

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**PENSION RULES FOR OCCUPATIONAL RETIREMENT
SCHEMES ISSUED IN TERMS OF THE RETIREMENT
PENSIONS ACT, 2011**

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INTRODUCTION

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 either licensed under the Act to provide one or more services listed in the Schedule to the Act and, or recognised to provide any one or more services of the back-office administrative activities established by the Pension Rules issued under the Act.

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 duly licensed under the Act. The Act also prohibits a person from providing, in or from within Malta, any back-office administrative activities detailed in the Pension Rules for Service Providers unless such a person is recognised by the MFSA to provide such activities.

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 issue 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 and, or recognised persons under the Act and others as may be specified therein.

In exercise of those powers, the MFSA has made these Pension Rules for Occupational Retirement Schemes.¹

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

Structure of Pension Rules for Occupational Retirement Schemes

The Pension Rules for Occupational Retirement Schemes are divided into four main parts:

- Part A specifies the nature and licensing process, and criteria applicable to Occupational Retirement Schemes;
- Part B sets out the Standard Licence Conditions for Occupational Retirement Schemes licensed under the Act;
- 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 Occupational Retirement Schemes and their practical application should be addressed to the Insurance and Pensions Supervision Unit of the MFSA.

Copies of the Pension Rules for Occupational Retirement Schemes can be downloaded from the MFSA's website (www.mfsa.com.mt).

The Pension Rules for Occupational Retirement Schemes 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 indicated otherwise in the Glossary to the Pension Rules issued under the Act.

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

PART A

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

A.1 Overview of an Occupational Retirement Scheme

Definition

In terms of articles 2 and 3 of the Act, an Occupational Retirement Scheme is a scheme or arrangement established for, or by, an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees and under which payments are made to Members and Beneficiaries for the principal purpose of providing Retirement Benefits. Retirement Benefits refer to benefits payable with reference to retirement, or on having reached a particular age, and may involve supplementary benefits paid on disability, death or other circumstances.

Moreover, a scheme or arrangement does not constitute an Occupational Retirement Scheme under the Act, if it provides for:

- (a) the payment of Retirement Benefits to five or fewer Members; or
- (b) the commencement of payment of Retirement Benefits to a Member on a date that is earlier than that on which such Member has attained the age of fifty, or not later than that specified in Pension Rules for Occupational Retirement Schemes, except in those cases where the retirement scheme or arrangement provides that:
 - (i) the payment is made by reason of the disability or death of a Member; or
 - (ii) the payment is made to the Member without the necessity of the Member's consent in line with any Pension Rules for Occupational Retirement Schemes in the event that the Member is no longer employed by the employer;

Provided that a scheme or arrangement described in paragraph (a) may, by written notice to the MFSA, apply to be considered as an Occupational Retirement Scheme for purposes of the Act.

If there is any doubt as to whether, for the purposes of the Act, a scheme or other arrangement is an Occupational Retirement Scheme within the meaning of the Act, the MFSA should be approached and it shall conclusively determine the matter.

Establishment and Form

An Occupational Retirement Scheme may be established in the following forms under Maltese law:

- (a) as an investment company with variable share capital ("SICAV") under the Companies Act (Chapter 386 of the Laws of Malta);

- (b) as a trust by trust deed under the Trusts and Trustees Act (Chapter 331 of the Laws of Malta);
- (c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta); or
- (d) in any other legal form as may be approved by the MFSA.

Nature and Operation

An Occupational Retirement Scheme is established with the purpose of collecting contributions made by an employer(s), or by an employer(s) and employees, or by employees through an employment relationship and investing these contributions in assets earmarked to provide Retirement Benefits to Members and Beneficiaries thereof. An Occupational Retirement Scheme operates in accordance with a written instrument (known as the “*Scheme Document*”) which lays down the rules stipulating the Retirement Benefits and the conditions under which these are granted. The Scheme Document may be incorporated as part of the Constitutional Document of the Scheme.

An Occupational Retirement Scheme may be a *Defined Benefit Scheme* or a *Defined Contribution Scheme*. A Defined Benefit Occupational Retirement Scheme provides fixed or determinable Retirement Benefits and may take different forms (e.g. traditional defined benefit schemes, hybrid schemes etc.). In a Defined Contribution Occupational Retirement Scheme, Retirement Benefits are established by reference to the contributions and the returns or gains that are received on the invested contributions less expenses and any losses in relation thereto. An Occupational Retirement Scheme may also provide cover against Biometrical Risk or investment risks subject to the conditions outlined in the Pension Rules for Occupational Retirement Schemes.

An Occupational Retirement Scheme may be established either as a *Closed Scheme* or as an *Open Scheme*. Closed Occupational Retirement Schemes are schemes established at the initiative of a single employer or a group of related employers or an association representing employers and membership of the scheme is limited thereto. Open Occupational Retirement Schemes are schemes usually established at the initiative of a Retirement Scheme or Retirement Scheme Administrator (as applicable), whose membership is open to a number of unrelated employers and self-employed persons acceptable to the Retirement Scheme Administrator.

Governance Arrangements & Related Parties

An Occupational Retirement Scheme, irrespective of its legal form, is required to appoint the following:

- (a) a *Retirement Scheme Administrator* – A Service-Provider licensed under the Act who would be responsible for the overall operation, management and

administration of the Occupational Retirement Scheme. The Retirement Scheme Administrator is required to carry out duties specified in Part B.1 of the Pensions Rules for Service-Providers issued in terms of the Act.² The Retirement Scheme Administrator carries out the day-to-day administration duties and may also either carry out the investment management of the assets or provide custody services for the safe-keeping of assets of the Occupational Retirement Scheme, if it is duly licensed to do so under the Act;

- (b) an *Auditor* appointed in terms of the article 16 of the Act; and,
- (c) an *Actuary* (whose appointment is required only in the case of a Defined Benefit Retirement Scheme).

The appointment of an *Investment Manager, Custodian, Investment Advisor* and a *Back-Office Administrator* is optional.

Mandatory Functions

An Occupational Retirement Scheme, irrespective of its legal form, 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 Occupational Retirement Scheme an investment manager, separate from the Retirement Scheme Administrator, 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 Occupational Retirement Scheme, a custodian separate from the Retirement Scheme Administrator may need to be appointed for the safe-keeping of assets. Separation of the custody and investment management function is compulsory.

In delegating/outsourcing functions to third parties, the *Retirement Scheme Administrator* retains responsibility for the overall operation, management and administration of the Occupational Retirement Scheme and the investment management and custody of the assets of the Retirement Scheme. The Retirement Scheme Administrator is expected to put in place adequate monitoring arrangements to ensure the appointed third parties are carrying out the functions in line with the stipulated requirements.

² Please refer to the Rules issued under the Act for Service-Providers for details regarding the licensing / recognition criteria and requirements as well as the operational conditions applicable to Service Providers.

Without prejudice to the provisions of Part IV of the Act relating to governance, the MFSA may consider different structural and governance proposals as long as these arrangements provide appropriate protection for Members and Beneficiaries of the Occupational Retirement Scheme and its assets.

Employee Representation

Employee representation in an Occupational Retirement Scheme is optional. The arrangements for the provision of employee representation in an Occupational Retirement Scheme are subject to MFSA's approval and therefore should be discussed in advance with the MFSA.

Funding & Technical Provisions

Occupational Retirement Schemes are funded by the *Contributor(s)*, who may be either:

- (a) solely the Employer; or
- (b) the Employer and the Employees; or
- (c) Employees through an employment relationship.

A Defined Benefit Occupational Retirement Scheme (and any other type of scheme providing cover against biometrical or investment risks) is required to comply with the technical provisions requirements as set out in the Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2014 and Part B of these Pension Rules for Occupational Retirement Schemes.

Investment of Contributions

An Occupational Retirement Scheme is required to invest its Contributions in accordance with the Constitutional Document, Scheme Document and Scheme Particulars (as applicable), the prudent person principle and the investment restrictions set out in Part B of the Pension Rules for Occupational Retirement Schemes issued in terms of the Act. An Occupational Retirement Scheme may opt to invest either directly or indirectly on the market.

