

**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

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**PENSION RULES FOR SERVICE PROVIDERS ISSUED  
IN TERMS OF THE RETIREMENT PENSIONS ACT, 2011**

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## **INTRODUCTION**

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## ***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 these Pension Rules.

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 it is duly licensed under the Act. The Act also prohibits a person from providing any back-office administrative activities detailed in these Pension Rules issued by the Malta Financial Services Authority (“MFSA”), 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 regarding Service Providers of a Retirement Scheme and/or Retirement Fund or of a similar or equivalent arrangement overseas.<sup>1</sup>

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

### ***Structure of the Pensions Rules for Services Providers***

These Pension Rules for Services Providers are divided into six main parts:

- Part A specifies the licensing process and applicable criteria applicable to Service-Providers;
- Part B sets out the Standard Licence Conditions applicable to Service-Providers;
- Part C set out the standard recognition requirements applicable to Recognised Back-Office Administrators;
- Part D sets out the standard rules for Introducers;
- Part E includes the Appendices.
- Part F contains Application Forms and related information.

### ***General***

Any questions concerning the contents of these Pension Rules and their practical application should be addressed to the Insurance and Pensions Supervision Unit of the MFSA.

Copies of these Pension Rules can be downloaded from the MFSA's web site ([www.mfsa.com.mt](http://www.mfsa.com.mt)).

These Pension Rules 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.

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<sup>1</sup> There are separate Pension Rules for Occupational Retirement Schemes, Personal Retirement Schemes, and Retirement Funds. These are available from the MFSA web-site.



## **PART A**

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**AN OVERVIEW OF THE LICENSING and/or RECOGNITION  
REQUIREMENTS APPLICABLE TO SERVICE PROVIDERS  
OPERATING IN / OR FROM MALTA, IN TERMS OF THE  
RETIREMENT PENSIONS ACT, 2011 (“the Act”)**

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### ***A.1 Service Provider - Definition***

In terms of article 2 of the Act, a “service provider” means any person:

- (a) licensed under the Act to provide any one or more of the services listed in the Schedule and, or;
- (b) recognised to provide any one or more of the back-office administrative activities established by Pension Rules,

in relation to a Retirement Scheme or Retirement Fund or to a similar or equivalent arrangement overseas.

## ***A.2 Licensable Activities under the Act***

### ***2.1 What Constitutes Licensable Activity***

Licensable activity takes place when any one or more of the services listed in the Schedule of the Act is provided, in or from within Malta, in relation to an instrument as per the Investment Services Act and carried out in relation to a Retirement Scheme and/or Retirement Fund or in relation to a similar or equivalent arrangement overseas.

The Schedule to the Act lists the following services:

1. *Retirement Scheme Administration*
  - administering the operation of a Retirement Scheme
2. *Custodian or Trustee Services*
  - acting as custodian or trustee of a Retirement Scheme
  - acting as custodian or trustee of a Retirement Fund
3. *Investment Management*
  - management of the assets of a Retirement Scheme
  - management of the assets of a Retirement Fund

For the purposes of this paragraph, investment management means managing or agreeing to manage assets belonging to a retirement scheme or retirement fund on behalf of a retirement scheme or retirement fund if those assets consist of or include one or more instruments or the arrangements for their management are such that the person may manage those assets to invest in one or more instruments.

Reference in the said Schedule to a Retirement Scheme or to a Retirement Fund also includes reference to a similar or equivalent arrangement established overseas within the meaning of article 6 of the Act.

For the purposes of this Act, an "instrument" means any instrument, contract or right falling within the Second Schedule to the Investment Services Act (Cap.370), whether or not issued in Malta.

### ***2.2 Requirement for a Licence***

Article 6 of the Act states:

“(1) No person shall provide or hold itself out as providing any one or more of the services listed in the Schedule in or from within Malta to a retirement scheme or retirement fund or to a similar or equivalent arrangement established overseas, unless it is duly licensed under this Act.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall 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 this Act.”

A licence is required whether the service is being provided in Malta or from Malta. If the service is being provided in Malta to an overseas retirement scheme or fund, a licence is required. If the service is being provided overseas, from outside Malta, under article 6(2) of the Act a licence is required if it is being provided by a body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta. The purpose of article 6(2) is to make it illegal to use Malta as a base for providing services overseas without having a licence. In practice the MFSA is unlikely to grant a licence to an applicant who intends to carry out licensable activities overseas unless the services will be offered in a territory which is adequately regulated.

Under article 37 of the Act, regulations may be issued providing for exemptions from the requirement to have a licence under the Act. The exemptions are set out in the Retirement Pensions (Exemption) Regulations, 2014, as applicable.

### **2.3 Licensed Service-Providers**

A service-provider carrying out licensable activities under the Act is also known as a Licence Holder.

An Applicant may apply to provide one or more of the services listed in the Schedule to the Act. The provision of custody services and investment management services is mutually exclusive and may either be provided by the Retirement Scheme Administrator itself or outsourced to third parties specifically licensed to provide the services in question.

The nature of the activities a licence holder will be able to provide will be described in the Licence.

The applicable fees and financial resources requirements are determined by the activities covered by the Licence held.

#### **2.3.1 Retirement Scheme Administrator**

An entity licensed under the Act to provide Retirement Scheme Administration Services to a Retirement Scheme is called a *Retirement Scheme Administrator*. In this regard, a *Retirement Scheme Administrator*:

- (a) is responsible for the overall operation of a Retirement Scheme in accordance with the Scheme’s Constitutional Document, Scheme Document and Scheme Particulars and in the case of Retirement Schemes established by contract or as trusts, for all functions of the Retirement Scheme not attributed by the Scheme Document or the Act to the Contributor(s) or the Members or Beneficiaries; and

- (b) shall perform all duties stipulated in Part B1 of these Pension Rules, associated with the overall operation and ordinary day-to-day administration of the Retirement Scheme, unless otherwise delegated to third parties as permissible in terms of these Pension Rules.

In the case of a Retirement Scheme established as a Trust, the Retirement Scheme Administrator shall not require further authorisation in terms of the Trusts and Trustees Act (Cap. 331) provided that such trustee services are limited to retirement schemes.

### ***2.3.2 Retirement Scheme / Fund Investment Manager***

An entity licensed under the Act to provide investment management services to a Retirement Scheme or Retirement Fund. The Retirement Scheme Administrator may also be licensed to carry out the investment management function to a Retirement Scheme where it is fit and proper and has the required expertise and competence.

### ***2.3.3 Retirement Scheme / Fund Custodian***

An entity licensed under the Act to provide custody services to a Retirement Scheme or Retirement Fund..The Retirement Scheme Administrator may also be licensed to carry out custody services to a Retirement Scheme, where it is fit and proper and has the required expertise and competence.

### ***A.3 Recognised Activities under the Act***

#### ***3.1 What Constitutes Recognisable Activity***

For the purposes of article 7 of the Act, the MFSA may from time to time, issue Pension Rules laying down the requirements for recognition, including establishing which activities constitute administrative services for the purposes of this article. Recognisable activity takes place when a person carries out one or more of the back-office administrative activities stipulated in Part C of these Pensions Rules, in relation to a Retirement Scheme or Retirement Fund, or in relation to a similar or equivalent arrangement overseas

#### ***3.2 Requirement for a Recognition***

Article 7 of the Act states:

“Any person who, in or from within Malta, provides to licence holders, or to similar or equivalent persons overseas, any one or more of the back-office administrative activities, as established by Pension Rules which do not themselves constitute a licensable activity under this Act, shall be required to apply for recognition by the MFSA under this article, and no person shall provide such activities unless he is so recognised.”

#### ***3.3 Recognised Back-Office Administrator***

An entity recognised under the Act to provide one or more of the back-office administrative activities stipulated in Part C of these Pension Rules in relation to a Retirement Scheme is known as a *Retirement Scheme Back-Office Administrator*, and when provided in relation to a Retirement Fund, is known as a *Retirement Fund Back-Office Administrator*.

## ***A.4 Licensing and/or Recognition Criteria / Requirements for Service-Providers operating in / or from within Malta***

### ***4.1 Licensing and/or Recognition Criteria***

#### ***4.1.1 General***

In terms of article 9 of the Act, when considering whether to grant or refuse a licence and/or recognition, the MFSA shall, in particular, have regard to:

- (a) the protection of Beneficiaries, Members and Investors;
- (b) the promotion of competition and choice; and
- (c) the reputation and suitability of the applicant and in the case of a retirement scheme and, or retirement fund, the persons responsible thereof, and all other parties connected with the retirement scheme and, or the retirement fund as the case may be.

In addition, in order to grant a licence and/or recognition to a Service-Provider, the MFSA must be satisfied that the Applicant is a fit and proper person to provide the services concerned. The "fit and proper" test is one which an Applicant and a Licence Holder and/or Recognised Person 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 Applicant and Licence Holder / Recognised Person. It is not the duty of the MFSA to prove that an applicant is not fit and proper either on licensing or thereafter. The MFSA's approach is cumulative - that is to say the MFSA may conclude that a Licence Holder / Recognised Person has failed the test on the basis of considering several situations, each of which on its own would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether a Licence Holder / Recognised Person is 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 inaccurate, false or misleading information.

In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test:

- (a) integrity;
- (b) competence; and
- (c) solvency.

*Integrity* involves the Licence Holder / Recognised Person and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties.

*Competence* means that those people carrying on the business of the Licence Holder / Recognised Person must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. Individuals should have a sufficient understanding of the business,

and of the services and instruments (including the related markets) with which they are dealing. The MFSA will take into account the qualifications, experience and skills of those involved.

*Solvency* means ensuring that proper financial control and management of liquidity and capital is applied. The business should have sufficient financial resources to meet not only the financial demands on the business but also the financial resources requirements established by the MFSA.

Moreover, in order to grant a licence and/or recognition to a Service-Provider, the MFSA must be satisfied that the Applicant will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder and that no aspect of or related to the application raises any regulatory concerns. The MFSA will not license or recognise a Service Provider under the Act unless it is satisfied that the entity concerned has the business organisation, systems, and set-up required to perform its duties in terms of such licence or recognition. Sound and prudent management, adequate resources, and a scrupulous attitude towards clients are essential. The business should be well organised, it should have adequate controls, and it should maintain sufficient records to demonstrate these attributes.

#### ***4.1.2 Licensing Criteria applicable to Retirement Scheme Administrators***

In addition to the criteria set out in paragraph 4.1.1 of Part A to the Pension Rules for Service Providers, any investment management or custody function (as applicable) and/or back-office administration duties relating to a Retirement Scheme carried out by the Retirement Scheme Administrator, must satisfy the MFSA (on an on-going basis) that it shall have administration systems and staff who are qualified by their ability, knowledge and practical experience of financial matters, administration and investment management to discharge such administration and investment management role (as applicable); and that such persons will devote sufficient time and have available to them sufficient resources to carry out such functions to an acceptable standard.

#### ***4.1.3 Recognition Criteria particular to Back-Office Administrators***

The MFSA will only grant the Applicant recognition, if it is satisfied of its fit and proper status, including that of all persons connected thereto, in particular its directors and qualifying shareholders. Moreover, the MFSA will need to be satisfied that proper systems are in place or in the case of in-house administration by employers of their own occupational retirement scheme, and that proper monitoring arrangements are put in place between the employer and the Retirement Scheme Administrator or Scheme/Fund. The recognised Administrator will not be subject to any on-going requirements or conditions, other than those specified in Section C.2 of the Pension Rules for Service Providers or which may be specified in the recognition certificate issued by the MFSA.



## **4.2 Independence Requirements**

### **4.2.1 Retirement Scheme Administrators**

The following independence requirements would need to be satisfied by a Retirement Scheme Administrator:

- (a) The Retirement Scheme Administrator shall be a separate and independent person from the Contributor(s) of an Occupational Retirement Scheme where the Contributor is the sponsoring employer. The Retirement Scheme Administrator shall act independently from such a Contributor(s) of any Occupational Retirement Scheme for which it is a Retirement Scheme Administrator and shall act in the best interests of the Members and Beneficiary(ies).

While such independence does not preclude such a Contributor from being represented in connection with the Occupational Retirement Scheme, the governance arrangements shall be such that the operational independence of the Retirement Scheme Administrator from such a Contributor(s) is not prejudiced.

- (b) It is a requirement that in the case of an Retirement Scheme and Retirement Fund, the investment management duties and the custody function are carried out by two separate and independent entities. Where applicable, the Retirement Scheme Administrator carrying out the investment management function would be required to comply with this independence requirement.
- (c) It is a requirement that in the case of a Scheme established as a SICAV, the scheme is independent from the entities undertaking the investment management and custody function of the Scheme. Where applicable, the Retirement Scheme Administrator carrying out the investment management function would be required to comply with this independence requirement.

### **4.2.2 Retirement Scheme / Fund Investment Managers**

The following independence requirements would need to be satisfied by an Investment Manager:

- (a) The Retirement Scheme / Fund Investment Manager shall be separate and independent from the entity providing custody services to the Retirement Scheme or Retirement Fund, as applicable.
- (b) It is a requirement that in the case of a Retirement Fund or Retirement Scheme established as a SICAV, the Scheme or Fund is independent from the entity undertaking the investment management function or the custody function of the Scheme or Fund. Where applicable, the Retirement Scheme Administrator carrying out the investment management function would be required to comply with this independence requirement.

### 4.2.3 Retirement Scheme / Fund Custodians

The following independence requirements would need to be satisfied by a Custodian:

- (a) The Retirement Scheme / Fund Custodian shall be independent from the Contributor to an Occupational Retirement Scheme where this is the sponsoring employer. The Retirement Scheme / Fund Custodian must also satisfy the independence requirements specified in regulations 18 and 19 of the Retirement Pensions (Control of Assets) Regulations, 2014
- (b) The Retirement Scheme / Fund Custodian shall be separate and independent from the Investment Manager of a Retirement Scheme / Fund.

### 4.3 Financial Resources Requirements

In terms of section 4.1 of Part A of these Pension Rules, Retirement Scheme Administrators, and Retirement Scheme / Fund Investment Managers and Retirement Scheme / Fund Custodians licensed under the Act shall be required to satisfy the following financial resources requirements:

- (a) *Net Tangible Assets Requirement*  
Net Tangible Assets should (where applicable) exceed the following minimum Net Tangible Asset Requirement:

|                                 |           |
|---------------------------------|-----------|
| Retirement Scheme Administrator | € 116,500 |
| Investment Manager              | € 116,500 |
| Custodian                       | € 125,000 |

- (b) *Expenditure Based Requirement*  
Liquid capital should exceed the higher of €11,650 and 25 % of the Expenditure Based Requirement:

The Expenditure Based Requirement is determined by reference to the Annual Expenditure as defined in Appendix I.

