CHAPTER 514

RETIREMENT PENSIONS ACT

To regulate Retirement Schemes, Retirement Funds and Service Providers related thereto.

1st January, 2015*

ACT XVI of 2011, as amended by Act XX of 2013 and Acts XXVI of 2018 V of 2020 and XIX of 2026.

PART I

Preliminary

Short title.

1. The short title of this Act is the Retirement Pensions Act.

Interpretation. *Amended by: V.2020.59; XIX.2026.37.*

2. (1) In this Act, unless the context otherwise requires -

"advertisement" means any form or medium of advertising or promotional activity, other than a scheme document, scheme particulars or retirement fund particulars 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, 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, the contents of which either invite persons, or contain material calculated to induce persons to become or offer to become members in a retirement scheme or investors in a retirement fund; and references to the issue of an advertisement shall be construed accordingly;

"beneficiary" means an individual receiving retirement benefits in accordance with the provisions of a scheme document;

"collection body" shall have the same meaning assigned to it in Article 2 of the ESAP Regulation;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"contributor" means -

(*a*) the individual who contributes solely or partly to the retirement scheme; and, or

(*b*) the employer who contributes solely or partly to the retirement scheme,

for the benefit of members of the retirement scheme;

"data extractable format" shall have the same meaning assigned to it in Article 2 of the ESAP Regulation;

"defined benefit retirement scheme" means a retirement scheme, other than a defined contribution retirement scheme, which has as

*See article 1(2) of the Act as originally enacted, and Legal Notices 4 of 2015 and 35 of 2015.

its primary purpose that of providing for the payment of fixed or determinable retirement benefits;

"defined contribution retirement scheme" means a retirement 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 retirement scheme, the accumulation of profits, gains and other income, after the deduction of expenses and losses in relation thereto;

"directive" means a directive issued under article 41;

"document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended by any subsequent acts;

"EIOPA" means the European Insurance and Occupational Pensions Authority established in terms of article 1 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November, 2010;

"ESAP" means the European single access point in accordance with the ESAP Regulation;

"ESAP Regulation" means Regulation (EU) 2023/ 2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, as may be amended from time to time, and includes any implementing measures that have been, or may be issued thereunder;

"instrument" shall have the same meaning as assigned to it in the Investment Services Act; Cap. 370.

"investor" means the retirement scheme and, or overseas retirement scheme investing in a retirement fund;

"key function" within a system of governance, means a capacity to undertake practical tasks comprising the risk management function, the internal audit function, and the actuarial function;

"licence" means a retirement scheme licence or a retirement fund licence or a licence of a service provider providing any one or more of the services listed in the Schedule, and "licensing" and "licensed" shall be construed accordingly;

"licence holder" means a person or body corporate or unincorporated body holding a licence under this Act;

"machine-readable format" shall have the same meaning assigned to it in Article 2 of the ESAP Regulation;

"main administration" means the place, located in Malta, where the main strategic decisions of a retirement scheme and a retirement fund are made;

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of the European Union and membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral or multilateral, including Memoranda of Understanding, to which Malta is a party;

"member" means a person who is entitled or will become entitled to retirement benefits in accordance with the provisions of a scheme document;

"Member State" means a Member State of the European Communities;

"metadata" shall have the same meaning assigned to it in Article 2 of the ESAP Regulation;

"the Minister" Minister responsible for the regulation of financial services;

"Occupational Pensions Directive"means Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast), as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and similar measures that have been or may be issued thereunder;

"occupational retirement scheme" means a retirement scheme, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade, for the purposes of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(*a*) individually or collectively between the employer or employers and the employees or their respective representatives; or

(*b*) with self-employed persons, individually or collectively,

and which carries out activities directly arising therefrom;

"officer", in relation to a licence holder, includes a director, manager or company secretary or any person effectively acting in such capacity, whether formally appointed or not;

"overseas regulatory authority" means an authority in a country or territory outside Malta which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act; Cap. 330.

