

# MFSA

---

MALTA FINANCIAL SERVICES AUTHORITY

## CONSULTATION DOCUMENT

**CONSULTATION ON REGULATIONS AND  
PENSION RULES TO BE  
ISSUED UNDER THE RETIREMENT PENSIONS ACT**

[MFSA REF.: 08/2013]

**1<sup>st</sup> April 2013**

**Closing Date: 13<sup>th</sup> May 2013**

**Note:** The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

## **Note for Consultation**

### **1. Purpose**

- 1.1 The Retirement Pensions Act (Chapter 514 of the Laws of Malta) was published by means of Act No. XVI of 2011, in the Government Gazette on the 5<sup>th</sup> August 2011. This Act repeals and replaces the Special Funds (Regulation) Act (Chapter 450 of the Laws of Malta), regulations and directives issued thereunder.
- 1.2 The Retirement Pensions Act provides the legal framework for the licensing and regulation of retirement schemes, retirement funds and service providers related thereto as well as the requirement of recognition for persons carrying on back-office administrative activities. The detailed requirements and conditions for licensing or recognition as well as on-going obligations of persons licensed or recognised under the Retirement Pensions Act are stipulated in the law itself, in secondary legislation and Pension Rules which may be issued from time to time under the said Act. The Retirement Pensions Act, secondary legislation and Pension Rules also transpose the provisions of Directive 2003/41/EC of the European Parliament and of the Council of the 3rd June 2003 on the activities and supervision of the institutions for occupational retirement provision (the IORP Directive).
- 1.3 The MFSA is issuing for consultation the proposed regulations and Pension Rules to be issued under the Retirement Pensions Act. Any comments and feedback are to be addressed to the Insurance and Pensions Supervision Unit by email on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt). Interested parties are kindly asked to submit any comments in writing by not later than the **Monday 13<sup>th</sup> May 2013**.

### **2. Proposed Regulations to be issued under the Retirement Pensions Act**

- 2.1 The following legal notices have been issued under the Special Funds (Regulation) Act:
  1. Special Funds (Registration of Retirement Fund Custodians) Regulations, 2003 (L.N 365 of 2003);
  2. Special Funds (Control of Assets) Regulations, 2003 (L.N 366 of 2003);
  3. Special Funds (Registration Fees) Regulations, 2003, (L.N 367 of 2003);
  4. Special Funds (Regulation) Act (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2006 (L.N 71 of 2006);
  5. Special Funds (Regulation) Act (Exemption) Regulations, 2006 (L.N 72 of 2006);
  6. Special Funds (Regulation) Act (Retirement Schemes Exemption) Regulations, 2009 (L.N 167 of 2009).
- 2.2 All these legal notices, other than the Special Funds (Registration Fees) Regulations, 2003, (L.N 367 of 2003), will be repealed, and replaced by a new set of regulations

issued under the Retirement Pensions Act. The Special Funds (Registration) Fees Regulations, 2003, (L.N 367 of 2003) will temporarily remain in force and applicable for the purposes of the Retirement Pensions Act.

2.3 Hence for the purposes of the Retirement Pensions Act, it is proposed to issue the following Legal Notices:

1. Retirement Pensions (Control of Assets) Regulations, 2013;
2. Retirement Pensions (Exemption) Regulations, 2013;
3. Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2013;
4. Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2013;
5. Retirement Pensions (Transitional Provisions) Regulations, 2013;
6. Special Funds (Registration of Retirement Fund Custodians)(Repeal) Regulations, 2013;
7. Special Funds (Regulation) Act (Retirement Schemes Exemption) (Repeal) Regulations, 2013;
8. Investment Companies with Variable Share Capital as Retirement Schemes or Retirement Funds Regulations, 2013;
9. Investment Services Act (Exemption) (Amendment) Regulations, 2013.

