

***CHAPTER 450**

SPECIAL FUNDS (REGULATION) ACT

To make provision regulating retirement funds.

1st October, 2002

ACT XVII of 2002, as amended by Act IX of 2003; Legal Notices 181 and 186 of 2006; Act XII of 2006; and Legal Notice 426 of 2007.

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*Repealed by Cap [514](#)

PART I

PRELIMINARY

Short title. **1.** The short title of this Act is the Special Funds (Regulation) Act.

Interpretation.
Amended by:
XII. 2006.123. **2.** (1) In this Part and in Parts II and III of this Act and in the Schedules thereto unless the context otherwise requires -

"advertisement" means any form of advertising, whether verbal, in written or by electronic means and, without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or show cards, by means of letters, circulars, prospectuses, catalogues, price lists or other documents, by the exhibition of pictures or photographic or cinematographic films, by way of sound, television or other broadcast, by the distribution of recordings or in any other manner, and references to the issue of an advertisement shall be construed accordingly;

"affiliate" with respect to a person (hereinafter "the relevant person") means:

- (a) any person who owns directly or indirectly 25% or more of the total combined voting power or 25% or more of the total value of the stock or ownership interests of the relevant person (hereinafter referred to as "an owner");
- (b) any person where the relevant person directly or indirectly owns 25% or more of the total combined voting power or 25% or more of the total value of stock or ownership interest of such person (hereinafter referred to as "the sub-person");
- (c) any two or more persons where an owner directly or indirectly, in the case of each such person owns 25% or more of the total combined voting power or 25% or more of the total value of the stock or ownership interest of such person (each of such two or more persons, hereinafter referred to as "a sister-person");
- (d) any person where a director, or officer of a relevant person, an owner, a sub-person or a sister-person owns 25% or more of the total combined voting power or 25% or more of the value of the stock or ownership interests of such person;
- (e) any person that in the opinion of the Authority -
 - (i) is under the *de facto* or effective control of a relevant person; or
 - (ii) exercises *de facto* or effective control of the relevant person;

"ancillary cash" means cash used in connection with a registered scheme to pay expenses, to pay retirement benefits, and to fulfil similar requirements of the scheme;

"asset manager" means a person who provides the investment

service of managing investments of a retirement fund or scheme;

"Authority" means the Malta Financial Services Authority established by article 3 of the [Malta Financial Services Authority Act](#); Cap. 330.

"beneficiary" means an individual who is to receive current or future payments under the applicable scheme or overseas retirement plan; and, where relevant, the estate of such individual;

"Commissioner" means the Commissioner of Inland Revenue;

"contributor" shall mean -

- (a) the individual, in the case of a retirement scheme to which contributions are made solely or partly by the individual for the benefit of that same individual; and
- (b) the employer, in the case of a scheme to which contributions are made solely or partly by an employer for the benefit of employees; and for the purpose of this Act, a partnership shall be treated as the employer of each of its partners, and a company shall be treated as the employer of each of its officers and directors; and "employee" and "employment" shall be construed accordingly;

"defined benefit scheme" means a scheme other than a defined contribution retirement scheme which has as its primary purpose that of providing for the payment of fixed or determinable retirement benefits;

"defined contribution retirement scheme" means a scheme which has as its primary purpose that of providing for the payment of retirement benefits, which are established by reference to the contributions paid into such scheme, the accumulation of profits, gains and other income, after the deduction of expenses and losses in relation thereto;

"directive" means a directive issued by the Authority in accordance with article 51(3);

"Income Tax Acts" means collectively the [Income Tax Act](#) and the [Income Tax Management Act](#); Cap. 123.
Cap. 372.

"investment service" means any service falling within the Second Schedule, when provided in relation to an instrument;

"instrument" shall have the same meaning as assigned to it in the [Investment Services Act](#); Cap. 370.

"Malta's international commitments" shall have the same meaning as assigned to it in the Investment Services Act;

"Minister" means the Minister responsible for finance;

"overseas retirement plan" means a *bona fide* scheme or arrangement, organized under the laws of a country outside of Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to beneficiaries for the principal purpose of providing retirement benefits;

"occupational scheme" means a scheme to which contributions

are made solely or partly by an employer for the benefit of employees;

"permanent invalidity" means a medically-determined disability of a permanent nature, which as certified by a medical doctor approved by the retirement scheme administrator, has rendered the employee incapable of meeting the requirements of the employment he had been performing at the onset of such disability;

"prescribed" means prescribed by regulations or directives made under this Act;

"registration" in relation to a scheme or retirement fund or to a retirement fund administrator, retirement scheme administrator or asset manager, or to a matter connected therewith or ancillary thereto, means a registration under this Act, and "register" and "registered" shall be construed accordingly;

"retirement benefit" means pension or other benefits that are payable to a beneficiary after retirement, permanent invalidity or death;

"retirement fund" means a company established for the principal purpose of holding and investing the contributions made to one or more schemes or to one or more overseas retirement plans and shall be construed in accordance with article 4(2);

"retirement fund administrator" shall be construed in accordance with article 17;

"retirement scheme administrator" shall be construed in accordance with article 17;

"scheme" means a scheme or arrangement which is registered under this Act under which payments are made to beneficiaries for the principal purpose of providing retirement benefits. a scheme or arrangement shall not constitute a scheme under this Act if it provides for:

- (a) the payment of retirement benefits to five or fewer beneficiaries; or
- (b) solely the payment of proceeds from the surrender or maturity of a long term contract of insurance effected by an insurance company authorised under the [Insurance Business Act](#); or
- (c) the commencement of payment of retirement benefits to a beneficiary on a date that is earlier than that on which such beneficiary has attained the age of fifty, or later than that on which the beneficiary attains the age of seventy, except in those cases where the scheme or arrangement provides that:
 - (i) the payment is made by reason of the permanent invalidity or death of a beneficiary; or
 - (ii) the payment is made by means of a cash lump sum to the beneficiary without the necessity of the beneficiary's consent in such amount as the Authority may prescribe in the event that the

beneficiary is no longer employed by the contributor of the scheme or arrangement:

Provided that a scheme or arrangement described in paragraphs (a) or (b) may by written notice to the Authority elect to be considered a scheme for purposes of this Act;

"scheme document" means the written instrument evidencing a registered scheme;

"tax" means the tax imposed by the Income Tax Acts;

"technical funding requirement" has the meaning given by article 31.

(2) In Parts I, II and III of this Act and in the Schedules and in any regulations or directives made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

PART II

REGISTRATION AND OPERATIONAL REQUIREMENTS

3. (1) No person shall provide or hold himself as providing a scheme situated in Malta unless such scheme is a registered scheme which complies with the requirements of articles 4(1) and 5.

Prohibition against unregistered schemes and unregistered retirement funds.

(2) No person shall accept money or other consideration from a contributor with respect to a scheme situated in Malta unless such scheme is a registered scheme which complies with the requirements of articles 4(1) and 5.

(3) No person shall maintain or hold himself out as maintaining a retirement fund situated in Malta unless such fund is a registered fund which complies with the requirements of articles 4(2) and 6.

(4) The Authority may by directives under this article declare such schemes or other arrangements as may be referred to in the directives not to be a scheme for the purposes of this Act, or declare that such funds as may be referred to in the directives not to be a retirement fund for the purposes of this Act.

(5) The Authority may by notice in writing to any person determine that:

- (a) an activity falls within the meaning of articles 17, 18, 19 or 24 when provided in relation to a retirement fund or a scheme; or
- (b) a service falls within the Second Schedule to this Act; or
- (c) for the purposes of this Act, a scheme or other arrangement is a scheme situated in Malta, or a fund is a retirement fund situated in Malta,

and subject to any appeal under article 54, with respect to such person, the determination by the Authority, unless otherwise overruled by the Tribunal referred to in that article shall be conclusive for all purposes of this Act.

Requirement to register schemes and retirement funds.

*Amended by:
IX. 2003.120;
XII. 2006.124.*

4. (1) A scheme shall not be registered under the provisions of this Act unless the scheme document contains written terms and provisions which shall state:

- (a) that the principal purpose of the scheme is to provide retirement benefits;
- (b) that all contributions to the scheme may be invested exclusively in one or more retirement funds, except for ancillary cash;
- (c) that the scheme is designed and operated for the exclusive benefit of the beneficiaries specified in such scheme;
- (d) the specific means to be used to identify all current, and future contributors of the scheme together with their respective obligations;
- (e) the specific means to be used to identify all current and future beneficiaries of the scheme together with the specific means to be used to determine the amount of their respective retirement benefits, and the timing of payment of such retirement benefits;
- (f) the name, address and the telephone number and e-mail address, if available, of the initial retirement scheme administrator appointed to carry out the administrative requirements of the scheme;
- (g) the rules or other criteria governing the valuation of assets and liabilities attributable to the scheme and the timing of such valuations;
- (h) the rules governing admissible costs and expenses payable out of the scheme;
- (i) the method of appointment, removal, and replacement of the retirement scheme administrator and, where appropriate, the asset manager, auditor, actuary or any other party to the scheme;
- (j) the rules governing the surrender, termination or, where appropriate, forfeiture of a retirement benefit;
- (k) the applicable rules in the event of an inability or failure by a contributor to fulfil its obligations;
- (l) the rules governing amendments to the scheme document;
- (m) the circumstances leading to the winding up of the scheme, other than such circumstances established by law; and
- (n) that, unless otherwise prescribed under this Act there exists no statutory provision for compensation in the case where a scheme or retirement fund is unable to satisfy the liabilities attributed to it, and the registration of the scheme or retirement fund is not an endorsement by the Authority of the scheme's or the retirement fund's financial performance.

