

**RULES FOR RETIREMENT FUNDS  
ISSUED IN TERMS OF THE  
RETIREMENT PENSIONS ACT, 2011**

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## REVISIONS LOG

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| VERSION | DATE ISSUED     | DETAILS   |
|---------|-----------------|---|
| 1.00    | 1 January 2015  | Issued  |
| 2.00    | 15 January 2019 | Circular to Licensed Retirement Funds to submit the half-yearly and annual report as stipulated under Part B of the Pension Rules for Retirement Funds issued in terms of the Retirement Pensions Act, 2011 |

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**INTRODUCTION**

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## **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 situated 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 situated 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 may be licensed under the Act to provide one or more services listed in the Schedule to the Act established by the Pension Rules for Service Providers.

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 it is duly licensed under this Act.

## ***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 make 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.

In exercise of those powers, the MFSA has made these Pension Rules for Retirement Funds.<sup>1</sup>

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

### ***Structure of the Pension Rules for Retirement Funds***

These Pension Rules for Retirement Funds are divided into four main parts:

- Part A provides an introductory overview of the nature of Retirement Funds and specifies the licensing process and criteria applicable to Retirement Funds;
- Part B sets out the Standard Licence Conditions applicable to Retirement Funds;
- 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 Retirement Funds and their practical application should be addressed to the Insurance and Pensions Supervision Unit of the MFSA.

Copies of these Pension Rules for Retirement Funds can be downloaded from the MFSA's website ([www.mfsa.com.mt](http://www.mfsa.com.mt)).

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<sup>1</sup> There are separate Rules for Occupational Retirement Schemes, Personal Retirement Schemes, and for Service-Providers. These are available from the MFSA web-site or from the MFSA's Insurance and Pensions Supervision.

These Pension Rules for Retirement Funds 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 defined otherwise in the Glossary to the Pension Rules issued under the Act.

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**PART A**

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***AN OVERVIEW OF THE APPLICABLE LICENSING REQUIREMENTS UNDER THE RETIREMENT  
PENSIONS ACT, 2011 ("the Act")***

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## **A.1 Overview of a Retirement Fund**

### **Definition**

In terms of article 2 of the Act, a “Retirement Fund” means an arrangement established for the principal purpose of holding and investing the contributions made to one or more retirement schemes and, or to one or more overseas retirement schemes.

The main purpose of a retirement fund is to act as a pooling vehicle through which one or more Retirement Schemes licensed under the Act or one or more Overseas Retirement Schemes may channel the investments of the contributions received by the respective schemes.

### **Establishment and Form**

A Retirement Fund shall be established as an investment company with variable share capital (“SICAV”) under the Companies Act (Chapter 386 of the Laws of Malta). It can be established as a multi-fund company with various Sub-funds or pools of assets. This means that a retirement fund may be constituted of several pools of assets to match the varying objectives of different retirement schemes and/or overseas retirement Schemes pooling their assets in the Retirement Fund.

### **Governance Arrangements & Related Parties**

A Retirement Fund is required to appoint an Auditor appointed in terms of the Pension Rules for Retirement Funds.

The appointment of an Investment Manager and a Custodian are mandatory. The appointment of an Investment Advisor is optional.

### **Mandatory Functions**

A Retirement Fund 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 Retirement Fund, an investment manager 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 Retirement Fund, a custodian may need to be appointed for the safe-keeping of assets. Separation of the custodial and investment management function is compulsory.

***Independence of the Retirement Fund***

The following independence requirements would need to be satisfied:

- (a) A majority of the Directors of the Retirement Fund shall be independent from the Retirement Scheme Administrator of any Retirement Scheme investing in it and where the Contributor to a Retirement Scheme is the sponsoring employer, the Directors of the Retirement Fund shall also be independent from such Contributor. They shall act independently of each other and solely in the interests of the Investors into the Retirement Fund. Where a Retirement Fund receives contributions solely from one Retirement Scheme, the independence requirements will be deemed to be satisfied if the Retirement Fund has, at least, one independent person on its Board of Directors
- (b) Separation of the custody and investment management function is compulsory. Where the Retirement Fund appoints an Investment Manager and Custodian these shall be separate persons independent of each other and where the Contributor to a Retirement Scheme is a business concern, the Investment Manager shall also be separate person independent from such Contributor.

