

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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

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INTRODUCTION

The Retirement Pensions Act, 2011

The Retirement Pensions Act, (“the Act”), provides a statutory basis for the regulation in Malta of Retirement Schemes, Retirement Funds and related Service Providers:-

- *Retirement Schemes:* A Retirement Scheme may be an Occupational Retirement Scheme or a Personal Retirement Scheme established for the principal purpose of providing retirement benefits.

The Act makes it illegal for a retirement scheme 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 situated in Malta and unless it 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 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 situated in Malta and unless it is duly licensed under the Act. The Act also makes it illegal for a retirement fund formed in accordance with or existing under the laws of Malta to carry on any activity in relation to a retirement scheme and, or overseas retirement scheme, in or from within a country, territory or other place outside Malta unless it is duly licensed under the Act.

- *Service Providers:* Service-Providers are entities that may be either licensed under the Act to provide one or more services listed in the Schedule to the Act and, or recognised to provide any one or more services of the back-office administrative activities established by the Pension Rules For Service Providers to a Retirement Scheme and/or a Retirement Fund or to a similar or equivalent arrangement overseas.

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 this Act. The Act also prohibits a person from providing any back-office administrative

activities detailed in the Rules for Service Providers 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 make 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 Retirement Funds.¹

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

Structure of the Pension Rules for Retirement Funds

These Pension Rules for Retirement Funds are divided into three main parts:

- Part A provides an introductory overview of the nature of Retirement Funds and specifies the licensing process and criteria applicable to Retirement Funds;
- Part B sets out the Standard Licence Conditions applicable to Retirement Funds;
- Part C includes the Appendices and reporting schedules.

The Standard Licence Conditions set out in Part B may be supplemented where appropriate, by other conditions or codes of conduct.

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).

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

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 defined otherwise in the Glossary to the Pension Rules.

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PART A

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

A.1 Overview of a Retirement Fund

Definition

In terms of article 2 of the Act, a “Retirement Fund” means an arrangement established for the principal purpose of holding and investing the contributions made to one or more retirement schemes and, or to one or more overseas retirement schemes.

The main purpose of a retirement fund is to act as a pooling vehicle through which one or more Retirement Schemes licensed under the Act or one or more Overseas Retirement Schemes may channel the investments of the contributions received by the respective schemes.

Establishment and Form

A Retirement Fund may be established in the following forms under Maltese law:

- a) as an investment company with variable share capital under the Companies Act (Chapter 386 of the Laws of Malta);
- b) as a trust by trust deed under the Trusts and Trustees Act (Chapter 331 of the Laws of Malta);
- c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta),

or in any other legal form approved by the MFSA.

A Retirement Fund established in the form of an investment company with variable share capital can be established as a multi-fund company with various sub-funds or pools of assets. This means that a retirement fund may be constituted of several pools of assets to match the varying objectives of different retirement schemes and/or overseas retirement Schemes pooling their assets in the Retirement Fund.

Governance Arrangements & Related Parties

A Retirement Fund, irrespective of its legal form, is required to appoint or to have the following parties:

- (a) a *Investment Manager* licensed under the Act, or any other entity acceptable to the MFSA, to carry out the discretionary management function of the assets of the Retirement Fund; and
- (b) a *Custodian* licensed under the Act as Custodian of Retirement Funds or any other entity acceptable to the MFSA to carry out the custody function; and
- (c) an *Auditor appointed in terms of the Pension Rules for Retirement Funds*.

A *Back-Office Administrator* may also be appointed to carry out the day-to-day back-office administration of the Retirement Fund.

Independence of the Retirement Fund

The following independence requirements would need to be satisfied:

- a) a majority of the Directors of the Retirement Fund shall be independent from the Retirement Scheme Administrator of any Retirement Scheme investing in it and where the Contributor to an Retirement Scheme is the sponsoring employer, the Directors of the Retirement Fund shall also be independent from such Contributor. They shall act independently of each other and solely in the interests of the Investors into the Retirement Fund. In the case of a Retirement Fund that receives contributions only from one Retirement Scheme, the Retirement Fund is required to have an independent person on its Board of Directors.
- b) any Investment Manager and Custodian appointed to the Retirement Fund shall be separate persons independent of each other and where the Contributor to a Retirement Scheme is a business concern, the Investment Manager shall also be separate person independent from such Contributor.

Investment Requirements

A Retirement Fund must invest contributions (received from retirement schemes and/or overseas retirement schemes), and all returns on such contributions in instruments and other assets, with the aim of maximising the return on such contributions.

A Retirement Fund is required to invest all money and other assets received in accordance with the applicable investment policy and investment restrictions of the retirement scheme and/or overseas retirement scheme investing therein and in accordance with the Retirement Fund's Memorandum of Association and the Fund Particulars.

A.2 Licensing Requirements

Licensing Requirement

In terms of Article 5 of the Act, a Retirement Fund requires a licence to carry on the activity of a retirement fund in or from Malta. In terms of this article:

- (a) no retirement fund shall carry on any activity in or from within Malta in relation to a retirement scheme or an overseas retirement scheme, unless such retirement fund is situated in Malta and unless duly licensed under this Act.
- (b) no retirement fund formed in accordance with or existing under the laws of Malta shall 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 duly licensed under this Act.

Licensing Criteria

A Retirement Fund must be constituted and structured in line with the requirements set out by the MFSA. The Retirement Fund's constitutional document shall meet the requirements set out in the Standard Licence Conditions B.1 of Part B of the Pension Rules on Retirement Funds. Moreover, the name of the Retirement Fund must be one which, in the opinion of the MFSA, is not misleading. Moreover, the MFSA shall refrain from licensing a Retirement Fund unless it is satisfied that:

- (a) the Retirement Fund and any person, by whatever name designated, responsible for the operation, administration, management of the fund will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;
- (b) the Retirement Fund and any person responsible for the operation, administration and management of the retirement fund are fit and proper persons to carry out the functions required of them in connection with the fund;
- (c) any aspect of or related to the application does not raise any regulatory concerns.

When considering whether to grant or refuse a licence to a Retirement Fund, the MFSA shall in particular have regard for:

- (a) the protection of Beneficiaries and Members;
- (b) the promotion of competition and choice, and
- (c) the reputation and suitability of the Retirement fund and the persons responsible thereof and all other parties connected therewith.

The MFSA will need to be satisfied that appropriate governance structures and mechanisms are in place. The business should be well organised and have adequate controls and sufficient records should be maintained.

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

The "fit and proper" test is one which an Retirement Fund and its related parties must satisfy on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that it meets the required standards is on the Retirement Fund and its related parties. It is not the duty of the MFSA to prove the converse before it can refuse or before it intends to suspend or cancel a Licence. The MFSA's approach is cumulative that is to say the MFSA may conclude that a Retirement Fund and/or its related parties has failed the test on the basis of considering several situations, each of which on its own merit would not lead to that conclusion. An open and honest relationship with the MFSA is thus essential. When arriving at its decision as to whether a Retirement Fund and its related parties are fit and proper the MFSA will take account of all material facts whether such facts are divulged or not (for example in respect of a Director's criminal record). It should be noted that it is an offence to provide information or make statements which are inaccurate, false or misleading.

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

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

Integrity involves the Retirement Fund and its related parties acting honestly and in a trustworthy fashion in relation to the Members and Beneficiaries.