(2) A retirement fund shall not be registered under this Act unless it satisfies the following requirements:

- (a) the retirement fund is registered as an investment company with fixed share capital or an investment company with variable share capital under the [Companies Act](#);
- (b) the memorandum of association of the retirement fund states that its objectives are limited to -
 - (i) the receipt of contributions made by one or more schemes, and, or by one or more overseas retirement plans, and the investment of such contributions and all return on such contributions in instruments or immovable property with the aim of maximising return on such contributions;
 - (ii) the payment of retirement benefits to the beneficiaries of the schemes or the overseas retirement plans which have invested in such retirement fund; and
 - (iii) the carrying on of all matters or functions connected or ancillary to the objectives mentioned in subparagraphs (i) and (ii); and
- (c) the name of the retirement fund is one which, in the opinion of the Authority, is not misleading; and
- (d) the company's head office is, and is operated, in Malta.

Cap. 386.

(3) The assets of the retirement fund shall not be for the benefit of any investor in the retirement fund, but shall be used for the exclusive purpose of providing retirement benefits to the beneficiaries of the schemes or the overseas retirement plans which have invested in such retirement fund, and of defraying the expenses as are allowable under this Act, of such scheme, or the *bona fide* expenses of the overseas retirement plan, as applicable.

(4) Unless otherwise provided in this Act, the provisions of the [Companies Act](#) shall apply to a Retirement Fund.

Cap. 386.

(5) A scheme or retirement fund registered under this Act shall not be subject to any licensing requirements under the [Investment Services Act](#).

Cap. 370.

5. An application for registration of a scheme shall be made in the form and manner required by the Authority and shall -

Application for registration of a scheme.

- (a) contain or be accompanied by a copy of the scheme document containing statements listed in article 4(1);
- (b) be accompanied by such fee or fees as may be prescribed;
- (c) specify the nature of the scheme;
- (d) contain or be accompanied with such other information and particulars, as the Authority may require or as may be prescribed; and
- (e) contain the address in Malta for service on the

applicant of any notice or other documents required or authorized to be served on him by or under this Act or any other law.

Application for registration of a retirement fund.

6. An application for registration of a retirement fund shall be made in the form and manner required by the Authority and shall -

- (a) contain or be accompanied by a copy of the memorandum and articles of association of the retirement fund which satisfy the requirements of article 4(2);
- (b) specify the name and address and the telephone number and e-mail addresses if available of the retirement fund, the directors and retirement fund administrator of such retirement fund;
- (c) be accompanied by such fee or fees as may be prescribed;
- (d) contain or be accompanied with such other information and particulars, as the Authority may require or as may be prescribed;
- (e) contain the address in Malta for service on the applicant of any notice or other document required or authorised to be served on it by or under this Act or any other law; and
- (f) contain a general description of the investment objectives, the risk and return characteristics of the retirement fund, as well as information relating to the type and diversification of assets anticipated within the investment portfolio of the retirement fund.

Power of Authority to refuse registration of a scheme.
Amended by:
L.N. 426 of 2007.

7. (1) The Authority may register or refuse to register a scheme for which an application is made under this Act.

(2) The Authority shall not register a scheme unless it is satisfied that -

- (a) the retirement scheme administrator is fit and proper to provide the scheme concerned;
- (b) the retirement scheme administrator will comply with and observe the provisions of this Act and any regulations or directives prescribed thereunder; and
- (c) the proposed Scheme will comply with the provisions of this Act and any regulations or directives prescribed thereunder.

(3) In registering a scheme, the Authority may subject it to such conditions as it may deem appropriate, and having registered it, the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(4) When considering whether to register any scheme under this Act, the Authority shall in particular have regard for -

- (a) the protection of investors and the general public;
- (b) the protection of the reputation of Malta taking into

account Malta's international commitments;

- (c) the promotion of competition and choice; and
- (d) the reputation and suitability of the retirement scheme administrator and any other parties connected with the scheme.

(5) (a) Where close links exists between an applicant and any other person the Authority shall:

- (i) only register a scheme if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and
- (ii) refuse to register a scheme if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.

(b) The Authority may from time to time, by means of directives under this Act define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(6) Where a scheme or the retirement scheme administrator, asset manager or other person responsible for the scheme contravenes or falls to comply with any of the conditions imposed on the scheme under this article, the Authority may by notice in writing and, without recourse to a court hearing impose on the scheme, retirement scheme administrator, asset manager to other person, as the case may be, an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

8. (1) The Authority may register or refuse to register a retirement fund for which an application is made under this Act.

Power of Authority to refuse registration of a retirement fund.
Amended by:
L.N. 426 of 2007.

(2) The Authority shall not register a retirement fund unless it is satisfied that -

- (a) the promoters, the directors and the retirement fund administrator are fit and proper persons to offer the retirement fund concerned;
- (b) the directors and the retirement fund administrator will comply with and observe the provisions of this Act and any regulations or directives prescribed thereunder; and
- (c) the proposed retirement fund will comply with the provisions of this Act and any regulations or directives made thereunder.

(3) In registering a retirement fund, the Authority may subject it to such conditions as it may deem appropriate, and having registered it, the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(4) When considering whether to register any retirement fund

under this Act, the Authority shall in particular have regard for -

- (a) the protection of investors and the general public;
 - (b) the protection of the reputation of Malta taking into account Malta's international commitments;
 - (c) the promotion of competition and choice; and
 - (d) the reputation and suitability of any promoter, director, retirement fund administrator and any other party connected with the retirement fund.
- (5) (a) Where close links exist between an applicant and any other person the Authority shall:
- (i) only register a retirement fund if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and
 - (ii) refuse to register a retirement fund if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement, prevent the effective exercise of its supervisory functions.
- (b) The Authority may from time to time, by means of directives under this Act, define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

(6) Where a retirement fund, or the retirement fund administrative, its manager, secretary, director or other person responsible for the retirement fund contravenes or fails to comply with any of the conditions imposed on the retirement fund under this article, the Authority may by notice in writing and without recourse to a court hearing impose on the retirement fund, its manager, secretary, director or other person, as the case may be, an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

Payment of
periodic fees.

9. Every scheme and retirement fund shall pay to the Authority such periodic and application fees, and within such time, as may from time to time be prescribed.

Changes in
information.

10. A retirement scheme administrator or a retirement fund administrator, or any other person having responsibility for the day to day administration or management of a scheme or fund, shall provide the Authority with particulars of any changes in the information provided under this Act as soon as such person or its delegate becomes aware of such changes.

Power of Authority
to cancel or
suspend
registration of a
scheme.

11. Without prejudice to any other provision of this Act and of any regulations or directives made thereunder, the Authority may cancel or suspend the registration of a scheme if:

- (a) it considers that a retirement scheme administrator is

not a fit and proper person to carry out the functions required of it in connection with the scheme; or

- (b) it considers that the scheme to which the registration refers does not comply with the provisions of this Act or of any regulations and, or, directives made thereunder, or that there has been a contravention of any such provisions, or of an obligation or condition to which the scheme or its registration are subject by or under this Act; or
- (c) information has been furnished to the Authority by or on behalf of or in relation to the scheme which is false, inaccurate or misleading.

12. Without prejudice to any other provision of this Act and of any regulations or directives made thereunder, the Authority may cancel or suspend the registration of a retirement fund if:

Power of Authority to cancel or suspend registration of a retirement fund.

- (a) it considers that a director or retirement fund administrator is not a fit and proper person to carry out the functions required of it in connection with the retirement fund; or
- (b) it considers that the retirement fund to which the registration refers does not comply with the provisions of this Act or of any regulations and, or, directives made thereunder, or that there has been a contravention of any such provisions, or of an obligation or condition to which the retirement fund or its registration are subject by or under this Act; or
- (c) information has been furnished to the Authority by or on behalf of or in relation to the retirement fund which is false, inaccurate or misleading.

13. (1) Where the Authority proposes -

- (a) to vary any condition to which a registration is subject or to impose a condition thereon; or
- (b) to refuse an application for registration or to cancel or to suspend a registration,

Notification of proposed refusal, variation, cancellation or suspension of a registration.

it shall give the retirement scheme administrator or retirement fund administrator notice in writing of its intention to do so, such notice setting out the reasons for its proposed action.

(2) Every notice given under subarticle (1) shall state that the recipient of the notice may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the Authority giving reasons why the proposed decision should not be taken, and the Authority shall consider any representation so made before arriving at a final decision.

(3) The Authority shall as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under subarticle (1).

Retirement fund
directors.

14. (1) Every company, which is formed as a retirement fund, shall have at least three directors.

(2) Subject to the provisions of this Act and to the applicable scheme, it shall be the responsibility of the board of directors either directly or through an asset manager to invest all money and other assets received by the retirement fund in accordance with its memorandum of association.

Appointment of
retirement fund
administrator.

15. (1) Every retirement fund shall have a retirement fund administrator to carry out such duties assigned to such administrators under this Act or any other law.

(2) It shall be the duty of the directors of the retirement fund to appoint a retirement fund administrator, and such directors shall have the power to remove the retirement fund administrator at their discretion.

