

Feedback Statement issued further to Industry Responses to the MFSA Consultation Document on the Proposed Amendments to the Pension Rules issued under the Retirement Pensions Act

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## 1.0 Introduction

On 1 December 2021, the MFSA issued a [Consultation Document on the proposed amendments to the Pension Rules issued under the Retirement Pensions Act](#). The purpose of this Consultation Document was to highlight the changes proposed to be carried out to the Pension Rules to address issues identified during supervisory work carried out by the MFSA as well as observations and proposals put forward by the market. Further to the said Consultation Document, the MFSA is issuing a Feedback Statement on the comments received from the market in relation to this consultation. An outline of such comments and the MFSA's position in relation thereto is provided below.

## 2.0 General comments received on the proposed amendments to the Pension Rules issued under the Retirement Pensions Act

### 2.1 Applicability of the Pension Rules for Service Providers

**2.1.1 Industry Comment:** *A market participant requested clarification as to which service providers fall within the remit of the Pension Rules for Service Providers. The said market participant made reference to the definition of 'service providers' in the Glossary to the Pension Rules. The same market participant also referred to the Pension Rules for Personal Retirement Schemes, wherein the 'investment advisor' and the 'introducer' are in certain instances also referred to as service providers. Clarification was also sought as to whether the concept of 'introducer' had been eliminated.*

**MFSA's Position:** The MFSA would like to clarify that in line with the definition provided in the Glossary to the Pension Rules, a service provider is any person acting in the capacity of a retirement scheme administrator, an investment manager or a custodian. A service provider **may** also be an investment advisor, but such a function is not mandatory. With respect to the market participant's reference to the role of the introducer, the Authority can confirm that the concept of an introducer has not been eliminated and is found under part C of the Pension Rules for Service Providers.

## 3.0 Main comments received on the proposed amendments to the Pension Rules issued under the Retirement Pensions Act

### 3.1 Removal of the concept of a retirement scheme established as an investment company with variable share capital ("SICAV")

**3.1.1 Industry Comment:** *A market participant stated that, while noting that SICAV schemes form the minority of schemes which have been licensed by the MFSA, pension schemes should not be limited to trusts or contract schemes and that viable alternatives are to be made available.*

**MFSA's Position:** The Authority confirms that the establishment of a retirement scheme as a SICAV has not generated interest from the market and it does not see added value in retaining these types of schemes. In this respect, the MFSA remains of the view that the concept of a retirement scheme established as a SICAV will be removed.

### 3.2 Removal of the concept of sufficient retirement income

**3.2.1 Industry Comment:** A market participant requested clarification from the MFSA as to the minimum income that can be paid out to members of pure Maltese retirement schemes (i.e. not those schemes that qualify as a QROPS) when such members attain retirement age. The same market participant asked whether the minimum requirement is that of 'sufficient income' or whether the member of a pure Maltese retirement scheme may request any amount up to that allowable under published drawdown rates, with no specific minimum.

**MFSA's Position:** The MFSA would like to clarify that as a consequence of the amendments carried out to remove the concept of 'sufficient retirement income', the Pension Rules do not contain a specific minimum income which is to be paid out to the members of pure Maltese retirement schemes (i.e. not those schemes that qualify as a QROPS) that attain retirement age. In this respect, reference should also be made to paragraph 4.6.3 of the Pension Rules for Occupational Retirement Schemes and for Personal Retirement Schemes. This paragraph states that the remaining assets of a Member which are not paid in the form of an initial cash lump sum shall be used towards programmed withdrawals, or used to purchase a life annuity, or for a combination of programmed withdrawals and life annuity. Therefore, while the pension rules do not contain a specific minimum income, members are still required to start withdrawing retirement benefits at some point after they turn 50 but not later than when they reach the age of 75.

### 3.3 Amendment to clarify the age when retirement benefits can commence to be paid

**3.3.1 Industry Comment:** Concern was raised by a market participant stating that the amendment to the age when retirement benefits can commence to be paid is unfair on the existing policyholders who already held a pension product prior to the change made in 2019. The same market participant requested the MFSA to consider allowing a grace period for such policyholders to decide whether to continue with the plan in line with the new income tax provisions or revised age to commence retirement benefits or decide to request the withdrawal of the accumulated value to date and close out the plan.

**MFSA's Position:** The MFSA would also like to clarify that Subsidiary Legislation 123.175 and Subsidiary Legislation 123.163 are issued under the Income Tax Act. These legal notices fall within the remit of the Inland Revenue Department. Relevant market participants are encouraged to voice their concerns with the said department. The amendments which were proposed to be introduced by the MFSA in standard licence condition B.1.2.5 of the Pension Rules for Personal Retirement Schemes and standard licence condition B.1.2.5 of the Pension Rules for Occupational Retirement Schemes were merely to clarify that where a scheme is categorised as a qualifying scheme under Subsidiary Legislation 123.175 and Subsidiary Legislation 123.163, the retirement benefits shall commence at an age as stipulated in Subsidiary Legislation 123.175 and Subsidiary Legislation 123.163.

