

# Consultation on the Proposed Amendments to the Pension Rules

**Ref:** 10-2023

**Date:** 7 December 2023

**Closing Date:** 5 January 2024

NOTE: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

## 1.0 Introduction

1.1 The MFSA is proposing to amend the Pension Rules issued under the Retirement Pensions Act in line with findings resulting from regulatory work as well as other findings which came from the market whilst carrying out their operations. By means of this consultation, the MFSA is proposing to address the following issues:

- MFSA's approval of the contents and of amendments to certain documents;
- Subordinated loan agreements under the Pension Rules for Service Providers;
- Declaration and distribution of dividends by Retirement Scheme Administrators;
- Clarification of the Rule relating to the 20% investments' sub-funds or fund as in paragraph 4.2.1 (h) (v) of the Pension Rules for Occupational Retirement Schemes; and,
- Amendments to the Pension Rules for Occupational Retirement Schemes and to the Pension Rules for Personal Retirement Schemes relating to Programmed Withdrawals.

1.2 These proposals are not binding and are subject to changes and revisions.

1.3 The documents circulated by the MFSA for the purpose of the Consultation are in draft form and consist of the following:

- The Consultation Document;
- A draft of Glossary to the Pension Rules;
- A draft of the Pension Rules for Occupational Retirement Schemes;
- Proposed new draft of Appendix 15 to the Pension Rules for Occupational Retirement Schemes;
- A draft of the Pension Rules for Personal Retirement Schemes;
- Proposed new draft of Appendix 10 to the Pension Rules for Personal Retirement Schemes;
- A draft of the Pension Rules for Retirement Funds;
- A draft of the Pension Rules for Service Providers; and,
- A draft of Appendix 1 Annex V to the Pension Rules for Service Providers.

1.4 The purpose of this consultation is to highlight the changes proposed to be carried out. Interested parties are expected to thoroughly review the Consultation Document and the draft legislation and provide in writing comments, requests for clarifications and suggestions.

## 2.0 MFSA's Approval of the Contents and of Amendments to Certain Documents

- 2.1 Currently, in accordance with the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes, the contents of Constitutional Documents, Scheme Documents and Scheme Particulars shall require the prior approval of the MFSA. In accordance with the said Rules, the MFSA's approval shall also be obtained before any amendments are made to these documents, whether such amendments are minor or material. The same requirement applies to the contents of and any amendments to Constitutional Documents and Fund Particulars in accordance with the Pension Rules for Retirement Funds. However, the Pension Rules for Service Providers solely require the notification to the MFSA prior to any proposed **material change** to the Service Provider's business.
- 2.2 The requirement for the MFSA's approval with respect to minor amendments has proven itself to lengthen the process of amending certain documents. In this respect, the MFSA is proposing to amend the Pension Rules for Occupational Retirement Schemes, the Pension Rules for Personal Retirement Schemes, and the Pension Rules for Retirement Funds to state that the MFSA's approval shall solely be required to be obtained where **material changes** are made to the abovementioned documents. In this respect, the MFSA is also proposing to include a definition of the term 'material changes' in the Glossary to the Pension Rules stating that this refers to information that could influence the decision-making or judgement of the intended users of that information. The aim behind this proposed amendment is to ensure clarity with respect to what are material changes to the abovementioned documents.
- 2.3 Furthermore, it is to be noted that currently the Pension Rules require the prior approval of the MFSA with respect to the contents of the abovementioned documents. The MFSA is proposing to amend the Pension Rules for Occupational Retirement Schemes, the Pension Rules for Personal Retirement Schemes, and the Pension Rules for Retirement Funds to state that such documents shall solely be **reviewed** rather than approved by the MFSA.

## 3.0 Subordinated Loan Agreements under the Pension Rules for Service Providers

- 3.1 Annex II of Appendix I to the Pension Rules for Service Providers states that subordinated loan agreements must be approved by the MFSA. The said Annex also states that such agreements must be in the form set out in Annex V to the same Appendix, which contains a specimen subordinated loan agreement, or such other form as has been agreed by the MFSA. It is to be noted that the said specimen subordinated loan agreement in Annex V of Appendix I to the

Pension Rules for Service Providers indicates that the MFSA should form part of the said agreement.