Competence means that those people carrying on the business of the Retirement Fund should be able to demonstrate an acceptable amount of knowledge, qualifications, professional expertise and experience directly relevant to the occupational retirement activities with which they are dealing. The MFSA will also look at the experience and track record of all parties who will be involved in the management of the Retirement Fund to assess competence. The degree of competence required will depend upon the job being performed.

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

Application Documents

A request for the licensing of a Retirement Fund should be made by submitting a duly completed Application for licensing as a Retirement Fund in the form set out in Schedule XXX of these Pension Rules, supported by the documents specified in the Application Form. The MFSA may require any additional documents as deemed necessary.

The Licensing Process

- (a) The Pension Rules for Retirement Fund should be read carefully before an Application Form for licensing is submitted. It is recommended that due consideration is given to the applicable legal and regulatory requirements. Applicants may wish to arrange to meet representatives of the MFSA in advance of submitting a formal application for licensing and, 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 XX under these Pension Rules should not be amended in any way. All questions in the application form should be answered and any questions which are not relevant to the application at hand should be marked 'Not Applicable' and not deleted.

- (c) Following submission, the Application and supporting documentation will be reviewed and comments provided to the Applicant directly or to the Applicant's professional advisors. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The MFSA will only accept comments on issues arising from its review of the application documents, either directly from the Applicant or the professional advisors thereof or from any other person if the latter is so authorised by the Applicant upon evidence of the said authorisation. The 'fit and proper' checks begin at this stage.
- (d) The MFSA will analyse the submissions and on the basis of this, make a decision regarding the licensing.

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 Retirement Funds 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 application, the Applicant will be required to finalise any outstanding matters, such as (in the case of a new entity) its incorporation and capitalisation.

- (f) Thereafter, licensing will be effected. Where the application is one of a number of related licensing applications, the MFSA will normally require that licensing for all the relevant entities takes place simultaneously. Alternatively, where the MFSA agrees that licensing need not be simultaneous, this will normally be on the condition that business is not commenced until all the necessary licences are in place.
- (g) The Applicant may also be required to satisfy a number of post-licensing matters prior to formal commencement of business.

Fees

The fees can be found in the Special Funds (Registration Fees) Regulations, 2004. 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 Registration 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 a Licence

Requests for variation of a Licence should be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

A.3 Rules for Retirement Funds licensed under the Act

The Standard Licence Conditions which are to be satisfied by Retirement Funds licensed under the Act are stipulated in the Act itself, in secondary legislation which may be issued from time to time and in these Pension Rules issued by the MFSA.

The detailed Standard Licence Conditions applicable are set out in Part B 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 to reflect the particular circumstances of the Retirement Fund. A Retirement Fund licensed under the Act will be notified of the applicable Standard Licence Conditions, which are to be applied under the Act or generally. The Standard Licence Conditions will be notified to the applicant prior to final licence.

The MFSA has the right, at any time and from time to time, to vary or revoke any Standard Licence Condition or impose new Standard Licence Conditions.

A.4 Overseas Retirement Schemes

Definition

An Overseas Retirement Scheme is a scheme or arrangement, organized under the laws of a country outside of Malta with the principal purpose of providing retirement benefits.

Qualification as an Overseas Retirement Scheme

An Overseas Retirement Scheme does not require licensing under the Act. However, it may either decide to establish a Retirement Fund licensed under the Act or else invest its Contributions in an already established Retirement Fund licensed under the Act. Consequently, the Overseas Retirement Scheme should be considered eligible as such by the Retirement Fund in which it will be investing.

The following issues shall particularly be taken into account in arriving at a decision whether a scheme or arrangement is eligible or qualifies as an Overseas Retirement Scheme:

- a) whether it falls within the definition of an Overseas Retirement Scheme as specified in article 2 of the Act;
- b) its reputation and suitability;
- c) whether it is subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, and,
- d) any other criteria as may be determined from time to time.

Qualification Procedure

Where an Overseas Retirement Scheme is interested in investing in an already established Retirement Fund it shall first contact such fund. The Retirement Fund shall undertake its own checks and enquiries to establish whether in its opinion, the scheme or arrangement qualifies to invest in the fund (by reference to the issues outlined in points (a) to (d) above). The Retirement Fund shall notify the MFSA of any scheme which it has considered as being eligible or qualifies as an Overseas Retirement Scheme, including the basis for its eligibility or qualification.

In the instance where the Overseas Retirement Scheme is to establish and licence Retirement Funds locally, the eligibility or qualification of the scheme shall be considered as part of the application process for the licensing of the Retirement Fund(s). In such case, the applicant would need to demonstrate that the scheme or arrangement qualifies as an Overseas Retirement Scheme.

The Retirement Fund in which an Overseas Retirement Scheme invests shall be responsible for ensuring that the qualification or eligibility of the Overseas Retirement Scheme remains so applicable on an ongoing basis. The Retirement Fund shall notify the MFSA as soon as it is aware that such qualification or eligibility is no longer applicable.

PART B

STANDARD LICENCE CONDITIONS FOR RETIREMENT FUNDS

B.1 Constitution, Operation and Governance

Constitution

- 1.1 A Retirement Fund shall be established for the principal purpose of holding and investing the contributions made to one or more Retirement Schemes and / or to one or more Overseas Retirement Schemes. The Retirement Fund shall:
- a) operate according to the principle of risk spreading;
 - b) pool the contributions received from Retirement Schemes and/or Overseas Retirement Schemes and the profits or income out of which payments are to be made;
 - c) issue units continuously or in blocks at short intervals; and
 - d) repurchase or redeem out of its assets, continuously or in blocks at short intervals, units in the Retirement Fund held by a Retirement Scheme or Overseas Retirement Scheme, at the request of that Retirement Scheme or Overseas Retirement Scheme.
- 1.2 A Retirement Fund shall be established in terms of Maltese Law. A Retirement Fund may be established:
- a) as an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta); or
 - b) as a trust in terms of the Trust and Trustees Act (Chapter 331 of the Laws of Malta); or
 - c) by contract in terms of the Civil Code (Chapter 16 of the Laws of Malta).
- or in any other legal form approved by the MFSA.
- 1.3 The Constitutional Document of a Retirement Fund shall contain at least the information outlined in Appendix 1. The contents of the Constitutional Document of a Retirement Fund shall be approved by the MFSA in advance of the licensing of the Retirement Fund.

Operation of the Retirement Fund

- 1.4 The Retirement Fund shall be operated in accordance with the Constitutional Document, the Fund Particulars, the Standard Licence Conditions and with all applicable laws, regulations and rules, whether in Malta or elsewhere to which it is subject, including, without limitation, the Act.

- 1.5 The Retirement Fund shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.
- 1.6 The Retirement Fund may only accept subscriptions from Retirement Schemes and Overseas Retirement Schemes.
- 1.7 The Retirement Fund shall invest subscriptions in line with its investment objective, policies and restrictions applicable to the retirement schemes.

Service-Providers

- 1.8 Any person, appointed in terms of article 13(2) of the Act, responsible for the operation, administration and, management of the Retirement Fund shall be responsible for compliance with the Pension Rules on Retirement Funds. Where the administrative activities are limited to back-office administrative activities as stipulated in Part C of the Pension Rules for Services-Providers, such activities may only be delegated to a back-office administrator recognised under the Act.