Although the requirement is based on the latest audited financial statements, the Applicant should consider the potential requirement in relation to the latest period for which information is available, in order to avoid the possibility of a breach occurring when the audited financial statements are formally approved. In the case of a company's first period of account, the Expenditure Based Requirement shall be computed on the basis of the best available estimates for the period concerned. This figure shall be agreed to by the MFSA.

Where audited financial statements cannot be provided by an Applicant, the MFSA will require the auditor's confirmation that financial resources are in place and that they meet the Financial Resources Requirements at a date prior to the granting of the licence.

Where an entity is licensed as a Retirement Scheme Administrator and managing the investment of assets of a Retirement Scheme, it shall be required to comply with only one set of financial resources requirements. Where an entity is licensed as a Retirement Scheme Administrator and is also licensed to carry out the custody function, it shall be required to comply with financial resources requirements applicable to custodians.

#### ***4.4 The Application Process***

##### ***4.4.1 Application for licensing or recognition of Service Providers***

A Service Provider is ordinarily expected to apply for a licence and/or recognition as part of a related application for the licensing of a Retirement Scheme or Retirement Fund. In such circumstances, the Applicant's licence will be dealt with as part of the overall process of licensing the Retirement Scheme and/or Retirement Fund concerned.

##### ***4.4.2 Services to Multiple Retirement Schemes and/or Retirement Funds***

Although a licence and/or recognition of a Service Provider will normally be by reference to a particular Retirement Scheme or Retirement Fund, a licence and/or recognition allows that Service Provider to act as such in relation to other Retirement Schemes or Retirement Funds, as applicable.

##### ***4.4.3 Abridged Application Processes***

###### ***(a) Retirement Scheme Administrator***

An abridged application process shall apply in the case where a company applying for licensing as a Retirement Scheme Administrator is:

- i. already licensed under the Investment Services Act, 1994, as a Category 2 or 3 Investment Services Licence Holder to provide the relevant services.
- ii. already authorised to carry out long term business under the Insurance Business Act, 1998 in class VII – 'pension fund management'.
- iii. in the case of a Retirement Scheme established as a trust, a Corporate Trustee already licensed to provide trustee services under the Trusts and Trustees Act, 1988.

***(b) Retirement Scheme / Fund Investment Manager***

An abridged application process shall apply in the case where a company applying for licensing as a Retirement Scheme / Fund Investment Manager is already licensed under the Investment Services Act, 1994, as a Category 2 or 3 Investment Services Licence Holder to provide the relevant services.

***(c) Retirement Scheme / Fund Custodian***

An abridged application process shall apply in the case where a company applying for licensing as a Retirement Scheme / Fund Custodian is already licensed under the Investment Services Act, 1994 to act as as Custodian or a credit institution licensed under the Banking Act.

***(d) Retirement Scheme / Fund Back-Office Administrator***

An abridged application process shall apply in the case where a company applying for recognition as a Retirement Scheme / Fund Back-Office Administrator is in possession of a recognition certificate issued under the Investment Services Act, 1994 to provide back-office administration services.

***4.4.4 Full Application Process***

The full application process applies where the applicant may not avail of the abridged application process.

A request for licensing and/or recognition should be made by submitting a duly completed Application for licensing and/or recognition in the form set out in the relevant Schedules in Part F of these Pension Rules supported by the following:

- (a) a three year business plan including a description of the nature of the applicant's business and relevant experience including a description of the services to be provided and minimum three year financial projections; and
- (b) details as to whom such services will be provided i.e. nature and type of Retirement Schemes and/or Retirement Funds to be serviced or Retirement Scheme Administrator, as applicable;
- (c) a copy of any proposed agreement between the Service Provider and the Retirement Scheme or the Retirement Fund and/or any third party service provider;
- (d) an application fee (as and where applicable);
- (e) a copy of the deed of incorporation of the entity;

- (f) a duly completed Personal Questionnaire by each Director and qualifying shareholders and any person who will hold a key function within the entity;
- (g) address of the premises in Malta from where the services will be rendered and contact details;
- (h) a copy of the most recent audited financial statements of the corporate entity, where these are not available within the MFSA.

The difference between the abridged and full application process relates primarily to the extent of detail which the MFSA will request upon application for licensing and/or recognition under the Act, in that relevant information regarding the entity in question which is already known to MFSA by virtue of the entity's regulated status under the Investment Services Act, 1994 or Insurance Business Act, 1998, the Banking Act, 1994 or the Trust and Trustees Act, 1988 as may be the case, will be taken into account.

For the avoidance of doubt, all entities, whether applying through the abridged or full application process, will be required to satisfy the MFSA that they possess the appropriate organisational set-up, systems, experience and expertise for the effective performance of their duties under the Act.

#### ***4.4.5 Role of the Compliance Officer***

The MFSA requires Service Providers to adhere strictly to the requirements imposed under the law, the regulations and other rules in force. As part of the licensing process, every Applicant will be asked to identify one individual who will be responsible for ensuring the Service Provider's adherence to the Standard Licence Conditions listed in Part B of these Pension Rules.

The role of a Compliance Officer is honourous – not least because of the extent of responsibility and the possibility of censure by the MFSA if problems arise. No individual should accept this responsibility lightly – and certainly not without due consideration of the information that follows. Compliance Officers are advised to ensure they are clear about the extent of responsibilities. Compliance Officers should also be clear whether they could be held personally responsible in the event of a problem. Some specific points that Compliance Officers should consider are:

- (a) as the person made responsible for all aspects of compliance, the Compliance Officer will be expected to demonstrate independence of judgement and to exercise proper day-to-day supervision and control over the activity of the entity as a Service Provider under the Act.
- (b) in order to be able to satisfy these requirements, the Compliance Officer must familiarise him/herself thoroughly with the Standard Licence Conditions that attach to the Service Provider's licence as well as any relevant Guidance issued by MFSA and take steps to ensure that the Service Provider's staff are familiar

with those Standard Licence Conditions that are relevant to their role within the entity.

- (c) in particular, the Compliance Officer must pay particular attention to paragraph 4.1.7 of Part B of these Pension Rules which requires the Service Provider to establish, implement and maintain adequate policies and procedures to identify breaches by the Service Provider of the applicable regulatory requirements, and to minimise the risk of such breaches.
- (d) the MFSA also expects the Compliance Officer not to breach, or to permit breaches by others, of internal control procedures and systems or Standard Licence Conditions imposed upon the Service Provider's business by the MFSA. If the Compliance Officer becomes aware of such breaches, (s)he is expected to draw them to the attention of the person concerned and, where appropriate, to the attention of the Board of Directors. All such breaches and action taken as a result should be recorded in writing. The Compliance Officer is to notify the MFSA of any breach of any Standard Licence Conditions upon becoming aware of such a breach.
- (e) the MFSA also expects the Compliance Officer to ensure, as far as is possible, that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.
- (f) the MFSA requires very high standards of conduct and compliance from all its Service Providers. Consequently, a breach of any Standard Licence Condition, and in particular, evidence of bad faith, lack of care and concern for the interests of customers, deceptive acts and behaviour, and incompetence, are all considered to be serious matters.
- (g) the MFSA considers it important to ensure that Compliance Officers understand the requirements placed upon them and always stands prepared to discuss any doubts, worries, suspicions or queries that may arise from time to time in respect of their role.

Before a Compliance Officer is appointed, the Service Provider must formally propose appointment to MFSA, after having conducted its own due diligence checks. The MFSA will then write to the person proposed reminding the said person of the nature of the role and asking that person to confirm in writing his/ her understanding of the requirements and their acceptance of the responsibilities attached to the Compliance role.

#### ***4.4.6 Role of the Money Laundering Reporting Officer***

Service Providers carry on "relevant financial business" for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008. Accordingly, besides adhering to the Prevention of Money Laundering Act, 1994, Licence Holders are required to

adhere to the Regulations and any Implementing Procedures and any guidance notes issued by the Financial Intelligence Analysis Unit.

Regulation 15 of the Prevention of Money Laundering Regulations and the Funding of Terrorism Regulations requires the appointment of a Money Laundering Reporting Officer.

The person assuming this role may or may not act as Compliance Officer having the duties outlined in paragraph 4.4.5 above. The role of the Money Laundering Reporting Officer is an onerous one and should only be accepted by individuals who fully understand the extent of responsibilities attached to the role.

In this regard, particular attention should be given to the following:

- (a) The Money Laundering Reporting Officer should familiarise himself/herself thoroughly with the Prevention of Money Laundering Act, 1994, the Regulations and as well as the Implementing Procedures and any guidance notes issued by the Financial Intelligence Analysis Unit.
- (b) The Money Laundering Reporting Officer should also ensure that all staff are familiar with the legislation referred to in paragraph (a) above and that regular training is being given in this regard. Note is to be taken of training that has been carried out and records retained of the persons trained and the date of such training. Care should also be taken when new staff is recruited to ensure that they receive the necessary training.
- (c) Any suspicious transactions are to be reported by the money laundering reporting officer directly to the Financial Intelligence Analysis Unit, even if the transaction is not carried out.
- (d) The money laundering reporting officer is to set up an internal reporting procedure to ensure that staff can report any such transactions without hindrance and that clear reporting lines are in place.
- (e) The money laundering reporting officer should ensure that proper Customer Due Diligence procedures are in place and that the procedures set out in the Implementing Procedures relating to the identification and verification of natural or legal persons are complied with

Before a Money Laundering Reporting Officer is appointed, the Licence Holder must formally propose appointment to the MFSA, after having conducted its own due diligence checks. MFSA will then write to the person proposed reminding that person of the nature of the role and asking that person to confirm (in writing) his/ her understanding of the requirements and their acceptance of the responsibilities attached to the role of Money Laundering Reporting Officer.

#### ***A.5 The Licensing and/or Recognition Process for Retirement Scheme Administrators, Investment Managers, Custodians and Back-Office Administrators***

- (a) The Pension Rules for Service Providers should be read carefully before an Application Form for licensing or recognition 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 and/or recognition, 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 F of these Pension Rules for Service Providers 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 / recognition 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 Service Providers may be not 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 / recognition 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 / recognition 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/recognition matters prior to formal commencement of business.

## ***A.6 Fees***

Reference should be made to the Retirement Pensions (Fees) Regulations, 2014 as may be amended from time to time, for details of the applicable 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 Fees are payable on the day the licence or recognition is issued and thereafter annually, upon the anniversary of that date. Details of the applicable fees and can be downloaded from the MFSA's website.

### ***A.7 Standard Licence Conditions for Persons Licensed / Recognised under the Act***

The detailed Standard Licence Conditions for persons licensed / recognised under the Act are stipulated in the Act itself, in these Pension Rules issued by the MFSA, and in Regulations which may be issued from time to time.

The detailed Standard Licence Conditions applicable are set out in Part B and Part C of these Pension Rules. While the Standard Licence Conditions should be sufficiently flexible to operate in a range of different situations, they may be supplemented or varied from time to time, or varied to reflect particular circumstances. A person licensed / recognised under the Act will be notified of any 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 / recognition.

The MFSA has the right, at any time and from time to time, to vary or revoke any licence condition (without compromising regulatory standards) or impose new Standard Licence Conditions.

**PART B.1**

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**PENSION RULES FOR RETIREMENT SCHEME ADMINISTRATORS**

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## ***B.1.1 Responsibilities, Duties, Governance and Operations***

### ***Responsibilities and Duties***

- 1.1.1 A Retirement Scheme Administrator (“Scheme Administrator”), shall be responsible for the overall operation and oversight of an Occupational or Personal Retirement Scheme (“the Scheme”) in accordance with the Scheme’s Constitutional Document, Scheme Document and Scheme Particulars. The Scheme Administrator shall perform all duties stipulated in section B.1.3 of Part B.1 of these Pension Rules, associated with the overall operation and ordinary day-to-day administration of a Scheme, unless otherwise delegated to third parties as permissible in terms of these Pension Rules.
- 1.1.2 In the case of a Scheme established as a trust or in contractual form, the Retirement Scheme Administrator shall assume and carry out on behalf of the Scheme, any functions and obligations applicable to the Scheme under the Act and the regulations prescribed thereunder, as well as the requirements specified in these Pension Rules.
- 1.1.3 In the case of a Scheme established as a SICAV, the Retirement Scheme Administrator shall carry out such functions applicable to the Scheme under the Act and the regulations prescribed thereunder, as well as the requirements specified in these Pension Rules related to the overall operation, management and administration of the Scheme, and as entrusted by the Board of Directors of the Scheme.
- 1.1.4 \_The Retirement Scheme Administrator, may also act as Investment Manager or as a Custodian of a Retirement Scheme, in which case it will also be subject to the Pension Rules for Investment Managers in Part B.2 of these Pension Rules or the Pension Rules for Custodians in Part B.3 of these Pension Rules, and subject to the satisfaction of the independence requirements applicable to the Investment Manager or the Custodian of a Retirement Scheme.

### ***Governance***

- 1.1.5 A Scheme Administrator licensed under the Act shall be a company operating in and shall have an established place of business in Malta.
- 1.1.6 The Scheme Administrator’s business shall be effectively directed or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and experienced so as to ensure the sound and prudent management of the Scheme Administrator’s business.

Moreover, the Scheme Administrator shall take reasonable steps to ensure continuity and regularity in the performance of its activities. To this end, the Scheme Administrator shall employ appropriate and proportionate systems, resources and procedures.

- 1.1.7 The Scheme Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Scheme Administrator.
- 1.1.8 The Scheme Administrator shall at all times have a Compliance Officer and Money Laundering Reporting Officer (who may be the same person) in accordance with the conditions specified in section B.4.2 of Part B.4 of these Pension Rules ‘Appointment of Compliance Officer and Money Laundering Reporting Officer’.

### ***Independence Requirements***

- 1.1.9 The Scheme Administrator should comply with the following independence requirements:
- (a) The Retirement Scheme Administrator shall be a separate person from the Contributor(s) of an Occupational Retirement Scheme where the Contributor is the sponsoring employer. The Retirement Scheme Administrator shall act independently from such Contributor(s) of any Occupational Retirement Scheme for which it is a Retirement Scheme Administrator and shall act in the best interests of the Members and Beneficiary(ies).

While such independence does not preclude such a Contributor from being represented in connection with the Occupational Retirement Scheme, the governance arrangements shall be such that the operational independence of the Retirement Scheme Administrator from such a Contributor(s) is not prejudiced.

- (b) It is a requirement that in the case of a Retirement Scheme the investment management function and the custody function are carried out by two separate entities independent from each other. Where applicable, the Retirement Scheme Administrator carrying out the investment management function would be required to comply with this independence requirement.
- (c) Where a Retirement Scheme is established as a SICAV, the Scheme shall be independent from the entities undertaking the investment management and the custody functions of the Scheme. Where applicable, the Retirement Scheme Administrator carrying out the investment management function should comply with this independence requirement.