***Investment Requirements***

A Retirement Fund must invest contributions (received from retirement schemes and/or overseas retirement schemes), and all returns on such contributions in instruments and other assets, with the aim of maximising the return on such contributions.

A Retirement Fund is required to invest all money and other assets received in accordance with the applicable investment policy and investment restrictions of the retirement scheme and/or overseas retirement scheme investing therein and in accordance with the Retirement Fund's Memorandum and Articles of Association and the Fund Particulars.

## **A.2 Licensing Requirements**

### **Licensing Requirement**

In terms of Article 5 of the Act, a Retirement Fund requires a licence to carry on the activity of a retirement fund in or from Malta. In terms of this article:

- (a) no retirement fund shall carry on any activity in or from within Malta in relation to a retirement scheme or an overseas retirement scheme, unless such retirement fund is situated in Malta and unless duly licensed under this Act;
- (b) no retirement fund formed in accordance with or existing under the laws of Malta shall 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 duly licensed under this Act.

### **Licensing Criteria**

A Retirement Fund must be constituted and structured in line with the requirements set out by the MFSA. The Retirement Fund's Constitutional Document shall meet the requirements set out in the Standard Licence Conditions B.1 of Part B of the Pension Rules for Retirement Funds. Moreover, the name of the Retirement Fund must be one which, in the opinion of the MFSA, is not misleading. Moreover, the MFSA shall refrain from licensing a Retirement Fund unless it is satisfied that:

- (a) the Retirement Fund and any person, by whatever name designated, responsible for the operation, administration, management of the fund will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;
- (b) the Retirement Fund and any person responsible for the operation, administration and management of the retirement fund are fit and proper persons to carry out the functions required of them in connection with the fund; and
- (c) any aspect of or related to the application does not raise any regulatory concerns.

When considering whether to grant or refuse a licence to a Retirement Fund, 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 Retirement fund, the persons responsible thereof and all other parties connected therewith.

The MFSA will need to be satisfied that appropriate governance structures and mechanisms are in place. The business should be well organised and have adequate controls and sufficient records should be maintained.

The MFSA will also need to be satisfied that the applicant and the related parties are fit and proper to provide or to carry out the indicated activities. The MFSA has the right to refuse a Licence if it does not approve a party involved with a Retirement Fund.

The "fit and proper" test is one which a Retirement Fund 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 it meets the required standards is on the Retirement Fund 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 that is to say the MFSA may conclude that a Retirement Fund 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 a Retirement Fund and its related parties are fit and proper the MFSA will take account of all material facts whether such facts are divulged or not (for example in respect of a Director's criminal record). It should be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.

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 Retirement Fund and its related parties acting honestly and in a trustworthy fashion in relation to the Members and Beneficiaries.

Competence means that those people carrying on the business of the Retirement Fund should be able to demonstrate an acceptable amount of knowledge, qualifications, professional expertise and experience directly relevant to the retirement activities with which they are dealing. The MFSA will also look at the experience and track record of all parties who will be involved in the management of the Retirement Fund to assess competence. The degree of competence required will depend upon the job 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.

### **Application Documents**

A request for the licensing of a Retirement Fund should be made by submitting a duly completed Application for licensing as a Retirement Fund in the form set out in Schedule A of Part D of these Pension Rules for Retirement Funds, supported by the documents specified in the Application Form. The MFSA may require any additional documents as deemed necessary.

### **The Licensing Process**

- (a) The Pension Rules for Retirement Funds 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 and, 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.
- (b) 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.

The application forms and related information set out in Schedule A of Part D of 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.

- (c) 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.
- (d) The MFSA will analyse the submissions and on the basis of this, make a decision regarding the licensing application.

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 Retirement Funds may be not applicable or be amended (where the circumstances justify such treatment) and supplementary conditions applied.

- (e) 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.
- (f) 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.
- (g) The Applicant may also be required to satisfy a number of post-licensing matters prior to formal commencement of business.

### ***Fees***

The fees can be found in the Retirement Pensions (Fees) Regulations, 2014. Where applicable, Application Fees are payable on submission of the Application Form (or the draft Application Form if this is submitted initially) 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.

### ***Variation of a Licence***

Requests for variation of a Licence should be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

### **A.3 Pension Rules for Retirement Funds licensed under the Act**

The Standard Licence Conditions which are to be satisfied by Retirement Funds licensed under the Act are stipulated in the Act itself, in Regulations made from time to time, and in these Pension Rules for Retirement Funds issued by the MFSA.