Investment Manager

- 1.9 The Retirement Fund shall have an Investment Manager to manage the investment of the Retirement Fund's assets on a discretionary basis.
- 1.10 The Investment Manager of the Retirement Fund may either be:
- a) an entity licensed to carry out investment management services to Retirement Funds under the Act;
 - b) investment manager established in another EU or EEA State and duly authorised for this activity in accordance with Directives 2009/65/EEC, 2004/39/EEC, 2006/48/EC, 2002/83/EC and 2011/98 EU and which has passported its services in Malta;
 - c) any other entity which is subject to an adequate level of regulatory supervision in the jurisdiction where it operations take place,

having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment management activities.

Custodian

- 1.11 The assets of the Retirement Fund shall be entrusted to a Custodian, for safe-keeping and for enquiring into the conduct of the Investment Manager and the Retirement Fund to report whether the Retirement Fund has been managed in accordance with the investment rules and borrowing powers laid out in the Fund Particulars and

otherwise in accordance with the provisions of the Constitutional Document of the Retirement Fund, Fund Particulars and the Standard Licence Conditions.

1.12 The Custodian of a Retirement Fund shall have an established place of business in Malta.

1.13 The Custodian may 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 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/EEC and which has passported its services in Malta;
- c) an entity providing the services of Custodian in terms of a Category 4 Investment Services Licence issued under the Investment Services Act, 1994;
- d) an entity established and regulated in a recognised jurisdiction,

having the business organisation, systems, experience and expertise deemed necessary for it to act as Custodian.

For the purposes of paragraph (d), “recognised jurisdictions” refers to signatories to a Multilateral Memorandum of Understanding or Bilateral Memorandum of Understanding with the MFSA covering the relevant sector of financial services.

Investment Advisor

1.14 The Retirement Fund may appoint an Investment Advisor responsible for the provision of investment advice in relation to the assets of the Retirement Fund.

1.15 The Investment Advisor of a Retirement Fund may either be:

- a) an entity licensed to provide investment advice to Professional Clients under the Investment Services Act;
- b) investment advisors established in another Member State and duly authorised for this activity in accordance with Directive 2004/39/EC and which passported its services in Malta;
- c) any other entity which is subject to an adequate level of regulatory supervision in the jurisdiction where its operations take place;

having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to undertake investment advice.

Back-Office administrator

- 1.16 The Retirement Fund may appoint a Back-Office administrator responsible for back-office administrative activities in accordance with the Pension Rules for Service Providers. Where a Back-Office administrator is not appointed, the Investment Manager shall be responsible for the back-office administrative function and is required to have the appropriate systems and expertise to provide back-office administrative services.
- 1.17 The Back-Office Administrator, where appointed, shall have an established place of business in Malta.
- 1.18 The Back-Office administrator of a Retirement Fund may either be:
- a) the Investment Manager of the Retirement Fund;
 - b) an entity recognised to provide back-office administration services to Retirement Funds under the Act;
 - c) any other entity acceptable to the MFSA,
- having the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to provide back-office administration service.

Independence Requirements

General

- 1.19 The Investment Manager and Custodian of the Retirement Fund shall be separate persons, independent from each other and shall act independently and solely in the interests of the Retirement Scheme/s and / or Overseas Retirement Scheme/s investing in the Retirement Fund.
- 1.20 In the case of a Retirement Fund established as an investment company, the Retirement Fund shall at all times be independent from the Investment Manager and the Custodian.
- 1.21 The Retirement Fund (where the latter is established as an investment company) and the Investment Manager shall be independent from a Contributor to a Retirement Scheme and/or Overseas Retirement Scheme investing in the Retirement Fund, where the Contributor is the sponsoring employer of the Occupational Retirement Scheme.
- 1.22 Any facts, relationships, arrangements or circumstances which may at any stage bring any required independence into question shall be declared to the MFSA as soon as the entity concerned becomes aware of any such matter.

Fitness and Properness

- 1.23 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Service Provider of the Retirement Fund.
- 1.24 A Service-Provider shall, on a continuing basis, have sufficient financial resources and liquidity at its disposal to enable it to conduct its business effectively and to meet its liabilities.

Appointments and Replacement of Service-Providers

- 1.25 Where any Service Provider is appointed, the Retirement Fund shall ensure, as a minimum that it acts with due skill care and diligence in:
- a) selecting the Service Provider, assessing its suitability for the role contemplated ensuring that it has the appropriate skills and any necessary regulatory licence or recognition or approval to perform the tasks assigned to it;
 - b) satisfying itself on an ongoing basis that the Service Provider remains suitable for the role contemplated and provides the relevant services to a proper and appropriate standard; and
 - c) takes prompt and appropriate action if the Service Provider fails (or reasonably appears likely to fail) to provide its services to such standard.
- 1.26 The appointment and/or the replacement of any Service-Provider to a Retirement Fund, the terms of that appointment, and the contents of the agreement to which the appointment is subject, shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of all or of any Service-Provider.

Auditor

- 1.27 The Retirement Fund shall appoint an auditor approved by the MFSA. The appointment or replacement of an auditor of a Retirement Fund shall be subject to the prior approval of the MFSA. The MFSA shall have the right to require the replacement of the auditor of a Retirement Fund. The MFSA shall be entitled to be satisfied, on a continuing basis, that the auditor of the Retirement Fund has the appropriate expertise and experience to carry out its functions.
- 1.28 An individual shall not be appointed as an auditor of a Retirement Fund, nor an audit firm be appointed where the individual directly responsible for the audit or her/his firm is:
- a) a director, partner, qualifying shareholder, officer, representative or employee of the Retirement Fund or Custodian of the Retirement Fund;

- 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 Retirement Fund;
- e) a person who is engaged under a contract of service to provide non-audit services to any employer acting as Contributor to a Retirement Scheme or Overseas Retirement Plan investing in the Retirement Fund;
- f) a person disqualified by the MFSA from acting as an auditor of a Retirement Fund.

For this purpose, an auditor shall not be regarded as an officer of the Retirement Fund solely by reason of being auditor of that Retirement Fund.

- 1.29 The Retirement Fund shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of the appointment. The letter of engagement shall contain at least the information in Appendix 5. The Retirement Fund shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.
- 1.30 In respect of each annual accounting period, the auditor shall be required to include in the annual report of the Retirement Fund, an audit report. The Retirement Fund shall notify the MFSA immediately it becomes aware its auditor intends to qualify the audit report.
- 1.31 On the appointment of an auditor, the MFSA shall be provided with the declaration referred to in Annex II to the Application Form for Licensing as a Retirement Fund.
- 1.32 If at any time, the Retirement Fund 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 Retirement Fund.

B.2 Documentation, Reporting and Records

The Retirement Fund Particulars

- 2.1 The Retirement Fund shall prepare and maintain a document known as the “Fund Particulars”. It shall be dated and maintained up-to-date. The Fund Particulars shall describe the Retirement Fund in sufficient detail for any Retirement Scheme and/or Overseas Retirement Scheme (including any Contributor, Member and/or Beneficiary thereof) investing in the Retirement Fund, to make an informed judgement as to how the assets of the Retirement Fund are being managed and invested and to be fully aware of the risks to which they will be exposed. The Fund Particulars shall, as a minimum, include the contents outlined in Appendix 2.
- 2.2 The Fund Particulars and any amendments thereto shall require the prior approval of the MFSA before being effected.
- 2.3 The Retirement Fund shall provide copies of the Fund Particulars to the Retirement Scheme/s and/or Overseas Retirement Scheme/s investing in the Retirement Fund and notify it/ them of any changes thereto.