"overseas retirement scheme" means a scheme or arrangement, organized under the laws of a country outside Malta with the principal purpose of providing retirement benefits;

"Pension Rules" means rules issued by the competent authority,

under various articles of this Act and under any regulations made thereunder;

"personal data" shall have the same meaning as assigned to it in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

"personal retirement scheme" means a retirement scheme which is not an occupational retirement scheme and to which contributions are made for the benefit of an individual;

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

"qualifying shareholding" means a direct or indirect holding in a body corporate which represents ten per cent or more of the share capital issued by such body, or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the body corporate;

"retirement benefit" means benefits paid by reference to reaching, or the expectation of reaching, retirement or, where they are supplementary to those benefits and provided on an ancillary basis, in the form of payments on death, disability, or cessation of employment or in the form of support payments or services in case of sickness, indigence or death;

"retirement fund" means an arrangement established for the principal purpose of holding and investing the contributions made to one or more retirement schemes and, or to one or more overseas retirement schemes;

"retirement scheme" means a scheme or arrangement as defined in article 3;

"Retirement Scheme Administrator" means a person licensed to provide the retirement scheme administration services referred to in the Schedule;

"schedule of payments" shall be construed in accordance with article 18;

"scheme document" means the written instrument evidencing or establishing a retirement scheme and which stipulates the retirement benefits and the conditions under which these are granted;

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

"service provider" means any person licensed under this Act to provide any one or more of the services listed in the Schedule;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November, 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as may be amended from time to time and includes any delegated acts and any technical standards that

have been, or may be issued thereunder;

"sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, which acts as an employer or in a self-employed capacity or any combination thereof and which offers an occupational retirement scheme or pays contributions to an occupational retirement scheme;

"subsidiary" has the same meaning as that assigned to the term "subsidiary undertaking" under article 2 of the Companies Act; Cap. 386.

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

"the Income Tax Acts" means collectively the Income Tax Act and the Income Tax Management Act. Cap. 123. Cap. 372.

(2) In this Act and in the Schedule and in any regulations prescribed or Pension Rules issued thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

(3) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

(4) The objective of this Act is, in part, to implement the provisions of the Occupational Pensions Directive and relative European Union measures, and it shall be interpreted and applied accordingly.

PART II

Substituted by: V.2020.60.

Licensing and Recognition Requirements

Licensing of Retirement Schemes

Definition of retirement scheme. *Amended by: XX. 2013.108; XXVI.2018.89; V.2020.61.*

3. (1) A retirement scheme means a scheme or arrangement with the principal purpose of providing retirement benefits.

(2) A scheme or arrangement shall not constitute a retirement scheme under this Act if it provides for:

(*a*) the payment of retirement benefits to five or fewer members; or

(*b*) the commencement of payment of retirement benefits to a member on a date that is earlier than that on which such member has attained the age of fifty, or later than that specified in Pension Rules, except in those cases where the scheme or arrangement provides that:

(i) the payment is made by reason of the disability or death of a member; or

(ii) the payment, in the case of an occupational retirement scheme, is made to the member as may be determined by means of Pension Rules issued under the Act, in the event that the member is no longer employed by the employer:

Provided that a scheme or arrangement described in paragraph (a) may, by written notice to the competent authority, apply to be considered as a scheme for the purposes of this Act, and such a scheme

shall comply with the provisions of Articles 32 to 35 of the Occupational Pensions Directive.

(3) A retirement scheme may be an occupational retirement scheme or a personal retirement scheme.

Requirement of licence for retirement schemes. *Amended by: V.2020.62.*

4. (1) Subject to the provisions of sub-article (6), no retirement scheme shall carry on any activity for the provision of retirement benefits in or from within Malta, unless the main administration of such retirement scheme is located in Malta and is duly licensed under this Act.

(2) Subject to the provisions of sub-article (6), no retirement scheme formed in accordance with or existing under the laws of Malta shall carry on any activity for the provision of retirement benefits in or from within a country, territory or other place outside Malta unless duly licensed under this Act.

(3) Subject to the provisions of sub-article (6), no person shall accept money or other consideration from a contributor with respect to a retirement scheme carrying on any activity for the provision of retirement benefits in or from within Malta unless the main administration of such retirement scheme is located in Malta and is duly licensed under this Act.

(4) The competent authority may by notice in writing to any person determine that for the purposes of this Act, a scheme or other arrangement is a retirement scheme -

(*a*) located in Malta; or

(*b*) carrying on any activity in or from within Malta,

and subject to any appeal under article 44 with respect to such person, the determination by the competent authority shall be conclusive for all purposes of this Act.