The detailed Standard Licence Conditions applicable are set out in Part B of these Pension Rules for Retirement Funds. While the Standard Licence Conditions should be sufficiently flexible to operate in a range of different situations, they may be supplemented or varied to reflect the particular circumstances of the Retirement Fund. A Retirement Fund 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.

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.

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## **A.4 Overseas Retirement Schemes**

### **Definition**

An Overseas Retirement Scheme is a scheme or arrangement, established under the laws of a country outside of Malta with the principal purpose of providing retirement benefits.

### **Qualification as an Overseas Retirement Scheme**

An Overseas Retirement Scheme does not require licensing under the Act. However, it may either decide to establish a Retirement Fund licensed under the Act or else invest its Contributions in an already established Retirement Fund licensed under the Act. Consequently, the Overseas Retirement Scheme should be considered eligible as such by the Retirement Fund in which it will be investing.

The following issues shall particularly be taken into account in arriving at a decision whether a scheme or arrangement is eligible or qualifies as an Overseas Retirement Scheme:

- (a) whether it falls within the definition of an Overseas Retirement Scheme as specified in article 2 of the Act;
- (b) its reputation and suitability;
- (c) whether it is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place; and,
- (d) any other criteria as may be determined from time to time.

### **Qualification Procedure**

Where an Overseas Retirement Scheme is interested in investing in an already established Retirement Fund it shall first contact such fund. The Retirement Fund shall undertake its own checks and enquiries to establish whether in its opinion, the scheme or arrangement qualifies to invest in the fund (by reference to the issues outlined in points (a) to (d) above). The Retirement Fund shall notify the MFSA of any scheme which it has considered as being eligible or qualifies as an Overseas Retirement Scheme, including the basis for its eligibility or qualification

In the instance where the Overseas Retirement Scheme intends to establish a Retirement Fund licensed locally, the eligibility or qualification of the Scheme shall be considered as part of the application process for the licensing of the Retirement Fund(s). In such case, the Retirement Fund

would need to demonstrate that the scheme or arrangement qualifies as an Overseas Retirement Scheme.

The Retirement Fund in which an Overseas Retirement Scheme invests shall be responsible for ensuring that the qualification or eligibility of the Overseas Retirement Scheme remains so applicable on an ongoing basis. The Retirement Fund shall notify the MFSA as soon as it is aware that such qualification or eligibility is no longer applicable.

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**PART B**

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**STANDARD LICENCE CONDITIONS FOR RETIREMENT FUNDS**

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

### **B.1.1 Constitution**

1.1.1 A Retirement Fund shall be established for the principal purpose of holding and investing the contributions made to one or more Retirement Schemes and / or to one or more Overseas Retirement Schemes. The Retirement Fund shall:

- (a) operate according to the principle of risk spreading;
- (b) pool the contributions received from Retirement Schemes and/or Overseas Retirement Schemes and the profits or income out of which payments are to be made;
- (c) issue units continuously or in blocks at short intervals; and
- (d) repurchase or redeem out of its assets, continuously or in blocks at short intervals, units in the Retirement Fund held by a Retirement Scheme or Overseas Retirement Scheme, at the request of that Retirement Scheme or Overseas Retirement Scheme.

1.1.2 A Retirement Fund shall be established as an investment company with variable share capital ("SICAV") in terms of the Companies Act (Chapter 386 of the Laws of Malta).

1.1.3 The Constitutional Document of a Retirement Fund shall contain at least the information outlined in Appendix 1. The contents of the Constitutional Document of a Retirement Fund shall be approved by the MFSA in advance of the licensing of the Retirement Fund.

### **B.1.2 Operation of the Retirement Fund**

1.2.1 The Retirement Fund shall be operated in accordance with the Constitutional Document, the Fund 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.

1.2.2 The Retirement Fund shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.

- 1.2.3 The Retirement Fund may only accept subscriptions from Retirement Schemes and Overseas Retirement Schemes.
- 1.2.4 The Retirement Fund shall invest subscriptions in accordance with Part B.3 to the Pension Rules on Retirement Funds.