The Fund Particulars shall be made available in a printed form at the registered office of the Retirement Fund or its Investment Manager.

Retirement Fund Records and Reports

- 2.4 A Retirement Fund shall keep such accounting and other records as are necessary to enable it to comply with the Pension Rules on Retirement Funds and to demonstrate that compliance has been achieved.
- 2.5 Accounting records shall be retained for a minimum period of ten years after the Fund year to which they relate.
- 2.6 The Retirement Fund shall prepare and submit monthly returns. The contents of the monthly returns are set out in Appendix 3. The monthly returns shall be submitted within two weeks of the end of the month concerned.
- 2.7 The Retirement Fund shall prepare half-yearly and annual reports which shall at least contain the matters specified in Appendix 4 of these Pension Rules.
- 2.8 The half-yearly report is to be submitted to the MFSA within one month of the end of the period concerned.
- 2.9 The Fund’s annual report shall be prepared in conformity with International Financial Reporting Standards. The accounting information provided in the annual report shall be audited by a qualified auditor approved by the MFSA. Accounting policies shall be consistently applied.

- 2.10 Within four months of its financial year end, the Retirement Fund shall submit to the MFSA, each Retirement Scheme Administrator of any Retirement Scheme and/or the operator of any Overseas Retirement Plan investing in the Retirement Fund and any other person as required by the Act or which the MFSA may prescribe:
- a) its annual report, including the auditors' report in full;
 - b) its audited accounts; and
 - c) a Directors' report providing information sufficient to enable the persons mentioned above to make an informed judgement on the development, management, operation and financial performance of the Retirement Fund.
- 2.11 Financial returns shall not be misleading as a result of the misrepresentation or omission of any material item.
- 2.12 The Retirement Fund shall submit such other information, additional financial returns and reports as the MFSA may from time to time request.
- 2.13 The financial year end of the Retirement Fund (including any changes thereto) shall be agreed with the MFSA.
- 2.14 Where an occupational retirement scheme is investing in a Retirement Fund, the Fund shall publish any information as may be required by the MFSA.

B.3 Investment Objective, Policies and Restrictions

Investment Policy and Restrictions

- 3.1 The Retirement Fund shall observe its Investment Objective, Policies and Restrictions.
- 3.2 A Retirement Fund shall invest all money and other assets received, in accordance with the investment policy and restrictions applicable to the Retirement Scheme and/or Overseas Retirement Scheme investing in the Retirement Fund, and in accordance with the Retirement Fund's Constitutional Documents and Fund Particulars.
- 3.3 The MFSA may require a Retirement Fund to adopt specific investment restrictions applicable to retirement schemes.

Breaches of Investment Rules

- 3.3.1 The Retirement Fund shall comply with the investment restrictions stipulated in its Fund Particulars within six months from the launch of the Retirement Fund or upon reaching a value equivalent to €2,500,000 whichever is sooner.
- 3.4 The following shall be the rules applicable in the event of failure to comply with the investment restrictions:
 - a) if one or more of the Retirement Fund's Investment Restrictions are at any time contravened for reasons beyond the control of the Investment Manager, the Investment Manager shall take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the Investors and, in any event, within the period of three months beginning on the date of discovery of the contravention of such restriction(s) or such other period as may be agreed by the MFSA;

The above is aimed at addressing circumstances which may arise following acquisition of the Fund's assets and include market price movements of the Fund's underlying assets or market illiquidity. The above is without prejudice to the duty of the Investment Manager to comply with the Fund's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.

- b) Forthwith upon the Custodian becoming aware that circumstances of a kind described above have arisen, the Custodian shall take such steps as are necessary to ensure that the Fund complies with the requirement imposed by (a) above.

- c) Failure to comply with an Investment Restriction which may arise due to the circumstances outlined in (a) above shall not be considered as a breach of a Standard Licence Condition and will therefore not be subject to the MFSA's notification requirements. However, where the contravention is not remedied within the maximum three month period stipulated in (a) above, a breach of this Standard Licence Condition is deemed to arise and the relevant notification requirements will apply.

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B.4 General Conditions

General

- 4.1 The Retirement Fund shall state that it is licensed and regulated by the MFSA in all correspondence and other documents. Wording similar to the following shall be used: “*Licensed as a Retirement Fund by the Malta Financial Services Authority*”.
- 4.2 The Retirement Fund shall cooperate fully with any compliance test, inspection or other enquiry carried out by, or on behalf of, the MFSA. The Retirement Fund shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information.
- 4.3 Units in a Retirement Fund are not freely transferable other than between Investors and between the Investors and the Retirement Fund. Units in the Retirement Fund may not be transferred from a unitholder to any other party without the advance permission of the MFSA.
- 4.4 No bearer units may be issued.
- 4.5 Where the Retirement Fund is not listed, the advance permission of the MFSA shall be sought before it takes any preparatory steps to seeking a listing.
- 4.6 The MFSA has the right to require the suspension of the repurchase or redemption, or sale or issue of units. Where the Retirement Fund suspends temporarily the repurchase or redemption of units, it shall inform the MFSA immediately and, in any event, within the working day.
- 4.7 When requested to do so by the MFSA, the Retirement Fund shall submit to arbitration in respect of any dispute between itself and an Investor. Under such circumstances the MFSA shall be entitled to appoint an Arbitrator.
- 4.8 The Retirement Fund shall make available to any Service Provider and auditor of the Fund, the information and explanations needed to discharge the responsibilities arising from the respective role of Service Provider or auditor of the Fund and in order to meet the MFSA’s requirements.
- 4.9 Any variation of the fees and charges by which the issue or sale price of units is increased or by which the redemption or repurchase price of units is decreased shall be notified to the MFSA and the Custodian as applicable. Such variation shall be published in revised Fund Particulars at least 90 days before becoming effective. An increase in the fees and charges applied to the redemption or repurchase price shall be applied only to units issued or sold after the date on which the increase takes effect.

- 4.10 The Retirement Fund shall be liable to unit holders for any loss or prejudice suffered by them resulting from its fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations.