A.2 Licensing Requirements

Licensing Requirement

In terms of article 4 of the Act, an Occupational Retirement Scheme requires a licence to carry on any activity for the provision of Retirement Benefits. In terms of this article:

- (a) no retirement scheme shall carry on any activity for the provision of Retirement Benefits in or from within Malta unless such scheme is situated in Malta; and
- (b) no retirement scheme formed in accordance with or existing under the laws of Malta shall carry on any activity for the provision of Retirement Benefits in or from within a country, territory or other place outside Malta; and
- (c) no person shall 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 scheme is situated in Malta, and,

unless such scheme is duly licensed under the Act.

Subarticle (6) of Article 4 of the Act permits the initial steps for the incorporation or establishment of an Occupational Retirement Scheme to be taken before a licence has been obtained, **but** a retirement scheme may not deal or carry out any licensable activity before it is licensed.

Licensing Criteria

An Occupational Retirement Scheme must be constituted and structured in line with the requirements set out by the MFSA and must have a Scheme Document as stipulated in Part B.2.1 of the Pension Rules for Occupational Retirement Schemes. Moreover, the MFSA shall refrain from licensing an Occupational Retirement Scheme unless it is satisfied that:

- (a) the Occupational Retirement Scheme and the Retirement Scheme Administrator, will comply with and observe the provisions of the Act and any regulations or Pension Rules made thereunder;
- (b) the Occupational Retirement Scheme, sponsoring undertakings and Retirement Scheme Administrator are fit and proper persons, also to carry out the functions required of them;

- (c) the name of the Occupational Retirement Scheme is one which, in the opinion of the MFSA, is not misleading; and
- (d) any aspect of or related to the application does not raise any regulatory concerns.

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

The MFSA will consider the nature of the Occupational Retirement Scheme and will need to be satisfied that appropriate governance structures and mechanisms are in place. Sound and prudent management, adequate resources, and a responsible attitude towards Members and Beneficiaries are essential. The business should be well organised and have adequate controls and sufficient records should be maintained to demonstrate these attributes.

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

The "fit and proper" test is one which an Occupational Retirement Scheme 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 Occupational Retirement Scheme 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 an Occupational Retirement Scheme 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 an Occupational Retirement Scheme 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 Occupational Retirement Scheme 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 Occupational Retirement Scheme should be able to demonstrate an acceptable amount of knowledge, qualifications, professional expertise and experience directly relevant to the occupational retirement activities with which they are dealing. The MFSA will also look into the experience and track record of all parties who will be involved in the management of the Occupational Retirement Scheme 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.

Although Occupational Retirement Schemes may vary in nature, the MFSA will apply consistent standards in dealing with different types of Occupational Retirement Schemes. Each application is assessed on its own merits and on the basis of the relevant circumstances.

Application Documents

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

The Licensing Process

- (a) The Pension Rules for Occupational Retirement Schemes 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, 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 Schedules in Part D under 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 Occupational Retirement Schemes may not be 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 or recognition 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 a 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 Occupational Retirement Schemes licensed under the Act

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

The detailed Standard Licence Conditions applicable are set out in Part B of these Pension Rules for Occupational Schemes. While the Standard Licence Conditions should be sufficiently flexible to operate in a range of different situations, they may be supplemented or varied according to the particular nature of the Occupational Retirement Scheme. An Occupational Retirement Scheme 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.

A.4 Exercise of Passport Rights by Occupational Retirement Schemes

An Occupational Retirement Scheme licensed under the Act which qualifies as an Institution for Occupational Retirement Provision in terms of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, also referred to as the “Occupational Pensions Directive”, may operate on a cross-border basis in terms of the Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2014. This means that such an Occupational Retirement Scheme duly licensed under the Act may receive contributions from employers (or "sponsoring undertakings" as defined in the Directive) located in other EU Member States or EEA States and provide benefits to employees of the contributing employers.

An Occupational Retirement Scheme which is entitled and wants to operate on a cross-border basis, is required to follow the procedure set out in the Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2014, and to comply with requirements stipulated therein.

A Maltese Occupational Retirement Scheme wishing to accept sponsorship in terms of the Occupational Pensions Directive by a sponsoring undertaking located within a Member State or EEA State is to provide the MFSA with the following information:

1. *Current information on the Occupational Retirement Scheme:*
 - (a) name and address;
 - (b) contact details of authorised entities responsible for managing the scheme and acting on their behalf (phone number; fax; e-mail, website);
 - (c) legal form of the Maltese Occupational Retirement Scheme;
 - (d) current number of Members covered in Malta and on a pre-existing cross border basis (in total). Please use the latest data available and specify the date to which the data applies;
 - (e) the Member State/s in which it intends to operate;
 - (f) if there is any external, contract-based investment manager;
 - (g) if there is any external, contract-based custodian;
2. *Information regarding the pension scheme to be operated:*
 - (a) name, address and contact details of the sponsoring undertaking;
 - (b) a list of all Member States involved in this notification;

- (c) name, legal form, address and contact details and identification code (if any) of the representative the Occupational Retirement Scheme in the host Member State (if any);
- (d) a description of the pension scheme;
- (e) a description of the eligibility criteria for membership of the pension scheme, including whether membership is compulsory or voluntary and the approximate number of members and, if applicable, beneficiaries, expected to participate in the scheme at the start of the operation in the host Member State(s).
- (f) the type of scheme offered to the sponsoring undertaking including whether:
 - (i) it operates on a defined contribution basis (including any investment options);
 - (ii) it operates on a defined benefit basis (final salary/salary-related);
 - (iii) hybrid (separate defined contribution and defined benefit sections);
 - (iv) a description of any other arrangement;
- (g) the type of benefits offered and conditions for payment of benefits specifying:
 - (i) a description of the types of benefit offered (e.g. retirement pension, widow's pension, orphan's pension, disability pension, etc.)
 - (ii) a description of the conditions for payment of benefits (e.g. age, contribution, etc.);
 - (iii) a description of the type of pay-out (annuities, payments for temporary periods, lump sum, etc.);
 - (iv) a description of any guarantees offered (e.g. investment performance, a given level of benefits, etc.) and who provides the guarantees;
 - (v) a describe the additional coverage offered (e.g. long term care, additional biometrical risks, etc.) and who provides the additional coverage;

- (h) whether the Occupational Retirement Scheme or another company is responsible for the payments of the benefits (e.g. insurance company; indicate the company name in full, if available, address, contact details); and
- (i) a description of the types of contributions paid by the sponsoring undertaking and by the Members, e.g. percentage of salary, flat rate, single premium, certain percentage paid by the employee, etc.

PART B

**STANDARD LICENCE CONDITIONS
FOR OCCUPATIONAL RETIREMENT SCHEMES**

B.1 Constitution, Operation and Governance

B.1.1 Constitution

- 1.1.1 An Occupational Retirement Scheme (“the Scheme”) shall be established in terms of Maltese Law. The Scheme may be established:
- (a) as an investment company with variable share capital (“SICAV”) in terms of the Companies Act (Chapter 386 of the Laws of Malta); or
 - (b) as a trust in terms of the Trust and Trustees Act (Chapter 331 of the Laws of Malta); or
 - (c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta); or
 - (d) in any other legal form as may be approved by the MFSA.
- 1.1.2 The Constitutional Document of the Scheme shall contain, as a minimum, the information outlined in Appendix 1 in Part C of these Pension Rules. The contents of the Constitutional Document of a Scheme shall be approved by the MFSA in advance of the licensing of the Scheme.
- 1.1.3 The Scheme shall be established with the principal purpose of providing Retirement Benefits to Members and/or Beneficiaries.
- 1.1.4 The Scheme may be either a Defined Benefit Scheme or a Defined Contribution Scheme.
- 1.1.5 The Scheme may also be a Closed Scheme or an Open Scheme:
- (a) in the case of a Closed Scheme sponsored by one or more Sponsoring Undertakings, there shall exist a professional, associative, business or social connection between the Sponsoring Undertakings and their approval is needed for new sponsors to join the Scheme.
 - (b) in the case of an Open Scheme, there need not be any connection between those joining the Scheme and joining the Scheme is dependent upon acceptance by the Scheme or the Retirement Scheme Administrator.