### 3.4 Amendment to the current standard licence condition 9.6 (b) (i) (bb) (now renumbered to 8.6 (b) (i) (bb)) of the Pension Rules for Personal Retirement Schemes)

**3.4.1 Industry Comment:** Market participants raised their concern with regard to the proposed amendment and argued that the Insurance Distribution Directive allows an insurance intermediary who

is solely authorised under Directive (EU) 2016/97 to provide advice on the underlying investment assets of an insurance-based investment product.

**MFSA's Position:** Primarily, the MFSA would like to point out that the Insurance Distribution Directive does not apply to pension products. In fact, Article 2 (1) (17) of the Insurance Distribution Directive excludes pension products from the definition of insurance-based investment products. In this respect, and also taking into consideration that members invest their hard-earned monies to be used at the most vulnerable time – namely during their retirement age – the MFSA deems that an added layer of protection is required. As a result, the MFSA will retain the proposal raised during the Consultation Document.

**3.4.2 Industry Comment:** A market participant noted that the list of entities qualifying as an 'investment advisor' under standard licence condition B.1.3 does not match with the list provided in standard licence condition 8.6 (b) (i) (bb) of the Pension Rules for Personal Retirement Schemes.

**MFSA's Position:** The MFSA reviewed the comments raised by the market and will be amending standard licence condition B.1.3.11 of the Pension Rules for Personal Retirement Schemes to align it with the standard licence condition now renumbered 8.6 (b) (i) (bb) of the same pension rules.

**3.4.3 Industry Comment:** Concern was raised by the market relating to prudential bonds. A market player noted that an international prudential bond is a 'closed architecture' product with access to a limited number of underlying unit-linked insurance funds, which are not MIFID investments. On the basis of such information, the market opined that investment advisors authorised under the Insurance Distribution Directive are authorised to give advice on international prudential bonds. Therefore, the market held that there is no need to appoint a MIFID firm or to appoint a discretionary fund manager.

**MFSA's Position:** The MFSA would like to note that prior to the issuing of the Consultation Document, discussions were already being held with the market on the matter in question. Following the said discussions, the MFSA had sought feedback with the aim of gathering further details on open and closed architecture products. Notwithstanding efforts to gather such information on the Authority's part, no clarifications have been received from the Malta Association of Retirement Scheme Practitioners. As a result, the comments raised above could not be taken into account.

**3.4.4 Industry Comment:** A market participant requested clarification from the MFSA as to whether the scope of standard licence condition 8.6 (b) (i) (bb) (ii) can be extended from the appointment of a discretionary fund manager to manage the underlying investment funds, to include also an investment advisor who is licensed under Directive 2014/65/EU.

**MFSA's Position:** The MFSA reviewed the comments raised by the market and will be amending standard licence condition 8.6 (b) (i) (bb) (ii) of the Pension Rules for Personal Retirement Schemes accordingly.

**3.4.5 Industry Comment:** A market participant made reference to the footnote under standard licence condition 9.7 (b) (ii) (now renumbered to 8.7 (b) (ii)) and held that investment managers do not provide an advisory service to Members and are authorised and regulated to manage investments in the country

where the firm is established. In this respect, the same market participant proposed that the said footnote should be removed from the Pension Rules for Personal Retirement Schemes.

**MFSA's Position:** The MFSA reviewed the comments raised and agrees with the comments raised and will thus be removing the said footnote in the pension rules accordingly.

### **3.5 Amendments to the Pension Rules for Occupational Retirement Schemes on the custody function**

**3.5.1 Industry Comment:** Market participants suggested that retirement scheme administrators who are also licensed as custodians should be able to outsource the safekeeping of such assets. In this respect, the same market participant proposed that standard licence condition 4.4.11 of the Pension Rules for Service Providers – which states that the work the service provider outsources will not be outsourced again by the supplier to another provider – should be amended so as not to apply to the outsourcing of custodians.

**MFSA's Position:** The MFSA has reviewed the comments received and has held further discussions on the matter. In view of such concerns, the MFSA will be amending standard licence condition 4.4.11 of the Pension Rules for Service Providers. In this respect, where a retirement scheme administrator also carries out the outsourcing function, the retirement scheme administrator will be able to sub-outsource this function to another provider. In this respect, the MFSA would like to clarify that **only** service providers who undertake a custody function can sub-outsource their duties.