(3) Where the post of retirement fund administrator becomes vacant, the directors of the retirement fund shall, within fourteen days from the date of vacancy, appoint another person to fill the post.

(4) Where the directors fail to fill such vacancy within the fourteen days provided above, the Authority may, on an application made by any one of the directors or by a contributor or beneficiary, appoint a person to fill such vacancy itself.

(5) During any period where there is no retirement fund administrator, and during any period of incapacity of the retirement fund administrator, any officer of the retirement fund authorized generally or specifically in that behalf by the directors shall carry out the functions of the retirement fund administrator.

Appointment of
retirement scheme
administrator.

16. (1) Every scheme shall have a retirement scheme administrator to carry out such duties assigned to such administrator under this Act or any other law.

(2) It shall be the duty of the contributors of the scheme to appoint a Retirement Scheme Administrator, and such contributors shall have the power to remove the retirement scheme administrator at their discretion.

(3) Where the post of retirement scheme administrator becomes vacant, the contributors of the scheme shall, within fourteen days from the date of vacancy, appoint another person to fill the post.

(4) Where the contributors fail to fill such vacancy within the fourteen days provided above, then the Authority may, on an application made by any one of the contributors or beneficiaries, appoint a person to fill such vacancy itself.

(5) During any period where there is no retirement scheme administrator, and during any period of incapacity of the retirement scheme administrator any officer of the scheme authorized generally or specifically in that behalf by the contributors shall carry out the functions of the retirement scheme administrator.

17. (1) No person shall provide a retirement fund or a scheme with any administrative services described in articles 18 and 19, trustee services or any other services as the Authority may specify, unless such person is registered under this Act as a retirement fund administrator or a scheme administrator as the case may be, or is otherwise registered by the Authority to perform any such services.

Registration of retirement fund administrators and retirement scheme administrators.
Amended by:
XII, 2006.125;
L.N. 426 of 2007.

(2) No person shall be registered as a retirement fund administrator or retirement scheme administrator under this Act unless -

- (a) such person is a company operating in Malta which -
 - (i) has its head office in Malta, or
 - (ii) in the case of a company whose head office is outside Malta, is established in a country which in the opinion of the Authority is subject to an adequate level of regulatory supervision;
- (b) in the case only of a retirement fund administrator such person is in possession of an appropriate licence under the [Investment Services Act](#) or as may otherwise be prescribed.

Cap. 370.

(3) The application for registration of a retirement fund administrator or of a retirement scheme administrator shall be made in the form and manner as may be prescribed, and shall -

- (a) specify the name, and address, and telephone number and e-mail address, if available, of the retirement fund administrator or retirement scheme administrator, as the case may be;
- (b) be accompanied by such fees as may be prescribed;
- (c) contain or be accompanied by such other information and particulars as the Authority may require or as may be prescribed;
- (d) contain the address in Malta for service on the applicant of any notice or other document required or authorized to be served on it by or under this Act or any other law; and
- (e) specify the nature of the applicant's business and relevant experience.

(4) The Authority may provide for the automatic registration of retirement fund administrators or retirement scheme administrators that already are in possession of a valid investment services licence within the meaning of the [Investment Services Act](#), or that are already registered under such other law as the Authority may specify.

Cap. 370.

(5) The registration of a retirement fund administrator or of retirement scheme administrator, may be made subject to such conditions as the Authority may deem appropriate, and after registration the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(6) Where a retirement fund administrator or retirement

scheme administrator contravenes or fails to comply with any of the conditions imposed under this article, the Authority may without recourse to a court hearing impose an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

(7) The provisions of this Act applicable to retirement scheme administrators and retirement fund administrators, as the case may be, shall apply *mutatis mutandis* to persons who provide trustee services or any other services in accordance with subarticle (1) unless the Authority otherwise provides. The Authority may issue any directives to regulate the activities of trustees providing trustee services under this Act and it may impose such conditions as it deems appropriate in relation to the services provided by a trustee or trustees in the context of a Scheme.

Duties of the
retirement fund
administrator.

18. (1) The retirement fund administrator shall perform all duties in connection with the ordinary or day-to-day operations of the retirement fund, including but not limited to the following:

- (a) receiving the assets of eligible investors, and maintaining or arranging custody of such assets;
- (b) ensuring that the retirement fund receives all payments due to it in the proper amounts and in a timely manner;
- (c) ensuring that all income and proceeds received by the retirement fund are applied in accordance with the retirement fund's memorandum and articles of association;
- (d) ensuring that all disbursements are effected in accordance with the memorandum and articles of association;
- (e) maintaining accurate records regarding the net asset value of the retirement fund in accordance with this Act, the memorandum and articles of association;
- (f) maintaining accurate records regarding the retirement fund's investors;
- (g) complying with all the retirement fund's statutory and other requirements including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;
- (h) complying with any requirements of the Income Tax Acts in order to qualify for tax-exemption or tax-approval;
- (i) ensuring that all instructions and decisions affecting the retirement fund conform with the law and the memorandum and articles of association; and
- (j) providing or arranging for all necessary accounting or other services.

(2) A retirement fund administrator 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.

(3) It shall be the duty of the retirement fund administrator who has in any way, whether directly or indirectly an interest in any transaction or proposed transaction affecting the retirement fund, to immediately declare the nature of its interest to the retirement fund's board of directors.

19. (1) The retirement scheme administrator shall perform all duties in connection with the ordinary or day-to-day operations of the scheme, including but not limited to the following:

Duties of the
retirement scheme
administrator.
*Amended by:
XII. 2006.126.*

- (a) investing all contributions in accordance with the terms of the scheme document;
- (b) ensuring that the scheme receives all payments due to it by any contributor or retirement fund in the proper amounts and in a timely manner;
- (c) ensuring that all income and proceeds received by the scheme are applied in accordance with the terms of the scheme document and that all disbursements are effected in accordance with the scheme document;
- (d) maintaining custody of assets;
- (e) maintaining accurate records regarding the net asset value of the scheme in accordance with this Act and the scheme document;
- (f) ensuring that, with respect to a defined benefit retirement scheme, the scheme satisfies the technical funding requirement at each prescribed interval;
- (g) ensuring that, with respect to a defined contribution retirement scheme, any assets of the scheme in excess of the current liabilities, or that, with respect to a defined benefit retirement scheme, the liabilities that represent future payment obligations to beneficiaries, shall not be distributed to a party other than to a beneficiary of the scheme, except in such manner as may be prescribed;
- (h) ensuring that the interests in any security in which the scheme may be invested, including the shares of any retirement fund or funds, as may be applicable, held for the benefit of an individual who is to receive payments under such scheme, shall, upon the retirement, permanent invalidity, or death of such individual, be redeemed or otherwise liquidated by the scheme from such retirement fund, and the value of such redemption or liquidation shall be made available to the beneficiary or as provided for in the scheme document;
- (i) maintaining accurate records regarding the scheme's contributors and beneficiaries;
- (j) complying with all the scheme's statutory and other requirements, including those affecting the disclosure of information, admissible financial transactions and the preparation of any financial audit;

- (k) complying with any requirements of the Income Tax Acts to qualify for tax-exemption or tax-approval;
- (l) seeking to ensure that all instructions and decisions affecting the scheme are in conformity with the law and the scheme document; and
- (m) arranging for all necessary accounting, actuarial or other services.

(2) A retirement scheme administrator shall act in the best interests of the scheme and may not use the assets of the scheme for its own or other purposes.

(3) It shall be the duty of the retirement scheme administrator who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the scheme, to immediately declare the nature of its interest to the contributors of the scheme, or their appointed representative.

Remuneration of the retirement fund administrator or retirement scheme administrator.

20. (1) The remuneration that is payable to the retirement fund administrator or retirement scheme administrator shall be set out in a written contract between such person and the retirement fund or scheme, as applicable, and shall be approved by the board of directors of the retirement fund or a majority by value of contributions on the relevant date within the scheme, of the contributor of the scheme, as the case may be, and be disclosed in the retirement fund or scheme's annual report.

(2) For the purpose of this article "remuneration" includes sums paid in respect of expenses.

(3) The provisions of this article shall apply in relation to benefits in kind as well as to payments in cash, and in relation to any benefit in kind, references to its amount are to be taken as references to its estimated money value. The nature of any such benefit shall also be disclosed.

Removal of the retirement fund administrator or retirement scheme administrator.

21. (1) Subject to any requirements as may be prescribed, the board of directors of a retirement fund may at any time replace the retirement fund administrator with a new retirement fund administrator.

(2) Subject to any requirements as may be prescribed, a majority by value of contributions to date within the scheme of the contributor of the Scheme may at any time replace the retirement scheme administrator with a new retirement scheme administrator in accordance with the relevant scheme document.

(3) It shall be the duty of the administrator being replaced to cooperate fully with the new retirement fund administrator or retirement scheme administrator, to ensure a proper, orderly and complete transfer of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the retirement fund and the beneficiaries.

Liability of the retirement fund administrator or retirement scheme administrator.

22. In the discharge of their responsibilities, and without prejudice to the liability for damages under any other law, the retirement fund administrator and retirement scheme administrator shall be liable for any loss or damage suffered as a result of fraud,

wilful default or negligence on their part.

23. (1) The Authority shall have the power to audit and investigate a retirement fund administrator or retirement scheme administrator or any other party providing services to a retirement fund.

Regulation of the retirement fund administrator or retirement scheme administrator.