B.1.2 Operation of the Scheme

- 1.2.1 The Scheme shall be operated in accordance with the Constitutional Document, Scheme Document, Scheme 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 Scheme 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 Scheme shall only accept contributions from Contributor/s identified in the Scheme Document. Any contributions other than in cash, shall be subject to the following requirements:
- (a) a report would need to be drawn-up by the Scheme's auditor or Independent Qualified Valuer depending on the asset concerned. This report must describe each of the contributions as well as the methods of valuation used. The report shall state whether the values arrived at by these methods correspond at least to the number and par book value of the units to be issued in consideration thereof and whether the Scheme remains in compliance with the applicable investment restrictions. The report, in which its conclusions shall be reproduced, shall be retained by the Retirement Scheme Administrator and made available to the MFSA upon request;
 - (b) the ownership of the assets passes to the Scheme;
 - (c) the Retirement Scheme Administrator must be satisfied that the legal process regarding the transfer of ownership of the assets to the Scheme has been completed before accepting the asset in the Scheme; and
 - (d) the Retirement Scheme Administrator would need to be satisfied that the investment restrictions of the Scheme will continue to be satisfied.
- 1.2.4 The Scheme shall invest its Contributions in line with the Scheme Investment Objectives and Statement of Investment Principles outlined in the Scheme Document and Scheme Particulars and shall observe the investment restrictions in Part B.3.2 of the Pension Rules on Occupational Retirement Schemes.
- 1.2.5 The commencement of payment of Retirement Benefits to a Member of the Scheme may not be made on a date that is earlier than that on which such Member has attained the age of fifty, or not later than that on which the Member attains the age of seventy-five.
- 1.2.6 A Scheme wanting to operate on a cross-border basis shall comply with the provisions prescribed in the Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2014.

- 1.2.7 The Scheme shall comply with the minimum requirements relating to the acquisition and preservation of pension rights set out in Appendix 12 to these Pension Rules.

B.1.3 Employee Representation

- 1.3.1 A Scheme may provide for employee / employer representation in its structure and governance. The appointment of employee / employer representation within the structure of a Scheme, shall be agreed in advance with the MFSA and requires MFSA's prior approval and may be subject to any conditions as the MFSA may deem applicable.

B.1.4 Service-Providers

Retirement Scheme Administrator

- 1.4.1 The Scheme shall have a Retirement Scheme Administrator performing duties in connection with the overall operation and administration of the Scheme in accordance with the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Service Providers issued in terms of the Act.
- 1.4.2 The Retirement Scheme Administrator shall have an established place of business in Malta.
- 1.4.3 The Retirement Scheme Administrator shall be an entity duly licensed to provide retirement scheme administration services under the Act, having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Retirement Scheme Administrator.

Investment Manager

- 1.4.4 The Scheme may appoint an Investment Manager to carry out the investment management function of the Scheme, independent from the entity carrying out the custody function in connection with the Scheme. In the case of an open scheme, the Scheme may appoint an investment manager for every sponsoring undertaking within the Scheme.
- 1.4.5 The Investment Manager of the Scheme may either be:
- (a) the Retirement Scheme Administrator if it is not undertaking the custody function for the Scheme itself and if duly licensed under the Act to carry out investment management services for a Scheme; or

- (b) an entity licensed to carry out investment management services to Schemes under the Act; or
- (c) 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
- (d) 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

1.4.6 The Scheme may appoint a Custodian, independent from the entity carrying out the investment management services in connection with the Scheme. In the case of an open scheme, the Scheme may appoint a Custodian for every sponsoring undertaking within the Scheme.

1.4.7 Where the assets of a Scheme are entrusted to a Custodian for safekeeping, the Custodian of the Scheme shall either be:

- (a) the Retirement Scheme Administrator if it is not undertaking the investment management function for the Scheme itself and if duly licensed under the Act to carry out custody services for a Scheme; or
- (b) an entity licensed to carry out custody services to Schemes under the Act; or
- (c) 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 Malta; or
- (d) 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

1.4.8 A Scheme may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Scheme.

1.4.9 The Investment Advisor of a Scheme 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.

Back-Office Administrator

1.4.10 A Scheme may appoint a Back-Office Administrator responsible for back-office administrative activities in accordance with the Pension Rules for Service Providers issued in terms of the Act. Where a Back-Office Administrator is not appointed, the Retirement Scheme Administrator shall be responsible for the back-office administrative function and is required to have the appropriate systems and expertise to provide back-office administrative services.

1.4.11 The Back-Office Administrator of a Scheme may either be:

- (a) the Retirement Scheme Administrator itself; or
- (b) an entity/person recognised to provide back-office administration services to Schemes under the Act; or
- (c) any other entity which is considered by the MFSA to be of sufficient standing and repute and has the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake back office administrative services and which satisfies any additional criteria which may be set out in the Pension Rules issued under the Act.

Independence Requirements

General

1.4.12 The Scheme and the Retirement Scheme Administrator, as applicable, shall be separate and independent entities from the Sponsoring Undertaking of the Scheme.

1.4.13 The entity undertaking the investment management of the Scheme shall be a separate and independent entity from the entity undertaking the custody function of the

Scheme. Each of these entities shall act solely in the interests of the Members and Beneficiaries.

- 1.4.14 In the case of a Scheme incorporated as a SICAV, the Scheme shall at all times be independent from the entities undertaking the investment management and custody function of the Scheme.
- 1.4.15 In the instance that a Scheme is investing solely in a Retirement Fund, the Scheme and the Retirement Scheme Administrator, as applicable, shall be separate and independent from the Custodian and the Investment Manager of the Retirement Fund.
- 1.4.16 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

- 1.4.17 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Service Provider of the Scheme.
- 1.4.18 A Service Provider appointed by the Scheme 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 Replacements of Service-Providers

- 1.4.19 Where the Scheme or the Retirement Scheme Administrator, as applicable, 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 Scheme or Retirement Scheme Administrator, as applicable;
 - 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 Scheme's Assets.
- (b) the Scheme or the Retirement Scheme Administrator, as applicable, shall ensure that it shall have a right of action against such Service-Provider for any breach of its duties;
- (c) the Scheme or the Retirement Scheme Administrator, as applicable, shall ensure, as a minimum, that it acts with due skill, care and diligence in:
 - i. selecting the Service Provider and assessing its suitability for the role contemplated ensuring that it has the appropriate skills and any necessary regulatory licence or recognition 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.

1.4.20 The appointment, including the replacement, of any Service Provider, 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 any Service Provider.

1.4.21 In the instance that the Scheme or Retirement Scheme Administrator, as applicable, outsources certain key functions (such as the Investment Management, Custody and the back-office administration) in connection with the Scheme 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 services provider of any outsourced functions. The appointment of the Service Provider by the Scheme or the Retirement Scheme Administrator shall be subject to these conditions.

B.1.5 Auditor

- 1.5.1 The Scheme shall appoint an auditor approved by the MFSA for the purposes of these Pension Rules. The appointment or replacement of an auditor of a Scheme 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 Scheme. The MFSA shall be entitled to be satisfied, on an on-going basis, that the Scheme's auditor has the appropriate expertise and experience to carry out its functions.
- 1.5.2 An individual shall not be appointed as an auditor of the Scheme, 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 Scheme, the Retirement Scheme Administrator or any Contributor;
 - (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 Scheme, Retirement Scheme Administrator or any Contributor;
 - (e) a person who is engaged under a contract of service to provide non-audit services to the Retirement Scheme Administrator or to any employer acting as Contributor;
 - (f) a Contributor or Beneficiary to or of the Scheme;
 - (g) a person disqualified by the MFSA from acting as an auditor of a Scheme;
 - (h) an Affiliate of the Retirement Scheme Administrator.