(5) For the purposes of sub-article (4), "carrying on any activity in or from within Malta" includes but shall not be limited to, marketing, advertising or otherwise promoting, as may be further stipulated in Pension Rules.

(6) No retirement scheme shall be precluded by the provisions of sub-articles (1) to (3) from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the retirement scheme or from taking such steps as may be necessary for securing the licensing of the retirement scheme by the competent authority.

Cap. 370.

(7) A retirement scheme licensed under this Act shall not be subject to any licensing requirements under the Investment Services Act.

Licensing of Retirement Funds

Requirement of licence for retirement funds. *Amended by: V.2020.63.*

5. (1) Subject to the provisions of sub-article (5), no retirement fund shall carry on any activity in or from within Malta in relation to a retirement scheme or an overseas retirement scheme unless the main administration of such retirement fund is located in Malta and is duly licensed under this Act.

(2) Subject to the provisions of sub-article (5), no retirement fund formed in accordance with or existing under the laws of Malta shall carry on any activity in relation to a retirement scheme and, or overseas retirement scheme, in or from within a country, territory or other place outside Malta, unless duly licensed under this Act.

(3) The competent authority may by notice in writing to any person determine that, for the purposes of this Act, a fund is a retirement fund:

(*a*) located in Malta; or

(b) carrying on any activity in or from within Malta,

and subject to any appeal under article 44 with respect to such person, the determination by the competent authority shall be conclusive for all purposes of this Act.

(4) For the purposes of sub-article (3), "carrying on any activity in or from within Malta" includes but shall not be limited to, marketing, advertising or otherwise promoting, as may be further stipulated in Pension Rules.

(5) No retirement fund shall be precluded by the provisions of sub-articles (1) and (2) from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the retirement fund or from taking such steps as may be necessary for securing the licensing of the retirement fund by the competent authority.

(6) A retirement fund licensed under this Act shall not be subject to any licensing requirements under the Investment Services Act. Cap. 370.

Licensing of Service Providers

Requirement of licence for persons providing services listed in the Schedule.

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

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing a service in or from within a country, territory or other place outside Malta unless duly licensed under this Act.

(3) The competent authority may by notice in writing to any person determine that a service falls within the Schedule when provided in relation to an instrument and, subject to any appeal under article 44, with respect to such person, the determination by the competent authority, shall be conclusive for all purposes of this Act.

Recognition of Service Providers

Requirement of recognition for persons carrying on back-office administrative activities.

7. *Repealed by Act V.2020.64.*

Substituted by: V.2020.65.

PART III

Application, Grant, Cancellation and Suspension of Licences

Application for a licence. *Amended by: V.2020.66.*

8. An application for a licence shall be made in writing in such form and manner required by the competent authority and shall -

(*a*) contain or be accompanied by such information and particulars as the competent authority may require by means of Pension Rules;

(*b*) be verified in the manner and to the extent required by the competent authority as may be established by means of Pension Rules.

Power of competent authority to refuse or grant a licence. *Amended by: V.2020.67.*

9. (1) The competent authority may grant a licence applied for under this Act.

(2) The competent authority shall not grant a licence applied for under this Act, unless it is satisfied that -

(*a*) in the case of a retirement scheme:

(i) it is constituted and structured in line with any Pension Rules, as applicable;

(iA) the activities of the retirement scheme are limited to retirement benefit related operations and activities arising therefrom;

(ii) it submits evidence that it shall be in a position to comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;

(iii) the retirement scheme and Retirement Scheme Administrator are fit and proper to carry out the functions required of them in connection with the retirement scheme;

(iv) there is a scheme document which contains terms and conditions in line with any Pension Rules;

(v) the name of the retirement scheme is one which, in the opinion of the Authority, is not misleading;

(vi) any aspect of, or related to, the application does not raise any regulatory concerns; and

(aA) in addition to the requirements in paragraph (a), in the case of an occupational retirement scheme:

(i) the Retirement Scheme Administrator shows evidence that it will be in a position to comply with the system of governance provided for in article 13A;

(ii) the Retirement Scheme Administrator shows evidence that, where the sponsoring undertaking guarantees the payment of the retirement benefits, the employer is committed to regular financing;

(*b*) in the case of a retirement fund:

(i) it is constituted and structured in line with any Pension Rules, as applicable;