## *Activities*

- 1.1.10 The activities of the Scheme Administrator shall ordinarily be limited to retirement benefits-related operations and activities arising therefrom. Provided that, this shall not preclude the Scheme Administrator from being involved in other activities not related to the Act, provided such other activities are considered to the satisfaction of the MFSA as not creating a conflict of interest with the Scheme Administrator's duties and do not expose the Scheme Administrator to undue risks. Such Scheme Administrators are required to ring-fence all assets and liabilities related to the Retirement Scheme and manage and organise their business in connection with the Retirement Scheme, separately from the other activities without any possibility of transfer, as may be agreed with the MFSA.
- 1.1.11 The Scheme Administrator may provide the services for which it is duly licensed under the Act solely to Retirement Schemes or similar equivalent arrangements overseas. Without prejudice to SLC 1.1.10 above, where the Scheme Administrator is to provide services to other parties, it shall ensure that it has the required licence, approval or authorisation in terms of any other applicable law prior to undertaking such activities.
- 1.1.12 The Scheme Administrator shall commence its business within twelve months of the date of issue of its Licence under the Act. If, for any reason the Scheme Administrator is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Act.
- 1.1.13 The Scheme Administrator shall comply with:
- (a) all applicable laws and regulations including without limitation, the Act, the regulations and Pension Rules prescribed thereunder to which it is subject as may be amended from time to time;
  - (b) the Scheme's Constitutional Document, the Scheme Document, the Scheme Particulars and any other binding agreements, statements or documents specifying how the Retirement Scheme will be operated.
- 1.1.14 The Scheme Administrator shall have internal control mechanisms and administrative and accounting procedures which permit verification of their compliance with these Pension Rules. The Scheme Administrator shall also have effective procedures for risk assessment and management as well as effective control and safeguard arrangements for information processing systems.

### ***B. 1.2 Financial Resources and Insurance Arrangements***

- 1.2.1 The Scheme Administrator shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Scheme Administrator shall comply with the financial resources requirements specified in section 4.3 of Part A and section B.4.3 of Part B of these Pension Rules.
- 1.2.2 The Scheme Administrator shall take out and maintain adequate insurance cover. The Scheme Administrator shall as a minimum obtain cover in respect of loss of money or loss or damage to any other asset or property belonging to the Scheme Administrator or which are in the care, custody or control of the Scheme Administrator or for which the Scheme Administrator is responsible (unless otherwise agreed with the MFSA). The policy shall be governed by Maltese law.

The Scheme Administrator shall within one month of renewal of the insurance policy provide the MFSA with a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Pension Rules.



### ***B.1.3 Duties of Retirement Scheme Administrators***

#### ***General Duties***

- 1.3.1 The Scheme Administrator shall act in the best interests of the Scheme Members and Beneficiaries.
- 1.3.2 The Scheme Administrator shall not enter into a contract for the sale of assets when such assets are not in the ownership of the Scheme.
- 1.3.3 The Scheme Administrator shall perform all duties associated with the ordinary or day-to-day operations of the Scheme, including but not limited to the following:
- (a) ensuring that all contributions are invested in accordance with the terms of the Scheme's Constitutional Document, Scheme Document and Scheme Particulars;
  - (b) arranging for the custody of the Scheme's assets;
  - (c) maintaining a Schedule of Payments for the Scheme containing the rates of contributions payable towards the Scheme by or on behalf of the employer and, where applicable, by any other Contributor(s) to the Scheme and the dates on which such contributions are to be paid. The form of the Schedule shall be as set out in Appendix 7 of the Pension Rules for Occupational Retirement Schemes and Appendix 7 of the Pension Rules for Personal Retirement Schemes
  - (d) ensuring that the Schedule of Payments is prepared and certified before the Scheme commences activities and is revised prior to the signing of subsequent actuarial valuation reports;
  - (e) ensuring that the Scheme has received all payments owed to it by any Contributor in the proper amounts and in a timely manner;
  - (f) ensuring that all income and proceeds received by the Scheme are applied in accordance with the terms of the Scheme Document and Scheme Particulars;
  - (g) ensuring that all disbursements are effected in accordance with the Scheme Documents and Scheme Particulars;
  - (h) where payments owed are not made in accordance with the Schedule of Payments, the Scheme Administrator has a duty to report this to the MFSA and Members if the payment is not received within 30 days of their due date. In addition, the Scheme Administrator shall take action to obtain payment as described in article 19 of the Act;

- (i) maintaining accurate records regarding the Scheme and the Scheme's Contributors, Member(s), and Beneficiaries in accordance with the Act, regulations and Pension Rules, as well as in accordance with the Scheme Document and Scheme Particulars, as applicable;
- (j) ensuring that the interests in any asset in which a Retirement Scheme may be invested, held for the benefit of a Member who is to receive payments under such Scheme, shall, upon the retirement, permanent invalidity, death or transfer of such Member to another Scheme, be redeemed or otherwise liquidated by the Scheme, and the value of such redemption or liquidation shall be made available to the Member or Beneficiary or as provided for in the Scheme Document and Scheme Particulars. In the case of Personal Retirement Schemes, established as a defined contribution schemes, *in specie* transfers of assets of a Scheme, are permitted as long as an independent valuation of that asset is obtained by the Retirement Scheme Administrator, unless the assets are traded on a recognised investment exchange..
- (k) ensuring that the Scheme is operated in accordance with the Scheme Document and Particulars and is in compliance with the Act, the regulations and applicable Pension Rules prescribed or issued thereunder and any other law to which the Scheme is subject;
- (l) ensuring that the Scheme Document and Scheme Particulars comply with the Pension Rules for Retirement Schemes issued under the Act;
- (m) ensuring compliance with any conditions of any applicable tax legislation for the Scheme's qualification for tax-exemption or tax-approval;
- (n) ensuring that the Scheme's Contributors, Members and Beneficiaries are sufficiently informed of the conditions of the Scheme and other matters as may be prescribed;
- (o) arranging for all necessary accounting, actuarial or other services;
- (p) maintaining accurate records regarding the net asset value of the Scheme in accordance with the Act, the Regulations issued thereunder and these Pension Rules and the Constitutional Document;
- (q) ensure that the net asset value of the Scheme and the respective entitlements to Members is calculated in accordance with the provisions of the Constitutional Document and Scheme Document; where the Scheme Administrator carries out the calculation of the Scheme's net asset value itself, it shall put in place an appropriate administration structure to ensure the exact calculation of the net asset value and detect any potential errors;
- (r) preparing the Scheme's Half Yearly and Annual Report in respect of each scheme year in accordance with the provisions of the Act and these Pension Rules and any other applicable laws, including a report as to whether the

Scheme has been managed in accordance with the Scheme's Investment Objectives, Scheme Document, Particulars and Constitutional Document and otherwise in accordance with the provisions of the Constitutional Document, Scheme Document and Particulars.

- (s) supervise the operation of the Scheme to ensure that the Investment Manager, where appointed, complies with the investment objectives, restrictions and borrowing powers of the Scheme; where the Scheme Administrator undertakes the management of the assets of the Scheme, it shall have procedures in place to ensure that the scheme is in compliance with any applicable investment restrictions and borrowing limitations.

***Supplementary Duties of Scheme Administrator acting for a Defined Benefit Scheme***

1.3.4 The Scheme Administrator shall have the following additional duties in relation to Defined Benefit Schemes:

- (a) ensuring that it establishes at all times the adequate amount of liabilities to reflect the financial commitments arising out of the Scheme(s) for which it acts as Scheme Administrator;
- (b) establishing by obtaining an actuarial valuation report whether, any ancillary cash plus the net asset value of the Scheme, equals or exceeds the present value of the future payment liability of the Scheme to its Beneficiaries;
- (c) ensuring at prescribed intervals that the contribution rates set out in the Schedule of Payments are such that the Scheme is expected to satisfy the minimum Technical Funding Requirement. The Scheme Administrator should establish whether this condition is met by obtaining certification by the actuary of the initial Schedule of Payments and obtaining an actuarial valuation report with an effective date as from the date of the anniversary of the commencement of the Scheme and, on an annual basis thereafter;
- (d) obtaining a certificate from the actuary stating the funding position of the Scheme, and whether in his opinion the contributions set out in the Schedule of Payments are adequate to maintain or achieve the minimum Technical Funding Requirement within/over 10 years (or average working lifetime of the contributing individuals if less) or before the Scheme winds up if earlier and indicating any relevant changes since the last valuation;
- (e) where an actuarial valuation shows that, on the effective date of the valuation, the value of the Scheme assets is less than the minimum Technical Funding Requirement, the Scheme Administrator shall take

action to ensure that the employer or Contributor, sets up a concrete and realisable plan to re-establish the required amount of assets to cover fully the technical provisions in due time. The plan shall be made available to Members, or where applicable to their representatives and shall be subject to approval by the MFSA. Thereafter, the Scheme Administrator shall ensure that the employer or Contributor makes an appropriate payment to the Scheme Administrator so that within the prescribed time-scale, the value of the Scheme assets is not less than the minimum Technical Funding Requirement. The required increase in the Scheme assets shall be achieved within 10 years (or average working lifetime of the contributing individuals if less) from the date the actuarial valuation is signed or before the date at which the Scheme is wound up if earlier. The Scheme Administrator shall liaise with the employer, and where applicable, any other Contributor to ensure that in drawing up the plan, account shall be taken of the specific situation, in particular the asset/ liability structure, risk profile, liquidity plan, the age profile of the Members entitled to receive retirement benefits, start-up schemes and schemes changing from non-funding or partial funding to full funding;

- (f) where an actuarial valuation reveals an under-provision relative to the minimum Technical Funding Requirement, if the required payment is not received so that the value of the Scheme assets is restored to at least the minimum Technical Funding Requirement within the periods prescribed in paragraph (d) (or other such period as the MFSA shall prescribe) notifying the MFSA, Members and Beneficiaries within 30 days of the end of the prescribed period and seeking to obtain the required payment in accordance with article 19 of the Act;
- (g) ensuring that any assets in excess of the Minimum Technical Funding Requirement shall not be distributed to a party other than to a Member or Beneficiary of the Scheme unless it is to provide a suspension or reduction in contributions paid by a Contributor or in such other manner as may be prescribed;
- (h) if in the opinion of the actuary there is an excessive overprovision of assets, the Scheme Administrator shall inform the MFSA and the provisions of regulation 7 of the Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2014 shall apply.
- (i) ensuring that the liabilities that represent future payment obligations to Beneficiaries, shall not be distributed to a party other than to a Member or Beneficiary of the Scheme, except in such manner as may be prescribed.
- (j) ensuring that it establishes at all times the adequate amount of liabilities to reflect the financial commitments arising out of the Scheme(s) for which it acts as Scheme Administrator;

- (k) ensuring that sufficient technical provisions have been established and are operated to deal properly with biometrical risks or guarantees of investment performance or level of benefits and that the same are calculated and certified by an actuary in line with principles regarding the calculation of the technical provisions stipulated in the Pension Rules for Occupational Retirement Schemes and for Personal Retirement Schemes;
- (l) ensuring that it does not underwrite the liability to cover any biometrical risk or guarantees on investment performance or given level of benefits for any Scheme for which it acts as Scheme Administrator;
- (m) calculating the appropriate equivalent actuarial value of accrued benefits where a Beneficiary wishes to transfer the value of her/his accrued benefits to another Scheme.

Where a Scheme Administrator is not resourced to carry out such calculation, the Scheme Administrator must either procure the necessary resources or otherwise the Scheme or the Scheme Administrator (as applicable) must appoint an appropriately qualified third party advisor to carry out this task on its behalf;

- (n) obtaining certification from an actuary that the method used to calculate the equivalent actuarial value of benefits to be transferred to another Scheme is appropriate.

***Supplementary Duties in the case of a Scheme established as a trust***

- 1.3.5 In the case of a Scheme established as a trust, the Scheme Administrator shall act as a trustee to the Scheme.

#### ***B.1.4 Records, Accounting and Reporting***

##### ***Records and Reporting***

- 1.4.1 The Scheme Administrator shall maintain sufficient records to be able to demonstrate its compliance and that of the Scheme with the Act, regulations the provisions of the Scheme Document, Scheme Particulars and Standard Licence Conditions.
- 1.4.2 The Scheme Administrator shall maintain accurate records regarding the Scheme and the Scheme's Member(s), Contributors and Beneficiaries.
- 1.4.3 The Scheme Administrator shall comply with the Accounting and Record Keeping Rules and Reporting Requirements specified in section B.4.3 of Part B.4 of these Pension Rules for Service Providers.

##### ***Complaints Procedure***

- 1.4.4 The Scheme Administrator shall ensure that adequate procedures for the reasonable and prompt handling of complaints are in place and for the recording of each complaint in line with Appendix II of Part E to these Pension Rules. This shall include the setting up of a "Complaints Register" within which the Scheme Administrator is to record every complaint and the action taken in its regard.

### ***B.1.5 Other General Conditions***

- 1.5.1 The Scheme Administrator shall be liable to the Scheme, its Contributor(s), Members and Beneficiaries for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or on part its obligations.

Moreover, the liability of the Scheme Administrator shall not be diminished if it has entrusted to a third party some of its functions.

Where the appointed third party is an affiliate of the Scheme Administrator, the latter shall be liable for any loss or prejudice suffered by the Scheme, its Contributor(s), Members and Beneficiaries as a result of any breach of duty or insolvency of such person.

- 1.5.2 The Scheme Administrator shall comply with the conditions laid out in the Retirement Pensions (Control of Assets) Regulations, 2014.
- 1.5.3 The Scheme Administrator shall also be subject to the conditions included in Part B.4 of these Pension Rules (General Rules for Licensed Service Providers), including the Conduct of Business Rules contained therein.

**PART B.2**

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**PENSION RULES FOR INVESTMENT MANAGERS**

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## ***B.2.1 Responsibilities, Duties, Governance and Operations***

### ***Responsibilities***

- 2.1.1 An Investment Manager shall be responsible for the investment management function of the assets of a Retirement Scheme (“the Scheme”) or of the assets of the Retirement Fund for which it acts as Investment Manager. Part B.2 of these Pension Rules shall apply *mutatis mutandis* to any person responsible for the investment management function of the Scheme or Fund.
- 2.1.2 The Investment Manager shall act in the best interests of the Members and Beneficiaries of the Scheme or Investors of the Retirement Fund, as applicable.
- 2.1.3 The Investment Manager, where appointed, taking into account all of the Schemes or Retirement Funds which it manages, shall not acquire sufficient Instruments to give it the right to exercise control over 20 per cent 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.
- 2.1.4 Where the Investment Manager invests the assets of the Scheme or Retirement Fund in a collective investment scheme managed by the same Investment Manager:
- (a) the Investment Manager shall waive all charges which it is entitled to charge for its own account in relation to the acquisition or disposal of Units in the collective investment scheme into which investment is made. As far as is practicable, it shall avoid management charges being incurred in respect both of the Scheme and/or Retirement Fund and of the underlying collective investment scheme/s;
  - (b) the Investment Manager, who receives a commission by virtue of an investment by a Scheme or Retirement Fund in the units of another collective investment scheme, shall pay such commission into the property of the Scheme or Retirement Fund, as applicable.

