

24<sup>th</sup> July 2020

## Circular in relation to the professional member criteria in line with the Standard Licence Condition B.9.3 of the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011

### 1.0 Introduction

On the 28<sup>th</sup> of December 2018, the MFSA published the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011 (hereinafter referred to as the "Pension Rules"). Following the said publication, the MFSA has received a number of queries from market participants in relation to the criteria identified in Standard Licence Condition 9.3 of the said Pension Rules. Standard Licence Condition 9.3 of the Pension Rules provides for an interpretation of "a professional member". In terms of this ground, a "professional member" would be permitted to direct himself the investments within his account, rather than using an intermediary, such as an investment manager or investment advisor.

A member will only be permitted to manage his/her own investments, where the Retirement Scheme Administrator receives from the Member a request, in writing, that the said Member wishes to be considered as a professional member, and the RSA is satisfied that the prospective member or member of the Scheme fulfils the criteria referred to in SLC 9.3 of the Pension Rules. In addition, a written declaration is to be signed by the Member which is to include a statement that such Member is aware that he or she is responsible for the investment decisions taken with respect to the member's individual account within the Scheme.

The criteria referred to in SLC 9.3 of the Pension Rules have been modelled on Directive 2014/65/EU on Markets in Financial Instruments (MIFID II), with some modifications, in view of the fact that schemes licensed under the RPA are ultimately pension schemes and not investment vehicles.

The aim of the criteria identified in S.L.C. 9.3 of the Pension Rules is to ensure that the prospective member has sufficient knowledge and experience in the investment field relevant to the specific types of financial instruments in which he is investing in.

## 2.0 Clarifications related to Standard Licence Condition 9.3 of the Pension Rules

The MFSA would like to clarify that the criteria identified in SLC 9.3(i) of the Pension Rules would be fulfilled where the prospective member has worked in the financial services sector for at least three years in the last ten years, in a professional position. It is to be noted that a person who is merely a back-office employee and whose task is purely administrative in nature, would not satisfy such a criteria. As a consequence, only a person who has worked in a professional position and who has experience in the investment field relevant to the specific type of financial instrument in which he is investing would satisfy the criteria identified in SLC 9.3(i) of the Pension Rules.

As clarified in the [Feedback Statement](#) issued by the MFSA on the 4<sup>th</sup> January 2019, the criteria identified in SLC 9.3(ii) of the Pension Rules would be satisfied where the Retirement Scheme Administrator ensures that the member's account within the Scheme contains EUR 500 000, at the time the member is requesting to join into the Personal Retirement Scheme. The MFSA would expect the professional member to keep the Retirement Scheme Administrator informed about any changes, which could affect his position as a professional member.

With respect to the last criteria, the criteria identified in SLC 9.3 (iii) of the Pension Rules, would be satisfied where a member or a prospective member has performed transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters. It is to be noted that such transactions are required to be carried out in relation to the personal affairs of the prospective member, outside his / her existing pension arrangements and not as a part of the person's employment. For clarification purposes, where the transactions identified in SLC 9.3 (iii) of the Pension Rules are performed as part of the professional member's employment / profession, the criteria identified in SLC 9.3 (iii) of the Pension Rules would not be fulfilled, and should not be taken in account for the purpose of this assessment.

## 3.0 Conclusion

Any queries or requests for clarifications in respect of the above should be sent by email on [ips\\_legal@mfsa.mt](mailto:ips_legal@mfsa.mt).