**B.1.3 Duties for persons responsible for the operation, administration and management of the Retirement Fund**

- 1.3.1 Any person, referred to in article 13(2) of the Act, responsible for the operation, administration and management of the Retirement Fund, shall be approved by the MFSA. Such person shall act in the best interest of the Retirement Fund.
- 1.3.2 The person referred to in article 13(2) shall perform duties associated with the ordinary or day-to-day operations of the Fund of the Act, including but not limited to the following:
  - (a) receiving the assets of Investors;
  - (b) ensuring that the Retirement Fund receives all payments owed to it in the proper amounts and in a timely manner;
  - (c) ensuring that all income and proceeds received by the Retirement Fund are applied in accordance with the Retirement Fund's Constitutional Document;
  - (d) ensuring that all disbursements are effected in accordance with the Constitutional Document;
  - (e) maintaining accurate records regarding the net asset value of the Retirement Fund in accordance with Pension Rules on Retirement Funds and the Constitutional Document;
  - (f) maintaining accurate records regarding the Retirement Fund's Investors;
  - (g) ensuring that all instructions and decisions affecting the Retirement Fund are in conformity with any applicable law and the Constitutional Document;
  - (h) providing or arranging for all necessary accounting or other services;
  - (i) carry out the instructions of the Retirement Fund's directors unless they conflict with the Act or the Retirement Fund's Constitutional Document or its terms of appointment or duties;

- 1.3.3 Any person responsible for the operation, administration and management of the Retirement Fund shall comply with and ensure that the Retirement Fund complies and acts in accordance with:
- (a) all applicable laws and regulations whether in Malta or elsewhere and the disclosure of information, admissible financial transactions and the preparation of its financial audit; and
  - (b) the Retirement Fund's Constitutional Document.

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

##### **Investment Manager**

- 1.4.1 The Retirement Fund may appoint an Investment Manager, to carry out the investment management function of the Fund, independent from the entity carrying out the custody function in connection with the Fund.
- 1.4.2 The Investment Manager of the Retirement Fund may either be:
- (a) an entity licensed to carry out investment management services to Funds under the Act; or
  - (b) an investment manager established in another Member State or EEA State and duly authorised for this activity in accordance with Directives 2009/65/EC, 2004/39/EC, 2006/48/EC, 2002/83/EC and 2011/61/EU, as amended from time to time, and which has passported its services in Malta; or
  - (c) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment management activities.

##### **Custodian**

- 1.4.3 The Retirement Fund may appoint a Custodian, independent from the entity carrying out the investment management services in connection with the Fund.

- 1.4.4 Where the assets of a Retirement Fund are entrusted to a Custodian for safekeeping, the Custodian of the Fund may either be:
- (a) an entity licensed to carry out custody services to Retirement Funds under the Act; or
  - (b) custodians or depositaries established in another Member State or EEA State and duly authorised for this activity in accordance with Directives 2004/39/EC or Directive 2006/48/EC, or accepted as a depository for the purposes of Directive 2009/65/EC, as amended from time to time, and which has passported its services in; or
  - (c) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake custody services.

### **Investment Advisor**

- 1.4.5 The Retirement Fund may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Retirement Fund.
- 1.4.6 The Investment Advisor of a Retirement Fund 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 2004/39/EC, as amended from time to time, and which has passported its services in Malta; or
  - (c) any other entity which is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment advice.

### **Independence Requirements**

#### **General**

- 1.4.7 The investment management function and the custody function of the Retirement Fund shall be carried out by separate persons, independent from each other and

shall act independently and solely in the interests of the Retirement Scheme/s and / or Overseas Retirement Scheme/s investing in the Retirement Fund.

- 1.4.8 The Retirement Fund and the persons carrying out the investment management function shall be independent from a Contributor to a Retirement Scheme and/or Overseas Retirement Scheme investing in the Retirement Fund, where the Contributor is the sponsoring employer of the Occupational Retirement Scheme.
- 1.4.9 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***

- 1.4.10 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Service Provider of the Retirement Fund.
- 1.4.11 A Service-Provider appointed by the Fund 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 Replacement of Service-Providers***

- 1.4.12 Where the Retirement Fund 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 Retirement Fund;
  - 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 Fund's Assets.
- (b) the Retirement Fund shall ensure that it shall have a right of action against such Service-Provider for any breach of its duties;
- (c) the Retirement Fund, shall ensure, as a minimum, that it acts with due skill, care and diligence in:
  - i. selecting the Service Provider, 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. takes prompt and appropriate action if the Service Provider fails (or reasonably appears likely to fail) to provide its services to such standard.