The Investment Manager shall satisfy these requirements at all times.

- 2.1.5 The Investment Manager shall keep a daily record of its dealings, including, where relevant, records of any units held on behalf of the Scheme or Retirement Fund. The records shall be available to the Retirement Scheme Administrator, the Custodian (where applicable) and MFSA.

### ***Constitution and Governance***

- 2.1.6 An Investment Manager licensed under the Act shall be a company operating in, and shall have an established place of business, in Malta.

2.1.7 The Investment Manager of the Scheme may either be:

- (a) the Retirement Scheme Administrator if it is not undertaking custody functions 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.

2.1.8 The business of the Investment Manager shall be effectively directed or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent investment management undertaken for a Scheme or Retirement Fund.

Moreover, the Investment Manager shall take reasonable steps to ensure continuity and regularity in the performance of its activities. To this end, the Investment Manager shall employ appropriate and proportionate systems, resources and procedures.

2.1.9 The Investment Manager shall at all times have a Compliance Officer and Money Laundering Reporting Officer in accordance with the conditions specified in Part B.4 (Pension Rules for Service Providers), section B.4.2 of Part B.4 of these Pension Rules ‘Appointment of Compliance Officer and Money Laundering Reporting Officer’.

### ***Independence Requirements***

2.1.10 The Investment Manager shall be a separate and independent person and shall act independently from:

- (a) the Contributor of a Scheme for which it acts as Investment Manager where the Contributor is an employer sponsoring the Scheme;
- (b) the Custodian or the person carrying out the custody function of a Scheme for which it acts as Investment Manager;

- (c) the Custodian or the person carrying out the custody function of a Retirement Fund for which it acts as Investment Manager;
- (d) the Scheme or Retirement Fund itself in the case where these are established as a body corporate.

Since independence may be compromised in various ways, any facts, relationships, arrangements or circumstances which bring or are likely to bring that independence into question shall be declared to the MFSA as soon as the Investment Manager becomes aware of any such matter.

### ***Operations, Internal Controls and Compliance***

- 2.1.11 The activities of the Investment Manager shall ordinarily be limited to the investment management of the assets of the Schemes and/or Retirement Funds. Provided that this shall not preclude the Investment Manager from being involved in other activities not related to the Act, provided such other activities do not create a conflict of interest with the Investment Manager's duties and do not expose the Investment Manager to undue risks.
- 2.2.12 The Investment Manager may provide the services for which it is duly licensed under the Act solely to Schemes or Retirement Funds as may be authorised by the MFSA. Without prejudice to SLC 2.1.11 above, where the Investment Manager is to provide services to other parties it shall ensure that it has the required licence, approval or authorisation in terms of any applicable law in order to undertake such activities.
- 2.2.13 The Investment Manager shall have the business organisation, systems and appropriate expertise and experience as deemed necessary by the MFSA for it to carry out the investment management functions. These requirements shall be satisfied on a continuous basis.
- 2.2.14 The Investment Manager shall have internal control mechanisms and administrative and accounting procedures which permit verification of its compliance with applicable laws, regulations and Pension Rules, including procedures in place to monitor the extent to which it is complying with any investment restrictions and borrowing limitations to which a Scheme and/or Retirement Fund is subject. The Investment Manager shall have effective procedures for risk assessment and management as well as effective control and safeguard arrangements for information processing systems. These requirements shall be satisfied on a continuous basis.
- 2.2.15 The Investment Manager shall commence its business within twelve months of the date of its Licence issued by MFSA in terms of the Act. If, for any reason the Investment Manager is not in a position to comply with this condition, it shall notify the MFSA on writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business.

2.2.16 The Investment Manager shall comply with:

- (a) all applicable laws and regulations including without limitation, the Act, the Regulations issued thereunder, and Pension Rules to which it is subject, as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, 1994 and Regulations issued thereunder;
- (b) the investment and borrowing rules to which the Retirement Scheme or Retirement Fund is subject.

### ***B.2.2 Financial Resources and Insurance Requirements***

2.2.1 The Investment Manager shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Investment Manager shall comply with the financial resources requirements specified in section 4.3 of Part A and section B.4.3 of Part B.4 of the Pension Rules on Service Providers.

2.2.2 The Investment Manager shall take out and maintain adequate insurance cover. The Investment Manager shall as a minimum obtain cover in respect of loss of money or loss or damage to any other asset or property belonging to the Investment Manager or which are in the care, custody or control of the Investment Manager or for which the Investment Manager is responsible (unless otherwise agreed with the MFSA). The policy shall be governed by Maltese law.

2.2.3 The Investment Manager shall within one month of renewal of the insurance policy, provide the MFSA with a copy of the renewal cover note or such other written evidence as the MFSA may require to establish compliance with these Pension Rules.

### ***B.2.3 Accounting, Record Keeping and Reporting Requirements***

- 2.3.1 The Investment Manager shall maintain sufficient records to be able to demonstrate its compliance with the regulations and the Pension Rules.
- 2.3.2 The Investment Manager shall comply with the Accounting, Record Keeping and Reporting Requirements specified in section B.4.3 of Part B.4 of these Pension Rules.

### ***B.2.4 Other General Conditions***

- 2.4.1 The Investment Manager shall be liable to the Scheme, Retirement Fund and participants thereof and Scheme Administrator (as applicable) for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or on part its obligations.
- 2.4.2 Where the Investment Manager appoints a third party to provide services to or in relation to a Scheme or Retirement Fund or where such appointee is an affiliate of the Investment Manager, the Investment Manager shall be liable for any loss or prejudice suffered by the Scheme or Retirement Fund and participants thereof as a result of any breach of duty or insolvency of such person. This is to be stated in the investment management agreement.
- 2.4.3 The Investment Manager shall also be subject to the conditions included in Part B.4 of these Pension Rules, including the Conduct of Business Rules contained therein.

**PART B.3**

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**RULES FOR CUSTODIANS**

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### ***B.3.1 Responsibilities, Duties, Governance and Operations***

#### ***Responsibilities and Duties of a Custodian of a Retirement Scheme***

- 3.1.1 A Custodian shall be responsible for the safekeeping of the assets of a Retirement Scheme (“the Scheme) for which it acts as Custodian. Where the Retirement Scheme Administrator also carries out the custody function for a Scheme, it shall comply with Part B.3 of these Pension Rules.
- 3.1.2 The Custodian shall carry out the instructions of the Investment Manager or the Retirement Scheme Administrator, as applicable, unless they conflict with the MFSA requirements, if any, applicable to the Scheme and with the Constitutional Document, Scheme Document and Scheme Particulars.

#### ***Responsibilities and Duties of a Custodian of a Retirement Fund***

- 3.1.3 A Custodian shall be responsible for the safekeeping of the assets of a Retirement Fund for which it acts as Custodian. Any person carrying out the custody function of a Retirement Fund shall be required to comply with Part B.3 of these Pensions Rules.
- 3.1.4 A Custodian of a Retirement Fund shall also be responsible for ensuring that in transactions involving a Retirement Fund’s assets, consideration is remitted to it within time limits which are in accordance with accepted market practice in the context of a particular transaction;
- 3.1.5 The Custodian shall carry out the instructions of the Investment Manager unless they conflict with the MFSA requirements, if any, applicable to the Retirement Fund and with the Constitutional Document and Fund Particulars (as applicable).

#### ***Constitution and Governance***

- 3.1.6 A Custodian licensed under the Act shall be a company operating in and shall have an established place of business in Malta.
- 3.1.7 Where the assets of a Scheme or Retirement Fund are entrusted to a Custodian for safekeeping, the Custodian of the Scheme shall either be:
- (a) an entity licensed to carry out custody services to Schemes under the Act;
  - (b) 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;

- (c) an 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.

3.1.8 The business of the Custodian shall be effectively directed or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the custody duties undertaken for a Scheme (‘Scheme’) or Retirement Fund.

Moreover, the Custodian shall take reasonable steps to ensure continuity and regularity in the performance of its activities. To this end, the Custodian shall employ appropriate and proportionate systems, resources and procedures.

3.1.9 The Custodian shall at all times have a Compliance Officer and Money Laundering Reporting Officer in accordance with the conditions specified in section B.4.2 of Part B.4 of these Pension Rules, ‘Appointment of Compliance Officer and Money Laundering Reporting Officer’.

### ***Independence Requirements***

3.1.10 The Custodian shall be a separate and independent person and act independently from:

- (a) the Contributor of an Occupational Retirement Scheme for which it acts as Custodian, where the Contributor is an employer sponsoring the Scheme;
- (b) the Investment Manager or the person carrying out the investment management function of a Scheme for which it acts as Custodian;
- (c) the Investment Manager or the person carrying out the investment management function of the Retirement Fund for which it acts as Custodian;
- (d) the Scheme or Retirement Fund in the case where these are established as a body corporate.

Since independence may be compromised in a variety of ways, any facts, relationships, arrangements or circumstances which bring or are likely to bring that independence into question shall be declared to the MFSA as soon as the Custodian becomes aware of any such matter.



## ***Operations, Internal Controls and Compliance***

- 3.1.11 The activities of the Custodian shall be limited to maintaining custody of the assets of Schemes or Retirement Funds. Provided that this shall not preclude the Custodian from being involved in other activities not related to the Act provided such other activities are considered to the satisfaction of the MFSA do not create a conflict of interest with the Custodian's duties and do not expose the Custodian to undue risks.
- 3.1.12 The Custodian may provide the services for which it is duly licensed under the Act solely to Schemes or Retirement Funds. Without prejudice to SLC 3.1.11 above, where the Custodian is to provide services to other parties it shall ensure that it has the required licence, approval or authorisation in terms of any applicable law in order to undertake such activities.
- 3.1.13 The Custodian shall have the business organisation, systems and appropriate expertise and experience as deemed necessary by the MFSA for it to carry out the custody functions. These requirements shall be satisfied on a continuous basis.
- 3.1.14 The Custodian shall have internal control mechanisms and administrative and accounting procedures which permit verification of its compliance with these Pension Rules as well as effective procedures for risk assessment and management as well as effective control and safeguard arrangements for information processing systems. These requirements shall be satisfied on a continuous basis.
- 3.1.15 The Custodian shall commence its business within twelve months of the date of its License issued by MFSA in terms of the Act. If, for any reason the Custodian is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business.
- 3.1.16 The Custodian shall comply with:
- (a) all applicable laws and regulations including without limitation, the Act, the Regulations issued thereunder, and Pension Rules to which it is subject, as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, 1994 and Regulations issued thereunder;
  - (b) the custody rules to which the Scheme or Retirement Fund is subject including the conditions of the Retirement Pensions (Control of Assets) Regulations, 2014, as may be amended from time to time.

### ***B.3.2 Financial Resources and Insurance Requirements***

- 3.2.1 The Custodian shall have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities. The Custodian shall comply with the financial resources requirements specified in section 4.3 of Part A and section.B.4.3 of Part B.4 of these Pension Rules.
- 3.2.2 The Custodian shall take out and maintain adequate insurance cover. The Custodian shall as a minimum obtain cover in respect of loss of money or loss or damage to any other asset or property belonging to the Custodian or which are in the care, custody or control of the Custodian or for which the Custodian is responsible (unless otherwise agreed with the MFSA). The policy shall be governed by Maltese law.
- 3.2.3 The Custodian shall within one month of renewal of the insurance policy, provide the MFSA with a copy of the renewal endorsement or such other written evidence as the MFSA may require to establish compliance with these Pension Rules.

### ***B.3.3 Accounting, Record Keeping and Reporting Requirements***

- 3.3.1 The Custodian shall maintain sufficient records to be able to demonstrate its compliance with the regulations and the Standard Licence Conditions.
- 3.3.2 The Custodian shall comply with the Accounting, Record Keeping and Reporting Requirements specified in section B.4.3 of Part B.4 of these Pension Rules.

### ***B.3.4 Other General Conditions***

- 3.4.1 The Custodian shall be liable to the Scheme, Retirement Fund and participants thereof, Scheme Administrator and Investment Manager (as applicable) for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or on part its obligations.
- 3.4.2 Where the Custodian appoints a third party to provide services to or in relation to a Scheme or Retirement Fund, the liability of the Custodian shall not be diminished if it has entrusted to a third party some or all of its assets in its safe-keeping.
- 3.4.3 Where the appointed third party is an affiliate of the Custodian, the latter shall be liable for any loss or prejudice suffered by the Scheme, Retirement Fund and participants thereof, Scheme Administrator and Investment Manager (as applicable), as a result of any breach of duty or insolvency of such person. This shall be stated in the custodian agreement.
- 3.4.4 The Custodian shall also be subject to the conditions included in Part B.4 of these Pension Rules, including the Conduct of Business Rules contained therein.

**PART B.4**

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**GENERAL RULES FOR LICENSED SERVICE PROVIDERS**

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*Unless indicated otherwise, the conditions specified in this Part B.4 shall apply to “Retirement Scheme Administrators”, “Investment Managers” and “Custodians”. The term “Service Provider” shall be construed accordingly for the purposes of Part B.4.*

#### **B.4.1 Conduct of Business Rules**

##### **General**

- 4.1.1 The Service Provider may not use the Scheme's or Retirement Fund's assets, as the case may be, for its own purposes. The Service Provider, nor any of its affiliates, shall deal with the Scheme or the Retirement Fund as a principal or for its own account unless such transactions are on an ad-hoc basis and the terms of the transactions or arrangement are on normal commercial terms as if negotiated on an arm's length basis and the transaction entered into by the Scheme or Retirement Fund is on the best terms reasonably obtainable having regard to the interests of the Scheme or Retirement Fund as applicable.
- 4.1.2 If the Service Provider has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the Scheme or Retirement Fund, as the case may be, it shall immediately declare the nature of that interest to the Scheme or the Contributors of the Scheme or the Retirement Fund, as applicable.
- 4.1.3 The Service Provider shall act honestly, fairly and with integrity. Such action shall include:
- (a) avoiding conflicts of interest where this is possible and, where it is not, ensuring by way of disclosure, internal procedures or otherwise that the Scheme and its Contributor(s), Members and Beneficiaries, or the Retirement Fund and its Investors, as applicable, are treated fairly. The following procedures should be followed during Board Meetings where a director of the Service Provider considers that s(he) 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 s(he) has an interest first arises, or if the director was not at the date of the Meeting interested in the issue, at the next Board Meeting held after s(he) 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 s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
    - iii. the interested director should not vote at a Board Meeting in respect of any contract or arrangement in which s(he) is interested, and if

s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;

iv. the Board minutes 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;
- (d) avoiding making misleading or deceptive representations to a Scheme, its Contributors, Members and Beneficiaries or to a Retirement Fund and its Investors, as applicable;
- (e) avoiding receiving or making any payments, gifts or other benefits which could adversely affect impartiality;
- (f) avoiding the imposition of unfair or unreasonable charges on the Scheme and its Contributors and Members and Beneficiaries, and on the Retirement Fund and its Investors, as applicable, also taking into account, where applicable, the charges levied on any underlying investments in which the Scheme or Retirement Fund invests;
- (g) ensuring that the Licence is not presented as an opinion expressed by the MFSA on the merits of using the services of the Service Provider
- (h) where applicable, valuing assets on the basis of market value or, if they are not readily marketable, valuing them on an appropriate arm's length basis or as disclosed in the Constitutional Document or Particulars of the Scheme or Retirement Fund, as applicable;
- (i) conducting all transactions on an arm's length basis.