(2) The Authority may at any time cancel or suspend the registration of the retirement fund administrator or retirement scheme administrator if -

- (a) the Authority considers that such person is not fit and proper to carry out the function required of it in connection with the retirement fund or scheme; as the case may be; or
- (b) information has been furnished to the Authority by or on behalf of the administrator which is false, inaccurate or misleading.

(3) The Authority shall, in the exercise of its powers under subarticle (2), have regard to all relevant matters and shall act in the best interests of the beneficiaries.

24. (1) No person shall provide or hold itself as managing investments of any retirement fund or scheme unless such person is a registered asset manager or, a retirement scheme administrator duly authorized to provide investment management services, in accordance with this Act.

Registration of asset managers.
Amended by:
XII. 2006.127;
L.N. 426 of 2007.

(2) A person shall not be registered as an asset manager under the provisions of this Act unless it is a company -

- (a) operating in Malta and in possession of an appropriate licence under the [Investment Services Act](#) or as may be prescribed, or
- (b) in the case of a company operating outside Malta, which is established in a country where in the opinion of the Authority the company will be subject to an adequate level of regulatory supervision.

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(3) The application for registration of an asset manager shall be made in the form and manner required by the Authority and shall -

- (a) specify the name, and address and the telephone number and e-mail address, if available of the asset manager;
- (b) be accompanied by such fees as may be prescribed;
- (c) contain or be accompanied by such other information and particulars as the Authority may require or may be prescribed; and
- (d) specify the nature of the applicant's business and relevant experience.

(4) The Authority may provide for the automatic registration of asset managers that already are in possession of a valid investment services licence under the [Investment Services Act](#), or

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that are already registered under such other law as the Authority may specify.

(5) An asset manager, may be registered by the Authority subject to such conditions as the Authority may deem appropriate, and after registration the Authority may, from time to time, vary or revoke any condition so imposed or impose new conditions.

(6) Where an asset manager contravenes or fails to comply with any of the conditions imposed under this article, the Authority may without recourse to a court hearing impose an administrative penalty which may not exceed ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94).

Remuneration of
asset manager.

25. (1) The remuneration that is payable to a retirement fund asset manager shall be set out in a written contract between the retirement fund and the asset manager, be approved by the board of directors, and be disclosed in the retirement fund's annual report.

(2) The remuneration that is payable to a scheme asset manager shall be set out in a written contract between the retirement scheme administrator on behalf of a scheme and the asset manager, and be disclosed in the scheme's annual report.

(3) For the purpose of this article "remuneration" includes sums paid in respect of expenses.

(4) The provisions of this article shall apply in relation to benefits in kind as well as to payments in cash, and in relation to any benefit in kind, references to its amount are to be taken as references to its estimated money value. The nature of any such benefit shall also be disclosed.

Removal of asset
manager.

26. (1) Subject to any requirements as may be prescribed, and to any terms and provisions as are established in the scheme document, the board of directors of a retirement fund or the majority by value of contributions to date within the scheme of the contributors of a retirement scheme may replace the asset manager with a new asset manager at any time.

(2) It shall be the duty of the asset manager being replaced to cooperate fully with the new asset manager, or where no new asset manager is appointed, with the administrator, to ensure a proper, orderly and complete hand over of duties, and to take all reasonable and practical measures to preserve and safeguard the interests of the retirement fund or scheme, its shareholders, contributors, and beneficiaries.

Duties of asset
manager.

27. (1) An asset manager shall be responsible for all investment services which it has agreed to provide to the retirement fund or the scheme appointing it.

(2) An asset manager shall act in the best interests of the retirement fund or scheme appointing it and may not use the assets of the retirement fund or the scheme, as the case may be, for its own or other purposes.

(3) It shall be the duty of the asset manager who has in any way, whether directly or indirectly, an interest in any transaction or proposed transaction affecting the retirement fund or the scheme,

as the case may be, to immediately declare the nature of its interest to the board of directors of the retirement fund or the scheme's contributors.

28. In the discharge of its responsibilities, and without prejudice to any liability for damages under any other law, the asset manager shall be liable for any loss or damage arising out of fraud, wilful default or negligence on the part of the asset manager.

Liability of asset manager.

29. (1) Every auditor or actuary of a retirement fund or scheme shall have the duty to report immediately to the Authority any fact or decision of which it becomes aware in its capacity as auditor or as actuary of such retirement fund or scheme which -

Auditors and actuaries.

- (a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's or actuary's report on such retirement fund or scheme; or
- (b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to a retirement fund or scheme in or under this Act; or
- (c) seriously impairs the retirement fund's or scheme's ability to meet the current or future liabilities attributable to it; or
- (d) relates to any other matter which may be prescribed.

(2) An auditor or an actuary of a scheme or a retirement fund shall report to the Authority any facts or decisions as specified in subarticle (1) of any person having close links with such scheme or retirement fund within the meaning in articles 7 and 8, of which he becomes aware in his capacity as auditor or actuary of the scheme or retirement fund or of the person having such close links.

(3) The matters which may be prescribed for the purpose of subarticle (1)(d) may include matters related to persons or entities other than a retirement fund or scheme, including but not limited to the administrator of a retirement fund or a scheme, or to an asset manager.

(4) Every defined benefit retirement scheme, which is an occupational scheme, other than one falling within a class or description as may be prescribed, shall appoint an auditor and an actuary.

(5) Without prejudice to the provisions of the [Companies Act](#), the Authority may by directive - Cap. 386.

- (a) prescribe the class of persons who may act as auditors or actuaries on behalf of a retirement fund or scheme; or
- (b) provide that the persons who may so act shall be -
 - (i) persons with professional qualifications or experience as may be prescribed; or
 - (ii) such other class or classes of persons as are approved by the Authority.

(6) Without prejudice to the provisions of the [Companies Act](#), the Authority may by directive make provision relating to - Cap. 386.

- (a) the appointment, resignation and removal of auditors and actuaries of retirement funds or schemes;
- (b) the duty of an administrator of a retirement fund or of a scheme to disclose information and to make documents available to the auditors or actuaries of a retirement fund or of a scheme.

Duty to report.

30. (1) If a retirement fund director, retirement fund administrator or retirement scheme administrator, or the asset manager, auditor or actuary of any scheme or retirement fund knows, believes or otherwise suspects that -

- (a) any duty relevant to the administration of the scheme or retirement fund imposed by any law on any person acting in connection with the scheme or retirement fund has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of its functions,

he must immediately give a written report of the matter to the Authority.

(2) A retirement fund director, retirement fund administrator or retirement scheme administrator, or the asset manager auditor or actuary of a retirement scheme or retirement fund shall not be regarded as having contravened his duties merely because he may have given any information or opinion contained in a written report under this article or under article 52.

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Cap. 12.
Cap. 377.

(3) Saving the provisions of article 642(1) of the [Criminal Code](#) and of article 588(1) of the [Code of Organization and Civil Procedure](#), no duty, including any duty under the [Professional Secrecy Act](#), to which any person is subject shall be regarded as contravened merely because of any information or opinion contained in a report made by such person under this article or under article 52.

(4) Any person who fails to comply with subarticle (1) shall be guilty of an offence.

(5) If it appears to the Authority that a retirement fund director, retirement fund administrator or retirement scheme administrator, or the asset manager, auditor or actuary of a scheme or retirement fund has failed to comply with subarticle (1), the Authority may by notice in writing, together with reasons for its decision, disqualify him from being the director, retirement fund administrator or retirement scheme administrator, or the asset manager, auditor or actuary of the scheme or retirement fund specified in the notice.

(6) A notice under subarticle (5) may specify the scheme or retirement fund to which the failure relates, schemes or retirement funds falling within any class or description of schemes or retirement funds or all schemes or retirement funds.

(7) The Authority may, on the application of any person disqualified under this article who satisfies the Authority that he

will comply with those subarticles, by notice in writing revoke the disqualification; such a revocation shall not be retrospective.

(8) A retirement fund director, retirement fund administrator or retirement scheme administrator, or an asset manager, auditor or actuary of a scheme or retirement fund who is disqualified under this article shall, while he is so disqualified, cease to be the retirement fund director, retirement fund administrator or retirement scheme administrator, or the asset manager, auditor or actuary of the scheme or the retirement fund specified in the notice of disqualification.

(9) A person who, while he is disqualified under this article, purports to act as retirement fund director, retirement fund administrator or retirement scheme administrator, or as the asset manager, auditor or actuary of a scheme or retirement fund specified in the notice of disqualification shall be guilty of an offence.

31. (1) Every defined benefit retirement scheme which is an occupational scheme, other than one falling within such class or description as may be prescribed shall be subject to a requirement (referred to in this Act as the "technical funding requirement") that the value of the assets of the scheme shall not be -

Technical funding requirement.

- (a) less than such amount; nor
- (b) more than such amount,

as may be prescribed.

(2) The retirement scheme administrator shall obtain within such period as may be prescribed an actuarial valuation from the scheme's actuary and afterwards obtain such a valuation at such intervals as may be prescribed.

(3) The retirement scheme administrator shall on such occasions or dates as may be prescribed or within such periods or intervals as may be prescribed obtain a certificate prepared by the scheme's actuary -

- (i) stating whether or not in his opinion the contributions payable towards the scheme are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not met, whether or not in his opinion it will be met by the end of that period, and
- (ii) indicating any relevant changes that have occurred since the last actuarial valuation was prepared.