2.4 *Retirement Pensions (Control of Assets) Regulations, 2013*

This proposed Legal Notice is modelled on the Special Funds (Control of Assets) Regulations, 2003 (L.N 366 of 2003). References to the retirement fund administrator have been removed, since the concept of the retirement fund administrator has not been retained under the Retirement Pensions Act. Moreover, a new regulation has been introduced intending to clarify the application of the regulations where the custody of the assets of a retirement scheme or retirement fund is established as a trust and the custodian or the subject person is a trustee. In such a case, the regulations specify that the provisions of the Trust and Trustees Act shall apply.

2.5 *Retirement Pensions (Exemption) Regulations, 2013 and Special Funds (Regulation) Act (Retirement Schemes Exemption) (Repeal) Regulations, 2013*

These regulations are modelled on the Special Funds (Regulation) Act (Exemption) Regulations, 2006 (L.N 72 of 2006). The application of these proposed regulations has been extended to apply to personal retirement schemes. Moreover, a new regulation has been added so that a custodian appointed by a scheme, for the custody of its assets, is exempt from licensing under the Retirement Pensions Act if it satisfies the criteria set out in regulation 4 of these draft regulations.

Furthermore, the current provisions contained in the Special Funds (Regulation) Act (Retirement Schemes Exemption) Regulations, 2009 (L.N 167 of 2009) which provide for a list of retirement schemes not considered as retirement schemes for the purposes of the Special Funds (Regulation) Act, have been included in this Legal Notice.

2.6 *Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2013*

This proposed Legal Notice largely reproduces the Special Funds (Regulation) Act (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2006. However, two amendments have been carried out in the new proposed regulation which transpose the requirements of Article 4 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 (Omnibus I Directive) (*regulations 5 and 15 refer*). The said Article 4 amends the IORP Directive.

2.7 *Retirement Pensions (Defined Benefit Retirement Schemes) Regulations, 2013*

Article 26 of the Retirement Pensions Act requires every defined benefit retirement scheme to comply with technical, financial and actuarial management regulations as well as under-provision or over-provision of technical funding requirements. As a consequence, these regulations apply to every defined benefit retirement scheme providing cover against biometric risks or guaranteeing a given level of investment performance or level of benefits in terms of the Act whether it is set up as an occupational retirement scheme or a personal retirement scheme.

2.8 *Retirement Pensions (Transitional Provisions) Regulations, 2013*

Article 56 of the Retirement Pensions Act states that the Minister, acting on the advice of the MFSA, may, by regulations make transitional provisions in respect of such persons who, on the effective date of this Act, were registered under the Special Funds (Regulation) Act, and, without prejudice to the generality of the foregoing, may, by such regulations, in particular prescribe a period within which such persons shall apply for a licence under the Retirement Pensions Act.

These regulations provide that any scheme or arrangement, retirement fund, or any person registered in terms of the Special Funds (Regulation) Act, shall within the period of six months apply for a licence under the Retirement Pensions Act. Any registered person, scheme or fund registered in terms of the Special Funds (Regulation)

Act, shall, for the period of six months continue to be governed by the provisions of the said Act.

2.9 *Special Funds (Registration of Retirement Fund Custodians)(Repeal) Regulations, 2013*

The Special Funds (Registration of Retirement Fund Custodians) Regulations, 2004 will not be replaced by another legal notice. However, a number of the requirements contained in the said legal notice have been transposed in the Pension Rules for Services Providers.

2.10 *Investment Companies with Variable Share Capital As Retirement Schemes or Retirement Funds Regulations 2013;*

This proposed legal notice will apply to both retirement schemes and retirement funds. The amendments primarily relate to applying the provisions of the Companies Act (Investment Company with Variable Share Capital) Regulations, 2006 (LN. 241 of 2006) *mutatis mutandis* to Investment Companies with variable share capital established for the purpose of acting and operating as retirement schemes or retirement funds, subject to certain exceptions and qualifications as set out in regulation 2 of these regulations. These regulations also provide that distribution of assets of shares in an investment company with variable share capital duly licensed as a retirement scheme or a retirement fund in terms of the Retirement Pensions Act, shall be permitted in line with provisions contained in regulations and Pensions Rules, regarding the distribution of assets by retirement schemes or retirement funds, issued in terms of the Retirement Pensions Act.