1.4.13 The appointment and/or the replacement of any Service-Provider to a Retirement Fund, 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 all or of any Service-Provider.

1.4.14 In the instance that the Retirement Fund outsources certain key functions (such as the Investment Management and Custody) in connection with the Fund 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 service provider on any outsourced functions. The appointment of the Service Provider by the Retirement Fund shall be subject to these conditions.

### **B.1.5 Auditor**

1.5.1 The Retirement Fund shall appoint an auditor approved by the MFSA for the purposes of these Pension Rules. The appointment or replacement of an auditor of a Retirement Fund 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 Retirement Fund. The MFSA shall be entitled to be satisfied, on an on-going basis, that the auditor of the Retirement Fund has the appropriate expertise and experience to carry out its functions.

- 1.5.2 An individual shall not be appointed as an auditor of a Retirement Fund, 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 Retirement Fund;
  - (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 Retirement Fund;
  - (e) a person who is engaged under a contract of service to provide non-audit services to any employer acting as Contributor to a Retirement Scheme or Overseas Retirement Scheme investing in the Retirement Fund;
  - (f) a person disqualified by the MFSA from acting as an auditor of a Retirement Fund.

For this purpose, an auditor shall not be regarded as an officer of the Retirement Fund solely by reason of being auditor of that Retirement Fund.

- 1.5.3 The Retirement Fund 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 5 in Part C of these Pension Rules for Retirement Funds. The Retirement Fund 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 Retirement Fund, an audit report. The Retirement Fund shall notify the MFSA immediately it becomes aware its auditor intends to qualify the audit report.
- 1.5.4 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 as a Retirement Fund.
- 1.5.5 If at any time, the Retirement Fund 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 Retirement Fund.

## **B.2 Documentation, Reporting and Records**

### **B.2.1 Constitutional Document**

- 2.1.1 Each Retirement Fund shall be operated in accordance with a “Constitutional Document” which evidences or establishes the Fund.
- 2.1.2 The Constitutional Document shall at least contain the matters specified in Appendix 1 in Part C to these Pension Rules for Retirement Funds.
- 2.1.3 Without prejudice to any provisions of the Act, the Constitutional Document and any amendments thereto shall require the prior approval of the MFSA before being effected.

### **B.2.2 The Retirement Fund Particulars**

- 2.2.1 The Retirement Fund shall prepare and maintain a document known as the “Fund Particulars”. It shall be dated and maintained up-to-date. The Fund Particulars shall describe the Retirement Fund in sufficient detail for any Retirement Scheme and/or Overseas Retirement Scheme (including any Contributor, Member and/or Beneficiary thereof) investing in the Retirement Fund, to make an informed judgement as to how the assets of the Retirement Fund are being managed and invested and to be fully aware of the risks to which they will be exposed. The Fund Particulars shall, as a minimum, include the contents outlined in Appendix 2 in Part C of the Pension Rules for Retirement Funds.
- 2.2.2 The Fund Particulars and any amendments thereto shall require the prior approval of the MFSA before being effected.
- 2.2.3 The Retirement Fund shall provide copies of the Fund Particulars to the Retirement Scheme/s and/or Overseas Retirement Scheme/s investing in the Retirement Fund and notify it/ them of any changes thereto.
- 2.2.4 The Fund Particulars shall be made available in a printed form at the registered office of the Retirement Fund.

### **B.2.3 Retirement Fund Records and Reports**

- 2.3.1 A Retirement Fund shall keep such accounting and other records as are necessary to enable it to comply with the Pension Rules for Retirement Funds and to demonstrate that compliance has been achieved.
- 2.3.2 Accounting records shall be retained for a minimum period of ten years after the Fund year to which they relate.
- 2.3.3 The Retirement Fund shall prepare annual and half-yearly reports (including annual audited financial statements) which shall at least contain the matters specified in Appendix 3 and 4 of these Pension Rules for Retirement Funds.
- 2.3.4 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.
- 2.3.5 The Fund's annual report shall be prepared in conformity with International Financial Reporting Standards. The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA. Accounting policies shall be consistently applied.
- 2.3.6 Within six months of its financial year end, or at any other time as may be authorised or directed in writing by the MFSA, the Retirement Fund shall submit to the MFSA and to each Retirement Scheme Administrator of any Retirement Scheme and/or the operator of any Overseas Retirement Scheme investing in the Retirement Fund and any other person as required by the Act or which the MFSA may prescribe:
- (a) its annual report, including the auditors' report in full;
  - (b) its audited financial statements; and
  - (c) a Directors' report providing information sufficient to enable the persons mentioned above to make an informed judgement on the development, management, operation and financial performance of the Retirement Fund.
- 2.3.7 Financial returns shall not be misleading as a result of the misrepresentation or omission of any material item.
- 2.3.8 The Retirement Fund shall submit such other information, additional financial returns and reports as the MFSA may from time to time request.