(4) The retirement scheme administrator shall obtain an actuarial valuation within the period stated in subarticle (2) in the event that:

- (i) the actuary states in the certificate referred to in subarticle (3) that in his opinion the contributions payable towards the retirement

scheme are not adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or, if it appears to him that it is not then met, or that in his opinion it will not be met by the end of that period; or

(ii) in such circumstances as may be prescribed.

(5) Notwithstanding the provisions of subarticle (4) the retirement scheme administrator shall not be required to obtain an actuarial valuation if -

(a) in the opinion of the scheme actuary, the value of the scheme assets is not less than the amount prescribed for the purpose of subarticle (1)(a); and

(b) since the date on which the actuary signed the certificate referred to in that subarticle, the schedule of payments for the scheme has been revised in accordance with article 33(3).

(6) If the retirement scheme administrator obtains a valuation under subarticle (4), he shall do so -

(a) in the case of a valuation required by subparagraph (i) thereof, within the period of six months reckoned from the date of the actuarial certificate, and

(b) in any other case, within such period as may be prescribed.

(7) A valuation or certificate shall be prepared in such manner, give such information and contain such statements as may be prescribed.

Schedule of payments of occupational schemes.

32. The retirement scheme administrator of every occupational scheme, other than one falling within such class or description as may be prescribed shall prepare, maintain and from time to time revise a schedule (hereinafter and in article 31 referred to as a schedule of payments), showing -

(a) the rates of contributions payable towards the scheme by or on behalf of the employer and, where applicable, by any other contributors of the scheme;

(b) the dates on or before which such contributions are to be paid; and

(c) such other matter as may be prescribed.

Schedule of payments for occupational defined benefit retirement schemes.

33. (1) This article applies to every defined benefit retirement scheme, which is an occupational scheme, other than one falling within such class or description as may be prescribed.

(2) The schedule of payments shall be prepared before the end of such period as may be prescribed reckoned from the date of the first actuarial valuation for the scheme, and shall thereafter be revised before the end of such period as may be prescribed reckoned from the date of the signing of each subsequent actuarial valuation.

(3) Where from time to time, such revisions are agreed by the

retirement scheme administrator and the employer, and where applicable, any other contributor to the scheme, and any such revision in the rates of contributions is certified by the actuary of the scheme as meeting the requirements of this Act, or as may be prescribed or in the circumstances referred to in subarticle (4)(b) hereof, the schedule of payments may be revised.

(4) The matters contained in the schedule of payments as revised shall be:

- (a) matters previously agreed between the retirement scheme administrator and the employer, and where applicable, any other contributor to the scheme, or
- (b) where no such agreement has been reached:
 - (i) the rates of contributions determined by the retirement scheme administrator and the actuary of the scheme and certified by the actuary of the scheme, being such rates as in their opinion are adequate for the purpose of securing that the technical funding requirement will continue to be met throughout the prescribed period or where it appears to them that they are not then met, such as are adequate for them to be met by the end of that period; and
 - (ii) any other matters determined by the retirement scheme administrator and the actuary of the scheme.

(5) An agreement for the purposes of subarticle (4)(a) shall be made during such period as may be prescribed beginning with the signing of the last preceding actuarial valuation for the scheme.

(6) The actuary shall not certify the schedule of payments -

- (i) where it appears to him that the technical funding requirement is met, unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will continue to be met throughout the prescribed period, and
- (ii) in any other case unless he is of the opinion that the rates are adequate for the purpose of securing that the requirement will be met by the end of that period.

(7) The Authority may extend, or further extend the period referred to in subarticle (2), and where it refuses to extend, or further extend such period it shall give written notice of the refusal together with a statement of reasons for the decisions.

34. (1) Except in such circumstances, as may be prescribed the retirement scheme administrator and actuary of every occupational scheme, other than one falling within such class or description as may be prescribed, shall, where any amounts payable by or on behalf of the contributor(s) of the scheme in accordance with the schedule of payments have not been paid on or before the

Payment of
contributions.
Amended by:
L.N. 181 of 2006;
L.N. 186 of 2006.

due date, give notice of that fact, within such period as may be prescribed to the Authority and to the beneficiaries.

- (2)
 - (a) Where the retirement scheme administrator desires to sue for the recovery of a debt due from a contributor in respect of any contribution, he may make a declaration on oath before the registrar of the courts, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due.
 - (b) The declaration referred to in paragraph (a) shall be served upon the contributor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the contributor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded.
 - (c) The application filed in terms of paragraph (b) shall be served upon the retirement scheme administrator who shall be entitled to file a reply within the period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.
 - (d) In the case of an urgent nature the court may, upon an application of the retirement scheme administrator or the contributor, shorten any time limits provided for in this subarticle by means of a decree served on the other parts.
 - (e) Any executive title obtained according to the previous paragraphs of this subarticle in the absence of any opposition on the part of the contributor shall be rescinded if upon a request by sworn application to be filed by the contributor within twenty days from the first service upon him of an executive warrant based on the said title or of any other judicial act wherein reference is made to the said title the court is satisfied that the contributor was unaware of the service of the declaration referred to in paragraph (a) during the period during which he could oppose the same and that the claim contained in the said declaration is unfounded on the merits.
 - (f) No opposition other than that specifically provided in paragraph (e) shall stay the issue or execution of any executive act obtained thereunder or the paying out of the proceeds of any warrant or sale by auction carried out in pursuance thereof.

(3) In the case of an occupational scheme, other than one falling within such class or description as may be prescribed, any amounts payable by the contributor in accordance with the payment schedule shall be paid on or before the due date. Any contributor who fails to effect such payment on or before the due date shall be guilty of an offence.

(4) Where in the case of a defined benefit retirement scheme, which is an occupational scheme other than one falling within such class or description as may be prescribed, it appears to the retirement scheme administrator or the scheme actuary, at the end of such period as may be prescribed that the technical funding requirement is not met, such retirement scheme administrator or such scheme actuary, as the case may be, shall give written notice to the Authority of that fact together with such information as may be prescribed relating to the failure to meet that requirement.

35. (1) This article applies to every defined benefit retirement scheme, which is an occupational scheme, other than one falling within such class or description as may be prescribed.

Underprovision in an occupational benefit retirement scheme.

(2) Where an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is less than the amount prescribed for the purposes of article 31(1)(a) (the difference shown in the valuation hereinafter referred to as "the shortfall"), the employer, shall -

- (i) by making an appropriate payment to the retirement scheme administrator, or
- (ii) by such other method as may be prescribed,

secure an increase in the value of the scheme assets which, taken with any contributions paid, is not less than the shortfall.

(3) The required increase in that value must be secured -

- (a) before the end of such period as may be prescribed reckoned from the date of the valuation, or
- (b) if the actuarial valuation was obtained by reason of a statement in a certificate as is referred to in article 31(3), before the end of a prescribed period reckoned from the date of the certificate.

(4) Except in such circumstances as may be prescribed, if the employer referred to in subarticle (2) fails to secure the required increase in value before the end of the period applicable under subarticle (3), the retirement scheme administrator shall within the period of thirty days reckoned from the end of that period, give written notice of that fact to the Authority and to the beneficiaries of the scheme.

(5) Except in such circumstances as may be prescribed if the employer referred to in subarticle (2) fails to secure the required increase in value before the end of the period applicable under subarticle (3), then so much of the shortfall as, at any subsequent time, has not been met by an increase in value made under subarticle (2) or otherwise by contributions made before the end of that period, shall be recoverable by the retirement scheme administrator and the provisions of article 34(2) shall *mutatis mutandis* apply with regard to any such debt.

(6) The Authority may extend, or further extend the period referred to in subarticle (3), and where it refuses to extend or further extend the period it shall give written notice of the refusal together with a statement of reasons for its decision.

Overprovision in an occupational benefit retirement scheme.

36. (1) This article applies to every defined benefit retirement scheme, which is an occupational scheme, other than one falling within such class or description as may be prescribed.

(2) Where an actuarial valuation shows that, on the effective date of the valuation, the value of the scheme assets is more than the amount prescribed for the purposes of article 31(1)(b) (the difference shown in the valuation hereinafter referred to as "the excess"), the Authority may issue a directive to the employer and the retirement scheme administrator, to take such steps by such method as may be approved by the Authority to secure an appropriate reduction in the value of the scheme assets.

(3) The required reduction in that value must be secured before the end of such period as may specified in the directive.

(4) If the employer and retirement scheme administrator fail to secure the required reduction in value before the end of the period applicable under subarticle (3), the retirement scheme administrator shall within the period of thirty days reckoned from the end of that period, give written notice of that fact to the Authority and to the beneficiaries of the scheme.

(5) The Authority may extend, or further extend the period referred to in subarticle (3), and where it refuses to extend, or further extend the period it shall give written notice of the refusal together with a statement of reasons for the decision.

Scheme to invest in retirement fund.
Amended by:
XII. 2006.128.

37. A scheme may invest in one or more retirement funds which satisfy the requirements of this Act.

Permitted investments of retirement fund and borrowing powers.
Amended by:
XII. 2006.129.

38. (1) A retirement fund or scheme shall comply with such requirements as may be prescribed with regards to the investment, management and valuation of its assets and the extent to which a retirement fund may borrow money.