4.1.4 The Service Provider shall act with due skill, care and diligence. Such action shall include:

- (a) executing instructions and decisions in a prompt, fair and timely fashion;
- (b) where applicable, taking all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order;
- (c) acting in accordance with the terms of the Constitutional Document, Scheme Document, Scheme or Retirement Fund's Particulars (as applicable) and any other document describing how its services are to be provided.

- 4.1.5 The Service Provider shall ensure the adequate disclosure of relevant material information in a way which is fair, clear and not misleading. This shall disclose the identity of its regulator in all correspondence and other documentation. Wording similar to the following shall be used to disclose its regulated status: “Licensed as a [nature of licence] by the Malta Financial Services Authority”.
- 4.1.6 The Service Provider shall, before offering any services to the Member or Beneficiary, provide in writing a description of the nature and amount of any direct or indirect charges or fees a Member or Beneficiary will, or may be expected to bear in relation to the Scheme or Fund and, investments within the Scheme or Fund (if applicable).
- 4.1.7 The Service Provider shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls in respect of its own business and the Scheme or Retirement Fund, as applicable, to ensure compliance with regulatory conditions and to enable it to be effectively prepared to manage, reduce and mitigate the risks to which it is exposed. This shall include:
- (a) having adequate arrangements to ensure that its staff are suitable, adequately trained and properly supervised;
  - (b) having procedures to ensure that its staff conduct business openly, fairly, in compliance with regulations and Pension Rules, avoiding conflicts of interest and avoiding any undisclosed or improper benefit to staff;
  - (c) having procedures to ensure the adequate supervision of staff who shall not be allowed to act beyond their levels of competence;
  - (d) maintaining adequate records of the training, experience and qualifications of staff;
  - (e) establishing and maintaining appropriate compliance procedures with a view to ensuring that the staff are aware of and comply with the Act, regulations and Pension Rules made under the Act and the conditions of its Licence;
  - (f) establishing and maintaining adequate risk management policies and procedures;
  - (g) establishing and maintaining adequate policies and procedures governing personal transactions by staff;
  - (h) having adequate internal control procedures to protect Contributors, Members and Beneficiaries in the case of a Scheme, or Investors in the case of a Retirement Fund, third parties and the Service Provider itself, from financial loss arising from theft, fraud, or other dishonest acts, professional misconduct or omissions;

- (i) keeping a record of any disciplinary action taken against staff; and
- (j) making provision for the protection of the Scheme and its Contributors, Members and Beneficiaries or a Retirement Fund and its Investors, in the event of the interruption or cessation of the whole or part of the Service Provider's business due to internal or external environmental factors, including technical or human failure. For this purpose, the Service Provider shall have an appropriate documented Disaster Recovery and Business Continuity Plan which is regularly tested and updated.

***Notifications to the MFSA and aspects requiring MFSA's consent***

4.1.8 The Scheme Administrator shall notify the MFSA in writing of any circumstances relating to the Scheme which requires notification in terms of the Pension Rules for Occupational Retirement Schemes and the Pension Rules for Personal Retirement Schemes.

4.1.9 The Service Provider shall notify the MFSA in writing of:

- (a) any breach of its Standard Licence Conditions or of any breach of the Act as soon as it becomes aware of the breach;
- (b) any breach of the Scheme's or Retirement Fund's Standard Licence Conditions or of any of the provisions of the Scheme's Constitutional Document, Scheme Document, Scheme Particulars or of the Retirement Fund's Constitutional Document, Fund Particulars, as soon as it becomes aware of the breach;
- (c) a change in the Service Provider's name or business name (if different) at least one month in advance of the change being made;
- (d) a change of address (at least one month in advance);
- (e) ceasing or being about to cease to act as Service Provider of the Scheme, the reasons for such cessation and any circumstances connected therewith which in its opinion significantly affects the interests of the Scheme and its Members or Beneficiaries or the interest of the Retirement Fund and its Investors;
- (f) the resignation or removal of one of its directors or managers (including the Compliance Officer and Money Laundering Reporting Officer "MLRO"), within 14 days of the resignation or removal. The Service Provider shall also request the director or manager to confirm to the MFSA that their 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 notification of resignation or removal;

- (g) a change in the list of authorised signatories (as soon as the change is made);
- (h) any acquisitions or disposal of shares which fall within the disclosure provisions of article 32 of the Act immediately upon becoming aware of the proposed acquisition or disposal. It should be noted that MFSA has the right to object to such an acquisition;
- (i) the provision of a related company loan, within 15 days of making the loan. [the definition of ‘related company’ may be found in Sheet 2 of Annex II of Appendix I of Part E of these Pension Rules];
- (j) any proposed material change to the Service Provider’s business at least one month before the change is to take effect. Where a licence is required for the proposed new activity, the new business shall not begin until such licence has been granted;
- (k) any evidence of fraud or dishonesty by a member of its staff immediately upon becoming aware thereof;
- (l) a decision to make a material claim on any insurance policy held in relation to its business (as soon as the decision is taken);
- (m) any actual or intended legal proceedings of a material nature by or against it upon becoming aware of the same;
- (n) the fact, where applicable, that it has not provided any activities as a Service Provider for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity;
- (o) any event detailed in the Financial Notification requirements as applicable;
- (p) where applicable, the fact that it has not carried out the reconciliations required under S.L.C. 4.7.7 of Part B.4.7 of Part B.4 of these Pension Rules on the due date or, if having done so, it is unable to resolve any discrepancies;
- (q) any material changes in the information supplied by the Service Provider to the MFSA upon becoming aware of the same. This shall include the obligation to notify the MFSA on a continuous basis of any changes or circumstances which give rise to the existence of close links, as defined in article 9 of the Act between the Service Provider and any other person;
- (r) any other material information concerning the Service Provider, its business or staff immediately upon becoming aware of the matter.



4.1.10 When servicing a Scheme formed in accordance with or existing under the laws of Malta duly licensed by the MFSA, the Service Provider shall notify the MFSA of 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 of the Scheme as soon as it becomes aware of the breach.

4.1.11 The Service Provider shall obtain the written consent of the MFSA:

- (a) in relation to any circumstances relating to the Scheme which requires MFSA's consent in terms of the Pension Rules for Occupational Retirement Schemes and Pension Rules for Personal Retirement Schemes;
- (b) before making any change to its share capital or the rights of its shareholder;
- (c) before establishing a branch in Malta or abroad;
- (d) before acquiring 10 per cent or more of the issued share capital or of the voting rights attaching to such share capital of another company;
- (e) before taking any steps to cease its business;
- (f) before agreeing to sell or merge the whole or any part of its undertaking;
- (g) before granting a loan to a shareholder or director;
- (h) before making application to a Regulator abroad to undertake any form of licensable activity outside Malta;
- (i) before the appointment of a Director and of Senior Managers responsible for the business of the Service Provider (including the Compliance and Money Laundering Officer "MLRO"), at least twenty one business days in advance of the date when the service provider would like that person to take up the appointment. The request for consent of the appointment, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule I in Part F of these Pension Rules – duly completed by the person proposed, which shall in the case of a proposed Compliance Officer and/or MLRO, include sufficient details of the individual's background, training and/or experience relevant to the post, to enable an adequate assessment by the MFSA. Where the person proposed had within the previous five years submitted a PQ to the MFSA in connection with some other role with the same entity, the request for consent need not be accompanied by a new PQ. In such instances, it shall be accompanied by a confirmation by the proposed person as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

For the purposes of the above, ‘Senior Manager’ means a person employed by the licence holder/entity who, under the immediate authority of a director or the Chief Executive officer of the licence holder/entity, exercises managerial functions or is responsible for maintaining accounts or other records of the licence holder/entity.

- (j) the change in the responsibilities of a Director or Senior Manager at least twenty one business days in advance of the date when the service provider would like that person to take up those responsibilities. The request for consent of the change in responsibilities of a Director or Senior Manager shall be accompanied by a PQ unless the individual concerned had within the previous five years submitted a PQ to the MFSA in connection with another role occupied by such individual with the same entity, in which case it shall be accompanied by a confirmation by the proposed Director or Senior Manager as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

A change in the responsibilities of a director or manager should only be notified to the MFSA when such a change is material. Material changes include those which lead to a change in the status or seniority of the person concerned (upwards or downwards).

- (k) before any persons, whether Directors, Senior Managers or employees who are to be engaged in any of the following activities:
- investment management function;
  - custody function

The request for authorisation shall include all relevant details of the individual’s background, training and/or experience relevant to the post in order to enable the MFSA to assess whether the persons concerned are sufficiently competent to undertake such activities.

- (l) before delegating any of its functions in relation to the Scheme or the Retirement Fund.

4.1.12 Where a Standard Licence Condition demands that the Service Provider notifies the MFSA of an event or requests MFSA’s consent, such notification or request for consent shall be made to the MFSA formally, by means of a written communication. Provided that where a Service Provider is also an Investment Services Licence Holder in terms of the Investment Services Act (“ISA”) or a credit institution in terms of the Banking Act (“BA”) or a Trustee authorised under the Trusts and Trustees Act (“TTA”) or is a company authorised to carry on the business of insurance, as Principal, under the Insurance Business Act (“IBA”) and is subject to the same notification or MFSA consent requirements as provided for in this section, such Service Provider may satisfy its requirements under the ISA or TTA or IBA, as applicable, and the Act, by means of one and the same notification or request for

consent, provided that appropriate reference is made to the fact that such notification or request for consent is in satisfaction of the respective requirements under the ISA or TTA or IBA, as applicable, and the Act. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

### ***Co-Operation***

4.1.13 The Service Provider shall co-operate fully with any inspection or other enquiry or compliance testing carried out by the MFSA, or an inspector acting on its behalf or with any request for information from or on behalf of the MFSA.

4.1.14 The Service Provider shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Service Provider shall supply the MFSA with such information, documentation and financial documentation as the MFSA requires.

4.1.15 Where a person ceases for whatever reason to be, as applicable:

- (a) Scheme Administrator to the Scheme; or
- (b) Investment Manager to the Scheme or Retirement Fund; or
- (c) Custodian to the Scheme or Retirement Fund,

that service provider, its directors and officers, including past officials shall continue to cooperate with the MFSA.

4.1.16 The Service Provider shall co-operate fully with any duly appointed replacement Service Provider to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the Scheme and its Members and Beneficiaries and/or the Retirement Fund and its unitholders / Investors as applicable.

### ***Liability***

4.1.17 As applicable:

- (a) The Scheme Administrator will be liable to the Scheme, Member(s), Beneficiary(ies) and Contributor(s) of the Scheme,
- (b) The Investment Manager will be liable to the Scheme or the Retirement Fund or Investors thereof,
- (c) The Custodian will be liable to the Scheme or the Retirement Fund or Investors thereof,

for any loss suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.

- 4.1.18 Where the Service Provider appoints a third party to provide services to or in relation to a Scheme or Retirement Fund, the liability of the Service Provider shall not be diminished if it has entrusted any of its functions to a third party or where the appointed third party is an affiliate of the Service Provider, the Service Provider shall be liable for any loss or prejudice suffered by the Scheme or Retirement Fund as a result of any breach of duty or insolvency of such person. This shall be stated in the agreement with the Scheme or Scheme Administrator as applicable or with the Fund. Any outsourcing shall be in accordance with section B.4.4 of Part B.4 of these Pension Rules.

### ***Fees***

- 4.1.19 The Service Provider shall pay promptly all fees due to the MFSA.

Reference should be made to the Retirement Pensions (Fees) Regulations, 2014 as may be amended from time to time, for details of the applicable 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 Fees are payable on the day the licence or recognition is issued and thereafter annually, upon the anniversary of that date. Details of the applicable fees and can be downloaded from the MFSA's website.

### ***Variation of Licence***

- 4.1.20 A request for a variation of any conditions attaching to the Licence of the Service Provider shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

### ***Termination of Business***

- 4.1.21 If so required by the MFSA, the Service Provider shall do all in its power to delay the cessation of its business, or the winding up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of the Scheme and its Members, Contributors and Beneficiaries and/or of the Retirement Fund and its Investors, as applicable.

#### ***B.4.2 Appointment of Compliance Officer and Money Laundering Reporting Officer***

- 4.2.1 The Service Provider shall appoint a Compliance Officer and a Money Laundering Reporting Officer ('MLRO').
- 4.2.2 In accordance with SLC 4.1.11 (i) of section 4.1 of Part B.4 of these Pension Rules, the Service Provider shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer or MLRO. The request for consent of the appointment or replacement of a Compliance Officer or MLRO shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement and shall be accompanied by a Personal Questionnaire, in the form set out in Schedule I in Part F of these Pension Rules duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement of a Compliance Officer or MLRO and to require such additional information it considers appropriate.
- 4.2.3 In accordance with SLC 4.1.9 (f) of section B.4.1 of Part B.4 of these Pension Rules, the Service Provider shall notify the MFSA of the resignation or removal of its Compliance Officer or MLRO upon becoming aware of the proposed resignation or removal. The Service Provider shall also request the Compliance Officer or MLRO to confirm to the MFSA that his / her departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Service Provider's notification of departure.
- 4.2.4 The Compliance Officer of a Retirement Scheme Administrator shall be requested to prepare a Compliance Report at least on a six monthly basis, which in the case of a Retirement Scheme taking the form of:
- i. a SICAV, should be presented to the Board of Directors; or
  - ii. a contract, should be presented to the Retirement Scheme Administrator; or
  - iii. a trust, should be presented to the Retirement Scheme Administrator.
- 4.2.5 The Compliance Report should indicate:
- i. that the business has been conducted in accordance with ,the Retirement Pensions Act, regulations and Pension Rules issued thereunder, the Standard Licence Conditions of the service provider and any recommendations or directives issued to the Service Provider by the MFSA;
  - ii. any breaches to the standard licence conditions;
  - iii. details of complaints from members of the Retirement Scheme/s and the manner in which these have been handled, where the Service Provider is a Retirement Scheme Administrator; and

- iv. material compliance issues during the period covered by the Compliance Report;
  - v. material valuation errors and the manner in which these have been handled.
- 4.2.6 The Compliance Report shall also include a confirmation that all the local Prevention of Money Laundering and Funding of Terrorism requirements have been satisfied. This confirmation should be obtained from the Scheme's Money Laundering Reporting Officer.
- 4.2.7 A copy of the Compliance Report should be held in Malta at the registered office of the Scheme and made available to the MFSA during Compliance Visits and upon specific request.