- 2.3.9 The financial year end of the Retirement Fund (including any changes thereto) shall be agreed with the MFSA.
- 2.3.10 Where an occupational retirement scheme is investing in a Retirement Fund, the Fund shall publish any information as may be required by the MFSA.

### **B.3 Investment Objective, Policies and Restrictions**

#### **Investment Policy and Restrictions**

- 3.1 The Retirement Fund shall observe its Investment Objective, Policies and Restrictions.
- 3.2 A Retirement Fund shall invest all money and other assets received, in accordance with the investment policy and restrictions applicable to the Retirement Scheme and/or Overseas Retirement Scheme investing in the Retirement Fund, and in accordance with the Retirement Fund's Constitutional Document and Fund Particulars.
- 3.3 The MFSA may require a Retirement Fund to adopt specific investment restrictions applicable to Retirement Schemes.
- 3.4 The Retirement Fund shall comply with the Investment Restrictions set out in SLC 3.2 of Part B.3 of the Pension Rules for Retirement Funds within six months from the launch of the Retirement Fund or upon reaching a value equivalent to €2,500,000 whichever is sooner.

#### **Failure to comply with Investment Restrictions**

- 3.5 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 Retirement Fund's Investment Restrictions are at any time contravened for reasons beyond the control of the Board of Directors, or the person appointed in terms of article 13(2) of the Act or the Investment Manager, as applicable, the Board of Directors 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 Investors 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 by the MFSA;

The above is aimed at addressing circumstances which may arise following acquisition of the Fund's assets and include market price movements of the Fund's underlying assets or market illiquidity. The above is without prejudice to the duty of the Board of Directors to comply with the Fund's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

- (b) 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 Standard 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 Standard Licence Condition is deemed to arise and the relevant notification requirements will apply.

#### **B.4 General Conditions**

##### **General**

- 4.1 The Retirement Fund shall state that it is licensed and regulated by the MFSA in all correspondence and other documents. Wording similar to the following shall be used: *"Licensed and regulated as a Retirement Fund by the Malta Financial Services Authority"*.
- 4.2 The Retirement Fund shall cooperate fully with any compliance test, inspection or other enquiry carried out by, or on behalf of, the MFSA. The Retirement Fund shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information.
- 4.3 Where the Retirement Fund is not listed, the advance permission of the MFSA shall be sought before it takes any preparatory steps to seeking a listing.
- 4.4 The Retirement Fund shall make available to any Service Provider and auditor of the Fund, the information and explanations needed to discharge the responsibilities arising from the respective role of Service Provider or auditor of the Fund and in order to meet the MFSA's requirements.
- 4.5 Units in a Retirement Fund are not freely transferable other than between Investors and between the Investors and the Retirement Fund. Units in the Retirement Fund may not be transferred from a unitholder to any other party without the advance permission of the MFSA.
- 4.6 No bearer units may be issued.

- 4.7 The MFSA has the right to require the suspension of the repurchase or redemption, or sale or issue of units. Where the Retirement Fund suspends temporarily the repurchase or redemption of units, it shall inform the MFSA immediately and, in any event, within the working day.
- 4.8 When requested to do so by the MFSA, the Retirement Fund shall submit to arbitration in respect of any dispute between itself and an Investor. Under such circumstances the MFSA shall be entitled to appoint an Arbitrator.
- 4.9 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. Such variation shall be published in revised Fund Particulars at least 90 days before becoming effective. An increase in the 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.
- 4.10 The Retirement Fund 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.