(ii) the retirement fund and any person, by whatever name designated, responsible for the operation, administration, and management of the retirement fund, will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;

(iii) the retirement fund and any person responsible for the operation, administration and management of the retirement fund, is a fit and proper person to carry out the functions required of it in connection with the retirement fund;

(iv) it has a constitutional document which contains terms and conditions in line with any Pension Rules;

(v) the name of the retirement fund is one which, in the opinion of the competent authority, is not misleading;

(vi) any aspect of, or related to, the application does not raise any regulatory concerns;

(*c*) in the case of a service provider:

(i) the applicant is a fit and proper person to provide the services concerned, and

(ii) the applicant will comply with and observe the provisions of this Act and any regulations or Pension Rules made thereunder;

(iii) any aspect of, or related to, the application does not raise any regulatory concerns.

(3) Without prejudice to article 38, a licence granted by the competent authority shall be subject to the applicable Pension Rules and to such conditions as the competent authority may from time to time deem appropriate.

(4) When carrying out its functions under the Act, the competent authority shall, in particular, have regard to:

(*a*) the protection of beneficiaries, members, and investors;

(*b*) the promotion of competition and choice; and

(*c*) the reputation and suitability of the applicant and in the case of the retirement scheme and, or retirement fund, the Retirement Scheme Administrator and, or the persons responsible thereof, and all other parties connected with the retirement scheme and, or the

retirement fund as the case may be.

(5) Every licence shall specify, as the case may be:

(*a*) the nature of the retirement scheme to which the licence relates;

(*b*) any service a person has been licensed to provide.

(6) *Repealed by Act V.2020.67.*

(7) Without prejudice to the generality of sub-article (3), the Pension Rules to which the competent authority shall subject a licence, may be made applicable to -

(*a*) all licences granted;

(*b*) certain categories of licences;

(*c*) all licences granted to certain categories of holders;

(*d*) all licences in relation to particular services or retirement schemes or retirement funds, as the case may be.

(8) Within six months from the date of the submission of a properly completed application form together with the requisite documentation, the competent authority shall inform an applicant in writing of its decision whether or not to grant a licence; and in the case of a refusal it shall inform the applicant in writing of the reasons for the refusal.

(9) Any requirement in this Act that a person be a fit and proper person to carry out certain activities or functions shall be interpreted as a requirement not only that such person be a fit and proper person to carry out such activities or functions, but also that any qualifying shareholder or director or officer of such person, or any person responsible for such activities or functions be a fit and proper person to carry out such activities or functions.

(10) (*a*) Where close links exist between an applicant and any other person the competent authority shall:

(i) only grant a licence if it considers that such close links do not prevent it from exercising effectively its supervisory functions; and

(ii) refuse to grant a licence 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 competent authority may from time to time, by means of Pension Rules issued under this Act, define the circumstances in which "close links" are to beregarded as existing between any two or more persons.

(11) The competent authority shall establish a register of all holders of a licence. The register, which shall be publicly available, shall also indicate the services and, or activities in relation to which each licence was issued. The register

shall be updated on a regular basis. In the case of cross-border activities carried out in terms of the Occupational Pensions Directive, the register shall also indicate the Member States or the EEA States in which the relevant licence holder is operating, and that information shall be communicated to EIOPA.

Power of competent authority to cancel or suspend a licence. *Amended by: V.2020.68.*

10. (1) Without prejudice to any other provision of this Act and of any regulations or Pension Rules made thereunder, the competent authority may at any time cancel or suspend a licence in accordance with the provisions of this Act.

(2) In the case of a retirement scheme, the competent authority may cancel or suspend a licence:

(*a*) if it considers that the retirement scheme or the Retirement Scheme Administrator, as the case may be, is not a fit and proper person to carry out the functions required of it in connection with the retirement scheme; or

(*b*) if it considers that the retirement scheme or Retirement Scheme Administrator, as the case may be, does not comply with the provisions of this Act or of any regulations made or Pension Rules issued thereunder, or that there has been a contravention of any such provisions, or an obligation or condition to which the retirement scheme is subject by virtue of or under this Act has not been satisfied or complied with; or

(*c*) if information has been furnished to the competent authority by or on behalf of or in relation to the retirement scheme which is false, inaccurate or misleading in any material particular, or if the Retirement Scheme Administrator has concealed, or conceals from, or fails to notify to the competent authority any document or information or change therein which it was the Retirement Scheme Administrator's duty to reveal or to notify under this Act and any regulations made thereunder or any Pension Rules; or

(*d*) if the retirement scheme or the Retirement Scheme Administrator, as the case may be, has not commenced to provide the activities it has been licensed to carry on within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to carry on such activities; or

(*e*) if it considers it desirable to cancel or suspend the licence for the protection of beneficiaries, members, or investors; or

(*f*) at the request of the retirement scheme or Retirement Scheme Administrator, as the case may be; or

(*g*) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse to grant such a licence.