- 1.5.3 The Scheme 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 9 in Part C of the Pension Rules for Occupational Retirement Schemes. The Scheme 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 Scheme an audit report. The Scheme or the Retirement Scheme Administrator, as applicable, shall notify the MFSA immediately it becomes aware the Scheme's auditor intends to qualify the audit report.
- 1.5.5 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 an Occupational Retirement Scheme.
- 1.5.6 If at any time, the Scheme 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 Scheme or Retirement Scheme Administrator.

B.1.6 Actuary

- 1.6.1 A Defined Benefit Scheme shall appoint an Actuary in accordance with the Standard licence Conditions outlined in Part B.6.3 of the Pension Rules for Occupational Retirement Schemes. This requirement does not apply to SLC B.4.6 of Part B of the Pension Rules for Occupational Retirement Schemes.

B.2 Documentation, Reporting & Records

B.2.1 Scheme Document

- 2.1.1 Each Scheme shall be operated in accordance with a “Scheme Document” which evidences or establishes the Scheme and which stipulates the Retirement Benefits and the conditions under which these are granted.
- 2.1.2 The Scheme Document shall at least contain the matters specified in Appendix 2 in Part C to these Pension Rules for Occupational Retirement Schemes. The Scheme Document may be integrated as part of the Constitutional Document of the Scheme and the contents thereof included in the Constitutional Document or otherwise annexed to the Constitutional Document.
- 2.1.3 Without prejudice to any provisions of the Act, the Scheme Document and any amendments thereto shall require the prior approval of the MFSA before being effected.
- 2.1.4 The Scheme Document shall be signed by the persons who are bound by the terms of its provisions, including the Contributor(s) and where applicable the persons underwriting the liability of the Scheme providing cover against biometric risk, or guaranteeing a given level of investment performance or a given level of benefits.

B.2.2 Scheme Particulars

- 2.2.1 In addition to the Scheme Document, the Scheme shall also prepare and maintain a document known as the “Scheme Particulars”. The Scheme Particulars shall describe the Scheme in sufficient detail for the Contributors, Members and Beneficiaries to make an informed judgement as to the nature of the Scheme and as to how the assets of the Scheme are being managed and invested and to be fully aware of the risks to which they will be exposed.
- 2.2.2 The Scheme Particulars shall, as a minimum, contain the matters specified in Appendix 3 in Part C of the Pension Rules for Occupational Retirement Schemes and shall be dated. It shall be maintained up-to-date and the section therein regarding the Statement of Investment Policy shall be revised at least every three years or more frequently where appropriate.
- 2.2.3 The Scheme Particulars and any amendments thereto shall require the prior approval of the MFSA before being effected.

B.2.3 Scheme Records & Reports

- 2.3.1 The Scheme shall keep such accounting and other records as are necessary to enable it to comply with the Pensions Rules for Occupational Retirement Scheme and to demonstrate that compliance has been achieved.
- 2.3.2 The Scheme shall at all times maintain proper and accurate accounting records to show and explain the transactions, and assets and liabilities of the Scheme in order to disclose with reasonable accuracy the Scheme's financial position. It shall also at all times maintain proper and accurate records in relation to the following:
- (a) the net asset value of the Scheme and its Sub-funds (where applicable) in accordance with the Investment Companies with Variable Share Capital As Retirement Scheme or Retirement Funds Regulations, 2014 and the Scheme Document;
 - (b) the Scheme's Members, Contributor(s) and Beneficiaries;
 - (c) the contributions paid by each Contributor and the dates on which they were paid;
 - (d) action taken to recover contributions not paid on the due date;
 - (e) the amount of any deficit identified in relation to a Defined Benefit Scheme and the action taken in regard thereto;
 - (f) accrued pension benefits of the Beneficiaries;
 - (g) transfers of Members' pension benefits into and out of the Scheme, the terms of such transfers and related asset movements;
 - (h) payments made to employers and to Members leaving the Scheme other than on a pension benefit transfer;
 - (i) payments made in respect of Contributor-Related Investments;
 - (j) any other payments into and withdrawals from the Scheme assets and the reason for such payment(s);
 - (k) any resolutions passed by or proceedings of Contributor(s) and/or Beneficiaries.
- 2.3.3 The Scheme shall retain records relating to a particular Member, Beneficiary or Contributor for the period expiring ten years after such person has ceased to be a Member, Beneficiary or Contributor. The Scheme shall retain records, including

accounting records, which relate to the Scheme as a minimum for ten years after the Scheme Year to which they relate.

- 2.3.4 As a minimum, the Scheme shall prepare annual and half-yearly reports (including annual audited financial statements) which shall at least contain the matters specified in Appendix 4 and 5 in Part C of these Pension Rules for Occupational Retirement Schemes.
- 2.3.5 The half-yearly report is to be submitted to the MFSA within two months of the end of the period concerned or at any other time as may be authorised or directed in writing by the MFSA.
- 2.3.6 The Scheme's Annual report shall contain information sufficient to enable Contributors, Members and Beneficiaries to make an informed judgement on the development, management, operation and financial performance of the Scheme.
- 2.3.7 The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA.
- 2.3.8 The Scheme's annual report shall be prepared in conformity with International Financial Reporting Standards. Where the Scheme invests in a Retirement Fund licensed under the Act, accounting policies used shall be consistent where applicable with those adopted in the relevant Retirement Fund's annual financial statements and shall be consistently applied. Financial returns shall not be misleading as a result of the misrepresentation or omission of any material item.
- 2.3.9 The annual report shall be produced and submitted to the MFSA within six months of the end of the period concerned, or at any other time as may be authorised or directed in writing by the MFSA.
- 2.3.10 The Scheme shall submit such other information, additional financial returns and reports as the MFSA may from time to time request.
- 2.3.11 The financial year-end of the Scheme (including any changes thereto) shall be agreed with the MFSA.

B.2.4 Compliance Report for the Scheme

- 2.4.1 The Compliance Officer of the Scheme Administrator shall prepare a Compliance Report for the Scheme at least on a six monthly basis. In the case of a Scheme established as a SICAV, the Compliance Report shall be presented to the Scheme's Board of Directors.

- 2.4.2 The Compliance Report for the Scheme shall indicate the requirements found in SLC 4.2.5 and 4.2.6 of Part B.4 of the Pensions Rules for Services Providers issued in terms of the Retirement Pensions Act.
- 2.4.3 A copy of the Compliance Report for the Scheme should be held in Malta at the office of the Scheme Administrator (or of the Scheme in case of a Scheme established as a SICAV), and made available to the MFSA during Compliance Visits and upon specific request.

B.2.5 Schedule of Payments

- 2.5.1 The Scheme set up as a Defined Benefit Scheme shall maintain and from time to time revise a schedule of payments, in the form described in Appendix 7 of Part C of these Rules, showing –
- (a) the rates of contributions payable towards the scheme by or on behalf of the employer(s) and, or where applicable, by any other Contributors of the scheme;
 - (b) the dates on or before which such contributions are to be paid; and
 - (c) such other matters as may be prescribed.