- 3.2 The MFSA is proposing that Annex V of Appendix I of the Pension Rules for Service Providers is amended to remove the requirement for the MFSA to form part of future subordinated loan agreements entered into by retirement scheme administrators. This amendment is being proposed in view of the fact that the MFSA's role with respect to such agreements is that of ensuring that the relevant requirements are satisfied, as evidenced by the specimen subordinated loan agreement.
- 3.3 The MFSA is also proposing to include a new requirement on the borrower in Annex V of Appendix I to the Pension Rules for Service Providers. The new requirement on the borrower in the subordinated loan agreement ensures that the auditor of the Service Provider provides the necessary assurances to the MFSA in relation to the proposed payment as and when the MFSA may require. The proposed amendment will allow the MFSA to ensure that the relevant requirements relating to subordinated loan agreements are satisfied.
- 3.4 The MFSA is also proposing to include another new provision in the specimen subordinated loan agreement. The new provision will state that the said agreement may only be amended in whole or in part by means of written consent of the parties, which amendment shall be effective as of the date then determined by the parties to the same agreement. This is a standard clause which is included in every agreement.

## **4.0 Declaration and/or Distribution of Dividends by Retirement Scheme Administrators**

- 4.1 Currently, retirement scheme administrators can distribute dividends to their shareholders without obtaining the MFSA's approval, since the Pension Rules for Service Providers do not require such approval. The MFSA is proposing to amend paragraph B.4.1.11 of the Pension Rules for Service Providers to require Service Providers to obtain the MFSA's prior authorisation before declaring and/or distributing any dividends. This proposed amendment is aimed at ensuring the protection of policyholders and to ensure that retirement scheme administrators licensed by the MFSA do not declare and/or distribute dividends to their shareholders whilst still having outstanding payments that need to be made to a number of their members.

## **5.0 Clarification of the Rule Relating to the 20% Investments Sub-Funds or Fund in Paragraph 4.2.1 (h) (v) of the Pension Rules for Occupational Retirement Schemes**

- 5.1 Paragraph 4.2.1 (h)(v) of the Pension Rules for Occupational Retirement Schemes currently states that an occupational retirement scheme may acquire the units in adequately regulated Collective Investment Schemes subject that not more than 20% of the Scheme's assets which shall be invested in total in any one Collective Investment Scheme which is properly diversified and predominantly invested in regulated markets.
- 5.2 During the last few years, a number of market players have reached out to the MFSA in order to request clarification with respect to the Authority's interpretation of paragraph 4.2.1 (h)(v) of the Pension Rules for Occupational Retirement Schemes. In particular, a clarification was sought in relation to whether the 20% threshold mentioned in paragraph 4.2.1 (h)(v) of the Pension Rules for Occupational Retirement Schemes is to be applied at SICAV level or at sub-fund level.
- 5.3 The MFSA discussed the matter internally and agreed that the 20% threshold mentioned in paragraph 4.2.1 (h)(v) of the Pension Rules for Occupational Retirement Schemes is to be applied at SICAV level. When a person purchases a pension product, the aim is for that product to be able to invest in instruments which will ensure an adequate amount of return. That same return will then be used by persons who reach retirement age to live off the said investment. As a result, it is imperative that the investments are carried out in a properly diversified manner and predominantly invested in regulated markets. For there to be proper diversification, the MFSA is of the view that the 20% threshold is to be applied at SICAV level.
- 5.4 Following these requests for clarification, the MFSA aims at clarifying the stance taken with the queries raised by market players during the last few years who had reached out to the to request clarification with respect to the Authority's interpretation of the said rule. Thus, for the purpose of clarity, the MFSA is proposing to amend paragraph 4.2.1 (h)(v) of the Pension Rules for Occupational Retirement Schemes to clarify that the 20% threshold is to be applied at SICAV level.