2.11 *Investment Services Act (Exemption) (Amendment) Regulations, 2013.*

The proposed amendment in regulation 2 provides for an exemption from the requirement of a licence under article 3 of the Investment Services Act in the circumstance where a person providing any investment service in terms of the First Schedule to the Investment Services Act is providing such service solely to a retirement scheme or to a retirement fund licensed under the Retirement Pensions Act. Such person must however be duly licensed under the Retirement Pensions Act in relation to the said service. It is to be highlighted that the regulations already specify that the said exemption shall not be automatically operative but its applicability shall be subject to a determination in writing by the MFSA that the requested exemption applies.

The proposed amendment in regulation 3 provides that collective investment schemes are exempt from a licence under article 4 of the Investment Services Act if it is a retirement scheme or retirement fund licensed under the Retirement Pensions Act.

### **3. Pensions Rules issued under the Retirement Pension Act**

The MFSA is proposing to restructure the Pensions Rules and issue four main documents in order to properly and clearly identify the Pensions Rules applicable to Retirement Schemes, Retirement Funds and Service Providers. It is also proposed to issue a Glossary of various terms used in these Pension Rules. The Pension Rules have now been divided into the following:

- Pension Rules for Occupational Retirement Schemes;
- Pension Rules for Personal Retirement Schemes;
- Pension Rules for Retirement Funds;
- Pension Rules for Service Providers.

The Pension Rules have been structured in different Parts. Generally, one Part lays down the licensing process and criteria applicable to Schemes/Fund/Service Providers. Another Part sets out the Standard Licence Conditions applicable to Schemes/Fund/Service Providers. Another Part includes Appendices and reporting Schedules. In the Pension Rules for Service Providers, two additional parts have been included, one setting out the standard recognition requirements applicable to Recognised Back-Office Administrators, and another allowing for the appointment of Introducers by Personal Retirement Schemes and Retirement Scheme Administrators acting on behalf of such schemes.

The relevant applications, as well as the personal questionnaire referred to in these proposed Pension Rules have not been attached for consultation purposes.

#### ***3.1 Pension Rules for Occupational Retirement Schemes issued in terms of the Retirement Pensions Act, 2011***

In terms of the Retirement Pensions Act, an "occupational retirement scheme" means a retirement scheme established for, or by, an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees.

The Pension Rules for Occupational Retirement Schemes will be divided in three main parts, the Licensing Requirements, Standard Licence Conditions and Appendices.

### *3.1.1 Part A of the Pension Rules for Occupational Retirement Schemes*

The MFSA is proposing that Part A be divided in four parts. Part A provides an overview of Occupational Retirement Schemes, by reproducing the definition of an Occupational Retirement Scheme as provided for in article 2 of the Retirement Pensions Act. Part A makes reference to the establishment and form, the nature and operation, the governance arrangements and related parties, employee representation, funding and technical provisions and the investment of contributions of Occupational Retirement Schemes.

Under the current Directives for Occupational Retirement Schemes made under the Special Funds (Regulation) Act, a Retirement Scheme may be established as a trust constituted by a trust deed between the Employer and the Retirement Scheme Administrator providing trustee services or by way of contract between the Contributor(s) and the Retirement Scheme Administrator, or in any other form as may be specified by the MFSA. The proposed Rules provide for an Occupational Retirement Scheme to be established as an investment company with variable share capital under the Companies Act. It is also being proposed that Closed Occupational Retirement Schemes can also be established at the initiative of an association representing employers. In so far as governance arrangements are concerned, the proposed Pension Rules provide for the appointment of a Retirement Scheme Administrator, custodian, auditor, actuary (where applicable) and the optional appointment of an investment manager, investment advisor, and a back-office administrator. The proposed Pension Rules now provide that Occupational Retirement Schemes can also be funded by employees through an employment relationship.