Notifications to the MFSA

- 4.11 The MFSA shall be informed of any material information concerning the Retirement Fund, its management or its operation, as soon as the Retirement Fund becomes aware of that information. This shall include notifying the MFSA in writing of:
- a) of any breach of the Act, the regulations issued thereunder, these Pension Rules or of any breach of the provisions of the Constitutional Document or Fund Particulars as soon as they become aware of the breach;
 - b) a change in its registered address, as applicable;
 - c) a proposed change to its Investment Policies;
 - d) any proposed material change to the Retirement Fund's business at least one month before the change is to take effect;
 - e) any evidence of fraud or dishonesty by anyone connected with the operation of the Retirement Fund immediately becoming aware thereof;
 - f) any actual or intended legal proceedings relating to the Retirement Fund which might adversely impact on the operation of the Retirement Fund or its compliance with its Constitutional Document or the Act upon becoming aware of the same;
 - g) of any facts, relationships, arrangements or circumstances which may at any stage bring the independence of any Service Provider or auditor of the Retirement Fund into question;
 - h) if the Retirement Fund is informed that its auditor intends to qualify the audit report;
 - i) of any intended variation of charges imposed on the Retirement Fund in accordance with SLC 4.9 of Part B of the Pension Rules for Retirement Funds;
 - j) of any intended winding up of the Retirement Fund;
 - k) the resignation or removal of a Director, Trustee or other individual in accordance with SLCs 5.4 and 6.6 of Part B of the Pension Rules for Retirement Funds;
 - l) the cessation of any appointment of a Service Provider or auditor of the Retirement Fund, the reasons thereof and any circumstances connected

therewith which significantly affects the interests of the Retirement Fund's Investors;

- m) any material changes in any information supplied by the Retirement Fund to the MFSA whether under the Act or otherwise;
- n) in the instance where the net asset value of the Retirement Fund is below € 2.33 million
- o) in the instance that the Retirement Fund fails to have an auditor in office for a period exceeding four weeks.

Amendments to Documents

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

- a) Constitutional Documents;
- b) the Fund Particulars;
- c) any other document affecting the rights of Investors in the Fund;
- d) the latest annual report and any subsequent interim report for the Retirement Fund;
- e) a business plan submitted to the MFSA;
- f) the Retirement Fund's agreements with any appointed Service Provider;

The Constitutional Documents shall establish the procedures for amending these documents.

Variation of Licence and Licence Fees

4.13 A request for a variation of any standard licence conditions of the Retirement Fund shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.

4.14 The MFSA has the right, from time to time, and following advance notification to the Retirement Fund, to vary or revoke any standard licence condition or to impose any new condition.

4.15 The fees payable to the MFSA are those specified in the Special Funds (Registration Fees) Regulations, 2004. The Retirement Fund shall pay promptly all amounts due to the MFSA.

Termination of a Retirement Fund

4.16 In the event of a winding-up of the Retirement Fund, the prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the

MFSA, the Retirement Fund shall use its best endeavours to delay the winding up of the Retirement Fund or to proceed with the winding-up in accordance with conditions imposed by the MFSA.

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B.5 Supplementary Conditions for Retirement Funds established as Investment Companies

- 5.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Retirement Fund. The concept of fitness and properness requires directors to be honest, competent and solvent persons.
- 5.2 The Retirement Fund shall obtain the written consent of the MFSA before the appointment of a Director. The Directors of the Scheme shall be individuals. The request for consent of the appointment or replacement of a Director should reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement.
- 5.3 The request for consent of the appointment or replacement of an individual as a Director shall be accompanied by a Personal Questionnaire, in the form set out in Schedule XX attached to these Pension Rules duly completed by the person proposed. The proposed Director shall not assume any powers or commence any duties as a Director unless and until the MFSA has approved her/his appointment. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information as it considers appropriate.
- 5.4 If any person shall for whatever reason cease to be a Director, the Retirement Fund shall notify the MFSA of this, including the reasons for such cessation, and any circumstances connected therewith which in its opinion significantly affects the interests of the Fund. The notification should be made within 14 days of the resignation or removal. The Retirement Fund shall also request the Director to confirm to MFSA that his resignation or removal had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Fund's notification of departure.
- 5.5 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Retirement Fund or at any place as may be agreed with the MFSA.
- 5.6 The Board of Directors shall act honestly, fairly and with integrity and in the best interests of the Retirement Fund. Such action shall include:
- a) avoiding conflicts of interest at all times and, where he/ she is aware of an actual conflict of interest, ensuring – by way of disclosure, internal procedures or otherwise – that the Retirement Fund's Investors are treated fairly. The following procedures should be followed during Board Meetings, where a director considers that he/she has or may have a conflict of interest:
 - i. that person should declare that interest to the other directors either at the Meeting at which the issue in relation to which he/ she has an interest first arises, or if the director was not at the date of the Meeting interested in the issue, at the next Meeting held after he/ she became so interested;

- i. unless otherwise agreed to by the other directors, a director shall avoid entering into discussions in respect of any contract or arrangement in which he/ she is interested and should withdraw from the meeting while the matter in which he/ she has an interest is being discussed;
 - ii. the interested director should not vote at a Meeting in respect of any contract or arrangement in which he/ she is interested, and if he/ she shall do so, his/ her vote shall not be counted in the quorum present at the Meeting; and
 - iii. the minutes of the meeting should accurately record the sequence of such events;
- b) abiding by all relevant laws and regulations;
 - c) avoiding any claim of independence or impartiality which is untrue or misleading; and
 - d) avoiding making misleading or deceptive representations to Investors.

B.6 Supplementary Conditions for Retirement Funds established as Trusts

- 6.1 Retirement Funds in the form of trusts shall be established by written instrument and shall not be subject to any limits on their duration.
- 6.2 Retirement Funds shall not be in the form of discretionary trusts.
- 6.3.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any Trustee of the Retirement Fund. The concept of fitness and properness requires the trustee to be honest, competent and a solvent person.
- 6.4 The Retirement Fund shall obtain the written consent of the MFSA before the appointment or replacement of a Trustee. The request for consent of the appointment or replacement of a Trustee shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement.
- 6.5 The request for consent of the appointment or replacement of an individual as a Trustee shall be accompanied by a Personal Questionnaire, in the form set out in Schedule XX to these Pension Rules duly completed by the person proposed. The proposed Trustee shall not assume any powers or commence any duties as a Trustee unless and until the MFSA has approved her/his appointment. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information as it considers appropriate.
- 6.6 If any person shall for whatever reason cease to be a Trustee, the Retirement Fund shall notify the MFSA of this, including the reasons for such cessation, and any circumstances connected therewith which in its opinion significantly affects the interests of the Fund. The notification should be made promptly and in any case not later than 14 days from the resignation or removal. The Retirement Fund shall also request the Trustee to confirm to MFSA that his resignation or removal had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Fund's notification of resignation or removal.
- 6.7 The Trustee(s) shall act honestly, fairly and with integrity and in the best interests of the Retirement Fund and abide by all relevant laws and regulations.

B.7 Supplementary Conditions for Retirement Funds set up as Umbrella Funds

- 7.1 Where the Retirement Fund is set up as an Umbrella Fund, in addition to approval being obtained for the Scheme, each sub-fund shall be approved by the MFSA, following the submission of an application form and supporting documentation.
- 7.2 Each sub-fund shall comply with the laws and regulations applicable to the Retirement Fund.
- 7.3 Each sub-fund of the Retirement Fund shall constitute a distinct and separate patrimony.
- 7.4 A sub-fund may not invest in another sub-fund of the same Retirement Fund.
- 7.5 A meeting of the unit holders in any one sub-fund may approve a modification of the Constitutional Documents or any policy statement only if the provisions to be modified relate only to that sub-fund.