B.3 Conditions relating to the investments of the Scheme

B.3.1 General

- 3.1.1 The Scheme shall observe its Investment Objective, Policies and Restrictions.
- 3.1.2 The Scheme's assets shall be invested in a prudent manner and in the best interest of Members and Beneficiaries, and also in accordance with the investment rules laid out in its Scheme Particulars and otherwise in the Constitutional Document and Scheme Document. In the case of a potential conflict of interest, the Scheme or the entity which manages its portfolio, shall ensure that the investment is made in the sole interest of Members and Beneficiaries.
- 3.1.3 In deciding the Scheme's investment allocation, consideration shall be made of the need to have sufficient liquid funds to pay Retirement Benefits.
- 3.1.4 The assets of the Scheme shall be:
- (a) invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
 - (b) properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole and to avoid excessive exposure to any particular asset, issuer or group of undertakings;
 - (c) predominantly invested in regulated markets.
- 3.1.5 The Scheme may hold ancillary liquid assets irrespective of its Investment Objective and policy.
- 3.1.6 The assets held to cover the technical provisions shall be:
- (a) invested in a manner appropriate to the nature, currency and duration of the future Retirement Benefits and to ensure the security, quality, liquidity and cost efficiency of the portfolio as a whole;
 - (b) properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole measured against its ability to finance the future Retirement Benefits;
 - (c) held in assets dominated in the currency of the liabilities. Not more than 30% of the assets covering the technical provisions shall be dominated in currencies other than those in which the liabilities are expressed.

B.3.2 Investment Restrictions of an Occupational Retirement Scheme

3.2.1. The following Investment Restrictions shall apply in relation to the assets of the Scheme:

- (a) not more than 5% of the Scheme's assets shall be invested in Contributor-Related Investments;
- (b) not more than 30% of a Scheme's assets should be invested in assets (i.e. shares and debt securities; movable and immovable assets etc.) which are not traded in or dealt on a market which is regulated, operates regularly, is recognised and is open to the public, and has adequate liquidity and adequate arrangements in respect of the transmission of income and capital. The Retirement Scheme, Retirement Scheme Administrator or Investment Manager (as applicable), shall determine the mix of assets within the 30% limit, subject to the following:
 - i. investments in such assets should always be carried out on an arms' length basis;
 - ii. the Scheme's assets may be directly or indirectly invested in commercial or residential Immovable Property, subject that:
 - (aa) direct investments in *commercial or residential immovable property* are effected as follows:
 - not more than 10% of a scheme's assets shall be invested in a single property;
 - before a property is acquired, it must be valued by an Independent Qualified Valuer(s)
 - the property must be acquired within 6 months from the date of the report and at a price which is within 5% of the valuation price;
 - not more than 5% of a scheme's assets should be invested in residential property;
 - any *residential property* acquired by the scheme is not for the direct or indirect use of Members or Contributors or beneficiaries (for example: the property may not be leased back or rented out to a Member or a Member's employer or Beneficiary, or constitute a holiday home purchased for the Member's or a Beneficiary's own use or used as a residence

by Members or Beneficiaries etc. examples provided should not be considered as exhaustive);

(bb) indirect investments in *commercial or residential immovable property* are effected as follows:

- may be effected through the purchase of Property Related Assets;
- not more than 10% of a scheme's assets shall be invested in a single issuer or a single issue of Property Related Assets;
- in the case of investment in bonds issued by property management or financing companies or property owning companies, reasonable steps shall be taken to ensure to the extent possible, that the issuer has made sufficient provision for the repayment of the bond at maturity;

(cc) The Scheme's percentage (direct or indirect) investment in immovable property is subject to reporting to the MFSA in the annual audited financial statements to ensure that the immovable property exposure limit is satisfied on an on-going basis.

iii. any investments in unlisted alternative assets (e.g. hedge funds) shall be permitted, subject that not more than 10% of the Scheme's assets is invested in any single asset of this type;

iv. investments in tangible movable assets are not permissible.

(c) the assets of the Scheme shall be invested in derivative instruments only insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They must be valued on a prudent basis, taking into account the underlying asset, and included in the valuation of the Scheme's assets. Excessive risk exposure to a single counterparty and to other derivative operations shall be avoided. The Scheme shall not be leveraged or geared in any way through the use of futures, options or other derivatives;

(d) in particular, the Scheme assets shall be invested as follows:

i. not more than 10% of assets shall be invested in securities issued by the same body;

ii. not more than 10% of the assets shall be kept on deposit with any one body. This limit may be increased to 30% in respect of money deposited with a credit institution licensed in Malta or in any other Member State

or EEA State, or with any other credit institution which has been approved by the MFSA;

- iii. the Scheme shall not hold more than 10% of any class of security issued by any single issuer:

Provided that, subject to approval from the MFSA, the above limits may not apply to investment in government bonds.

- (e) subject to the provisions of the Scheme Document, the Scheme may borrow as long as the borrowings do not exceed 10% of the value of the Scheme and provided such borrowing is temporary and for liquidity purposes;
- (f) a Scheme shall not grant loans or act as guarantor on behalf of a third party. This is without prejudice to the right of the Scheme to acquire debt securities;
- (g) the Scheme may invest up to 100% of its assets in a Retirement Fund licensed under the Act or an equivalent arrangement overseas or in a single insurance policy. In the case where the Retirement Fund is managed or advised by the same Investment Manager or Advisor or by an associate of the Scheme's Investment Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges;
- (h) the Scheme may acquire the units of Collective Investment Schemes adequately regulated subject to the following:
 - i. where a Scheme invests in the units of a collective investment scheme managed or advised by the same Investment Manager or Advisor or by an associate of the Scheme's Investment Manager or Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/or advisory charges;
 - ii. where commission is received by the Investment Manager of the Scheme by virtue of an investment in the units of a collective investment scheme, that commission shall be paid into the property of the Scheme;
 - iii. any underlying collective investment scheme must be properly diversified and predominantly invested in regulated markets (except for collective investment schemes investing in Immovable Property);
 - iv. the Scheme shall not invest in a feeder fund or, without MFSA approval, in a fund of funds;

- v. not more than 20% of the Scheme's assets shall be invested in total in any one collective investment scheme which is properly diversified and predominantly invested in regulated markets. However, where the Scheme is set up as a Fund of Funds, it may invest up to 30% of its assets in any one underlying collective investment scheme which is adequately regulated.
 - (i) the Scheme and its Investment Manager, taking into account all of the Schemes and other collective investment schemes which the latter manages, shall not acquire sufficient instruments to give it the right to exercise control over 20% or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.
- 3.2.2 The MFSA may require a Scheme to adopt specific Investment Restrictions. The nature of these restrictions may vary depending on the nature and purpose of the Scheme.
- 3.2.3 The Scheme shall comply with the Investment Restrictions specified in this section within six months from the launch of the Scheme or upon reaching a value equivalent to €2,500,000, whichever is sooner.

B.3.3 Failure to comply with Investment Restrictions

- 3.3.1 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 Scheme's Investment Restrictions are at any time contravened for reasons beyond the control of the Retirement Scheme Administrator or Investment Manager, if appointed, the Retirement Scheme Administrator 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 Members and Beneficiaries 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 with the MFSA;

The above is aimed at addressing circumstances which may arise following acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Retirement Scheme Administrator to comply with the Scheme'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

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 Licence Condition is deemed to arise and the relevant notification requirements will apply.

B.4 General Conditions

B.4.1 General

- 4.1.1 The Scheme shall state that it is licensed and regulated by the MFSA in all correspondence, advertisements and other documents. Wording similar to the following shall be used: “*Licensed and regulated as an Occupational Retirement Scheme by the Malta Financial Services Authority*”.
- 4.1.2 The Scheme shall cooperate fully with any compliance test, inspection or other enquiry carried out by, or on behalf of, the MFSA. The Scheme shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information.
- 4.1.3 When requested to do so by the MFSA, the Scheme shall submit to arbitration in respect of any dispute between itself and a Contributor, Member, or Beneficiary. Under such circumstances the MFSA shall be entitled to appoint an Arbitrator.
- 4.1.4 The Scheme shall make available to any Service Provider, auditor and actuary of the Scheme, the information and explanations needed to discharge the responsibilities arising from the respective role of Service Provider, auditor or actuary of the Scheme and in order to meet the MFSA’s requirements.

Additional conditions for Schemes established as Investment Companies with Variable Share Capital (“SICAV”)

- 4.1.5 The Scheme must repurchase the shares of a Member on the retirement or death of that Member. The repurchased shares shall by right be cancelled and the capital of the company reduced as a consequence.