The MFSA is also proposing to introduce a new Part A.4 for Maltese Occupational Retirement Schemes wishing to accept sponsorship in terms of the Occupational Pensions Directive by a sponsoring undertaking located within a Member State or EEA State is to provide to the MFSA. This means that such Occupational Retirement Schemes duly licensed under the Act may receive contributions from employers (or "sponsoring undertakings" as defined in the IORP Directive) located in other EU Member States or EEA States and provide benefits to employees of the contributing employers. Such Schemes will be required to follow the procedure set out in the Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2013 and provide the MFSA with information specified in the Part therein.

### *3.1.2 Part B of the Pension Rules for Occupational Retirement Schemes*

Part B of these Pension Rules sets out the Standard Licence Conditions which an Occupational Retirement Scheme is required to comply with. It is proposed to divide

Part B in eleven parts and include requirements referring to operation and governance, reporting requirements, conditions relating to the investments of the Scheme, conditions relating to information for Scheme Members, Beneficiaries and Contributors and other supplementary conditions.

A number of salient changes have been included in Part B which include the following:

1. The Occupational Retirement Scheme and the Retirement Scheme Administrator are now required to be independent entities from the Sponsoring undertaking of the Scheme.
2. The Scheme document may be integrated as part of the Constitutional Document of the Scheme and the contents thereof included in the Constitutional Document or otherwise annexed to the Constitutional Document.
3. The Scheme will be required to prepare half-yearly reports and well as annual reports. The annual report is to be produced and submitted to the MFSA within four months (instead of three months) of the end of the period concerned.
4. Under the current regime, the Scheme Administrator is to submit a Certificate of Compliance, in the form set out in Appendix 3 to the Directives for Occupational Retirement Schemes under the Special Funds (Regulation) Act. In terms of the proposed Pension Rules, the Compliance Officer of the Retirement Scheme Administrator will now be required to prepare a compliance report on a six monthly basis. A copy of the Compliance Report is to be held in Malta at the office of the Scheme Administrator and made available to the MFSA during Compliance visits.
5. The Scheme shall comply with investment restrictions applicable to Occupational Retirement Schemes within six months from the launch of the Scheme or upon reaching a value equivalent to € 2,500,000, whichever is sooner.
6. In the case of a Scheme investing in a Retirement Fund or in the case of a Scheme established as a fund of funds, Contributors, Members and Beneficiaries in the Scheme shall be given the opportunity to receive, upon request, copies of the Offering Document (Prospectus) for each underlying Fund.

The proposed Pension Rules also provide for supplementary conditions for:

- a. Defined Benefit Schemes and other Schemes providing cover against investment or biometric risk;
- b. Schemes established as investment companies;
- c. Schemes established as a trust;
- d. A scheme set up as an umbrella fund;



- e. A scheme set up as a fund of funds ;
- f. A scheme investing solely in Retirement Funds.

### *3.1.3 Part C of the Pension Rules for Occupational Retirement Schemes*

Part C will contain nine Appendices. A new Appendix 9 has been included for Occupational Retirement Schemes underwriting biometrical risks or guaranteeing any investment performance or a given level of benefits, to hold on an ongoing basis, additional assets above the technical funding requirement to serve as a buffer. Paragraphs 10.2 to 10.12 of Appendix 9 set out the Rules for calculating the minimum amount of additional assets. This requirement already existed under the current Directives for Occupational Retirement Schemes under the Special Funds (Regulation) Act, which provided that where there is no sponsoring employer to underwrite biometrical risks or guarantees on investment performance or a given level of benefits, then the minimum Technical Funding Requirement shall be increased by an amount calculated in accordance with Articles 27 and 28 of Directive 2002/83/EC (“Codified Life Directive”).