B.8 Supplementary Conditions for Retirement Funds set up as Fund of Funds (i.e. investing solely in Collective Investment Schemes other than Retirement Funds)

- 8.1 The Retirement Fund shall not invest in a Feeder Fund or without MFSA approval, in a Fund of Funds.
- 8.2 Any underlying scheme(s) shall fall within the objectives and investment policy set out in the Retirement Fund's Particulars. Also, the underlying funds of the Fund shall be licensed by the MFSA, or authorised in another jurisdiction by a supervisory authority responsible for the regulation of funds and which, in the opinion of the MFSA, provides an equivalent level of regulation.
- 8.3 Where the Retirement Fund invests in the Units of an underlying fund which is managed or advised by the Retirement Fund's Investment Manager or Investment Advisor or by an associate of the Investment Manager or Investment Advisor, arrangements shall be made to eliminate more than one set of charges on acquisition or disposal and more than one set of management and/ or advisory charges.
- 8.4 Price quotation and sale for shares/Units in the Fund in the circumstances allowed by the law and the Fund Particulars, shall ensure that:
- (a) an investor is able to purchase Units at a price based on the most recent underlying fund/s prices;
 - (b) the issuing of the Units of the purchase proceeds to the underlying fund/s is achieved as soon as is practicable;
 - (c) a investor is able to repurchase its Units at a price based on the most recent underlying fund/s prices;
 - (d) the cancellation of the Units and the remitting of the proceeds to the Member or Beneficiary are achieved as soon as is practicable.
- 8.5 The Retirement Fund shall, as far as practicable, be valued with the same frequency as the underlying fund/s.
- 8.6 The Retirement Fund shall not invest in another Retirement Fund.
- 8.7 Such information as is required by the MFSA concerning each underlying fund shall be made available to the MFSA on request.

PART C

**APPENDICES
TO PENSION RULES FOR RETIREMENT FUNDS**

APPENDIX 1

(SLC 1.3 of Part B of the Pension Rules for Retirement Funds)

CONTENTS OF CONSTITUTIONAL DOCUMENTS

The Constitutional Document of the Retirement Fund shall provide for the following:

- 1.1 that the objectives and policies of the Retirement Fund are limited to the following:
 - a) the receipt of contributions from one or more Retirement Schemes and / or from one or more Overseas Retirement Schemes; and
 - b) the investment of such contributions and all return on such contributions in accordance with the investment policy of the Retirement Scheme(s) and / or Overseas Retirement Scheme(s) investing in the Retirement Fund, with the aim of maximising return on such contributions; and
 - c) the carrying out of all matters or functions connected or ancillary to the objectives mentioned in subparagraphs (a) and (b) hereof.
- 1.2 that the assets of the Retirement Fund shall be entrusted to a Custodian for the safekeeping of such assets and shall outline the duties of the Custodian in terms of the Act and the applicable Pension Rules;
- 1.3 the conditions and procedures for the creation and cancellation, redemption or withdrawal of Units;
- 1.4 the procedures and circumstances for the temporary suspension of the calculation of the net asset value and redemption of units. Suspension may be provided for only in exceptional circumstances, where circumstances so require and suspension is justified having regard to the interests of Unitholders;
- 1.5 the principles and the method of valuation of the Retirement Fund's assets, which method shall have been approved by the MFSA;
- 1.6 that the value of the Retirement Fund's units shall be issued or sold at a price arrived at by dividing the net asset value of the Retirement Fund calculated on the approved basis by the number of units outstanding. Such value may be adjusted for duties and charges;
- 1.7 that Units shall not be issued, or if issued must be cancelled or withdrawn, unless the equivalent of the net issue price is paid into the assets of the Retirement Fund within time limits specified in the Constitutional

Document; provided that this provision shall not preclude the issue of bonus Units;

- 1.8 that the value of the Retirement Fund's units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the Retirement Fund calculated on the approved basis by the number of units outstanding. Such price may be decreased by duties and charges;.
- 1.9 determine the frequency of the calculation of the issue and repurchase prices. The method and frequency of the calculation of these prices shall be preferably, on each business day and, in all cases, at least twice each month;
- 1.10 that the Retirement Fund shall be bound to repurchase its units at the request of the Retirement Scheme or Overseas Retirement Scheme holding such units, on such terms as may be provided in its Constitutional Document;
- 1.11 that the Retirement Fund or Investment Manager or Custodian shall issue registered certificates representing one or more portions of the Retirement Fund, or written confirmation of entry in the register of Units or fractions of Units;
- 1.12 that rights attaching to fractions of Units shall be exercisable in proportion to the fractions of a Unit held except for voting rights which shall only be exercisable in whole Units;
- 1.13 provisions relating to the allocation and distribution of income;
- 1.14 specify the conditions under which there may be effected, and the procedure to be followed with respect to, the appointment and replacement of the Custodian or the Investment Manager and any other Service Provider, including a provision that the Retirement Fund shall have power to replace any Service Provider and any other person providing other services to the Retirement Fund, and including the right of the MFSA to require such replacement. There shall be provisions to ensure the protection of Unit holders in such circumstances;
- 1.15 identify the basis upon which any Director, any Service Provider and any other person providing services to the Retirement Fund may charge remuneration and expenditure to the Retirement Fund; the method of calculation and the nature of costs to be borne by the Retirement Fund; and the basis on which any other costs or expenses may be charged to the Retirement Fund;
- 1.16 outline the procedure for the amendment of:
 - a) the Constitutional Document;
 - b) any agreement between the Retirement Fund and a Service Provider and any other person providing services to the Retirement Fund;

- c) the Retirement Fund's Particular or similar document giving details of the Retirement Fund; and
 - d) the latest annual reports for the Retirement Fund.
- 1.17 that a provision has been included in Retirement Fund's Memorandum of Association establishing the separate patrimony between sub-funds for segregation between the sub-funds to be established.

Supplementary Contents for Retirement Funds set up as umbrella funds

- 1.18 provide that the assets and liabilities of each sub-fund shall be treated for all intents and purposes at law as a patrimony separate from the assets and liabilities of each other Sub-fund of such Retirement Fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose and in accordance with relevant regulations as may be applicable.
- 1.19 provide that the actual value of the paid up share capital of any sub-fund shall be at all times equal to the value of the assets of any kind of the particular sub-fund after the deduction of such sub-fund's liabilities and this in lieu of what is stated in article 84(2)(c)(i) of the Companies Act (Cap. 386).

Supplementary Contents for Retirement Funds set up as Unit Trusts

- 1.20 provide that the Trustee shall ensure that the sale, issue, repurchase, redemption and cancellation of Units effected by or on behalf of the Retirement Fund are carried out in accordance with MFSA's requirements, the Constitutional Documents and the most recent Fund Particulars;
- 1.21 provide that the Trustee shall ensure that the value of Units is calculated in accordance with the provisions of the Constitutional Document;
- 1.22 provide that the Trustee shall carry out the instructions of the Manager unless they conflict with the Standard Licence Conditions or the Constitutional Document;
- 1.23 provide that the Trustee shall ensure that in transactions involving the Retirement Fund's assets, consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;
- 1.24 provide that the Trustee shall ensure that the Retirement Fund's income is applied in accordance with the Constitutional Document;

- 1.25 provide that the Trustee shall enquire into the conduct of the Investment Manager in each annual accounting period and report thereon to the holders of Units. The Trustee's report shall be delivered to the Investment Manager in good time to enable the Investment Manager to include a copy of the report in its Annual Report. The Trustee's report shall state whether in the Trustee's opinion the Retirement Fund has been managed during that period:
- a) in accordance with the limitations imposed on the investment and borrowing powers of the Retirement Fund by the Constitutional Document and by the MFSA; and
 - b) otherwise in accordance with the provisions of the Constitutional Document and the Standard Licence Conditions.