Subject to any contrary provisions in its Constitutional Document or Scheme Document, a Scheme may issue shares at any time. On the other hand, it may only repurchase its shares in accordance with the conditions and limits set by the applicable law, the Constitutional Document and the Scheme Document of the retirement plans it operates.

- 4.1.6 Units in a Scheme are not transferable other than from the Member to the Scheme in the case of cessation of employment or retirement or any other circumstance as set out in the Scheme’s Constitutional Document and Scheme Document.
- 4.1.7 No bearer units may be issued by the Scheme.
- 4.1.8 The MFSA has the right to require the suspension of the issue or repurchase or redemption or cancellation of units. Where the Scheme suspends temporarily the

repurchase or redemption or cancellation of units, it shall inform the MFSA immediately and in any event within the working day.

- 4.1.9 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 and the Custodian, as applicable. Such variation shall be published in revised Scheme Particulars at least 90 days before becoming effective. An increase in 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.
- 4.1.10 The Scheme 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.

B.4.2 Notifications to the MFSA

- 4.2.1 The MFSA shall be informed of any material information concerning the Scheme or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of:
- (a) a change in the registered address of a Scheme;
 - (b) a proposed change to its Investment Policies;
 - (c) any breach of the Act, the regulations issued thereunder, these Pension Rules or of any breach of the provisions of the Constitutional Document, Scheme Document or Particulars as soon as the Scheme becomes aware of the breach;
 - (d) payments owed to the Scheme which are not made in accordance with the Schedule of Payments (referred to in SLC 2.5.1 of Part B of the Pension Rules for Occupational Retirement Schemes) and which are not received within 30 days of their due date. In addition, the Scheme shall take action to obtain payment as described in article 19 of the Act. Members shall also be notified if the payment is not received within 30 days of their due date;
 - (e) any actual or intended legal proceedings relating to the Scheme which might adversely impact on the operation of the Scheme or its compliance with the Scheme's Constitutional Document, the Scheme Document or the Act upon becoming aware of the same;
 - (f) any facts, relationships, arrangements or circumstances which may at any stage bring the independence of any Service Provider, auditor or actuary of the Scheme into question;

- (g) if the Scheme is informed that its auditor intends to qualify the audit report;
- (h) any intended variation of charges imposed on the Scheme or its Members whether directly or indirectly;
- (i) any evidence of fraud or dishonesty by anyone connected with the operation of the Scheme immediately upon becoming aware thereof;
- (j) any intended termination of the Scheme in accordance with the Standard Licence Conditions 4.5.1 and 4.5.2 of Part B of the Pension Rules for Occupational Retirement Schemes;
- (k) any 'new' sponsor that intends to contribute to the Scheme;
- (l) if the Scheme fails to have an auditor and in the case of a Defined Benefit Scheme, if the Scheme fails to have an actuary in office for a period exceeding four weeks in accordance with the SLC 1.5.6 and 6.3.7 of Part B of the Pension Rules for Occupational Retirement Schemes, respectively;
- (m) the resignation or removal of a Director or Trustee or other individual in accordance with the SLC 7.2.4 and 8.4 of Part B of the Pension Rules for Occupational Retirement Schemes, respectively;
- (n) the cessation of any appointment of a Service Provider, auditor or actuary of the Scheme, the reasons thereof and any circumstances connected therewith which significantly affects the interests of the Scheme's Members or Beneficiaries;
- (o) any material changes in the information supplied to the MFSA in relation to the Scheme whether under the Act or otherwise;
- (p) in the instance that the number of Members of the Scheme is five or less.

B.4.3 Amendments to Documents

4.3.1 The MFSA's approval shall be obtained before any of the following documents are amended:

- (a) Constitutional Document
- (b) Scheme Document;
- (c) Scheme Particulars;
- (d) any other document affecting the rights of the Members, Beneficiaries and /or Contributors of the Scheme;
- (e) a business plan submitted to the MFSA;

- (f) any agreement between the Scheme or the Retirement Scheme Administrator and the Investment Manager, Custodian, Investment Advisor or Back-Office Administrator, as applicable.

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

B.4.4 Standard Licence Conditions and Licence Fees

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

B.4.5 Termination of the Scheme

- 4.5.1 In the event of termination of the Scheme, where practicable, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Contributor(s), Members and/ or Beneficiary(ies) and the Retirement Scheme Administrator shall use their best endeavours to delay the termination of the Scheme or to proceed with the termination in accordance with conditions imposed by the MFSA.
- 4.5.2 In the event of termination of the Defined Benefit Scheme during a period where an actuarial valuation reveals an under-provision relative to the minimum Technical Funding Requirement, the Scheme shall inform the MFSA. The Scheme shall establish a procedure in order to transfer the assets and the corresponding liabilities to another financial institution or a similar body. This procedure shall be disclosed to the MFSA and a general outline of the procedure shall be made available to Members or, where applicable, to their representatives in accordance with the principle of confidentiality.

B.4.6 Retirement Benefits for a Defined Contribution Retirement Scheme

- 4.6.1 Retirement Benefits, other than any benefits paid on death or permanent invalidity of the Member, shall be paid in the following forms:

- (a) Initial cash lump sum (optional);
- (b) Programmed Withdrawals and/or Life Annuity (mandatory);
- (c) Additional cash lump sum (optional).

Retirement Benefits shall be provided for in the Scheme Document.

Initial cash lump sum

- 4.6.2 On the retirement date, a Member may elect to take up to 30 per centum of the assets of the Member in a Retirement Scheme as a cash lump sum. The sum which is determined on retirement date shall be paid either as one lump sum or a series of tranches within one year from retirement date.
Provided that any remaining assets of the Member which are not paid in the form of a cash lump sum generate sufficient retirement income to the Member as outlined in SLC 4.6.3.

Programmed Withdrawals and/or Life Annuity

- 4.6.3 The remaining assets of a Member which are not paid in the form as outlined in SLC 4.6.2 above shall:
- a) be used towards programmed withdrawals. Programmed withdrawals shall be based on publically available annuity/drawdown rates. The Retirement Scheme Administrator shall ensure that the said annuity/drawdown rates are based on sound and prudent actuarial principles; or
 - b) be used to purchase a life annuity; or
 - c) be a combination of programmed withdrawals and life annuity.

Additional cash lump sum

- 4.6.4 Where subsequent to a valuation of a Member's remaining assets in the Scheme it is established that the assets are more than adequate to generate sufficient retirement income throughout the Member's lifetime at valuation date, then 50 per centum of the excess value of such assets as determined by the valuation may be withdrawn as an additional cash lump sum.
- 4.6.5 The additional lump sum may only be opted for after three years from commencement of the Member's retirement benefits, and every year thereafter.
- 4.6.6 The above shall be without prejudice to any other limitations on withdrawal of retirement assets as specified by any other pensions or taxation legislation to which a retiree is subject to.

- 4.6.7 In the case where a Member is domiciled in Malta the conditions in SLC 4.6.4, shall only apply where the annual retirement benefit from an annuity exceeds €50,000. This value shall be adjusted annually to take account of changes in the index of inflation as published by the National Statistics Office in the Government Gazette of Malta.

Schemes which qualify as Qualifying Recognised Overseas Pension Schemes (“QROPS”)

- 4.6.8 The rules referred to under Part B.4.6 relating to Retirement Benefits for a Defined Contribution Retirement Scheme shall not apply to Members of retirement schemes licensed under the Act which qualify as Qualifying Recognised Overseas Pension Schemes under rules issued by Her Majesty’s Revenue and Customs (“UK HMRC”). Members of these Schemes shall be subject to UK HMRC Rules.