**3.5.2 Industry Comment:** A market participant held that the proposal put forward by the MFSA is not in line with Article 33 of the IORP II Directive. The said market participant argued that, while the IORP II Directive includes a provision with the option to appoint a depository, standard licence condition 1.4.8 of the Pension Rules for Occupational Retirement Schemes makes it mandatory to appoint a custodian.

**MFSA's Position:** Primarily, the MFSA would like to note that Article 33(1) of the IORP II Directive contains an option which allows Member States to require an IORP to appoint a depository. A similar article was already in existence in the IORP I Directive. In fact, the requirement for a retirement scheme to have a custody function was already mandatory – even before the IORP II Directive came into force, in line with the IORP I Directive. When the MFSA was transposing the IORP II Directive, a decision was taken that, in Malta, an IORP was required to appoint a custodian for the safekeeping and oversight of assets. In this respect, at that stage, a Consultation Document was issued, and no feedback was received from the market. It is to be noted that, in Malta, a depository is tantamount to a custodian, who is responsible for the safekeeping and oversight duties. In fact, in [section 2.11 of the Consultation Document on amendments to the pension rules issued under the Retirement Pensions Act](#), the MFSA held that “entities responsible for carrying out the custody function, besides being responsible for the safe-keeping of assets, are also to be made responsible for carrying an oversight function”.

### 3.6 Introduction of a capital sum threshold under Appendix 12 of the Pension Rules for Occupational Retirement Schemes

**3.6.1 Industry Comment:** Market participants welcomed the introduction of a capital sum threshold under Appendix 12 of the Pension Rules for Occupational Retirement Schemes but proposed an alteration to the amount from €3,000 to €9,000. The proposed alteration was aimed at reflecting the fact that an employee would have potentially saved what is permissible under the qualifying schemes for three years. In putting forward this proposal, the market participant held that the current proposal of €3,000 is only reflective of one year's potential savings under the income tax rules for occupational plans and is not deemed to be sufficient.

**MFSA's Position:** The MFSA reviewed the comments raised by the market, discussed the matter with the relevant authorities, and will increase the capital sum threshold under Appendix 12 of the Pension Rules for Occupational Retirement Schemes to €9,000, as suggested by the market.

### 3.7 Amendment to the complaints procedure requirements in the Pension Rules for Service Providers

**3.7.1 Industry Comment:** Market participants noted that [Appendix II as found on the MFSA website](#) makes reference to the MFSA's Consumer Complaints Unit, which is no longer existent.

**MFSA's Position:** The MFSA notes the comments raised by the market and will be removing Appendix II which is incorporated in the Pension Rules themselves and updating the separate document entitled 'Appendix II – Complaints Procedure' to reflect such change.

### 3.8 Amendment to clarify audited and annual financial statements requirements in the Pension Rules for Service Providers

**3.8.1 Industry Comment:** Market participants stated that the requirements laid down under standard licence condition 4.3.28 (a) and (c) in the Pension Rules for Service Providers, which are being proposed by the MFSA to form part of the management letter, are already covered and included in the auditor's report, in line with Article 179 of the Companies Act. In this respect, the said market participants proposed that such requirements are either removed or alternatively placed in a separate requirement prescribing these items to be reported by the auditor in the audit report. Market participants suggested that the requirements under standard licence condition B.4.3.28 (b) of the Pension Rules for Service Providers should be moved to standard licence condition 4.3.29 of the Pension Rules for Service Providers as it is already covered by the auditor's report.

**MFSA's Position:** The MFSA assessed and discussed the comments raised by the market. Following the said discussion, the MFSA remains of the view that standard licence condition 4.3.28 (a) of the Pension Rules for Service Providers is to be maintained under standard licence condition 4.3.28 of the Pension Rules for Service Providers. With respect to standard licence condition 4.3.28 (b) of the Pension Rules for Service Providers, the MFSA agrees with the market that the said requirement should be moved to standard licence condition 4.3.29 and renumbered as (d). In agreement with the

market, the MFSA will be removing standard licence condition 4.3.28 (c) of the Pension Rules for Service Providers, as it is already covered and included in the audit report, in line with Article 179 of the Companies Act.

*3.8.2 Industry Comment: A market participant suggested that standard licence condition B.4.3.29 Pension Rules for Service Providers should state what type of assurance is required.*

**MFSA's Position:** The MFSA reviewed the comments raised by the market and is in agreement with the market and will thus be amending standard licence condition 4.3.29 to clarify that the level of assurance required in the auditor's report is that of reasonable assurance as defined in the [International Standard on Assurance Engagements 3000](#).

## 4.0 Contacts

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