(2) A retirement fund or scheme shall comply with directives made by the Authority for the purpose of ensuring that:

- (a) no part, or not more than a specified proportion, of the Scheme's resources shall be invested in instruments or immovable property of such class or description as may be specified in the directive;
- (b) the whole or specified proportion of instruments or immovable property of any specified class or description forming part of the scheme's resources shall be realized before the end of such period as maybe specified in the directive;
- (c) the allocation of the scheme's assets among various investments shall be diversified in such manner as may be prescribed; and
- (d) the retirement fund or scheme shall derive in each fiscal year at least ninety per cent of its gross income from dividends, rent or interest payments with respect to Instruments or immovable property, or from gains from the sale or other disposition of such instruments

or immovable property, or from other income derived with respect to its business of investing in such Instruments or immovable property.

(3) Without prejudice to the generality of subarticle (1), a retirement fund or scheme shall comply with such restrictions as may be prescribed under this Act, with respect to the proportion of its resources that may at any time be invested in, or in any description of, contributor-related investments, as defined in subarticle (4).

(4) For purposes of this article -

(a) "contributor-related investments" means -

- (i) saving any exemption under article 50(1), any instrument issued by the contributor or an affiliate of the contributor;
- (ii) immovable property which is occupied or used by, or held under any title whatsoever by the contributor or an affiliate of the contributor;
- (iii) loans to the contributor or to an affiliate of the contributor;

(b) any sums due and payable by a person to a retirement fund or scheme and remaining unpaid shall to the extent that they are so unpaid be regarded for the purposes of this article as a loan made to that person by the retirement fund or scheme.

39. Retirement funds and schemes shall comply with such requirements as may be prescribed with regard to the use of the scheme's money or other assets -

Payment of retirement fund expenses and scheme expenses.

- (a) to defray administrative expenses;
- (b) to pay any commission; or
- (c) in any other way which does not result in the provision of retirement benefits for or in respect of beneficiaries.

40. (1) Subject to the following provisions, and to any regulations or directives as made for the purpose of this article, a defined benefit retirement scheme shall make a distribution to beneficiaries in the amounts and at the times specified in the applicable scheme document.

Distributions by a defined benefit retirement scheme.

(2) To the extent as may be consistent with the applicable scheme, a defined benefit retirement scheme may also satisfy its liability to a beneficiary under such scheme if -

- (a) it takes out an annuity contract or a policy of insurance or a number of such contracts or policies, with an insurance company carrying on long-term insurance business and authorized for this purpose in accordance with the [Insurance Business Act](#) (or, in the case of a beneficiary resident outside Malta, with a *bona fide* insurance company carrying on long-term insurance business outside Malta); and
- (b) it transfers the benefit of such a policy or policies or

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such a contract or contracts to such beneficiary:

Provided that a policy of insurance or annuity contract shall only be appropriate for the purposes of this article if -

- (a) it may not be assigned or surrendered except on conditions which satisfy such requirements as may be prescribed;
- (b) the amount secured by the policy may not be commuted except on conditions which satisfy the requirements of such scheme; and
- (c) it satisfies such other requirements as may be prescribed by any regulations or directives for the purpose of this article.

Compliance with tax requirements.

41. A retirement fund or scheme shall comply with any requirements as are established from time to time by the Commissioner.

Advertisement of schemes.

42. (1) The Authority may make directives relating to the form and content of advertisements and such other promotional activity as may be prescribed in connection with schemes or funds.

(2) All advertisements relating to a scheme or retirement fund shall, unless otherwise prescribed, contain a statement that there exists no statutory provision for compensation in the case where a scheme or retirement fund is unable to satisfy the liabilities attributable to it, and that the registration of the scheme or retirement fund is not an endorsement by the Authority of the scheme's or retirement fund's financial performance.

Disclosure of retirement scheme particulars.

43. (1) A retirement fund shall, not later than three months after the closing of its financial year, or at any other time as may be prescribed, send a copy of the documents listed in subarticle (2) to each of the following persons -

- (a) each overseas retirement plan investing in such retirement fund;
- (b) each retirement scheme administrator of a scheme investing in such retirement fund;
- (c) the Authority and the Commissioner; and
- (d) any other person as the Authority may prescribe.

(2) In relation to any retirement fund, the documents to which subarticle (1) applies are -

- (a) its audited accounts;
- (b) its annual report, in accordance with the requirements in the First Schedule; and
- (c) a directors' report providing such information as is sufficient to enable the persons mentioned in subarticle (1) to make an informed judgement on the development management, operation and financial performance of the retirement fund.

(3) In all other respects, the annual account and directors' report of a retirement fund shall be prepared in accordance with the

provisions applicable to companies generally to the extent that they are not inconsistent with the provisions of the preceding subarticles of this article and the First Schedule.

(4) The Authority may by directive specify additional requirements with respect to keeping the persons mentioned in subarticle (1), or any of them, informed of any changes with respect to, or additions to the terms and provisions -

- (a) of the retirement fund's administration and finances;
- (b) of the rights and obligations that arise or may arise in respect of the retirement fund; and
- (c) of any other matters that appear to the Authority to be relevant to retirement funds in general or to retirement funds of a description to which the retirement fund in question belongs.

(5) The directive may distinguish between -

- (a) cases in which information is to be given as of course; and
- (b) cases in which information need only be given on request or in such circumstances as may be prescribed.

(6) The Authority may by directive make provision as to the form and content of any such document as is mentioned in this article.

44. (1) The Authority may make directives requiring the retirement scheme administrator to submit to the Authority and to publish or make available to beneficiaries a document containing information about the scheme and complying with such requirements as may be prescribed.

Disclosure of retirement fund information.

(2) Directives may further require the retirement scheme administrator to submit and publish or make available revised or further scheme particulars if -

- (a) there is significant change affecting any matter contained in such particulars previously published or made available as may be prescribed; or
- (b) a significant new matter as may be prescribed arises.

45. (1) The retirement scheme administrator of an occupational scheme, other than one falling within such class or description as may be prescribed, shall produce a copy of the annual accounts of the scheme to the Authority not later than three months after the closing of its financial year, or at any other time as may be prescribed.

Annual accounts of occupational schemes.

(2) Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Authority at the same time as the annual accounts are submitted.

(3) The Authority may exempt in writing a scheme specified in the exemption from any provision contained in regulations made

under this Act relating to accounts.

(4) In this article, annual accounts means the scheme accounts as prescribed under this Act.

Scheme document
as binding
agreement.

46. (1) A scheme as written out in its scheme document shall, when duly disclosed to a beneficiary, be binding on the beneficiary, unless such beneficiary notifies the retirement scheme administrator of his written opposition thereto within a period of two months from the receipt by him of the scheme document.

(2) A beneficiary who is not himself also a contributor shall cease to be a beneficiary under a scheme if he opposes a scheme document which does not reduce the benefits due to him under the scheme.

Unenforceability
of unregistered
schemes.

47. (1) A scheme which is not registered in accordance with this Act shall be unenforceable against any contributor who is also a beneficiary; and such contributor shall be entitled to recover any money paid, or other property transferred by him under the scheme, or where such property cannot be so recovered, such contributor shall be entitled to have it replaced by its value at the time of the agreement, together with compensation for any loss sustained by him in consequence of such payment or transfer or the non-recovery of the property transferred and any profits that may have accrued as a result of that money or other property having been transferred by him.

(2) The provision of subarticle (1) shall not affect any liability which any person may incur apart from this article.

Transferability of
rights and
obligations.

48. Regulations or directives may prescribe the circumstances in which and the conditions subject to which -

- (a) a beneficiary may transfer his accrued rights from one scheme to another; and
- (b) a scheme may transfer the liabilities attributable to it to another scheme; and
- (c) a scheme may provide for the payment of a retirement benefit in the form of a lump sum instead of an annuity; and
- (d) a contributor may transfer, dispose of or charge his interest in a scheme.

Assignment or
attachment of
retirement fund
assets.

49. (1) The creditors of a contributor may not enforce their rights over the contributor's interest in the scheme; nor may such creditors attach or subject such interest to any precautionary or executive warrant:

Provided that nothing in this subarticle shall be deemed to deprive any creditor of such contributor of any rights granted to a creditor under article 1144 of the [Civil Code](#).

Cap. 16.

(2) Except as may be prescribed under this Act, every agreement that is made by a contributor to transfer, dispose of or charge his interest in the scheme shall be void.

PART III

GENERAL PROVISIONS

50. (1) The Minister, acting on the advice of the Authority, may make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing may, by such regulations, in particular, do any of the following;

Minister's powers.
Amended by:
IX. 2003.121;
XII. 2006.130;
L.N. 426 of 2007.