If the Investment Manager has not complied with these requirements, the Trustee shall state why this is the case and outline the steps which the Trustee has taken to rectify the situation;

- 1.26 provide that the Trustee will be liable to the Investment Manager, the Retirement Fund and the holders of Units for any loss suffered by them as a result of its failure to perform its obligations or its improper performance of them. It shall be provided that holders of Units shall be able to enforce this liability either directly or indirectly through the Investment Manager;
- 1.27 provide that the liability of the Trustee shall not be diminished if it has entrusted to a third party some or all of the assets in its safe-keeping;
- 1.28 provide that the Trustee shall not enter into a contract for the sale of assets unless such assets belong to the Retirement Fund;
- 1.29 provide that the Trustee shall notify the MFSA of any breach of the Standard Licence Conditions or of any breach of the provisions of the Constitutional Document as soon as it becomes aware of the breach;
- 1.30 prescribe the remuneration and the expenditure which the Investment Manager is empowered to charge to the unit trust and the method of calculation of such remuneration.
- 1.31 provide that a General Meeting of the holders of Units shall be held at least once each year.

APPENDIX 2

(SLC 2.1 of Part B of the Pension Rules for Retirement Funds)

CONTENTS OF FUND PARTICULARS

The Fund Particulars shall as a minimum contain the following details:

- 2.1 name and date of establishment or incorporation of the Retirement Fund, and, where applicable, a statement as to its duration if limited, the form in law, and where applicable, registered office and head office if different from registered office;
- 2.2 a statement of a place from where the constitutional document and period reports may be obtained;
- 2.3 a statement of the Retirement Fund's Investment Objective describing in detail the investment policy; the Fund's approach to risk and any risk parameters applied to its investment policy; any limitations on the investment policy; any formally adopted criteria (such as benchmarks and performance time scales) for measuring the Retirement Fund's or its Investment Manager's investment performance; the extent to which the Retirement Fund may borrow money;
- 2.4 where applicable details of the regulated market where the units of the Fund are listed or dealt in.
- 2.5 the identity of the Investment Manager appointed to the Retirement Fund, and the general nature of the service provided;
- 2.6 the identity and role of the Custodian appointed to the Retirement Fund;
- 2.7 the identity and role of any other Service Providers appointed to the Retirement Fund;
- 2.8 the investment objective, policies and restrictions clearly defined and sufficiently detailed so that Investors are fully aware of the risks to which they will be exposed. In particular, the Retirement Fund's Investment Objectives and Policy must include the following :
 - a) the Retirement Fund's policy on the kind of investments to be held, the balance between different kinds of investments and any risk parameters;
 - b) where the Contributor to an Investor is a business concern, the extent (if any) to which it may invest in Contributor-Related Investments and the type(s) of Contributor-Related Investments which it may invest in.

- 2.9 the Retirement Fund's policy on the realisation of assets;
- 2.10 the fee structures in place for any Investment Manager(s), Custodian as applicable, and Service Providers to the Retirement Fund, together with details of all other fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Retirement Fund;
- 2.11 rules for the valuation of assets;
- 2.12 procedures, conditions and method used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of units in the Retirement Fund;
- 2.13 description of the rules for determining and applying income;
- 2.14 accounting dates;
- 2.15 brief details of the tax provisions applicable to the Retirement Schemes and /or Overseas Retirement Plans invested in the Retirement Fund;
- 2.16 name of auditor;
- 2.17 such other matters as the MFSA may prescribe either generally or in relation to a particular Retirement Fund or class of Funds;

Supplementary Conditions Applicable for Umbrella Retirement Funds

- 2.18 an indication of the sub-funds;
- 2.19 details of all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Retirement Fund;
- 2.20 the charges, if any, applicable to the exchange of units in one sub-fund for units in another. Charges shall be detailed in the most recent Fund Particulars. Any increase in the charges shall be notified to the MFSA and the Investment Manager or Back-Office Administrator (where appointed) and published in revised Fund Particulars at least 90 days before becoming effective;
- 2.21 the procedures and basis of valuation (including in respect of any foreign exchange conversion) to be applied to the exchange of units in one sub-fund for units in another;
- 2.22 the basis of apportioning charges, expenses, liabilities and amounts received (which are not clearly attributable to only one fund) between sub-funds. This basis should be fair to the holders of Units in each sub-fund;

- 2.23 where a supplement to the Fund Particulars is issued relating to a Sub-Fund, it shall state that the Retirement Fund as a whole is constituted as an Umbrella Fund and name the other Sub-Funds.
- 2.24 the fact that the assets and liabilities of sub-funds represent a distinct and separate patrimony.

Supplementary Conditions Applicable for Retirement Funds established as funds of funds

- 2.25 accurately reflect the characteristics of the underlying funds. Where appropriate, Investors in the Fund shall be given the opportunity to receive copies of the Offering Document (Prospectus) for each underlying fund;
- 2.26 detail all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Retirement Fund and, where appropriate, by each underlying fund;
- 2.27 If an underlying fund is denominated in a currency other than that in which the Retirement Fund itself is denominated, the Fund Particulars shall explain the risks involved and, if appropriate, the techniques which may be used to reduce this risk.

General

- 2.28 material provisions of any contracts with Service Providers which may be relevant for Unit holders, including those relating to remuneration.

APPENDIX 3

(SLC 2.6 of Part B of the Pension Rules for Retirement Funds)

Information to be included in the monthly returns to the MFSA

- 3.1 Total net asset value of the Retirement Fund at month-end.
- 3.2 Number of units in circulation at month-end.
- 3.3 Net asset value per share / unit at month-end.
- 3.4 Percentage change in net asset value per unit compared to the previous month
- 3.5 Net proceeds from the issue of units during month.
- 3.6 Payments made for the repurchase of units during month.
- 3.7 Net amount generated by issues and repurchases during month.

This return should be submitted to the MFSA within two weeks of the month-end to which it refers.

APPENDIX 4

(SLC 2.7 of Part B of the Pension Rules for Retirement Funds)

Contents of Annual Report

Introduction

The contents of the Annual Report are primarily the responsibility of the Retirement Fund (“the Fund”) concerned. Moreover, any Service-Providers such as the Investment Manager and Custodian who includes their reports within the Fund’s Annual Report, also have a responsibility in ensuring the accuracy and fairness of their disclosures. In the case of the Annual Report which includes the Fund’s audited financial statements, the Fund’s auditor has a responsibility insofar as the audited financial statements and the opinion expressed thereon is concerned.

A copy of the Annual Report should be produced within the stipulated time limits in SLC B.2.11 of these Pension Rules. A copy of the Annual Report should also be submitted to the MFSA, together with a Directors’ Confirmation in line with Schedule II and an Auditor’s Report in line with Schedule III to this Appendix.

The Fund should ensure that all the necessary checks have been carried out to ensure the accuracy and completeness of the Annual Report.

The Annual Reports submitted to the MFSA should be accompanied by a Directors’ confirmation to the effect that to the best of their knowledge, the Report is complete and accurate in all material respects and conforms with MFSA’s requirements in terms of the Fund’s standard licence conditions. A specimen of the wording of such a confirmation is included in Schedule II hereto.