B.5 Conditions relating to information for Scheme Members, Beneficiaries and Contributors

B.5.1 General

- 5.1.1 The Scheme's Members, Beneficiaries and Contributors shall be informed of the conditions of the Scheme including:
- (a) the contractual rights and obligations of the parties to the Scheme;
 - (b) the financial, technical and other risks embedded in the Scheme;
 - (c) the distribution of risks embedded in the Scheme to the contracting parties.
- 5.1.2 Any Member, Beneficiary or Contributor and where applicable their representatives, shall be provided on request with:
- (a) detailed and substantive information on:
 - i. applicable target level of benefits, if any;
 - ii. the level of benefits in case of termination of employment;
 - iii. the range of investment possibilities and the actual investment portfolio as well as information on risk exposure and costs related to the investments;
 - iv. the arrangements relating to the transfer of pension rights to another Scheme in the event of termination of the employment relationship;
 - (b) a copy of the Scheme's Annual Report free of charge. In the case of an Umbrella fund, they may receive those accounts related to their specific scheme;
 - (c) the statement of investment policy (which is included in the Scheme Particulars).
- 5.1.3 In the case of a Scheme investing in a Retirement Fund, Contributors, Members and Beneficiaries in the Scheme shall be given the opportunity to receive, upon request, copies of the Offering Document (Prospectus) for each underlying fund.
- 5.1.4 Members shall be provided, on an annual basis, with brief particulars of the situation of the Scheme as well as, in the case of Defined Contribution Schemes, the current level of their individual entitlement and in the case of Defined Benefit Schemes, the current level of financing of their accrued individual entitlements.
- 5.1.5 Generally, all agreements, written communication and notification or information sent to the Member(s), Beneficiaries and Contributor(s) should be presented transparently and clearly.

B.5.2 Members' Register, Constitutional Document, Scheme Document and Scheme Particulars

- 5.2.1 Every Scheme Member shall be notified of the entry of his details in the Scheme's register of Members as well as provided with a copy of the Scheme Document and Scheme Particulars, within one month of his registration as Member to the Scheme.
- 5.2.2 Any Scheme Member, Beneficiary, Contributor or their representatives, shall be provided, upon request, with an up-dated version of the Scheme's Constitutional Document, Scheme Document and Scheme Particulars. The text and format of the Constitutional Document, Scheme Document and Scheme Particulars made available shall, at all times, be identical to the latest version approved by the MFSA.
- 5.2.3 Members, Beneficiaries, Contributors and any other relevant party shall be notified in writing, within a reasonable time, of any amendments to the Scheme Document and Scheme Particulars and at the same time be provided with the amending text or an up-dated version of the document concerned. This notification process is without prejudice to the rights of the Members or Beneficiaries or others regarding changes to the Scheme, as may be applicable under the Act.
- 5.2.4 Persons who are bound by the acceptance of the Constitutional Document (including the Contributor(s) and where applicable, the persons underwriting the liability of the Scheme providing cover against biometric risk, or guaranteeing a given level of investment performance or a given level of benefits) the Scheme Document and the Scheme Particulars, shall be provided, within a reasonable time, with a copy of these documents, as well as with any amendments to them.

These persons must accept these documents, as well as any amendments to them, in writing, if they have not signed them in any other capacity, and must send their statement to the Retirement Scheme Administrator of the Scheme.

- 5.2.5 The Scheme Document may be opposed by the Members and Beneficiaries and shall be deemed to have been accepted by them if they have not made their opposition known within two months from the date of receipt of the information referred to in SLC 5.2.1 above.

In the case where a Member who is not also a Contributor to the Scheme refuses to accept the Scheme Document, or a clause therein, s/he shall forfeit his/her status as a Member unless the Scheme Document reduces the benefits due to him/her under a previously accepted Scheme Document and unless s/he is subject to more restrictive provisions making his affiliation to the Scheme compulsory. By way of the relevant provisions of the Scheme Document, affiliation may be summarised as the maintenance of existing acquired rights or may take the form of continued accumulation of rights in the future.

However, if the Member is also a Contributor, or if his acceptance makes him in some way a debtor of the Scheme, he must accept the Constitutional Document, the Scheme Document and the Scheme Particulars, as well as any amendments to them, in writing, save where the Scheme Document is set up by way of a collective agreement or by a law.

B.5.3 Changes to Investment Policy

5.3.1 Members and Beneficiaries are to be notified of any changes to the Scheme's Investment Policy in advance of the change being implemented.

B.5.4 Transfer of Retirement Rights

5.4.1 The Members of the Scheme who opt to transfer their entitlements to another retirement scheme are to be provided with adequate information (such as retirement rights, choices, or any applicable charges or fees) to enable the Members concerned to make an informed decision.

B.5.5 On retirement or payment of benefits

5.5.1 Each Member and Beneficiary shall be provided, on retirement or when other benefits become due, with appropriate information on the Benefits due to her/him and the corresponding payment options.

B.6 Supplementary Conditions for Defined Benefit Schemes

B.6.1 Schedule of Payments

6.1.1 Apart from the requirements in SLC B.2.5 of the Pension Rules for Occupational Retirement Schemes, a Defined Benefit Scheme shall also comply with the requirements regarding the maintenance of a Schedule of Payments as prescribed in regulation 8 of the Retirement Pensions Act (Retirement Defined Benefit Schemes) Regulations, 2014.

B.6.2 Technical Provisions

6.2.1 A Defined Benefit Scheme shall comply with technical, financial and actuarial management requirements as well as requirements regarding the under-provision or over-provision of Technical Funding Requirement as prescribed in regulation 4 of the Retirement Pensions Act (Retirement Defined Benefit Schemes) Regulations, 2014.

6.2.2 The calculation of the technical provisions shall be carried out according to the following principles:

- (a) the minimum Technical Funding Requirement shall be calculated by a sufficiently prudent actuarial valuation. It must be sufficient both for pensions and benefits already in payment to Beneficiaries to continue to be paid, and to provide Beneficiaries with an actuarial value of their accrued pensions rights;
- (b) the minimum Technical Funding Requirement shall be assets that, had the Scheme wound up on the valuation effective date, the assets would have provided for:
 - i. benefits in course of payment;
 - ii. benefits, other than those referred to in (i), which consist of additional benefits secured or granted under the Scheme on behalf of the Beneficiary concerned by way of additional voluntary contributions or a transfer of rights from another Scheme;
 - iii. benefits with at least uniform attribution, other than those referred to in (i) or (ii), payable in respect of reckonable service completed up to the effective date; and
 - iv. the estimated expenses of administering the winding up of the Scheme.
- (c) where there is no sponsoring employer to underwrite biometrical risks or guarantees on investment performance or a given level of benefits, then the

minimum Technical Funding Requirement shall be increased by an amount calculated in accordance with Appendix 10 of the Pension Rules on Occupational Retirement Schemes;

- (d) in calculating the minimum Technical Funding Requirement the actuary may assume that the liabilities of the Scheme could have been provided on winding up by paying assets of equivalent actuarial value to the above benefits to another Scheme or purchasing of appropriate insurance contracts to provide the same benefits;
- (e) any maximum Technical Funding Requirement which may be prescribed;
- (f) the biometrical tables used for the calculation of technical provisions shall be based on prudent principles, having regard to the main characteristics of the Beneficiaries and the Scheme, in particular the expected changes in the relevant risks;
- (g) the rate of interest used shall be chosen prudently taking into account, if applicable, an appropriate margin for adverse deviation and determined in accordance with any conditions of the MFSA including other provisions of these Pension Rules;
- (h) the prudent rates of interest shall be determined by taking into account:
 - i. the yield on the corresponding assets held by the Scheme and the future investment returns; and/or
 - ii. the market yields of high quality government bonds.
- (i) the method and basis of calculation shall in general remain constant from one Scheme Year to the other. However, modifications may be justified due to a change in legal or economic circumstances underlying the assumptions.

B.6.3 Appointment of an actuary

6.3.1 A Defined Benefit Scheme shall appoint an actuary approved by the MFSA.

6.3.2 The appointment, including the replacement, of an actuary of a Scheme shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of the actuary of a Scheme. The MFSA shall be entitled to be satisfied, on an on-going basis, that the actuary of the Scheme has the appropriate expertise and experience to carry out its functions.

