

16 April 2021

Circular on the amendments to the Pension Rules & Legal Notices

1.0 Introduction

On 28 December 2018 the MFSA published the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011 and on 18 March 2020 the MFSA published the Pension Rules for Occupational Retirement Schemes issued in terms of the Retirement Pensions Act, 2011 (hereinafter referred to as the "Pension Rules"). Following the said publications, the MFSA periodically reviews the Pension Rules to amend them in line with findings observed during regulatory work as well as other findings observed by the market.

The MFSA has also amended the Pension Rules for Occupational Retirement Schemes to ensure complete transposition of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (the "IORP II Directive").

The purpose of this circular is to notify the market of such amendments and to provide information on the amendments carried out to the Pension Rules.

2.0 Amendments to the Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions act, 2011

The MFSA is amending the footnote to Standard Licence Condition 9.9(b)(ii) of the Pension Rules for Personal Retirement Schemes. Standard Licence Condition 9.9 currently states that the Retirement Scheme Administrator shall, where applicable carry out due diligence on the custodian. Standard Licence Condition 9.9(b)(ii) further specifies that the custodian shall be authorised and regulated to provide such custody services. The footnote states the following: *"It is not sufficient for such person to be licensed, but such licence permits the person to provide the investment advice being given to the Member."*

For clarification purposes and in view of the fact that the custodian does not provide investment advice, footnote 6 referred to above has been removed.

3.0 Amendments to the Pension Rules for Occupational Retirement Schemes issued in terms of the Retirement Pensions act, 2011

The MFSA is amending Standard Licence Condition 6.1.2(e) of the Pension Rules for Occupational Retirement Schemes. This Standard Licence Condition transposes Article 36(2)(e) of the IORP II Directive, which requires that the Pension Benefit Statement is available in an official language of the Member State. Currently Standard Licence Condition 6.1.2(e) states that the information referred to in S.L.C.6.1.1 of Part B of the Pension Rules for Occupational Retirement Schemes is to be available in the

Maltese AND English Language. Following internal discussions on the matter and in view of the fact that the English Language is one of the official languages in Malta, this requirement will be amended so that the information in the Pension Benefit Statement would be available in the Maltese OR English Language, thus eliminating the obligation to have this information provided in both the Maltese and English Language.

Article 20(2) of the IORP II Directive states that the Directive will be without prejudice to the role of social partners. Social partners include employer's organisations and trade unions. For clarification purposes, and to ensure that the Pension Rules are aligned with the IORP II Directive, the MFSA is amending the Standard Licence Condition 3.1.1 of the Pension Rules for Occupational Retirement Schemes to clarify that the Pension Rules are without prejudice to the role of social partners. Furthermore, and for the avoidance of doubt, the MFSA has included a definition of "*Social Partners*" in the Glossary to the Pension Rules.

Finally, the MFSA is also amending Part A of the Pension Rules for Occupational Retirement Schemes to clarify which documents the competent authority will accept as necessary in line with Article 22 of the IORP II Directive. In this respect, the MFSA will introduce new paragraphs to Section 2.4 of Part A to the Pension Rules for Occupational Retirement Schemes.

4.0 Amendments to Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2020 and Retirement Pensions (Control of Assets) Regulations, 2015

The MFSA has also amended the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2020 and Retirement Pensions (Control of Assets) Regulations, 2015 to bring them in line with Article 33(4) of the IORP II Directive. The amendments will provide the competent authority with the power to prohibit the free disposal of the assets of a custodian located in Malta, at the request of a European Regulatory Authority, in line with Article 33(4) of the IORP II Directive.

5.0 Amendments to Part C - Appendices to the Pension Rules for Occupational Retirement Schemes

The MFSA has also amended Appendices 1, 2 and 3 of the Pension Rules for Occupational Retirement Schemes to include a new requirement. The said requirement will clarify that the Constitutional Document, the Scheme Document and the Scheme Particulars shall include the requirements contained in Appendix 12 of the Pension Rules for Occupational Retirement Schemes. Appendix 12 of the Pension Rules for Occupational Retirement Schemes on *Minimum Requirements for enhancing Employee Mobility by Improving the Acquisition and Preservation of Pension Rights* specifies the requirements of Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights. The said amendment will clarify that the Constitutional Document, the Scheme Document and the Scheme Particulars of an Occupational Retirement Scheme will, apart from the requirements already listed down in the appendices, also include the requirements contained in Appendix 12 of the Pension Rules for Occupational Retirement Schemes.

Finally, *Appendix 14 – Provision of Occupational Pensions Information* has also been slightly amended by including a new link in paragraph 1.1 of the said Appendix. This link will replace the previous link and will direct the viewer to the updated Decision of the Board of Supervisors taken on 2 June 2020

on the reporting of national provisions of prudential nature relevant to the field of occupational pension schemes. This Decision supersedes the previous Decision taken by the Board of Supervisions on 10 April 2018. The new Decision also included minimal changes to the taxonomy requirements which will be reflected in Annexes I, II, III, IV of Appendix 14, as a result these annexes will be updated accordingly.

In this respect, the MFSA would like to draw the attention of licence holders who would be required to compile Annexes I, II and III of Appendix 14, as applicable, that a new version of the aforementioned spreadsheets has been uploaded and that the said licence holders are required to compile the new spreadsheets in line with the submission deadlines set out in the Annex V to Appendix 14.

5.0 Contacts

Any queries or requests for clarifications in respect of the above should be sent by email on ips_legal@mfsa.mt.