

PART C

APPENDICES TO RULES FOR PERSONAL RETIREMENT SCHEMES

Issued: 7th January 2015

Last Updated: 28th December 2018

APPENDIX 1

(SLC 1.1.2 of Part B of the Pension Rules for Personal Retirement Schemes)

Contents of the Constitutional Document of a Personal Retirement Scheme (“the Scheme”)

The Constitutional Document shall provide for the following:

- 1.1 that the objective of the Scheme is limited to the following:
 - (a) the receipt of contributions from Contributors and the investment thereof in accordance with the investment policy of the Scheme with the aim of maximising return on such contributions; and the payment of Retirement Benefits to the Members of the Scheme;
 - (b) the carrying out of all matters or functions connected or ancillary to the above;
- 1.2 in the case of non-member directed Schemes, for an effective custody function and investment management function outlining the duties as set out in terms of Part B.2 and Part B.3 of the Pension Rules for Service Providers;
- 1.3 the principles and method of valuation of the assets, which method shall have been approved by the MFSA;
- 1.4 specify the conditions under which there may be effected, and the procedure to be followed with respect to, the appointment and replacement of the Retirement Scheme Administrator, and where applicable, any other Service Provider, including a provision that the Retirement Scheme Administrator shall have power to replace any Service Provider and any other person providing other services to the Scheme, and including the right of the MFSA to require such replacement. There shall be provisions to ensure the protection of Members and Beneficiaries in such circumstances;
- 1.5 identify the basis upon which any Director (in the case of a SICAV), or any Service Provider and any other person providing services to the Scheme may charge remuneration and expenditure to the Scheme; the method of calculation and the nature of the costs to be borne by the Scheme; and the basis on which any other costs or expenses may be charged to the Scheme;
- 1.6 in the case where a Scheme is investing solely in a Retirement Fund, the deed constituting the Retirement Scheme may provide that Members’ contributions are to be channelled through sub-funds within the Retirement Fund;
- 1.7 outline the procedure for the amendment of:
 - i. the Constitutional Document;
 - ii. any agreement between the Scheme or Retirement Scheme Administrator and a Service Provider and any other person providing services to the Scheme;

- iii. the Scheme's Document, Scheme's Particulars or similar document giving details of the Scheme;
- iv. any other document affecting the rights of the Members, Beneficiaries and /or Contributors of the Scheme; and
- v. a business plan submitted to the MFSA;

1.8 The Constitutional Document shall also provide for the duties of the Custodian as follows:

- (a) the Custodian shall ensure that the sale, issue, repurchase, redemption and cancellation and withdrawal of units effected on behalf of the Scheme are carried out in accordance with MFSA's requirements, the Constitutional Document and the most recent Scheme Document and Scheme Particulars;
- (b) the Custodian shall carry out the instructions of the Retirement Scheme Administrator, the Investment Manager, the Scheme (as applicable) unless they conflict with the Standard Licence Conditions or the Constitutional Document, Scheme Document or Scheme Particulars;
- (c) the Custodian shall ensure that in transactions involving a Scheme's assets, any consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;
- (d) the Custodian shall ensure that a Scheme's income is applied in accordance with the Constitutional Document, Scheme Document or Scheme Particulars;
- (e) the Custodian shall not enter into a contract for the sale of assets unless such assets belong to the Scheme;
- (f) the Custodian shall notify the MFSA of any breach of the Standard Licence Conditions or of any breach of the provisions of the Constitutional Document, Scheme Document or Scheme Particulars, as soon as it becomes aware of the breach;
- (g) the Custodian must exercise due care and diligence in the discharge of its duties and will be liable to the Scheme, the Retirement Scheme Administrator and the Investment Manager and the Unitholders for any loss suffered by them as a result of its failure to perform its obligations or its improper performance of them. It shall be provided that unitholders shall be able to enforce this liability either directly or indirectly through the Retirement Scheme Administrator depending on the legal nature of the relationship between the Custodian, the Retirement Scheme Administrator and the unitholders;
- (h) the liability of a Custodian will not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping;

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

- 1.9 the conditions, procedures and limits for the creation and cancellation, redemption or withdrawal of Units;
- 1.10 the procedures and circumstances for the temporary suspension of the calculation of the net asset value and redemption of units. Suspension may be provided for only in exceptional circumstances where circumstances so require and suspension is justified having regard to the interests of Unitholders;
- 1.11 that the value of the Scheme’s units shall be issued or sold at a price arrived at by dividing the net asset value of the Scheme calculated on the approved basis by the number of Units outstanding. Such value may be adjusted for duties and charges;
- 1.12 that Units shall not be issued, or if issued must be cancelled or withdrawn, unless the equivalent of the net issue price is paid into the assets of the Scheme within time limits specified in the Constitutional Document; provided that this provision shall not preclude the issue of bonus Units;
- 1.13 that the value of the Scheme’s Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the Scheme calculated on the approved basis by the number of Units outstanding. Such price may be decreased by duties and charges;
- 1.14 that the Scheme shall be bound to repurchase its Units on the retirement of, or death of a member of the scheme on such terms as may be provided in its Constitutional Document;
- 1.15 that the Retirement Scheme Administrator shall issue registered certificates representing one or more portions of the Scheme, or written confirmation of entry in the register of Units or fractions of Units;
- 1.16 that rights attaching to fractions of Units shall be exercisable in proportion to the fractions of a Unit held except for voting rights which shall only be exercisable in whole Units;

Supplementary Conditions for Schemes established as Umbrella Funds

- 1.17 provide that the assets and liabilities of each Sub-fund shall be treated for all intents and purposes at law as a patrimony separate from the assets and liabilities of each other Sub-fund of such Retirement Fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other Sub-fund and shall not be available for any such purpose and in accordance with relevant regulations as may be applicable;
- 1.18 provide that the actual value of the paid up share capital of any Sub-fund shall be at all times equal to the value of the assets of any kind of the particular Sub-fund after

the deduction of such Sub-fund's liabilities and this in lieu of what is stated in article 84(2)(c)(i) of the Companies Act (Cap. 386).