### ***B.4.3 Financial Resources, Accounting, Record Keeping and Reporting Requirements***

#### ***Financial Resources Requirements***

- 4.3.1 The Service Provider shall ensure that it maintains adequate financial resources at its disposal to enable it to conduct its business efficiently, meet its business commitments and to be prepared to cope with the risks to which it is exposed.
- 4.3.2 The Service Provider shall at all times meet both the Net Tangible Assets and Liquid Capital Conditions applicable to its Licence as stipulated in Part A of these Pension Rules.
- 4.3.3 The methodology for calculating the Net Tangible Assets and Liquid Capital Requirement is set out in Sheet 5 of Appendix I.
- 4.3.4 The Service Provider shall comply with any further Financial Resources Requirements set by the MFSA. The Service Provider will be given due notice in writing of any additional financial resources requirements which shall be applied.
- 4.3.5 The Service Provider shall immediately advise the MFSA if at any time it is in breach of either of the Financial Resources Requirements applicable to its Licence. The MFSA may, if the circumstances justify it, allow the Service Provider a limited period within which to restore its financial resources to the required level.

#### ***Accounting and Record Keeping***

- 4.3.6 The Service Provider shall maintain proper accounting records to show and explain its own transactions, assets and liabilities.
- 4.3.7 The accounting records of the Service Provider shall:
  - (a) disclose with reasonable accuracy, at all times, its financial position; and
  - (b) enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of the Licence.
- 4.3.8 In particular, the financial records shall contain:
  - (a) entries from day-to-day of all sums of money received and expended and the matters to which they relate;
  - (b) a record of all income and expenses, explaining their nature; and
  - (c) a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments.
- 4.3.9 The Service Provider shall retain accounting records for a minimum period of ten years.

4.3.10 The Service Provider shall notify the MFSA its Accounting Reference Date (financial year end).

***Accounting Records related to a Scheme or Retirement Fund serviced by a Service Provider***

4.3.11 The Service Provider shall ensure that proper accounting records are kept to show and explain transactions undertaken by the Service Provider on behalf of the Scheme or Retirement Fund as applicable.

4.3.12 The records shall:

- (a) record all purchases and sales of the Scheme's or Retirement Fund's assets processed by the Service Provider, where applicable;
- (b) record all receipts and payments belonging to a Scheme or Retirement Fund which arise from transactions processed by the Service Provider, where applicable;
- (c) disclose, the assets and liabilities of the Schemes or Retirement Funds individually and collectively, to the extent that they are managed by the Service Provider;
- (d) record all assets of Schemes and Retirement Funds (including title documents) in the possession of the Service Provider or of another person who is holding such assets for, or to the order of the Service Provider, showing the location of the assets, their beneficial owner and the extent to which they are subject to any charge of which the Service Provider has been notified.

4.3.13 Service Providers shall arrange for records to be kept of all services and transactions undertaken by it which shall be sufficient to enable MFSA to monitor compliance with the requirements of these Pension Rules, and in particular to ascertain that the Service Provider has complied with all obligations with respect to Contributors, Members and Beneficiaries in the case of Schemes or Investors in the case of Retirement Funds.

***Reporting Requirements***

4.3.14 The Service Provider shall prepare an Interim Financial Return, in the form set out in Appendix I of Part E of these Pension Rules at dates three, six and nine months after the Accounting Reference Date. In the event of a change to the Accounting Reference Date, the dates for the preparation of the Interim Financial Return shall be agreed with the MFSA.



- 4.3.15 The unaudited Interim Financial Return and the Annual Financial Return shall be submitted to the MFSA within one month of the date up to which it has been prepared. It shall be signed by at least two directors or any other persons authorised to sign by way of a Board Resolution (a certified copy of which shall be provided to MFSA).
- 4.3.16 The Service Provider shall in each year prepare an Annual Financial Return in the form set out in Appendix I of these Pension Rules signed by at least two directors or any other persons authorised to sign by way of a Board Resolution (a certified copy of which shall be provided to MFSA).
- 4.3.17 The Annual Financial Return shall be submitted to the MFSA within one month of the Accounting Reference Date.
- 4.3.18 Audited annual financial statements prepared in accordance with International Financial Reporting Standards, together with a copy of the auditors' management letter and the auditors' report shall be submitted to the MFSA within four months of the Accounting Reference Date.
- 4.3.19 The Service Provider shall prepare and submit such additional financial returns as the MFSA may require.
- 4.3.20 The Service Provider shall be responsible for the correct compilation of the financial returns. The nature and content of the financial returns shall be as follows:
- (a) they shall be in the form set out in Appendix I of these Pension Rules;
  - (b) they shall be in agreement with the underlying accounting records;
  - (c) accounting policies shall be consistent with those adopted in the audited annual financial statements and shall be consistently applied. These accounting policies should adequately cater for the following:
    - i. amounts in respect of items representing assets or income may not be offset against amounts in respect of items representing liabilities or expenditure, as the case may be, or vice versa, unless duly authorised by the MFSA; and
    - ii. balances representing money and/or assets held/ controlled by the Service Provider on behalf of the Scheme or Retirement Fund must not form part of the Service Provider's Balance Sheet.
  - (d) information to be included in the financial returns shall be prepared in accordance with International Financial Reporting Standards;

- (e) investments shall be included in the Balance Sheet at valuations arrived at in accordance with the provisions of International Financial Reporting Standards;
- (f) financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;
- (g) where the Annual Financial Return has been submitted before the relevant audited annual financial statements have been produced it shall be updated to reflect the information in the audited statements and submitted to the MFSA together with the audited annual financial statements.

### ***Financial notification to the MFSA***

4.3.21 The Service Provider shall notify the MFSA immediately it becomes aware:

- (a) that it is in breach of the conditions in respect of financial resources, records, reporting or procedures and controls;
- (b) that it will be unable to submit an Annual or Interim Financial Return (as applicable) on the due date.

The notice shall give reasons and shall explain what action is being taken to rectify matters.

4.3.22 The Service Provider shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

### ***Appointment of Auditor***

4.3.23 The Service Provider shall appoint an auditor approved by the MFSA for the purposes of these Pension Rules. The Service Provider shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor.

The Service Provider shall make available to its auditor the information and explanations he needs to discharge his responsibilities as an auditor and in order to meet the MFSA's conditions.

4.3.24 The Service Provider shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his firm is:

- (a) a director, partner, qualifying shareholder, officer, representative or employee of the Service Provider;
- (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 Service Provider;
- (e) a person disqualified by the MFSA from acting as an auditor of a Service Provider;
- (f) an Affiliate of the Service Provider.

4.3.25 The Service Provider 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 Service Provider shall confirm in writing to its auditor its agreement to the terms in the letter of engagement. The auditor shall provide the MFSA with a letter of confirmation in the form set out in the respective applications of the Services Providers in Part F to these Pensions Rules.

4.3.26 The letter of engagement shall include terms requiring the auditor:

- (a) to provide such information or verification to the MFSA as the MFSA may request;
- (b) to afford another auditor all such assistance as may be required;
- (c) to vacate the office of auditor if such auditor becomes disqualified to act as auditor for any reason;
- (d) to advise the MFSA of that fact and of the reasons for ceasing to hold office if the auditor resigns, or is removed or not reappointed. The auditor shall also be required to advise the MFSA if there are matters which should be brought to the attention of the MFSA;
- (e) to report immediately to the MFSA in accordance with article 35 of the Act, any fact or decision of which the auditor becomes aware in the capacity of auditor of the Service Provider which:
  - i. is likely to lead to a serious qualification of, or refusal to issue, the auditor's report on the accounts of the Service Provider; or
  - ii. constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to the Service Provider in or under the Act;
  - iii. seriously impairs the ability of the Service Provider to meet the current or future liabilities attributable to it;

- iv. negatively and materially affects the interests of Members and Beneficiaries;
  - v. relates to any matter which may be prescribed;
- (f) pursuant to article 35(2) of the Act, to report to the MFSA, any facts or decision of any person having close links with the Service Provider, within the meaning of article 9(10) of the Act of which the auditor becomes aware in the capacity as auditor of the Service Provider or of the person having such close links.
- 4.3.27 If at any time the Service Provider 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 Service Provider.
- 4.3.28 In respect of each annual accounting period, the Service Provider shall require its auditor to prepare a management letter in accordance with International Standards on Auditing and to confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion:
- (a) the Annual Financial Return together with the audited annual financial statements are in agreement with the accounting records of the Service Provider;
  - (b) the Annual Financial Return has been prepared in accordance with the MFSA's requirements and is consistent with the audited annual financial statements;
  - (c) the Financial Resources of the Service Provider have been properly calculated in accordance with the MFSA's requirements and exceed the Service Provider's Resources Requirements as at the Accounting Reference Date;
  - (d) proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the Annual Financial Return;
  - (e) where applicable, the Service Provider has maintained throughout the period covered by the Annual Financial Return, systems adequate to safeguard assets and money held on behalf of the Scheme(s) or Retirement Fund in accordance with the SLCs, including at the Accounting Reference Date;
  - (f) all information and explanations necessary for the purpose of the audit have been obtained.

- 4.3.29 Where, in the auditor's opinion, one or more of the conditions have not been met, the auditor shall be required to include in his report a statement specifying the relevant conditions and the respects in which they have not been met. Where the auditor is unable to form an opinion as to whether the conditions have been met, the auditor shall be required to specify the relevant requirements and the reasons why he has been unable to form an opinion.
- 4.3.30 Service Providers in receipt of a management letter from their auditor which contains recommendations to remedy any weaknesses identified during the course of the audit, are required to submit to the MFSA by not later than four months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the auditor's recommendations have been/ are being implemented. In the instance where Service Providers have not taken/ are not taking an action in respect of any one or more recommendations in the auditor's management letter, the reasons are to be included.
- 4.3.31 The Service Provider is required to include in its annual report a statement regarding breaches of SLCs or any regulatory sanctions which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction. Where there have been no breaches or regulatory sanctions, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of the breach(es) committed and/or regulatory sanction imposed.

#### ***B.4.4 Outsourcing***

***In the event that the Service Provider wishes to delegate to third parties the carrying out on its behalf of certain of its functions, the Service Provider shall comply with the requirements specified in this section.***

- 4.4.1 The Service Provider shall not outsource all of its important operational or critical functions. The Service Provider shall accordingly not delegate functions to the extent that it becomes a “letter box” entity.
- 4.4.2 The MFSA’s prior consent should be obtained prior to the delegation or outsourcing by a Service Provider of any of its functions as Service Provider under the Constitutional Document, Scheme Document or Scheme or Retirement Fund Particulars, the Act or these Pension Rules or under any service level agreement entered into in relation to the Scheme or Retirement Fund (as applicable). Appropriate details should be submitted in this regard as may be required by MFSA.
- 4.4.3 Before outsourcing any function, the Service Provider should carry out a due diligence process on the entity selected to carry out the outsourced activities, irrespective of whether it is a supervised entity or an entity within the same group. The due diligence process should assess;
- i. the technical and financial ability of the entity and its capacity and competence to perform the outsourced function; and
  - ii. the internal control system of the entity.

The results of the due diligence should enable the Service Provider to assess the level of risk it is facing as a result of the outsourcing.

- 4.4.4 In no case, shall the liability of the Service Provider be affected by the fact that it delegated any functions to third parties. While in some circumstances a Service Provider can delegate authority, responsibility cannot be delegated. Therefore, the Service Provider shall remain fully responsible for any functions delegated or outsourced elsewhere.
- 4.4.5 On an on-going basis the Service Provider must ensure that the outsourced function is carried out at a proper standard and that the integrity of the Service Provider’s own systems and controls is not prejudiced.
- 4.4.6 The entity or person supplying the service (“the supplier”) must be competent and financially sound.

The Service Provider must be able to demonstrate that it has taken proper steps to verify this and that it also has procedures in place for assessing the supplier’s performance on an on-going basis. Additionally, the Service Provider must be able

to satisfy the MFSA, if called upon to do so, that the supplier is committed for the term of the contract to devoting appropriate resources to providing the service.

- 4.4.7 If the additional approval of any Regulator (other than the MFSA) is required, the Service Provider must inform the MFSA if that Regulator objects at the outset or at any subsequent time.
- 4.4.8 A Service Provider must have contingency plans in place to enable it to set up new arrangements quickly and with minimum interruptions to business, if the contract for outsourcing is suddenly terminated or if the supplier fails. Such contingency plans must be regularly reviewed. The level of detail in such plans may vary. (As the contract with an intra-group supplier is highly unlikely to be terminated through the actions of the supplier, the only significant risk is that the service will be interrupted by another unrelated and unanticipated event. This eventuality should be included in the Service Provider's business contingency plan).
- 4.4.9 Where a supplier services several entities or if the Service Provider's business experiences peaks in required outputs, the Service Provider should satisfy itself as to the minimum level of resources that the supplier will be able to devote to providing the agreed level of service at such times.
- 4.4.10 The Service Provider must be able to demonstrate to the MFSA – if called upon to do so – that it has taken all reasonable steps to ensure that the confidentiality of its customer's affairs will be protected under the outsourcing contract. This is an on-going responsibility which the Service Provider must fulfil at all times.
- 4.4.11 The Service Provider must ensure that the work it outsources will not be outsourced again by the supplier to another provider.
- 4.4.12 The service contract must be a legally enforceable document, prepared and agreed on an arm's length basis – even when the supplier and the Service Provider form part of the same group.
- 4.4.13 The Service Provider shall ensure that the MFSA has rights to information and powers of intervention to cover any outsourced functions of material importance by such Service Providers [in line with SLCs 4.4.15 (g) and (h) of section B.4.4 of Part B.4 of these Pension Rules]. This shall include the right by MFSA to carry out on-site inspections on outsourced functions to check if activities are carried out in accordance with the Pension Rules.
- 4.4.14 The Service Provider shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a supplier of critical or important operational functions.
- 4.4.15 The Service Provider shall also comply with the following requirements:
- (a) the mandate shall not prevent the effectiveness of supervision over the delegate, and in particular it shall not prevent the Service Provider from acting,

or for the Scheme to be managed or operated in the best interest of the Members and Beneficiaries or for the Retirement Fund to be managed or operated in the best interest of Investors;

- (b) when the delegation concerns the administration, investment management, Custody or Back-Office administration, the mandate may only be given to undertakings which are authorised, licensed or recognised as applicable for the purpose of the said functions and subject to prudential supervision;
- (c) a mandate with regard to the core function of investment management shall not be given to a Custodian or to any undertaking whose interests may conflict with those of the Service Provider or those of Members and Beneficiaries in the case of a Scheme, or those of Investors in the case of a Retirement Fund;
- (d) a mandate with regard to the core function of Custody shall not be given to an Investment Manager or to any undertaking whose interests may conflict with those of the Service Provider or those of Members and Beneficiaries in the case of a Scheme, or those of Investors in the case of a Retirement Fund;
- (e) the Service Provider shall retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;
- (f) the Service Provider shall take the necessary steps to ensure that the supplier must disclose to the Service Provider any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
- (g) the Service Provider shall take the necessary steps to ensure that the supplier must cooperate with the MFSA in connection with the outsourced activities;
- (h) the Service Provider shall take the necessary steps to ensure that the Service Provider, its auditors and the MFSA have effective access to data related to the outsourced activities, as well as to the business premises of the supplier, and the MFSA must be able to exercise those rights of access;
- (i) the mandate shall not prevent the Service Provider from giving at any time, further instructions to the undertaking to which functions are delegated and to withdraw the mandate with immediate effect when this is in the interest of Members and Beneficiaries in the case of a Scheme or the Investors in the case of a Retirement Fund; and
- (j) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated shall be qualified and capable of performing the functions in question.