- (a) extend or restrict the definition of "contributor", "beneficiary", "defined benefit retirement scheme", "defined contribution retirement scheme", "instrument", "investment service", "occupational scheme", "overseas retirement plan", "retirement benefit", "retirement fund" or "scheme", contained in article 2 to such class of persons, schemes, instruments, services, plans or benefits as the Minister deems fit; and amend the Schedules to this Act;
- (b) regulate retirement funds and retirement schemes, as well as the services provided and activities carried on in conjunction therewith or in relation thereto; establish the qualifications and other eligibility criteria necessary to act as Retirement Fund or Scheme Custodian, provide for the payment of such fees and other charges as may be prescribed, provide for the powers of the Authority in their regard including the imposition of administrative penalties and other measures as well as appeals therefrom to the Financial Services Tribunal, and provide for the issue of Directives establishing other requirements regarding their conduct and activities; and provide for any matter he may deem expedient and may in particular grant rights to the public in respect of such funds and schemes and regulate the exercise thereof;
- (c) establish or make arrangements for the compensation of beneficiaries in cases where a retirement fund or retirement scheme is unable to satisfy claims in respect of any liability incurred by it in connection with a retirement scheme;
- (d) regulate the format, content or amendment of a scheme document;
- (e) prescribe the circumstances in which auditors or actuaries shall be obliged to communicate information to the Authority in accordance with article 29 and may in particular increase the circumstances wherein auditors or actuaries shall be obliged to report to the Authority and prescribe the circumstances or classes thereof wherein they shall be exempted from the provisions of the said article 29; and prescribe rules governing the disclosure by auditors or actuaries of information, and establish supervisory and disciplinary procedures for auditors or actuaries in respect of their duties;

- (f) exempt any person, scheme, retirement fund, or advertisement from any one or more of the provisions of this Act and on such conditions as may be prescribed;
- (g) regulate the provision by any one retirement fund of separate investment portfolios, regulate the investment in any one retirement fund of separate schemes, providing for any matter he may deem expedient, including the regulation of the contents of the memorandum and articles of association of such retirement funds, and for the segregation of the assets of any one scheme from that of another, the regulation of the manner and the form whereby such retirement fund may create and issue shares, and the provision of any matter consequential, incidental to or connected therewith;
- (h) require the keeping and maintenance of records with respect to the transactions and financial position of an overseas retirement plan, a scheme or a retirement fund, and for the keeping of records in Malta and for the inspection of such records;
- (i) require the preparation and presentation of periodical or other reports by an overseas retirement plan, a scheme or a retirement fund, to the Authority and to any other person as the said Minister may prescribe;
- (j) require an overseas retirement plan, a scheme or a retirement fund -
 - (i) to obtain at prescribed times or on the happening of prescribed events such information and documents as may be prescribed;
 - (ii) to furnish that information and copies of those documents to the Authority and, or, such persons as may be prescribed in the form, manner and at the time prescribed;
- (k) restrict or otherwise regulate the manner in which a defined benefit retirement scheme deals with surplus funds;
- (l) provide for the content, format and audit of the annual accounts of an overseas retirement plan, a scheme or a retirement fund;
- (m) regulate the payment (including the time thereof), nature and amount of benefits which may or may not be paid to beneficiaries;
- (n) regulate the manner by which the amount or value of the assets or liabilities of a scheme shall be determined, calculated and, or, verified, and determine the assets and liabilities that are to be taken into account for such purpose;
- (o) prescribe anything that is to be or which may be prescribed; and

- (p) provide for any matter incidental to or connected thereto.

(2) Any regulations made under this article may also contain provision for enabling a beneficiary, contributor, and generally any person who has entered, or offered to enter, into a scheme, to rescind the agreement or withdraw the offer within such period and in such manner as may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make provision -

- (a) requiring the service of notice with respect to the rights exercisable under such regulations;
- (b) for the restitution of property and the making or recovery of payments where those rights are exercised; or
- (c) for such other matters as are incidental to or connected with any of the above.

(3) Any regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make different provision for different cases, circumstances or purposes and may give to the Authority such powers of adaptation of the regulations as may be therein specified.

(4) Regulations made under this article may provide that any contravention or failure of compliance therewith shall constitute an offence and that any person guilty of such an offence shall be liable on conviction to such penalty as may be prescribed being a penalty not exceeding a fine (*multa*) of ninety-three thousand and one hundred and seventy-four euro and ninety-four cents (93,174.94) or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

51. (1) The administration of this Act shall be vested in the Authority. The Authority shall perform such other functions as the Minister may consider appropriate in relation to the operation of this Act.

Powers of the Authority.

(2) The Authority shall have the power to carry out the functions assigned to it by or under this Act and to ensure that the provision of retirement schemes and retirement funds complies with this Act and with any regulations made thereunder, with any directive made by the Authority in virtue of this Act, and with the conditions specified in any registration of a scheme.

(3) The Authority may make, amend or revoke directives as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. Such directives, amendment and revocations may relate to a particular class of persons or situations or to persons and situations generally.

(4) All directives and any amendment or revocation thereof shall be officially communicated to the persons concerned and be open to public inspection in all the offices of the Authority at all times during the normal working hours of the Authority.

(5) The Authority shall enjoy the powers assigned to the competent authority in terms of articles 15 and 16 of the [Investment](#)

Cap. 370.

Services Act *mutatis mutandis*.

(6) The Authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:

- (a) the power to impose, revoke or vary conditions on the registration of a scheme or a retirement fund made pursuant to the provisions of articles 7(3) and 8(3);
- (b) the power to cancel or suspend a registration under articles 11 and 12;
- (c) the powers of inquiry under article 52;
- (d) the power to appoint inspectors under article 53;
- (e) the powers of intervention under subarticle (5) of this article;
- (f) the powers of entry under subarticle (5) of this article;
- (g) the power to communicate to the overseas regulatory authority information which is in the possession of the Authority, whether or not as a result of the exercise of any of the above powers.

(7) The Authority shall exercise powers by virtue of this article:

- (a) where the assistance is requested by the overseas regulatory authority for the purpose of the exercise of one or more of its regulatory functions; or
- (b) where so required within the terms of Malta's international commitments; or
- (c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request arising under a memorandum of understanding concluded with the Authority.

Power of Authority
to obtain
information.

52. (1) The Authority may, by notice in writing, require -

- (i) any contributor, retirement scheme administrator, retirement fund administrator or asset manager who is or was providing, or who appears to be or to have been providing, a retirement scheme, overseas retirement plan or a retirement fund, or who appears to be or have been carrying on activities in connection with a retirement scheme, overseas retirement plan or a retirement fund; or
- (ii) any contributor, retirement scheme administrator, retirement fund administrator, or asset manager who has issued, or appears to have issued an advertisement falling within the provisions of article 42; or
- (iii) any other contributor, retirement scheme administrator, retirement fund administrator, or

asset manager who appears to be in possession of relevant information,

to do all or any of the following:

- (a) to furnish to the Authority, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to any such retirement scheme or advertisement;
- (b) to furnish to the Authority any information or documentation authenticated in such manner as it may specify; or
- (c) to attend before the Authority, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such service, scheme or advertisement.

(2) The Authority may take and retain copies of any documents furnished or provided under this article.

(3) Where the Authority has appointed a person under subarticle (1)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the Authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement by the Authority.

53. (1) The Authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any person, scheme, overseas retirement plan or retirement fund referred to in article 52(1)(i) to (iii).

Appointment of inspectors.

(2) An inspector appointed under subarticle (1) -

- (a) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any person, scheme, overseas retirement plan or retirement fund mentioned in subarticle (1);
- (b) shall have and may exercise all the powers conferred on the Authority by article 51, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement by the Authority; and
- (c) may, and if so directed by the Authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the Authority.

(3) The Authority shall have power to order that all expenses of, and incidental to, an investigation pursuant to this article be paid by the person, scheme or retirement fund concerned.

54. (1) Subject to the provisions of this article, an appeal shall lie to the Tribunal established in article 21 of the [Malta Financial Services Authority Act](#) with respect to:

Appeals.
Cap. 330.

- (a) any determination in accordance with article 3(5);
- (b) any refusal, variation, cancellation or suspension of a

registration under article 7, 8, 11 or 12;

- (c) any decision under article 13(3), and any directive given under article 51(6)(e);
- (d) any decision to make a public statement, under the provisions of article 59, as to a person's misconduct; or
- (e) any administrative penalty in respect of infringements as may be prescribed under article 7, 8, 17 and 24.

(2) An appeal under this article shall lie only on any of the following grounds:

- (a) that the Authority has wrongly applied any of the provisions of this Act; or
- (b) that the decision or Directive of the Authority constitutes an abuse of discretion and is manifestly unfair, but the discretion of the Authority may not, so long as it has been exercised properly, be queried by the Tribunal.

(3) An appeal made under this article shall not suspend the operation of any decision or directive from which the appeal is made:

Provided that a decision to cancel a registration shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned:

Provided further that a decision to issue a statement as to a person's misconduct shall not be published until expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the statement shall not be published before the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.

Cap. 330.

(4) The provisions of article 21 of the [Malta Financial Services Authority Act](#) shall, except in so far as any of them is incompatible with the provisions of this article, apply to appeals made to the Tribunal under this Act.

Powers of the Court.

55. (1) If, on an application by the Authority made to the Civil Court, First Hall, the court is satisfied -

- (a) that there is reasonable likelihood that a person will contravene any of the provisions of this Act or any regulations or directives made thereunder, or will contravene or fail to comply with any condition, obligation, requirement, regulation, directive, or order made or given under any of the provisions of this Act; or
- (b) that a person has contravened any such provision or has contravened or failed to comply with any such condition, obligation, requirement, regulation,

directive, or order and that steps could be taken to remedy the contravention or failure,

the court may give such orders as it may deem appropriate to restrain the contravention or, as the case may be, to require the person referred to in paragraph (a) or (b), or any other person who appears to the court to have been knowingly concerned in the contravention, to take such steps as the court may direct.

(2) If, on an application made under subarticle (1), the court is satisfied that a person has entered into any transaction in contravention of any of the provisions of this Act, the court may order that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the transaction was entered into.