(3) In the case of a retirement fund, the competent authority may cancel or suspend a licence:

(*a*) if it considers that the retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the fund, as the case may be, is not a fit and proper person to carry out the functions required of it in connection with the retirement fund;

(*b*) if it considers that the retirement fund to which the licence refers and, or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, does not comply with the provisions of this Act or of any regulations made or Pension Rules issued thereunder, or that there has been a contravention of any such provisions, or an obligation or condition to which the retirement fund is subject by virtue of or under this Act, has not been satisfied or complied with; or

(*c*) if information has been furnished to the competent authority by or on behalf of or in relation to the retirement fund which is false, inaccurate or misleading; or

(*d*) if the retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, has not commenced to provide the activities within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to carry on such activities; or

(*e*) if it considers it desirable to cancel or suspend the licence for the protection of beneficiaries, members or investors; or

(*f*) at the request of the retirement fund or any person responsible for the operation, administration and management of the fund as the case may be; or

(*g*) in any of the circumstances under which the competent authority would have been precluded from issuing the licence under this Act or where under this Act it would have been entitled to refuse to grant such a licence.

(4) In the case of a service provider, the competent authority may cancel or suspend a licence:

(*a*) if it considers that the service provider is not a fit and proper person to provide any service he is licensed to provide; or

(*b*) if it considers that the service provider thereof does not fulfil the requirements of, or has contravened, any of the provisions of this Act or of any regulations made or Pension Rules issued thereunder, or has failed to satisfy or comply with any obligation or condition

to which he is subject by virtue of or under this Act; or

(*c*) if the competent authority has been furnished by or on behalf of the service provider with information which is false, inaccurate or misleading; or

(*d*) if the service provider has not commenced to provide the service he has been licensed to provide within the time provided for in the licence or if no such time is specified, within twelve months of its issue, or has ceased to provide such service; or

(*e*) if it considers it desirable to cancel or suspend the licence for the protection of beneficiaries, members or investors; or

(*f*) at the request of the service provider; or

(*g*) in any of the circumstances under which the competent authority would have been precluded from issuing the licence, or where under this Act it would have been entitled to refuse to grant such a licence and, or recognition; or

(*h*) if the service provider thereof has obtained the licence and, or recognition by making false statements or by any other irregular means.

Notification of proposed refusal, variation, cancellation or suspension of a licence. *Amended by: V.2020.69.*

11. (1) Where the competent authority proposes -

(*a*) to vary any condition to which a licence is subject or to impose a condition thereon; or

(*b*) to refuse an application for a licence or to cancel or to suspend a licence,

it shall give the applicant or, as the case may be, to the licence holder, or in the case of a retirement scheme to the Retirement Scheme Administrator, or in the case of a retirement fund to any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, a notice in writing of its intention to do so, such notice setting out detailed reasons for its proposed action.

(2) Every notice given under sub-article (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 competent authority giving reasons why the proposed decision should not be taken, and the competent authority shall consider any representation so made before arriving at a final decision.

(3) The competent authority shall notify its final decision in writing to any of the persons to whom notice is to be given under sub-article (1).

(4) The competent authority shall notify EIOPA of any restriction, suspension or cancellation of a licence of an occupational retirement scheme under article 10.

PART IV

Governance

Requirement for a Retirement Scheme Administrator.

12. A retirement scheme shall have a Retirement Scheme Administrator, who shall carry out such duties, functions and responsibilities as may be specified and who shall be subject to any requirements, as may be stipulated by Pension Rules.

General duty for any person responsible for a retirement scheme or fund. *Amended by: V.2020.70.*

13. (1) The Retirement Scheme Administrator shall act in the best interests of the retirement scheme, its members and beneficiaries, and may not use the assets of the retirement scheme for its own or other purposes.