## **6.0 Amendments to the Pension Rules for Occupational Retirement Schemes and to the Pension Rules for Personal Retirement Schemes Relating to Programmed Withdrawals**

- 6.1 In 2021, the MFSA held a high-level informal pre-consultation meeting with the insurance industry to discuss in detail the concept of the proposed new regime regulating Insurance Undertakings carrying on Long-Term Business and the Distribution of Contracts of Insurance as Retirement

Products and the salient features of the new legislation. Following the said consultation meeting, relevant stakeholders present during this meeting were requested to provide their feedback on the proposals discussed. The MFSA commenced working on the new regime keeping in mind the proposals made by the market. During the informal pre-consultation meeting with the relevant stakeholders, it was made clear that the MFSA will be required to draw up a document to be used to calculate programmed withdrawals when the product reaches a decumulation stage. The MFSA did not take the comments lightly since these products had already been sold and it did not have any applicable programmed withdrawal tables to refer to when it comes to withdrawing from the pot, once the product reaches the decumulation stage.

- 6.2 In fact, the MFSA engaged in discussions with the UK actuarial team to understand better the way the drawdown rates are calculated. A meeting was set with a UK actuary, who engaged with our actuarial experts on the manner in which these tables should be set. Following the said meeting, it was established that data was required from the National Statistics Office (NSO) in Malta to retrieve the necessary statistical documentation to be able to draw up the necessary drawdown tables to be applicable. The MFSA's actuarial experts delved into the data and into the way the drawdown rates should be calculated making use of data from NSO. Following this work, the actuarial team drew up an annex which contains the necessary tables as well as instructions as to how these drawdown rates are to be made use of.
- 6.3 In 2023, this proposed new regime went out for formal consultation to the insurance market together with the proposed programmed withdrawals, which were worked upon by the MFSA's consultative actuary at the time. The insurance market welcomed the programmed withdrawals as through them, every insurance undertaking will be calculating the withdrawals in the same manner.
- 6.4 Currently, the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes state that programmed withdrawals shall be based on publicly available annuity or drawdown rates. The said rules add that the Retirement Scheme Administrator shall ensure that the annuity or drawdown rates are based on sound and prudent actuarial principles. As a result, the current rules do not delve into the said programmed withdrawals.
- 6.5 The MFSA received feedback from the market requesting that the programmed withdrawals which were proposed in the new insurance regime, would also be applicable to the pensions sector. In this respect, the MFSA is proposing to amend the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes to state that programmed withdrawals shall not exceed the maximum amount of drawdown pension rates calculated on the basis amounts published by the competent authority. The amendments will also refer to the new annex which will contain the programmed withdrawals. The aim behind the

proposed amendment is to align the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes with the proposed legislation in the insurance sector pertaining to this new regime.

6.6 In this respect, the MFSA is also proposing to include an Appendix 15 to the Pension Rules for Occupational Retirement Schemes and an Appendix 10 to the Pension Rules for Personal Retirement Schemes which provide tables and instructions to determine the maximum income withdrawal from 'capped' drawdown retirement benefits. The introduction of these appendices is being proposed in order to align the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes with the proposed legislation in the insurance sector pertaining to this new regime.

6.7 In order to ensure alignment with the amendments proposed by the MFSA to the Conduct of Business Rulebook, the MFSA is also proposing to supplement the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes with further relevant provisions relating to the following:

- (a) Requirements in relation to certain information to be given to the client such as, information on the Accumulation Phase and Decumulation Phase of a Retirement Product;
- (b) Information to be given to clients during pre-maturity or retirement phase;
- (c) Information to be given to the beneficiaries during the pay-out phase; and,
- (d) Other information to be given to clients and beneficiaries.

## 7.0 Way Forward

7.1 Any comments and feedback in relation to the Consultation Document and the attached draft legislations are to be addressed to the Insurance and Pensions Supervision and submitted in writing on [ips\\_legal@mfsa.mt](mailto:ips_legal@mfsa.mt), by not later than **5 January 2024**. Following this, the MFSA will review the comments of the market and issue a Feedback Statement providing feedback to the market and a Circular informing the market that the amendments to the Pension Rules have become applicable.