Article 303 of the Solvency II Directive (Directive 2009/138/EC) amends Directive 2003/41/EC (IORP Directive) so that the requirements of articles 27 and 28 Directive 2002/83/EC have been transposed in Directive 2003/41/EC. Appendix 9 merely reproduces the amendments introduced by article 303.

## **3.2 Pension Rules for Personal Retirement Schemes issued in terms of the Retirement Pensions Act, 2011**

In terms of the Retirement Pensions Act a "personal retirement scheme" means a retirement scheme which is not an occupational retirement scheme and to which contributions are made for the benefit of an individual.

### *3.2.1 Part A of the Pension Rules for Personal Retirement Schemes*

The MFSA is proposing to issue a specific set of Pension Rules relating to Personal Retirement Schemes. Part A of the said Pension Rules provides an overview of the Personal Retirement Schemes, by reproducing the definition of Personal Retirement Scheme as contained in article 2 of the Retirement Pensions Act, the establishment and form of such Schemes, the nature and operation, the governance arrangements and related parties, funding and technical provisions and the investment of contributions in Personal Retirement Schemes.

In so far as establishment and form are concerned, the proposed Pension Rules now provide that a Personal Retirement Scheme can also take the form of an investment company with variable share capital under the Companies Act (Chapter 386 of the Laws of Malta). Moreover, the governance arrangements provide for the appointment of a Retirement Scheme Administrator, custodian, auditor, actuary (where applicable) and the optional appointment of an investment manager, investment advisor, and a back-office administrator.

### *3.2.2 Part B of the Pension Rules for Personal Retirement Schemes*

Part B of these Pension Rules lists the Standard Licence Conditions which a Personal Retirement Scheme is required to comply with such as operation and governance, reporting requirements, conditions relating to the investments of the Scheme, conditions relating to information for Scheme Members, Beneficiaries and Contributors and other supplementary conditions.

The MFSA would like to highlight some changes from current requirements applicable to Personal Retirement Schemes:

- a) The Scheme will be required to prepare half-yearly reports and well as annual reports. The annual report is to be produced and submitted to the MFSA within four months (instead of three months) of the end of the period concerned.
- b) Under the current regime, the Scheme Administrator is to submit a Certificate of Compliance, in the form set out in Appendix 3, to the current Directives. In terms of the proposed Pension Rules, the Compliance Officer of the Retirement Scheme Administrator will now be required to prepare a compliance report on a six monthly basis. A copy of the Compliance Report is to be held in Malta at the office of the Scheme Administrator and made available to the MFSA during Compliance visits.
- c) The Investments of the Scheme are subject to the investment restrictions set out in Appendix 9 of Part C of these Pension Rules. These investment restrictions mirror the restrictions presently issued to personal retirement schemes as conditions of authorisation.
- d) Every scheme member is to be notified of the entry of his details in the Scheme's register of members as well as provided with a copy of the scheme document and scheme particulars, within one month of his registration as member to the scheme.

In view of the fact that in a number of instances, members of personal retirement schemes appoint their own investment managers, a new section has been included in

the proposed Pension Rules establishing certain requirements for these types of schemes.

### *3.2.3 Part C of the Pension Rules for Personal Retirement Schemes*

Part C to the Pension Rules for Personal Retirement Schemes contains nine Appendices, each Appendix contains the content or format of the documents required by a Personal Retirement Scheme.

### **3.3 *Pension Rules for Retirement Funds issued in terms of the Retirement Pensions Act, 2011***

In terms of the Retirement Pensions Act, "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.

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; and Part C includes the Appendices and reporting schedules.

#### *3.3.1 Part A of the Pension Rules for Retirement Funds*

This Part provides for the establishment and formation of a Retirement Fund, the licencing process, an introduction to the standard licence conditions for funds and overseas retirement fund deciding to establish a Retirement Fund or else investing its contributions in an already established Fund licenced under the Act.

