

27 November 2023

Circular on the Professional Indemnity Cover under the Pension Rules for Service Providers

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 the said Consultation Document was to amend the Pension Rules for Personal Retirement Schemes, the Pension Rules for Occupational Retirement Schemes, the Pension Rules for Service Providers and the Pension Rules for Retirement Funds in line with findings observed during regulatory work as well as other findings observed by the market.

One of the amendments proposed in the Consultation Document was to the Pension Rules for Service Providers in relation to the introduction of professional indemnity cover in the same Rules. In this respect, the MFSA proposed the introduction of a new framework on professional indemnity cover that establishes clear quantitative and qualitative threshold requirements. Through this proposal, the MFSA aims at regulating the adequate insurance cover that is required to be taken out and maintained by service providers in line with the requirements of the current the Pension Rules for Service Providers.

2.0 Proposals in the First Formal Consultation

Before issuing the Consultation Document on the Proposed Amendments to the Pension Rules, the MFSA conducted a thorough exercise where the total assets of each retirement scheme administrator and the limit of liability which such administrators currently have in place were examined. The aim behind this exercise was to analyse the current trends and propose legislation which provides additional protection to members whilst at the same time not being detrimental to retirement scheme administrators.

In this respect, the MFSA proposed minimum limits of indemnity, which vary depending on whether the service provider concerned is a retirement scheme administrator, an investment manager, or a custodian. Furthermore, the said Consultation also clarified that the minimum

limit of indemnity will vary depending on whether the service provider in question performs more than one role. For instance, where a retirement scheme administrator carries on the investment function or where a retirement scheme administrator also carries on the custody function, the MFSA proposed that the required minimum limit of indemnity is increased, with the aim of reflecting the service provider's functions.

In the said Consultation Document, the MFSA also drew a distinction between the minimum limits of indemnity applicable in respect of each and every claim and those applicable in the aggregate. With respect to the minimum limit of indemnity applicable in the aggregate, the MFSA in its initial consultation proposed to require retirement scheme administrators, investment managers and custodians to have in place a minimum limit of indemnity in the aggregate of 1% of the total assets or retirement income depending on whether the service provider concerned is a retirement scheme administrator, an investment manager, or a custodian, or €1,500,000 or €2,000,000 once again depending on the service provider, whichever is higher.

Following the lapse of the consultation period on 21 December 2021, the MFSA reviewed the comments submitted by the market and on 6 May 2022 issued a [Feedback Statement](#) and a [Circular](#) on the same comments. In light of the extensive feedback received by the market in relation to the professional indemnity proposals, the MFSA felt it was necessary to engage again with the market before finalising and issuing the legislation. In this respect, the Feedback Statement and the Circular did not contain any feedback in relation to the professional indemnity proposals.

3.0 Proposals in the Second Informal Consultation

The MFSA thoroughly discussed the extensive feedback received from market players internally and proposed new amendments to the legislation to cater for the concerns raised.

The MFSA updated the original exercise which had been carried out to update the total assets of each retirement scheme administrator and the limit of liability such administrators currently have in place in line with the amendments to the consultation. Following internal discussions, further analysis, as well as discussions with the market, the MFSA decided to issue a second informal consultation.

In this second informal consultation, the MFSA proposed to require retirement scheme administrators, investment managers and custodians to have in place a minimum limit of indemnity in the aggregate of 1% of the total assets or retirement income of a service provider

or €5,000,000, whichever is lower, depending on whether the service provider concerned is a retirement scheme administrator, an investment manager, or a custodian. The second informal consultation was circulated to the pension market to seek its recommendations. During this period numerous meetings were held with the market to discuss the amendments and provide clarity.

Following the feedback received from the market during the second informal consultation, the MFSA once again analysed the total assets of each retirement scheme administrator and the limit of liability such administrators currently have in place taking into account the comments raised in the second informal consultation. Following further internal discussions, the MFSA is proposing to retain the amounts proposed in the second round of consultation with the pensions market.

4.0 Amendments to the Pension Rules for Service Providers

Therefore, following two rounds of feedback, the MFSA is proposing to require retirement scheme administrators, investment managers and custodians to have in place a minimum limit of indemnity in the aggregate of 1% of the total assets or retirement income depending on whether the service provider concerned is a retirement scheme administrator, an investment manager, or a custodian or €5,000,000, whichever is lower, together with legal costs limited to 20% of either of such amounts, whichever is applicable.

For clarification purposes, the MFSA will also be amending the Pension Rules for Service Providers to state that the professional indemnity policy shall be governed by the law of a European Union Member State or the law of the United Kingdom. Finally, the MFSA will also be amending SLC 4.8.5 to state that, where the policy is subject to an excess, this shall be for a sum not exceeding 1% of the limit of indemnity and subject to a maximum of €250,000.

It is to be noted that the new professional indemnity amounts indicated in the Pension Rules for Service Providers are the minimum amounts which a Service Provider is required to hold. The MFSA expects Service Providers to take into account the size and nature of the said service provider when deciding the amount of indemnity their policy of professional indemnity insurance will be covering.

5.0 Applicability

Service providers are required to revise the limits of their policy and amend the requirements of the said policy related to the governing law and excess as at renewal of their current professional indemnity insurance policies.

6.0 Contact

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