The Fund will be required to request its auditors to review the Report in its entirety to ensure that it includes all disclosures required by these Pension Rules and that all references to figures included in the audited financial statements are accurate. The Fund shall require the auditor to provide it with an opinion to this effect, which shall be retained in the Fund’s records. A specimen of the wording of such an opinion is included in Schedule III hereto.

MFSA reserves the right to take whatever action it deems appropriate should it come across material misstatements and/or inaccurate or incomplete information therein. Such action may range from requests for clarifications, to the possible imposition of fines and – where necessary – amendments to the Reports. The MFSA, if the circumstances so warrant may issue a Public Notice stating why amendments have been necessary.

A Fund should produce an Annual Report for each financial year.

Dates for the initial reports issued by a Fund should be agreed with the MFSA at the time of Licence.

The annual report should contain the information outlined in Schedule I to this Appendix.

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Schedule I

Information to be contained in the annual report

The annual report should include the following as well as any additional information, which will enable Investors to make an informed judgement on the progress of the Retirement Fund and its results.

1. A balance sheet or statement of assets and liabilities, including details of accounting and valuation policies. The statement of assets and liabilities should include:

Assets

- immovable property;
- transferable securities;
- debt instruments;
- other securities;
- bank balances;
- other assets;
- total assets;

Liabilities

- borrowings;
- other amounts payable;
- total liabilities.

Net Asset Value

2. Number of Units issued.
3. Net asset value per Unit, at the beginning and the end of the period.
4. Portfolio details, distinguishing between the different types of investments and categorising each investment in accordance with the most appropriate criteria in the light of the Investment Policy of the Retirement Fund (for example, in accordance with economic, geographical or currency criteria) as a percentage of net assets. For each of the investments the proportion it represents of the total net assets of the Retirement Fund should be stated. Details of the composition of the portfolio should distinguish at least between:
 - a. transferable securities listed on an official stock exchange;
 - b. transferable securities transacted in on another organised market;
 - c. recently issued transferable securities;
 - d. other transferable securities;
 - e. debt instruments.

Note: References in sub-paragraph (c) to recently issued transferable securities are

to securities the terms of issue of which include an undertaking that application will be made for admission to official stock exchange listing or to another organised market.

5. A statement of the principal developments which have occurred in the composition of the portfolio during the reference period.

6. Where a Fund holds more than 10 per cent of its assets in deposits or other accounts with credit institutions, details of the amounts and the names of the institutions should be provided. Funds holding less than 10 per cent of their assets in deposits or other accounts with credit institutions should submit the relevant details to the MFSA with the report.

7. A statement of changes in the assets and liabilities of the Fund during the reference period, including the following

:

Income

- income from investments;
- other income;
- total income.

Charges

- management/ investment advisor charges;
- custodian's charges;
- other charges and taxes;
- total charges.

Net investment income

- appreciation or depreciation in the value of investments;
- changes in the capital account;
- cash movements in relation to the creation and cancellation of U nits;
- details of transactions with the Custodian and the Investment Manager or their associates;
- any other changes affecting the assets and commitments of the Retirement Fund.

8. A comparative table covering the last three financial years (where applicable) and including, for each financial year, at the end of the financial year:

- the total net asset value;
- the net asset value per unit.

During its first, second and third financial years, a Fund should show the above information for all financial years since its inception.

9. Details, by category of transaction carried out by the Fund, on financial derivatives (e.g. options, futures, swaps), of the resulting amount of commitments at the year end date. ("Commitments" are those commitments resulting from the use of techniques and instruments for the purposes of efficient portfolio management, including protection against exchange, interest rate and market risks.)

10. Details of any changes with respect to, or additions to the terms and provisions:

- of the Retirement Fund's administration and finances;
- of the rights and obligations that arise or may arise in respect of the Retirement Fund;
- of any other matters that appear to the MFSA to be relevant to the Retirement Funds in general or to Retirement Funds of a description to which the Fund in question belongs.

11. A report by the Fund Directors and/or the Investment Manager on the activities during the period, providing information sufficient to enable the persons mentioned above to make an informed judgement on the development, management, operation and financial performance of the Retirement Fund.

12. A report by the Custodian as applicable on whether the Fund has been managed :

- in accordance with the limitations imposed on the investment and borrowing powers of the Fund by the Constitutional Documents and by the MFSA; and
- in accordance with its Constitutional Documents and its Standard Licence Conditions.

If the Manager or the Fund has not complied with any of the above requirements, the Report of the Custodian shall state why this is the case and outline the steps which the Custodian has taken to rectify the situation.

13. A summary of the compliance by the Fund with its provisions and the law.

14. A summary of the compliance by the Fund with its constitutional document and the law.

15. A statement regarding breaches of Standard Licence Conditions and/or regulatory sanctions. 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 each breach committed and/or regulatory sanction imposed.

16. Names and addresses of all Fund Service Providers and auditors.

17. In respect of umbrella Funds, the annual report shall contain separate information on each of the compartments, as well as consolidated information on all of those compartments.

The accounting information given in the annual report should be audited. The auditor's report, including any qualifications, should be reproduced in full.

Schedule II

Specimen Directors' Confirmation

(Addressed by the Fund Directors responsible for the preparation of the Annual Report of the Fund to the MFSA).

We the undersigned, are responsible for the preparation of the Annual Report of *(name of Retirement Fund)* for the year ended _____ and confirm that to the best of our knowledge it is complete and accurate in all material respects and conforms with the MFSA's requirements in terms of the Fund's Standard Licence Conditions.

Director

Director

Schedule III

Specimen Auditor's Opinion

(Addressed by the Auditor to the MFSA)

We the undersigned have audited the financial statements of *(name of Retirement Fund)* for the year ended _____ in accordance with International Standards on Auditing. In our opinion the Annual Report is complete in all material respects in accordance with the MFSA's requirements, and the Retirement Fund's Standard Licence Conditions.

Moreover, based on our review procedures, nothing has come to our attention that causes us to believe that the information contained in the Annual Report is inconsistent with the financial statements, the books of account and the records of *(name of Fund)*.

Auditor

(Signature and Date)

APPENDIX 5

(SLC 1.28 of Part B of the Pension Rules for Retirement Funds)

AUDITOR'S LETTER OF ENGAGEMENT

The auditor's letter of engagement shall include terms requiring the auditor:

- 5.1 to provide such information or verification to the MFSA as the MFSA may request;
- 5.2 to afford another auditor all assistance as may be required;
- 5.3 to vacate the office of auditor if such auditor becomes disqualified to act as auditor for any reason;
- 5.4 to advise the MFSA of the 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;
- 5.5 in accordance with article 35 of the Act, to report immediately to the MFSA any fact or decision of which the auditor becomes aware in the capacity of auditor of such Retirement Fund which:
 - is likely to lead to a serious qualification of, or refusal to issue, the auditor's report on such Retirement Fund; or
 - constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to a Retirement Fund in or under the Act; or
 - seriously impairs the Retirement Fund's ability to meet the current or future liabilities attributable to it; or
 - negatively and materially affects the interests of Investors;
 - relates to any other matter which may be prescribed.
- 5.6 pursuant to article 35(2) of the Act, to report to the MFSA any facts or decisions of any person having close links with the Scheme within the meaning of article 9 (10) of the Act, of which the auditor becomes aware in the capacity of auditor of the Scheme or of the person having such close links.