#### ***B.4.5 Advertisements and Other Promotional Activities***

- 4.5.1 In terms of article 34, no person, other than a licence holder may issue or cause to be issued an advertisement, including promotional material, in connection with a Retirement Scheme or Retirement Fund in or from within Malta. The consent of the MFSA is not required before any advertisement is issued. However, the said article of the Act requires any advertisement issued to conform with Pension Rules, which may determine the form and content of such advertisements and the manner in which any promotional activity in connection with a Retirement Scheme or Retirement Fund shall be carried out or cause to be carried out.
- 4.5.2 Every Service Provider shall when issuing an advertisement ensure that the advertisement is approved by the Service Provider's compliance officer or alternatively by any officer formally authorised by the Service Provider to do so. Advertisements may also be approved by third parties such as lawyers. Whatever practical arrangements are put in place for the approval of advertisements, the Service Provider shall remain responsible;
- 4.5.3 The Service Provider shall ensure that appropriate records of all issued and/or approved advertisements are maintained and made available for inspection by the MFSA, for not less than five years from the date of publication or broadcast. Such records should include:
- i. a record of all advertisements vetted by it;
  - ii. the name of the individual who approved the advertisement;
  - iii. the date of approval of the advertisement;
  - iv. the date of issue or publication/s in which the advertisement was included and the publications in which they were included; and
  - v. evidence to support any statement made which is not a statement of fact.
- 4.5.4 The Service Provider must exercise due skill, care and diligence in issuing an advertisement. All information, including marketing communications addressed by the Service Provider shall be fair, clear and not misleading.
- 4.5.5 Any statements made must be consistent with its Constitutional Document, Scheme Document or Particulars.
- 4.5.6 The Licence under the Act shall not be presented as an opinion expressed by the MFSA on the merits of the Scheme, Fund or the Service Provider. Any advertisement relating to a Scheme shall, unless the MFSA prescribes otherwise, contain a statement that there exists no statutory provision for compensation in the case where a Scheme is unable to satisfy the liabilities attributable to it, and that the Licence of the Scheme is not an endorsement by the MFSA of the Scheme's financial performance.

4.5.7 A Service Provider issuing an advertisement shall ensure that:

- (a) the advertisement is not misleading and does not contain a statement, promise or forecast which is untrue or misleading;
- (b) it does not contain any statement or fact which the Service Provider does not at the time the advertisement is issued have reasonable grounds, supported by documentary evidence, for believing to be true;
- (c) it does not contain any statement of opinion held by any person which the Service Provider does not at the time the advertisement is issued have reasonable grounds supported by documentary evidence for believing to be the honestly held opinion of that person at that time;
- (d) it does not contain a statement of fact which the Service Provider does not at the time the advertisement is issued have reasonable grounds for believing will continue to be true for so long as it remains relevant to the subject-matter of the advertisement;
- (e) it does not contain a statement relating to taxation, unless it is properly qualified to show what it means in practice and to whom it applies;
- (f) it contains sufficient information to enable one to understand what is being offered and any risks involved and to enable one to make an informed decision;
- (g) it contains appropriate disclaimers, warnings and a reference to the relevant product documentation and the place from where this may be obtained or accessed;
- (h) the advertisement makes clear the identity of the person making/ issuing the advertisement.

4.5.8 In assessing whether an advertisement or other communication meets these standards a Service Provider shall:

- (a) take into account matters which have been omitted (or might properly have been included) in the communication as well as the content of the communication itself and the context in which it is issued;
- (b) if the communication is subject to regulation outside Malta, comply with those regulations.

4.5.9 In the case of promotional communications to any prospective Contributor or Member, inviting them (whether directly or indirectly, expressly or by implication) to participate in any Scheme being promoted, or likely to have such an effect, the Retirement Scheme Administrator shall ensure that such Contributor or prospective Member is provided with reasonably sufficient information about the Scheme and

other relevant matters to enable that person to understand what is being offered (including any special factors as well as risks and tax implications), and to enable such person to make an informed decision about whether or not to participate in such Scheme. Such promotional communications shall include reference where an up-to-date copy of the Scheme's Particulars and (if available), audited financial statements of the Scheme may be obtained.

- 4.5.10 Where a Service Provider issues or causes to be issued an advertisement or carries out or causes to be carried out any promotional activity which is in breach of or does not comply with any of the provisions of the Act or these Pension Rules, the MFSA may issue an order directing the Service Provider -
- (a) to withdraw, wholly or partly, the advertisement or promotional activity; or
  - (b) to amend any particular of the advertisement or promotional activity; or
  - (c) to do such other thing as it deems appropriate in the circumstances.
- 4.5.11 If a Service Provider refuses or fails to comply with any order issued by MFSA under S.L.C. 4.5.10 of section B.4.5 of Part B.4 of these Pension Rules or refuses or fails to comply with such order within the time specified therein, without prejudice to any penalty which the Services Provider may incur under this Act, the MFSA shall have the power to enforce, at the expense of the Service Provider concerned, the order issued by it under that paragraph.
- 4.5.12 Section B.4.5 of Part B.4 of these Pension Rules shall also apply to advertisements issued by Service Providers and Retirement Funds. For the purposes of this Section the words "Service Providers" is to include a reference to the Board of Directors in the case of Retirement Funds.

#### ***B.4.6 Administrative Penalty***

- 4.6.1 Breach of these Pension Rules may give rise to disciplinary action being taken against the offending Service Provider or other person responsible for the Scheme or Retirement Fund.
- 4.6.2 Where a Service Provider or other person responsible for the Scheme or Retirement Fund breaches or infringes any Standard Licence Condition in the Pension Rules issued under the Act, the MFSA may by virtue of authority granted to it under article 46 of the Act impose penalties without recourse to a court of law, up to a maximum of Euro 93,200, in respect of each infringement. The Act grants the MFSA discretion to impose administrative penalties on licence holders and on the licence holder's directors or officers.
- 4.6.3 In determining whether to impose a penalty or other sanction in terms of the Act, and in determining the appropriate penalty or sanction, the MFSA shall be guided by the

principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, such as:

- (a) the good faith and the degree of openness of the Service Provider in the fulfilment of its obligations under the Act, relative Pensions Rules and Standard Licence Conditions or of decisions of the MFSA in his regard;
- (b) the degree of diligence and co-operation shown by the Service Provider;
- (c) any evidence of wilful deceit on the part of the Service Provider or its officers;
- (d) the seriousness of the effects of the infringement;
- (e) the repetition, frequency or duration of the infringement by the Service Provider;
- (f) the profits obtained by the Service Provider by reason of the infringement;
- (g) the economic size of the Service Provider;
- (h) prior sanctions imposed by the MFSA or other regulatory authorities on the same Service Provider.

4.6.4 Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Service Provider from its performance, unless the decision of the MFSA explicitly states the contrary.

4.6.5 A right of appeal to the Financial Services Tribunal is available to Service Providers on whom penalties are imposed.

4.6.6 Pursuant to article 16(8) of the Malta Financial Services Authority Act (Cap.330), any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the MFSA shall be subject to publication in such medium and in such manner and for such duration as may be deemed warranted by the circumstances and the nature and seriousness of the breach or wrongdoing.

#### **B.4.7 Safeguarding of Assets**

***This Section applies in particular to a Retirement Scheme Administrator and also to other Service Providers of a Retirement Scheme or Retirement fund licensed under the Act holding or controlling Client Assets who are also required to comply with the relevant provisions of the Retirement Pensions (Control of Assets) Regulations, 2014 as may be amended from time to time. For the purposes of these Pension Rules, the term “Client Assets” shall mean movable and immovable assets belonging:***

- ***to Members / Beneficiaries and the Scheme in the instance the Service Provider provides services to a Retirement Scheme***
- ***to Investors and the Retirement Fund in the instance that the Service Provider provides services to a Retirement Fund***

4.7.1 In the case of a Retirement Scheme, title to assets shall be registered in the name of a Retirement Scheme Administrator on behalf of the Scheme, or a Custodian on behalf of the Scheme, in a way which clearly distinguishes them from assets owned by the Retirement Scheme Administrator or Custodian (as applicable). Provided that, in the instance where the Retirement Scheme Administrator or Custodian provides trustee services, title to assets shall be registered in the name of the Retirement Scheme Administrator or Custodian in its capacity as trustee or in such other way that the existence of the Scheme is disclosed and in a way which clearly distinguishes them from assets owned by the Retirement Scheme Administrator or Custodian and any other assets held by the Retirement Scheme Administrator or Custodian under any other Scheme (as applicable) established as a trust.

In the case of a Retirement Fund, title to assets shall be registered in the name of the person carrying out the custody function, on behalf of the Fund.

4.7.2 The Service Provider shall acquire and hold any securities, any entitlement thereto and any other property or right acquired or held by it for the purposes of the Scheme or Retirement Fund (as applicable), together with any interest therein and all rights and benefits attaching thereto or arising therefrom, whether of a proprietary or personal nature, for the purposes of the Scheme and the Scheme’s Members in accordance with the Constitutional Document, the Scheme Document or Scheme Particulars (as applicable) and the Act, or for the purposes of the Retirement Fund and the Fund’s Investors in accordance with the Constitutional Document and Fund Particulars.

4.7.3 The Service Provider shall accept responsibility for all the Scheme’s or Retirement Fund’s assets which are in its possession or control. The Service Provider shall ensure that adequate arrangements are maintained to ensure that the Scheme’s or Retirement Fund’s assets, including documents evidencing title thereto, are properly recorded, identified, segregated and controlled, so that they and the interests of Members and Beneficiaries’ (in the case of Schemes) or of Investors (in the case of Retirement Funds) are safeguarded.

- 4.7.4 The Service Provider shall ensure that the Scheme's or Retirement Fund's assets are clearly identified in its records as property attributable to the Scheme or Retirement Fund as applicable.
- 4.7.5 Where the Scheme's or Retirement Fund's assets are held abroad, the Service Provider shall ensure and demonstrate to MFSA that the assets are afforded protection which is equivalent to that provided under the MFSA's requirements.
- 4.7.6 The Service Provider shall carry out, every six months, reconciliations between its internal accounts and records and those of any third parties by whom those assets are held.
- 4.7.7 Any discrepancy shall be resolved immediately. The Service Provider shall notify the MFSA if it has not carried out the reconciliation on the due date or, if having done so, it is unable to resolve any discrepancies.
- 4.7.8 All ancillary cash and any other money which the Service Provider holds or receives in respect of the Scheme or Retirement Fund which is not due to the Service Provider shall be held by the Service Provider for the purposes of the Scheme or Retirement Fund (as applicable). The Service Provider shall take steps to protect the Scheme's or Retirement Fund's money in the event of the Service Provider's insolvency, by ensuring that a liquidator is unable to claim the Scheme's or Retirement Fund's money as part of the assets of the Service Provider.
- 4.7.9 The Scheme's or Retirement Fund's money shall be held in specially created segregated accounts. Such assets shall not be commingled with the cash assets of the Service Provider or any other person. The account shall be entitled "Retirement Scheme Bank Account" in the case of a Scheme or "Retirement Fund Bank Account" in the case of a Retirement Fund and shall bear the name of the Scheme or Retirement Fund (as applicable) or in the case of a Scheme or Retirement Fund established as a trust or in contractual form, the name of the account shall evidence the existence of the Scheme or Retirement Fund (as applicable). The Service Provider shall ensure that the bank acknowledges in writing that it renounces, and will not attempt to enforce or execute, any charge, right of set-off or other claim against the account, or combine the account with any other account in respect of any debt owed to it by the Service Provider, and that interest payable on the account will be credited to the account and that it will deal with the assets in accordance with the Service Provider's instructions.
- 4.7.10 Where the Scheme's or Retirement Fund's money is paid into a bank account abroad, it is the responsibility of the Service Provider to ensure and demonstrate to the MFSA that money held in such an account is afforded protection which is at least equal to or better than that provided under the MFSA's conditions.
- 4.7.11 Only the Scheme's or Retirement Fund's money shall be paid into a Scheme's or Retirement Fund's bank account respectively.
- 4.7.12 Money shall only be withdrawn from a Scheme's or Retirement Fund's bank account if it is not the Scheme's or Retirement Fund's money (for example if a cheque

containing the Scheme's or Retirement Fund's Money and the Service Provider's money is paid into the account), or if it is properly required for payment to or on behalf of the Scheme or Retirement Fund, or if it is properly transferred to another Scheme or Retirement Fund bank account (as applicable).

- 4.7.13 The Service Provider shall account properly and promptly for the Scheme's or Retirement Fund's money and shall ensure that:
- (a) the respective Scheme's or Retirement Fund's Money and other money do not become commingled;
  - (b) at all times it knows how much Scheme's or Retirement Fund's Money stands to the credit of each respective Scheme or Retirement Fund; and
  - (c) money belonging to one Scheme or Retirement Fund is not used for another Scheme or Retirement Fund.
- 4.7.14 At least once a month, including at the Accounting Reference Date, the Service Provider shall reconcile the balance on each Scheme or Retirement Fund's Bank Account(s) as recorded by the Service Provider with the balance on that account(s) as set out in the statement issued by the bank.
- 4.7.15 As at the same date as in SLC 4.7.14 above, the Service Provider shall also reconcile, where applicable, the total of the balances on all the Scheme's or Retirement Fund's Bank Account(s) as recorded by the Service Provider with the total of the corresponding credit balances in respect of the respective Scheme's or Retirement Fund's, as recorded by the Service Provider.
- 4.7.16 Any differences identified as a result of the reconciliations carried out in accordance with SLC 4.7.14 or SLC 4.7.15 above shall be corrected immediately unless, in the case of SLC 4.7.15 above, they arise solely as a result of timing.
- 4.7.17 The reconciliations required in SLC 4.7.14 and SLC 4.7.15 above shall be carried out within two weeks of the date at which the reconciliation was due.