(3) If, on application made under subarticle (1), the court is further satisfied that -

- (a) profits have accrued to any person as a result of the contravention; or
- (b) a shareholder, contributor or a beneficiary has suffered loss or been otherwise adversely affected as a result of that contravention,

the court may order the person responsible for the contravention to pay into court such sum as appears to it to be just having regard to the extent of the profit, loss or adverse effect as aforesaid, and order such sum to be paid out as the court may direct to the persons who have entered into transactions as a result of which profits have accrued or losses or adverse effects have been suffered as aforesaid.

(4) For the purposes of this article the court may order the production by any person of such accounts and the provision of such information, and authenticated in such manner, as the court may deem appropriate.

(5) The provisions of this article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Authority.

- (6) (a) The Board established under article 29 of the [Code of Organization and Civil Procedure](#) may make rules concerning proceedings before the Civil Court, First Hall, under this article. Cap. 12.
- (b) The Minister responsible for justice may by regulations under this paragraph establish the fees payable in the registry of the Court relative to the filing of judicial acts in connection with proceedings under this article:

Provided that until such fees are so established, the fees contained in Schedule A to the [Code of Organization and Civil Procedure](#) shall apply.

Offences.

56. (1) Any person who contravenes or fails to comply with any of the provisions of this Act, or contravenes or fails to comply with any condition, obligation, requirement, regulation, directive or order made or given under any of the provisions of this Act, shall be guilty of an offence.

(2) Any person who for the purposes of, or pursuant to, any of the provisions of this Act or of any regulations made thereunder, or any condition, obligation, requirement or order made or given as aforesaid, furnishes information or makes a statement which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, shall be guilty of an offence.

(3) Any person who is knowingly a party to the carrying on of any retirement fund or scheme with an intent to defraud, shall be guilty of an offence.

(4) Any person who by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (whether dishonest or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into a retirement fund or scheme, shall be guilty of an offence.

(5) Any person who with intent to avoid detection of the commission of an offence under this Act removes, destroys, conceals or fraudulently alters any book, document or other paper, shall be guilty of an offence.

(6) Any person who intentionally obstructs a person exercising rights conferred by this Act shall be guilty of an offence.

Penalties.
Amended by:
L.N. 426 of 2007.

57. A person guilty of an offence under the provisions of article 56 shall unless another penalty is prescribed be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-five thousand and eight hundred and seventy-four euro and sixty-eight cents (465,874.68) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

Criminal
proceedings.

58. (1) No proceedings for an offence under this Act shall be commenced without the consent of the Attorney General.

(2) The provisions of this Act shall not affect any criminal liability that may be incurred by any person under any other law.

Public statement as
to misconduct.

59. (1) If it appears to the Authority that a person who is or was providing or who appears to be or to have been providing, a retirement scheme has contravened any of the provisions of this Act or of any regulations made thereunder or has contravened or failed to comply with any condition, obligation, requirement, directive or order made or given under any of the provisions of this Act, the Authority may publish a statement to that effect.

(2) Before publishing a statement under subarticle (1), the Authority shall give the person concerned written notice of the proposed statement and of the reasons for which it is proposed to

publish the statement.

(3) Where the reasons stated in the notice relate specifically to matters which -

- (a) refer to a person identified in the notice other than the person who is the subject of the notice; and
- (b) are in the opinion of the Authority prejudicial to that person in any office or employment,

the Authority shall, unless it considers it impracticable to do so, serve a copy of the notice also on that other person.

(4) A notice served on a person pursuant to the provisions of this article shall give particulars of the person's right of appeal under article 54 and of the provisions of subsection (5).

(5) Subject to the provisions of article 54(4), upon the expiration of one month from the date of service of the notice under subarticle (2), or a copy of the notice under subarticle (3) of this article, whichever was the later, the Authority may publish the proposed statement and, after publication, shall send a copy to that person and to any person on whom a copy of the notice was served under subarticle (3) of this article.

60. (1) Subject to the provisions of subarticle (2), information obtained by any person for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations or directives promulgated thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any person other than to a person who may lawfully obtain that information for the purposes of, or pursuant to, the provisions of this Act, except in the case of the consent of the person from whom it obtained the information, provided the information relates solely to that person.

Confidentiality.

(2) The provisions of subarticle (1) shall not preclude the disclosure of information -

- (a) with a view to the institution of, or otherwise for the purposes of, criminal proceedings or of any proceedings by the Authority before any court under this Act;
- (b) with a view to enabling or assisting the Authority in the performance or discharge of any of its functions under this Act;
- (c) which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;
- (d) in a summary or collection of information formed in such a way as not to enable the identity of any person to whom the information relates to be ascertained;
- (e) to an auditor or actuary where such disclosure would assist the auditor or actuary in the exercise of its

functions under article 29;

Cap. 345.

- (f) to the Central Bank of Malta or to the listing authority under the [Financial Markets Act](#), where such information is required by the Bank or the listing authority in the exercise of their respective functions in terms of law;
- (g) in response to a request from, or for the purpose of assisting an overseas regulatory authority pursuant to article 51;
- (h) to such other local or overseas regulatory, judicial or enforcement authorities where such disclosure is required or requested for the pursuance of serious regulatory concerns or the detection, prevention or prosecution of criminal offences;
- (i) in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of a scheme or retirement fund provided such information does not concern third parties involved in attempts to rescue such a scheme or retirement fund, and to such overseas bodies responsible for the liquidation of bankruptcy of a person holding a licence or an equivalent authorisation from an overseas regulatory authority or for other similar procedures.

Exclusion of liability.

61. The Authority and any officer or employee of the Authority, and any other person appointed to perform a function under this Act, or under any regulation and, or, directive promulgated thereunder, or under an order made or given under any of the provisions of this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any regulation and, or directive thereunder, unless the act or omission is shown to have been done or omitted to be done in bad faith.

Notices.

62. A notice or other document to be given or served under this Act, or any regulations or directives made thereunder, shall be deemed to have been duly given or served on a person if -

- (a) it has been delivered to it; or
- (b) it has been left at the address furnished by it to the Authority, or to its last known address; or
- (c) it has been sent to it by post, e-mail or by telefax at any of the aforesaid addresses; or
- (d) in the case of a body of persons, whether corporate or unincorporated, or of a scheme or a retirement fund, if it has been given or served in any of the manners aforesaid to or on a scheme or retirement fund administrator, secretary, clerk, manager, trustee or their equivalent, or to any contributor or to any director or member of the governing body or an appointed representative.

63. The [Exchange Control Act](#) shall not apply to transactions carried out by a scheme or retirement fund with persons or entities not resident in Malta for the purposes of the said Act.

Application of
Exchange Control
Act.
Cap. 233.

64. The Minister, acting on the advice of the Authority, may by regulations, make transitional provisions in respect of such persons who, on the effective date of this Act, were providing a scheme or a retirement fund, or in respect of companies which in accordance with this Act are to be converted into retirement funds, and, without prejudice to the generality of the foregoing, may, by such regulations, in particular -

Minister's power
to make
transitional
arrangements.

- (a) prescribe a period within which such persons shall apply for a registration under this Act; and
 - (b) allow such person to continue carrying on the activities of a scheme or a retirement fund including the issue or creation of units, to the extent of the activities then carried on until such time as the scheme or retirement fund is registered or the registration is refused or until the expiry of the deadline provided in such regulations, which is the shorter period, and on condition that such person has applied for a registration in accordance with the provisions of this Act within the period referred to in paragraph (a).
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FIRST SCHEDULE

(Article 43(3))

Information to be included in the annual report of a registered retirement fund

Statement of assets and liabilities:

Assets:

- Immovable property
- Transferable securities;
- Debt Instruments;
- Other securities;
- Bank balances;
- Other assets; and
- Total assets.

Liabilities:

- Borrowings;
- Other amounts payable; and
- Total liabilities.

Net asset value

Number of shares issued

Net asset value per share

Portfolio Description:

- Transferable securities listed on an official stock exchange;
- Transferable securities transacted on another organized market;
- Other transferable securities;
- Debt Instruments; and

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

Statement of changes in the assets and liabilities of the retirement fund during the reference period, including the following:

Income:

- Income from investments;
- Other income; and
- Total income.

Charges:

- Management/investment advisor charges;
- Depository's charges;
- Taxes;
- Other charges; and
- Total charges.

Net investment income:

- Appreciation or depreciation of investments;
- Changes in the "capital" account; and
- Any other changes affecting the assets and commitments of the retirement fund.

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; and
- The net asset value per share.

Details, by category of transaction carried out by the pension fund, on financial derivatives (e.g., options, futures, swaps), of the resulting amount of commitments at the year end date.

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

A summary of the compliance by the fund with its memorandum of association and with the law.

Specific Rules for Multiple Compartment Retirement Funds.

The financial reports of multiple compartment pension funds shall contain separate information on each of the compartments, as well as consolidated information on all of those compartments.

SECOND SCHEDULE

(Article 2)

1. Buying, selling, subscribing for or underwriting instruments.
 2. Giving or offering to a retirement fund or a scheme:
 - advice on the merits of their purchasing, selling, subscribing for or underwriting an instrument, or exercising any right conferred by an Instrument to acquire, dispose of, underwrite or convert an instrument; or
 - advice in relation to a collective investment scheme or arrangement involving an instrument
 3. Managing Investments.
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