Whereas under the current Directives for Occupational Retirement Schemes under the Special Funds (Regulation) Act, a Retirement Fund refers to an investment company with fixed or variable share capital incorporated under the Companies Act (Chapter 386 of the Laws of Malta), under the proposed Pension Rules, the Fund may be established as an investment company with variable share capital under the Companies Act (Chapter 386 of the Laws of Malta), as a trust in terms of the Trusts and Trustees Act (Chapter 331 of the Laws of Malta), 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. Moreover, this Part introduces the independence requirements applicable to Retirement Funds specified in Part B of these Pension Rules.

### *3.3.2 Part B of the Pension Rules for Retirement Funds*

The proposed Part B contains the Standard Licence Conditions for Retirement Funds. It contains provisions relating to the constitution, operation and governance of the Retirement Fund; the documentation, reporting and records which a Retirement Fund is required to maintain and provide to the MFSA; investment objectives, policies and restrictions imposed on Retirement Funds, and other general conditions with regards to notifications, variation and winding-up of a Retirement Fund.

The Special Funds (Regulation) Act required the appointment of a retirement fund administrator. There is no similar requirement under the Retirement Pensions Act. However, article 13(2) of the Retirement Pensions Act provides that any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, shall act in the best interests of the retirement fund and may not use the assets of the retirement fund for its own or other purposes. The Rules provide that such persons shall be responsible for compliance with the Pension Rules on Retirement Funds.

The Retirement Fund is required to appoint an investment manager and custodian and may appoint an investment advisor or a Back-office administrator.

Under the current regime, licence holders are required to comply with the prudential investment restrictions set out in Appendix 9 to the Directives. The investment restrictions in Appendix 9 will be no longer applicable. However, the proposed Pension Rules require the Retirement Fund to 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.

In so far as reporting is concerned, the Retirement Fund is required to prepare half-yearly and annual reports. The annual report is to be produced and submitted to the MFSA within four months (instead of three months) of the end of the period concerned.

The MFSA is proposing to introduce supplementary conditions on Retirement Funds depending on the constitution of the Fund.

### *3.3.3 Part C of the Pension Rules for Retirement Funds*

The proposed Part C of the Pension Rules for Retirement Funds contains five appendices, which focus on the information to be included in the Constitutional Document, the Fund Particulars, in the monthly returns to be submitted to the MFSA, the contents of the annual report, and the auditor's letter of engagement.

### ***3.4 Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011***

The Retirement Pensions Act defines a “service provider” as any person licensed under this Act to provide any one or more of the services listed in the Schedule and, or recognised to provide any one or more of the back-office administrative activities established by Pension Rules. The Pension Rules for Service Providers are divided in five main Parts.

#### ***3.4.1 Part A of the Pension Rules for Service Providers***

This Part of the proposed Pension Rules provides an overview of the Licensing or Recognition Requirements applicable to Service Providers Operating in or from Malta. Part A contains the definitions of the various Service Providers found under the Act, lays down the activities licensable or recognisable under the Retirement Pensions Act, provides for the licensing or recognition criteria, as well as the licensing or recognition process for Service Providers. In so far as licensing and recognition criteria are concerned, the proposed Pension Rules lay down specific independence requirements applicable to retirement scheme administrators, investment managers and custodians. The Pension Rules also set out the financial resources requirements applicable to such persons. The MFSA is also proposing to extend the abridged application process for investment managers, custodians and back-office administrators. Part A also includes specific requirements which Compliance Officers and Money Laundering Officers are required to comply with.

#### ***3.4.2 Part B of the Pension Rules for Service Providers***

The proposed Part B will be divided in four parts listing specific Rules depending on the activity of the service provider concerned. Part B.1 lays down Rules for Retirement Scheme Administrators, Part B.2 provides for Rules for Investment Managers, Part B.3 provides for Rules for Custodians, whilst Part B.4 provides for General Rules for Licenced Service Providers.