**Notifications to the MFSA**

- 4.11 The MFSA shall be informed of any material information concerning the Retirement Fund, its management or its operation, as soon as the Retirement Fund becomes aware of that information. This shall include notifying the MFSA in writing of:
- (a) of any breach of the Act, the regulations issued thereunder, these Pension Rules or of any breach of the provisions of the Constitutional Document or Fund Particulars as soon as they become aware of the breach;
  - (b) a change in its registered address, as applicable;
  - (c) a proposed change to its Investment Policies;
  - (d) any proposed material change to the Retirement Fund's business at least one month before the change is to take effect;
  - (e) any evidence of fraud or dishonesty by anyone connected with the operation of the Retirement Fund immediately becoming aware thereof;
  - (f) any actual or intended legal proceedings relating to the Retirement Fund which might adversely impact on the operation of the Retirement Fund or its compliance with its Constitutional Document or the Act upon becoming aware of the same;

- (g) of any facts, relationships, arrangements or circumstances which may at any stage bring the independence of any Service Provider or auditor of the Retirement Fund into question;
- (h) if the Retirement Fund is informed that its auditor intends to qualify the audit report;
- (i) of any intended variation of charges imposed on the Retirement Fund in accordance with SLC 4.9 of Part B of the Pension Rules for Retirement Funds;
- (j) of any intended winding up of the Retirement Fund;
- (k) the resignation or removal of a Director in accordance with SLC 5.4 of Part B of the Pension Rules for Retirement Funds;
- (l) the cessation of any appointment of a Service Provider or auditor of the Retirement Fund, the reasons thereof and any circumstances connected therewith which significantly affects the interests of the Retirement Fund's Investors;
- (m) any material changes in any information supplied by the Retirement Fund to the MFSA whether under the Act or otherwise;
- (n) in the instance that the Retirement Fund fails to have an auditor in office for a period exceeding four weeks.

#### ***Amendments to Documents***

- 4.12 The MFSA's approval shall be obtained before any of the following documents are amended:
- (a) Constitutional Document;
  - (b) the Fund Particulars;
  - (c) any other document affecting the rights of Investors in the Fund;
  - (d) a business plan submitted to the MFSA;
  - (e) the Retirement Fund's agreements with any appointed Service Provider;

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

### **Standard Licence Conditions and Licence Fees**

- 4.13 A request for a variation of any Standard Licence Conditions of the Retirement Fund shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 4.14 The MFSA has the right, from time to time, and following advance notification to the Retirement Fund, to vary or revoke any Standard Licence Condition or to impose any new condition.
- 4.15 The fees payable to the MFSA are those specified in the Retirement Pensions (Fees) Regulations, 2014. The Retirement Fund shall pay promptly all amounts due to the MFSA.

### **Termination of a Retirement Fund**

- 4.16 In the event of a winding-up of the Retirement Fund, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Retirement Fund shall use its best endeavours to delay the winding up of the Retirement Fund or to proceed with the winding-up in accordance with conditions imposed by the MFSA.

## **B.5 Duties applicable to Directors of Retirement Funds**

- 5.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Retirement Fund. The concept of fitness and properness requires directors to be honest, competent and solvent persons.
- 5.2 The Retirement Fund shall obtain the written consent of the MFSA before the appointment of a Director. The Directors of the Fund shall be individuals. The request for consent of the appointment or replacement of a Director shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement.
- 5.3 The request for consent of the appointment or replacement of an individual as a 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 as it considers appropriate.
- 5.4 If any person shall for whatever reason cease to be a Director, the Retirement Fund 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 Investor. The notification should be made within 14 days of the resignation or removal. The Retirement Fund 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 Fund's notification of resignation or removal.
- 5.5 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Retirement Fund or at any place as may be agreed with the MFSA.
- 5.6 The Board of Directors shall act honestly, fairly and with integrity and in the best interests of the Retirement Fund. 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 the Retirement Fund's Investors 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 Investors.
- 5.7 In delegating/outsourcing functions to third parties, the Directors of the Retirement Fund, retain the overall responsibility for the Retirement Fund.

**B.6 Supplementary Conditions for Retirement Funds set up as Umbrella Funds**

- 6.1 Where the Retirement Fund 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.
- 6.2 Each Sub-fund shall comply with the laws and regulations applicable to the Retirement Fund.
- 6.3 Each Sub-fund of the Retirement Fund shall constitute a distinct and separate patrimony.
- 6.4 A Sub-fund may not invest in another Sub-fund of the same Retirement Fund.
- 6.5 A meeting of the unit holders in any one Sub-fund may approve a modification of the Constitutional Document or any policy statement only if the provisions to be modified relate only to that Sub-fund.

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