(2) Any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, shall act in the best interests of the retirement fund and may not use the assets of the retirement fund for its own or other purposes.

System of governance for occupational retirement schemes. *Added by: V.2020.71.*

13A. (1) A Retirement Scheme Administrator shall be required to have in place an effective system of governance which provides for sound and prudent management of its activities in connection with the overall operation and administration of an occupational retirement scheme. The system of governance requirements shall be laid down in Pension Rules.

(2) A Retirement Scheme Administrator shall:

(a) ensure that persons carrying out a key function, and where applicable, persons or entities to which a key function has been outsourced, are fit and proper, in accordance with criteria set out in the Pension Rules;

(b) have in place the following key functions:

(i) an effective risk management system, including a risk management function;

(ii) an effective internal audit function; and

(iii) where applicable, an effective actuarial function;

(c) as part of the risk management system, conduct its own risk assessment and the risk assessment of the occupational retirement scheme;

(d) have in place an effective internal control system;

(e) if it outsources any of its functions or activities, remain fully responsible for discharging all of its obligations under this Act and the regulations and Pension Rules issued thereunder.

(3) The systems and functions referred to in sub-article (2) shall be determined by Pension Rules.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the occupational retirement scheme.

Liability.

14. (1) In the discharge of its duties, functions and responsibilities, and without prejudice to the liability for damages under any other law, the Retirement Scheme Administrator and any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, including any service provider, shall be liable for any loss or damage suffered as a result of fraud, willful default or negligence on its part, including the unjustifiable failure to perform in whole or in part its obligations arising under this Act, the terms and conditions of the agreement appointing it, the deed or other instrument establishing or regulating the retirement scheme or retirement fund, the conditions of licensing which may be required by the competent authority, and such other requirements as may be laid down by the latter from time to time.

(2) The liability of -

(*a*) the Retirement Scheme Administrator and any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund; and, or

(b) the service provider,

shall not be diminished if it has entrusted or delegated to a third party some or all of its duties, functions and responsibilities.

Delegation.

15. A Retirement Scheme Administrator, or a retirement fund, as the case may be, may delegate one or more of its duties to a service provider or similar entity, subject to any applicable Pension Rules.

Auditors and actuaries. *Amended by: V.2020.72.*

16. (1) Every retirement scheme or retirement fund shall appoint an auditor to carry out the duties as may be specified by Pension Rules.

(1A) Every retirement scheme which provides cover against biometric risks or guarantees an investment performance or a given level of benefits, shall also appoint an actuary to carry out the duties, as may be specified by regulations and Pension Rules..

(2) Every auditor and actuary of a licence holder shall have the right to demand such information or explanations as he deems necessary in the performance of his duties from any officer or employee of, or any person under an appointment from that licence holder.

Substituted by: V.2020.73.

PART V

Other Requirements

RETIREMENT SCHEMES

Assets, permitted investments and borrowing powers of a retirement scheme.

17. (1) The assets of a retirement scheme shall be used for the exclusive purpose of providing retirement benefits to the members and beneficiaries of the retirement scheme and of defraying the expenses as stipulated in the scheme document and as are allowable in terms of Pension Rules.

(2) A retirement scheme shall comply with such requirements in terms of Pension Rules, with regards to the investment, management, accounting and valuation of its assets and the extent to which it may borrow money.

Schedule of payments of occupational retirement schemes. *Amended by: V.2020.74.*

18. A Retirement Scheme Administrator of an occupational retirement scheme shall ensure the maintenance and, from time to time, the revision of a schedule (hereinafter and in article 19 referred to as a "schedule of payments"), showing -

(*a*) the rates of contributions payable towards the retirement scheme, as may be prescribed;

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

(*c*) such other matters as may be prescribed.

Payment of contributions for occupational retirement schemes.

19. (1) Any amounts payable by or on behalf of the contributor to an occupational retirement scheme in accordance with the schedule of payments shall be paid on or before the due date.

(2) Any employer of a scheme obliged to contribute solely or partly to an occupational retirement scheme who fails to effect such payment on or before the due date specified in the schedule of payments shall be guilty of an offence.