**PART C**

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**RULES FOR BACK OFFICE ADMINISTRATORS**

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## ***C.1 Standard Licence Conditions for Back-Office administrators***

### ***Requirement for Recognition for the provision of Back-Office administrative activities***

Article 7 of the Act provides that any person, who in Malta or from within Malta provides to Licence Holders, or to similar or equivalent persons overseas, any one or more of the back-office administrative activities as established by Pension Rules which do not themselves constitute a licensable activity under the Act, shall be required to apply for a recognition with the MFSA.

Recognised Back-Office administrators are required to comply with the ongoing requirements laid down in Section C.2 of these Pension Rules.

### ***Back-Office administrative activities***

In terms of article 7 of the Act, the MFSA may from time to time, issue Pension Rules laying down the requirements for recognition, including establishing which activities constitute administrative services for the purposes of this article. In this regard, such administrative activities shall be limited to Back-Office administrative activities for Schemes or Retirement Funds and shall include the following activities:

- Preparation of Net Asset Value
- Reconciliations
- Pricing the Investment Portfolio
- Preparation of Financial Statements
- Accounting services
- Performance Reporting
- Compliance Reporting
- Preparation of Contract Notes
- Record keeping
- Member/ Beneficiary Inquiries
- Maintenance of unit-holder register

Persons who intend to provide Back-Office Administrative activities not specified above are to consult the MFSA prior to carrying out activities in order that it may be determined whether the recognition requirement applies.

***Criteria which MFSA will apply in considering an application for Recognition for the provision of Back-Office administrative activities***

The MFSA shall not issue a recognition in terms of Article 7 of the Act unless it is satisfied that:

- (a) the Applicant is a fit and proper person to provide the indicated services; and
- (b) the Applicant will comply in all respects with the provisions of the Act, the relevant Regulations and these Pension Rules; and
- (c) that its Directors and officers are fit and proper persons to carry out the functions required of them; and that any aspect of or related to the application does not raise any regulatory concerns.

When considering whether to grant a recognition to an Applicant, the MFSA will, in particular, have regard to:

- (a) degree of protection of Beneficiaries, Members and Investors;
- (b) promotion of competition and choice; and
- (c) reputation and suitability of the Applicant.

The MFSA will consider the “fit and proper” status of the Applicant, the track record of the Applicant (and those associated with it), and the nature of the business.

The “fit and proper” test is one which an Applicant and a Recognised Back-Office administrator 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 Applicant and Recognised Back-Office administrator. It is not the task of the MFSA to prove that an Applicant is not fit and proper either during the application process or thereafter. The MFSA’s approach is cumulative that is to say the MFSA may conclude that a Recognised Back-Office administrator has failed the test on the basis of considering several situations, each of which on its own would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether a Recognised Back-Office administrator is 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.

The MFSA will only grant the Applicant recognition in terms of article 7 of the Act, if it is satisfied of its fit and proper status, including that of all persons connected thereto, in particular its Directors and Qualifying Shareholders. It is to be noted that the “fit and proper” test in respect of application for recognition focuses primarily on the integrity of the parties involved and the MFSA does not undertake any thorough evaluation of the competence and solvency of the Applicant as in the case of applications for licences issued in terms of the Act. Integrity involves the Recognised Back-Office administrator and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties. Moreover, the

Recognised Back-Office administrator will subject to the on-going requirements or conditions, specified in Section C.2 or which may be specified in the Recognition Certificate issued by the MFSA.

### ***The Application Process***

When submitting an application for Recognition as a Back-Office administrator of a Scheme or Retirement Fund, the promoter should ensure that the appropriate Application Form (Schedule G and H in Part F of these Pension Rules refers) is completed.

The application requirements which must be satisfied by an Applicant for Recognition, are found in Section A.5 of Part A of these Pension Rules.

The Recognised Back-Office administrator acknowledges that the MFSA has the right, from time to time, to vary or revoke any condition or to impose new conditions.

### ***Application Documents***

A request for Recognition as a Back-Office administrator of a Scheme or Retirement Fund should be supported by the following documentation:

- i. a duly completed Application for recognition as a Back-Office administrator of a Scheme or Retirement Fund;
- ii. a business plan including a description of the administrative services to be provided and details as to whom such administrative services will be provided;
- iii. a Memorandum & Articles of Association or equivalent constitutive document depending on the type of entity;
- iv. a copy of the most recent audited financial statements of the entity or in the case of a new entity, a business plan and minimum three year financial projections;
- v. a duly completed Personal Questionnaire found in Schedule I in Part F of these Pension Rules by each Director, senior manager and Qualifying Shareholder(s) of the Applicant;
- vi. resolution of the Directors of the Applicant confirming their intention to apply for a Recognition as a Back-Office administrator of a Scheme or Retirement Fund (as applicable) in terms of article 7 of the Act in favour of the Applicant;
- vii. address of the premises in Malta from where the services will be rendered including the relevant contact details;
- viii. Memorandum and Articles of Association of corporate shareholders of the Applicant;
- ix. a chart which illustrates the internal operational structure of the Applicant's business (this should show names, reporting lines and roles);

- x. where the Applicant forms part of a Group] a diagram showing the relationships between the Applicant and other members of the Group. The “family tree” submitted should give details up to the ultimate beneficial owner(s), showing percentage sizes of holdings in each entity; unless (a) the entity has one ultimate beneficial owner with a holding of over 50% of the voting rights or (b) no less than fifty ultimate beneficial owners who between them account for over 50% of the voting rights. If (a) or (b) apply, it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more;
- xi. the fee applicable.

The MFSA may require Applicants requesting recognition to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant Recognition to the Applicant as a Back-Office administrator of a Scheme or Retirement Fund (as applicable).

Persons in possession of a licence the Investment Services Act, shall, in applying for recognition in terms of article 7 of the Act, be exempt from the requirement to submit application documents listed in paragraphs (iii), (iv), (v), (vii), (viii) and (x) indicated above.

## ***C.2 Ongoing Requirements***

2.1 The MFSA may by notice in writing require the recognised Back-Office administrator to submit to the MFSA such information and documentation as it may require with respect to the administrative services provided and to furnish such information as the MFSA deems appropriate to assist other regulatory bodies both in Malta and overseas.

The recognised Back-Office administrator shall be required to submit the following to the MFSA:

- (a) within four months from its financial year end:
  - i. a copy of its annual audited financial statements;
  - ii. a report from its auditor to the MFSA, confirming whether in its opinion and further to the information available to it during the course of its audit, the activities of the recognised Back-Office administrator were, during the relevant accounting period, restricted to Back-Office administrative activities and did not involve licensable activity in terms of the Act.
- (b) the annual fee specified in the Retirement Pensions (Fees) Regulations, 2014

2.2 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to the premises from which the administrative services are rendered. For this purpose, the recognised Back-Office administrator shall ensure that proper accounting and other records are at all times retained at its premises to show and explain the transactions it carries out and the nature of its services and to make such records available to the MFSA.

2.3 The MFSA may at any time withdraw or suspend Recognition:

- (a) if it considers that the Back-Office administrator is not a fit and proper person to provide the service(s) he is recognised to provide. This shall include the cases where any persons connected to the Back-Office administrator, in particular its Directors and Qualifying Shareholders, are not fit and proper persons; or
- (b) if it considers that the Back-Office administrator does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any regulations or Pension Rules issued thereunder, or has failed to satisfy or comply with any obligation or condition to which he is subject by virtue of or under this Act; or
- (c) if the MFSA has been furnished by or on behalf of the Back-Office administrator with information which is false, inaccurate or misleading; or

- (d) if the Back-Office administrator has not commenced to provide the service he has been recognised to provide within the time provided for in the recognition or has ceased to provide such service; or
- (e) if it considers it desirable to cancel or suspend the recognition for the protection of Beneficiaries, Members or Investors; or
- (f) at the request of the Back-Office administrator; or
- (g) in any of the circumstances under which the MFSA would have been precluded from issuing the recognition as the case may be, or where under this Act it would have been entitled to refuse to grant such a recognition; or
- (h) if the Back-Office administrator thereof has obtained the recognition by making false statements or by any other irregular means.

2.4 The recognised Back-Office administrator shall notify the MFSA in writing of:

- (a) a change in its name or business name (if different) at least one month in advance of the change being made;
- (b) a change of address (at least one month in advance);
- (c) ceasing or being about to cease to act as Back-Office administrator of the Scheme or Retirement Fund, the reasons for such cessation and any circumstances connected therewith which in its opinion significantly affects the interests of the Scheme's Members or Beneficiaries or of Investors in the case of a Retirement Fund;
- (d) the resignation of one of its directors or senior managers (within 14 days of the resignation). The Back-Office administrator shall also request the director or senior manager to confirm to the MFSA that their resignation had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to the MFSA together with the notification of resignation;
- (e) any changes in its Memorandum & Articles of Association or equivalent constitutive document;
- (f) any proposed material change to the Back-Office administrator's business at least one month before the change is to take effect;
- (g) any evidence of fraud or dishonesty by a member of its staff immediately upon becoming aware thereof;
- (h) a decision to make a material claim on any insurance policy held in relation to its business (as soon as the decision is taken);

- (i) any actual or intended legal proceedings of a material nature by or against it upon becoming aware of the same;
- (j) the fact, where applicable, that it has not provided any activities as a Back-Office administrator for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity;
- (k) any material changes in the information supplied by the Back-Office administrator to the MFSA upon becoming aware of the same;
- (l) any other material information concerning the Back-Office administrator, its business or staff immediately upon becoming aware of the matter.

The recognised Back-Office administrator shall also be subject to section B.4.1 of Part B.4 of these Pension Rules (and the term “Service Provider” in section B.4.1 of Part B.4 shall be construed to refer to the Back-Office administrator).

## **PART D**

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### **INTRODUCERS**

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***D.1 Introdurers appointed by Personal Retirement Schemes or their Retirement Scheme Administrators***

- 1.1 An introducer is an individual or entity appointed by Personal Retirement Schemes / Retirement Scheme Administrators to carry out certain activities restricted to effecting introductions between customers and Personal Retirement Schemes / Retirement Scheme Administrators.
- 1.2 Introdurers must not carry out activities which, in any way, constitute a licensable or recognised activity in terms of the Act which would require the individual or entity to be licensed or recognised in the their own right. In particular, the introdurers must not give advice on personal retirement schemes. That is, they must not advise (or offer to advise) to customers on the merits of investing in a personal retirement scheme, or exercising any right that may be conferred by investing in a personal retirement scheme.
- 1.3 Introdurers shall not collect information from customers, in order to guard against the risk that:
  - (a) an introducer will be drawn into giving advice on personal retirement schemes;
  - (b) customers will perceive their introducer to have given them advice in relation to Personal Retirement Schemes.
- 1.4 An introducer should therefore not collect information on a customer's:
  - (a) existing pension arrangements or pension provision;
  - (b) risk profile;
  - (c) investment objectives.
- 1.5 An introducer is not permitted to receive any remuneration from a customer or give any commitments on behalf of the Personal Retirement Scheme / Retirement Scheme Administrator.
- 1.6 Personal Retirement Schemes / Retirement Scheme Administrators are required to ensure that an introducer does not carry on any activities which would require the individual or entity to be licensed or recognised under the Act. Adequate controls should be put in place in order to meet this requirement.
- 1.7 Personal Retirement Schemes / Retirement Scheme Administrators should ensure that introdurers are adequately informed of the activities which they may undertake as introdurers and any applicable procedures adopted by the Personal Retirement Schemes or the Retirement Scheme Administrator for effecting introductions.

- 1.8 Personal Retirement Schemes / Retirement Scheme Administrators shall:
- (a) establish and maintain a register containing the names and addresses of the introducers and any other particulars as the Personal Retirement Schemes / Retirement Scheme Administrators may deem appropriate;
  - (b) maintain a record, for inspection by the MFSA's Compliance Officers, of any remuneration paid to each introducer.
- 1.9 Charges which the customer will incur should not differ irrespective of whether such customer approached the Personal Retirement Scheme/ Retirement Scheme Administrator direct or through an Introducer.
- 1.10 The Retirement Scheme Administrator is responsible for "Customer Due Diligence" checks in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulation, 2008 and cannot rely on the Introducer's opinion.
- 1.11 If an Introducer is connected, in any manner, (for example as a shareholder) to a Retirement Scheme or Retirement Scheme Administrator under the Act, the introducer is to disclose that connection to a prospective customer.
- 1.12 The Introducer is bound by confidentiality as to the means and resources of the customer if s(he) is made aware of them.

#### ***Appointment of Individual Introducers***

- 1.13 An individual may be appointed as an introducer if his activities are limited to effecting introductions between customers and the Personal Retirement Scheme / Retirement Scheme Administrators.
- 1.14 An isolated introduction would not necessarily require the individual to be appointed as an introducer.
- 1.15 A Personal Retirement Scheme / Retirement Scheme Administrator before appointing an individual as an introducer must be satisfied, on reasonable grounds that the individual is:
- (a) of good repute and integrity; and
  - (b) suitable for effecting introductions between customers and the Personal Retirement Schemes / Retirement Scheme Administrators.
- 1.16 If a Personal Retirement Scheme / Retirement Scheme Administrator has any doubts that an individual is of good repute and integrity and suitable, it must resolve those doubts before appointing the individual as an introducer.

- 1.17 If a Personal Retirement Scheme / Retirement Scheme Administrator is aware that an individual's previous appointment as an introducer was terminated, then Personal Retirement Scheme / Retirement Scheme Administrator should take steps to seek to ascertain the reasons for the termination, and the extent to which those reasons reflect on the individual concerned.

***Entities acting as Introducers***

- 1.18 An entity may be appointed as an introducer if its activities are limited to effecting introductions between customers and the Personal Retirement Scheme / Retirement Scheme Administrator.
- 1.19 An isolated introduction would not necessarily require the firm to be appointed as an introducer.
- 1.20 A Personal Retirement Scheme / Retirement Scheme Administrator, before appointing an entity as an introducer should obtain information on its standing and professional reputation and must be satisfied, on reasonable grounds, that the individuals involved within the entity are:
- (a) of good repute and integrity;
  - (b) suitable for effecting introductions between customers and the Personal Retirement Scheme / Retirement Scheme Administrator.
- 1.21 If a Personal Retirement Scheme / Retirement Scheme Administrator has any doubts that any individual involved with the entity is of good repute and integrity and suitable, it must resolve those doubts before appointing the entity as an introducer.
- 1.22 If a Personal Retirement Scheme / Retirement Scheme Administrator is aware that the entity's previous appointment as an introducer was terminated, then Personal Retirement Scheme / Retirement Scheme Administrator should take steps to seek to ascertain the reasons for the termination, and the extent to which those reasons reflect on the entity concerned.