

11 March 2024

Circular on the Proposed Amendments to the Pension Rules

1.0 Introduction

On 7 December 2023, the MFSA issued a [Consultation Document on the Proposed Amendments to the Pension Rules](#) (MFSA Ref: 10-2023) proposing amendments to:

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

The period to submit comments to the consultation elapsed on 19 January 2024, and substantial feedback was received from the market. The MFSA reviewed the feedback received and discussed further internally. Following the said discussions, a Feedback Statement is being published by the MFSA highlighting the comments raised by the pension industry and the MFSA's replies thereto.

2.0 Amendments to the Glossary to the Pension Rules

Following the publication of the Consultation Document, whilst reviewing the amendments to the Pension Rules, the MFSA engaged in an exercise to ensure that the definitions in the Glossary are clear and whenever defined terms in the Glossary are made use of, these terms are capitalised. It is also to be noted that following feedback received, the MFSA has amended the term "material changes" to provide for further clarity as to what is meant by the new introduced term.

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

The Consultation Document proposed 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. Following feedback received from the market, the amendments were retained, and it has been clarified that the Constitutional Document, the Scheme Document and the Scheme Particulars and any material changes thereto will need to be only reviewed by the MFSA. Nevertheless, in line with paragraph 5.3.1 of the Pension Rules for Occupational Retirement Schemes and paragraph 4.3.1 of the Pension Rules for Personal Retirement Schemes, the amendment of any other documents referred to in the Pension Rules will need to be approved.

4.0 Subordinated Loan Agreements under the Pension Rules for Service Providers

In the Consultation Document, the MFSA proposed 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. Furthermore, a new requirement on the borrower in Annex V of Appendix I to the Pension Rules for Service Providers was imposed. The new requirement obliges the auditor of the Service Provider to provide the necessary assurances to the MFSA in relation to the proposed payment as and when the MFSA may require. Clarification from the market was sought as to what type of assurances are being referred to. The query was replied to in the Feedback Statement published together with this Circular.

5.0 Declaration and/or Distribution of Dividends by Retirement Scheme Administrators

In the Consultation Document, the MFSA proposed to introduce a new obligation on retirement scheme administrators to require the MFSA's approval before distributing dividends to their shareholders. It is to be noted that the same obligation is also found within the insurance sector. Market participants requested for further clarifications on timelines and the documentation necessary for the MFSA to approve the said dividends and clarification was provided in the feedback statement.

6.0 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

In the Consultation Document, the MFSA clarified that paragraph 4.2.1 (h) (v) of the Pension Rules for Occupational Retirement Schemes applies at SICAV level and not at sub-fund level. The MFSA received substantial feedback on the matter from the market, however the MFSA remains of the view that the 20% threshold should continue to apply at SICAV level and not at sub-fund level, to ensure that members of the said Schemes are protected.

7.0 Amendments to the Pension Rules for Occupational Retirement Schemes and to the Pension Rules for Personal Retirement Schemes Relating to Programmed Withdrawals

The MFSA received substantial feedback on the proposed programmed withdrawals and would like to clarify that with respect to members who have already commenced withdrawing retirement benefits and who are already making use of GAD rates or publicly available drawdown rates, the said members may continue to make use of the GAD rates or any publicly available drawdown rates. With respect to members who on the date of publication of the said Rules have not yet commenced withdrawing retirement benefits, whether such members have been sold the product a number of years ago, or whether the product has been recently sold, these members would need to make use of the new programmed withdrawals published.

The MFSA also received feedback in relation to the de-risking of investments and would like to clarify that the retirement scheme administrator may only commence de-risking the investments, unless otherwise indicated by the member after obtaining professional advice. Therefore, the member is within his right not to commence de-risking the investments. The MFSA is of the view that de-risking should still commence as from five years before the member reaches the agreed retirement age in order to protect the investment of the said member, however it is up to the member after obtaining the necessary professional advice to decide. Furthermore, upon further internal discussions, a new proviso will be included in the Pension Rules for Personal Retirement Schemes and the Pension Rules for Occupational Retirement Scheme to clarify that the requirement to apply professional advice as to whether or not to de-risk the investments of a Member shall not apply where the Member is a professional member.

8.0 Applicability

The amendments to the Pension Rules will come into force on the date of publication of this Circular.

9.0 Contacts

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