Parts B.1, B.2, and B.3 of the Pension Rules for Service Providers lay down the responsibilities, duties, governance and operations of Retirement Scheme Administrators, Investment Managers and Custodians. It also lays down the financial resources and insurance arrangements requirements applicable to such persons, as well as the general duties and reporting requirements applicable to such service providers. Presently, under the current directives issued under the Special Funds (Regulation) Act, the Retirement Scheme Administrator and the Custodian is required to commence business within six months of the date of its registration by MFSA. This has been now extended to twelve months to bring it in line with similar provisions in other financial

services legislation. If for any reason, the Retirement Scheme Administrator and the Custodian are not in a position to comply with this requirement, the Retirement Scheme Administrator and the Custodian are required to notify the MFSA of the reasons for such a delay and submit an updated business plan indicating the proposed date of commencement of business. The requirement to commence business within twelve months of the date of issue of its licence also applies to the Investment Manager.

Some salient amendments found in Part B.4 of the Pension Rules for Service Providers are the following:

1. Service Providers are required to notify the MFSA that it has not provided any activities as a service provider for the preceding six months;
2. Service Providers are required to notify the MFSA if the value of the Scheme falls below €2.33 million;
3. The Compliance Officer of the Retirement Scheme Administrator shall be required to prepare a compliance report at least on a six monthly basis, which is to be kept in Malta at the registered office and made available to the MFSA during Compliance Visits. The Compliance Report should also include a confirmation that all the local Prevention of Money Laundering and Prevention of Money Laundering and Funding of Terrorism Requirements have been satisfied;
4. Service Providers will be required to submit a management letter from their auditor to the MFSA by not later than four months from the end of the financial period, to which the management letter relates;
5. Service Providers wishing to outsource to third parties the carrying out, on its behalf, of certain functions, will be required to comply with the detailed requirements specified under part B.4.4. The proposed rules provide that service providers shall not be allowed to outsource all of their important operational or critical functions to the extent that it becomes a 'letter-box' entity, and the prior consent of the MFSA is required prior to the delegation or outsourcing of any of its functions. Moreover, the Service Provider is required to carry out a due diligence process on the entity selected to carry out outsourced activities;
6. Currently, advertisements cannot be issued without having first been approved by the MFSA. In terms of the proposed Pension Rules, adverts are now to be approved by the Service Provider's Compliance Officer or alternatively by any officer formally authorised by the Service Provider to do so. In terms of the proposed draft Pension Rules, the service provider is to ensure that the advertisement complies with

the requirements of SLC 4.5.7 of Part B.4 of these Pension Rules. Advertisements are to be made available for inspection by the MFSA for not less than five years from the date of publication.

#### *3.4.3 Part C of the Pension Rules for Service Providers*

The MFSA is proposing to introduce a new Part C providing for the regulation of Back Office Administrators. The proposed Pension Rules list a number of activities which are considered to be back-office administrative activities for Retirement Schemes or Retirement Funds. Persons who intend to provide administrative activities not specified in this list, will be required to consult the MFSA prior to carrying out such activities, in order that it may be determined whether the recognition requirement applies. This Part also lays down ongoing requirements for back office administrators.

#### *3.4.4 Part D of the Pension Rules for Service Providers*

The MFSA is aware that Personal Retirement Schemes or Retirement Scheme Administrators acting on behalf of such Schemes make use of Introducers. The regime of Introducers is already recognised in other financial services legislation in Malta. The MFSA therefore considered it opportune to introduce in these proposed rules a new Part D, which sets out the type of activities which such Introducers will be permitted to carry out.

#### *3.4.5 Part E of the Pension Rules for Service Providers*

This Part contains two appendices, Appendix I and Appendix II. Appendix I relates to the completion of automated interim and annual financial returns by Service Providers. The MFSA would like to highlight that the requirements found in the certificate of compliance currently found in Appendix III of Part D of the current directives issued under the Special Funds (Regulation) Act have now been included in these financial returns. Appendix II lays down the complaints procedure to be followed by a Scheme Administrator.