(3) A Retirement Scheme Administrator and any actuary of an occupational retirement scheme shall, where any amounts payable by or on behalf of the employer of the retirement scheme in accordance with the schedule of payments have not been paid on or before the due date:

(*a*) give notice of that fact to the members and the competent authority at the earliest opportunity; and

(*b*) take all such measures as may be necessary or appropriate to make the defaulting employer rectify the situation.

(4) A Retirement Scheme Administrator of an occupational retirement scheme shall notify the competent authority in writing of any such measures that have been taken or are being taken in terms of this article, at the earliest opportunity.

(5) The provisions of this article shall be without prejudice to the right of the Retirement Scheme Administrator to recover the amount remaining unpaid by the employer as debts which are certain, liquidated and due under Title III of Part I of Book Second of the Code of Organization and Civil Procedure.

Cap. 12.

Reporting requirements of retirement schemes. *Substituted by: V.2020.75.*

20. Every retirement scheme and Retirement Scheme Administrator shall forward to the competent authority a copy of its audited financial statements within the periods stipulated in the Pension Rules and shall comply with any reporting requirements, as may be required by Pension Rules.

Disclosure of retirement scheme information. *Amended by: XIX.2026.38.*

21. (1) The retirement scheme and Retirement Scheme Administrator shall comply with any Pension Rules regarding the submission to the competent authority and the publication and availability to members and beneficiaries of a document, known as "scheme particulars", containing information about the retirement scheme.

(2) A retirement scheme and Retirement Scheme Administrator shall comply with any other disclosure requirements as may be required by Pension Rules, including the type of documents to be issued, the form and content of any document that may be required and to whom such documents are required to be provided.

(3) For the purpose of making the information referred to in Articles 23(2), 29 and 30 of the Occupational Pensions Directive, as transposed in the Pension Rules, accessible on the ESAP, the IORPS shall, when making such information public, also submit it at the same time to the collection body:

Provided that for the purposes of this sub-article the collection body shall be the competent authority:

Provided further that such obligation shall be in force from 10 January 2030.

(4) The information referred to in sub-article (3) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format or, where required by Union law or national law, in a machine-readable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the IORP to which the information relates;

(ii) the legal entity identifier of the IORP, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the size of the IORP by category, as specified in accordance with point (d) of Article 7(4) of the ESAP Regulation;

(iv) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(v) an indication of whether the information contains personal data:

Provided that for the purposes of sub-paragraph (ii) the IORPS shall obtain a legal entity identifier.

Scheme document as binding agreement.

22. The scheme document shall be binding on those members and beneficiaries as may be provided for in regulations or Pension Rules made for the purpose of this article.

Unenforceability of unlicensed retirement schemes.

23. (1) A scheme or arrangement which is operating or purporting to operate as a retirement scheme which is not licensed in accordance with this Act shall be unenforceable against any contributor and such contributor shall be entitled to recover any money paid, or other property transferred by him under the retirement scheme.

(2) In cases falling under sub-article (1), 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.

(3) The provisions of sub-articles (1) and (2) shall be without prejudice to any liability which may arise under any other law.

(4) The provisions of sub-articles (1) and (2) shall not apply to a retirement scheme which is specifically exempted from licensing under this Act in terms of regulations made under this Act.

Assignment or attachment of retirement scheme assets.

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

Provided that nothing in this sub-article 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, pledge or otherwise charge his interest in the retirement scheme shall be void.

Distributions by retirement schemes.

25. Subject to any regulations or Pension Rules made for the purpose of this article, a retirement scheme shall distribute benefits to members and, or beneficiaries in the amounts and at the times specified in the applicable scheme document.

Substituted by: V.2020.76.

Quantitative Requirements

Technical provisions. *Substituted by: V.2020.77.*

26. (1) Every retirement scheme shall:

(*a*) establish at all times an adequate amount of liabilities corresponding to the financial commitments which arise out of their portfolio of existing pension contracts; and

(*b*) where it provides cover against biometric risks or guarantees either an investment performance or a given level of benefits, establish sufficient technical provisions.

(2) The manner in which technical provisions shall apply to retirement schemes licensed under the Act may be determined by regulations prescribed for this purpose.

Retirement Funds

Assets, permitted investments and borrowing powers of a retirement fund.

