) in paragraph (b) thereof, for the words, “address furnished by it to the competent authority,”, there shall be substituted the words, “address furnished by him to the competent authority,”; and

(d) in paragraph (c) thereof, for the words, “sent to it by post, e-mail or by telefax at any of”, there shall be substituted the words, “sent to it by post or e-mail at any of”.

Amendment of article 56 of the principal Act.

44. Immediately after sub-article (3) of article 56 of the principal Act, there shall be added the following new sub-article (4):

“(4) The Minister, acting on the advice of the competent authority, may, by regulations, make transitional provisions in respect of such persons who, were granted a recognition by the competent authority under article 7 of the Retirement Pensions Act, and, without prejudice to the generality of the foregoing, may, by such regulations, in particular prescribe a period within which back office administrators are to surrender their recognition, subject to such conditions and requirements as may be prescribed.”.

PART II

AMENDMENTS TO THE INSURANCE BUSINESS ACT, CAP.403

Amendment of the Retirement Pensions Act. Cap. 514.

51. This Part amends and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of article 2 of the principal Act.

52. In sub-article (1) of article 2 of the principal Act, for the definition “reinsurance”, there shall be substituted the following:

“ “reinsurance” means one of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country; or

(b) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council;”.

Amendment of article 67 of the principal Act.

53. In sub-article (6) of article 67 of the principal Act, the second proviso shall be deleted.

PART III

AMENDMENTS TO THE INSURANCE DISTRIBUTION ACT, CAP. 487

Amendment of the Retirement Pensions Act. Cap. 514.

54. This Part amends and shall be read and construed as one with the Insurance Distribution Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of article 3 of the principal Act.

55. In paragraph (a) of sub-article (2A) of article 3 of the principal Act, the words “and in such a case, a penalty imposed under this paragraph, whether in the form of a fixed amount, a daily penalty, or both, may in no case, exceed one hundred and fifty thousand euro (€150,000);” shall be deleted.