- 6.3.3 An actuary of a Scheme shall be a Member of a recognised professional actuarial association or have a recognised actuarial degree and holds a minimum of three years practical experience in advising Defined Benefit Schemes.
- 6.3.4 The Scheme shall not appoint an individual as an actuary to the Scheme, nor appoint an actuarial firm where the individual directly responsible for the actuarial duties or her/his firm is:
- (a) employed under a contract of service by the Retirement Scheme Administrator or any Contributor or is a Contributor, Member or Beneficiary to or of the Scheme;
 - (b) an Affiliate of the Retirement Scheme Administrator.
- 6.3.5 The Scheme shall obtain from its actuary a signed letter of engagement defining clearly the extent of the actuary's responsibilities and the terms of his/ her appointment. The letter of engagement shall contain at least the information in Appendix 9 in Part C of these Pension Rules for Occupational Retirement Schemes. The Scheme shall confirm in writing to its actuary its agreement to the terms in the letter of engagement.
- 6.3.6 On the appointment or a change in actuary the MFSA shall be provided with the declaration referred to in Annex III of the Application Form for Licensing as an Occupational Retirement Scheme in Part D of these Pension Rules for Occupational Retirement Schemes.
- 6.3.7 If at any time when the Scheme is required to have an actuary, the Scheme fails to have an actuary 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 Scheme or Retirement Scheme Administrator.

B.6.4 Duties of an actuary

- 6.4.1 The actuary of a Defined Benefit Scheme shall:
- (a) advise the Scheme and/or the Retirement Scheme Administrator (on an on-going basis) on the appropriate rates of Scheme contributions;
 - (b) calculate the technical provisions for any Biometrical Risks or investment risks or level of benefits for which the Scheme provides cover in accordance with recognised actuarial methods and complete and certify such calculations at least as frequently as the prescribed intervals;
 - (c) prior to the commencement of the Scheme, provide the Scheme Administrator with a certificate (in the form of that in Appendix 6 in Part C of these Pension

Rules) setting out whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments in the form of Appendix 7 in Part C of these Pension Rules) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule of Payments relates;

- (d) provide the Scheme and/or the Retirement Scheme Administrator following the end of the first Scheme Year and on an annual basis thereafter, with an actuarial report containing the following:
 - i. an actuarial valuation of the assets and liabilities of the Scheme as at the end of the relevant Scheme Year including a note of the assumptions and methods of valuation used and expressed so as to enable the expected future course of the Scheme's contribution rates and funding level to be understood;
 - ii. a certificate (in the form of that in Appendix 6 in Part C of the Pension Rules for Occupational Retirement Schemes) setting out the position of the Scheme with respect to the minimum Technical Funding Requirement and whether or not in the actuary's opinion the contributions payable towards the Scheme (as set out in the Schedule of Payments) are likely in the normal course of events to be adequate to continue to meet the Scheme's minimum Technical Funding Requirement over the period to which the Schedule relates or is expected to restore the funding position over this period and indicating any relevant changes that have occurred since the most recent actuarial valuation was prepared.

B.6.5 Actuarial valuation - General

- 6.5.1 An actuarial valuation is required with an effective date no later than the first anniversary of the date on which the Scheme commenced and on an annual basis thereafter.
- 6.5.2 The actuarial valuation report and accompanying certificate must relate to the position of the Scheme at the date 14 days before it is signed.

B.6.6 Transfer of benefits

- 6.6.1 Where a Member wishes to transfer the value of her/his accrued benefits to another Scheme, such Member shall request the Scheme or the Retirement Scheme Administrator to obtain the actuarial value of these benefits. The actuary shall certify (in the form of that in Appendix 8 in Part C of the Pension Rules for

Occupational Requirement Schemes) that the method used to calculate this value is appropriate. Such an actuarial value shall be assessed using market rates of interest.

6.6.2 The calculations of actuarial values for transfer to another Scheme shall be carried out according to the following principles:

- (a) market rates of interest used to calculate the actuarial value of accrued benefits shall be determined on the basis of market redemption yields on Government bonds of appropriate currency, duration and type at the time of transfer with allowance for investment of future interest/ redemption receipts at such rates as the actuary considers reasonable;
- (b) guaranteed or statutory increases, both in deferment and after payment commences, should be valued as part of the accrued benefit;
- (c) the actuary should first advise and then establish with the Scheme and/or the Retirement Scheme Administrator whether and to what extent it is considered appropriate to make any addition for future discretionary increases to the accrued benefits or for any other benefits that may be granted on a discretionary basis;
- (d) in general it would be inappropriate to allow for discretionary benefits in the calculation of transfer values unless the Scheme could satisfy the minimum Technical Funding Requirement with allowance made for such benefits for all Beneficiaries or Members;
- (e) the method and assumptions used for calculating the actuarial value of benefits to be transferred out of the Scheme should be consistent with the method and assumptions used to calculate benefits for a person acquiring transfer credits in the Scheme.

B.7 Supplementary Conditions for Schemes established as Investment Companies with Variable Share Capital (“SICAVs”)

B.7.1 General

- 7.1.1 Without prejudice to the responsibility of the Board of Directors for the management and operation of the Scheme, the Directors shall appoint a Retirement Scheme Administrator who shall be entrusted and assigned with the duties specified in the Pension Rules for Service Providers.

B.7.2 Board of Directors

- 7.2.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme. The concept of fit and proper requires directors to be honest, competent and solvent persons.
- 7.2.2 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director. The Directors of the Scheme 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.
- 7.2.3 The request for consent of the appointment or replacement of an individual as 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 it considers appropriate.
- 7.2.4 If any person shall for whatever reason cease to be a Director, the Scheme 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 Members or Beneficiaries. The notification should be made within 14 days of the resignation or removal. The Scheme 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 Scheme’s notification of resignation or removal.
- 7.2.5 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

7.2.6 The Board of Directors shall act honestly, fairly and with integrity and in the best interests of the Members and Beneficiaries. 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 Members and Beneficiaries 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 Members or Beneficiaries.

B.7.3 Sale or Repurchase of Units

7.3.1 Price quotation and sale and repurchase arrangements for shares/Units in the Scheme in the circumstances allowed by the law and the Constitutional Document and Scheme Document, shall ensure that:

- (a) a Member is allocated shares /Units in the Scheme at a price based on the most recent underlying fund/s prices;

- (b) the issuing of the Scheme's shares / Units of the purchase proceeds to the underlying fund/s is achieved as soon as is practicable;
- (c) a Scheme is able to repurchase its shares / Units at a price based on the most recent underlying fund/s prices;
- (d) the cancellation of the Units and the remitting of the proceeds to the Member or Beneficiary are achieved as soon as is practicable in line with Part 4.6 of these Pension Rules, in the circumstances allowable by law where the Member has access to such benefits.

7.3.2 The Scheme investing solely in Retirement Funds shall, as far as practicable, be valued with the same frequency as the Retirement Fund.

B.7.4 Additional Conditions for a Scheme set up as an Umbrella Fund

7.4.1 Where the Scheme 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.

7.4.2 Each Sub-Fund of the Scheme shall constitute a distinct and separate patrimony.

7.4.3 A Sub-fund may not invest in another Sub-fund of the same Scheme.

B.8 *Supplementary Conditions for Schemes established as a trust*

- 8.1 Schemes in the form of trusts shall be established by written instrument and shall not be subject to any limits on their duration.
- 8.2 Schemes shall not be in the form of discretionary trusts which allow the trustee to decide which beneficiaries are to benefit in terms of the trust deed.
- 8.3 The Scheme shall have the Retirement Scheme Administrator (who shall be licensed to provide trustee services under the Act) as its sole Trustee.
- 8.4 If any person shall for whatever reason cease to be a Trustee, the Scheme 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 Members and Beneficiaries. The notification should be made promptly and in any case not later than 14 days from the resignation or removal. The Scheme shall also request such a trustee to confirm to MFSA that his / her 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 Scheme's notification of resignation or removal.