27. (1) The assets of the retirement fund shall be used for the exclusive purpose of providing retirement benefits to the beneficiaries of the retirement schemes or the overseas retirement schemes which have invested in such retirement fund, and of defraying the expenses as are allowable under this Act of such retirement scheme, or the *bona fide* expenses of the overseas retirement scheme, as applicable.

(2) A retirement fund shall comply with such requirements in terms of Pension Rules, with regard to the investment, management, accounting and valuation of its assets and the extent to which it may borrow money.

Reporting requirements by retirement funds. *Amended by: V.2020.77.*

28. A retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, as the case may be, and comply with any reporting requirements such as annual accounts, reports, certificates and information as may be required by Pension Rules.

Disclosure of retirement fund information.

29. A retirement fund shall comply with any disclosure requirements that may be established by Pension Rules, including the type of documents to be issued, the form and content of any document that may be required and to whom such documents are required to be provided.

General

Payment of periodic fees. *Amended by: V.2020.79.*

30. Every licence holder under this Act shall pay to the competent authority such periodic fees, and within such time, as may from time to time be prescribed.

Changes in information. *Amended by: V.2020.80.*

31. A licence holder or any person having responsibility for the operation, administration and management of a retirement scheme or retirement fund shall provide the competent authority with particulars of any changes in the information provided under this Act, and any regulations made thereunder, or any Pension Rules, as soon as such person or its delegate becomes aware of such changes and shall notify the competent authority, on a continuous basis, of any changes or circumstances which give rise to the existence of close links within the meaning of article 9.

Notification of new or increased control. *Amended by: V.2020.81.*

32. (1) Notwithstanding anything contained in any other law, no person shall acquire, directly or indirectly, a qualifying shareholding in a service provider or increase such qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the service provider reaches or exceeds 20 per cent, 30 per cent or 50 per cent, or so that the service provider becomes the subsidiary of such person, unless such person has served on the competent authority a written notice stating that he intends to acquire or increase such shareholding, and -

(*a*) the competent authority has, before the end of the period of three months beginning with the service of

that notice, notified him in writing that there is no objection to his acquiring or increasing such shareholding; or

(*b*) that period has elapsed without the competent authority having served on him a notice of objection; or

(*c*) the competent authority has, before the end of the said period of three months, served a notice of objection which has subsequently been withdrawn, cancelled or quashed for any reason:

Provided that, the acquisition or increase of the qualifying shareholding takes place within one year following the event mentioned in paragraph (*a*), (*b*) or (*c*), as the case may be:

Provided further, that in the case envisaged in the aforesaid paragraph (c), the aforesaid period of one year shall commence to run from the date that the person concerned has been notified of the withdrawal, cancellation or quashing of the notice of objection, as the case may be.

(2) A notice served on the competent authority under sub-article (1) shall contain such information as the competent authority may direct and the competent authority may, after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the competent authority may reasonably require for deciding whether to serve a notice of objection.

(3) Where additional information or documents are required from any person by a notice under sub-article (2), the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in sub-article (1)(*a*).

(4) Every notice of objection mentioned in sub-article (1)(*c*) shall state the reasons for such objection and 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 competent authority giving reasons why the notice of objection should be withdrawn; and the competent authority shall consider any representations so made before arriving at a final decision.

(5) The competent authority shall notify its final decision in writing to the person who makes representations in writing under sub-article (4), within thirty days of receipt of representations as provided for in the said sub-article (4).

(6) Any person who proposes to sell or dispose, directly or indirectly, of a qualifying shareholding in a service provider or to reduce his qualifying shareholding so that the proportion of the voting rights or of the share capital held by him in the service provider would fall below 20 per cent, 30 per cent or 50 per cent, or so that the service provider would cease to be his subsidiary, must inform the competent authority in writing stating his intention to

sell, dispose of or reduce his shareholding and stating the size of his shareholding following such sale, disposal or reduction.

(7) Immediately on becoming aware of any proposed or actual acquisition or disposal of part or all of a shareholding in its share capital in any of the circumstances dealt with in this article, a service provider shall inform the competent authority in writing.

(8) Where the influence exercised by a person acquiring or proposing to acquire a part of the share capital is likely to be prejudicial to the sound and prudent management of a service provider, the competent authority may issue a notice of objection, and exercise any of the powers assigned to it under this Act, including the power to issue directives, as it may deem reasonable and appropriate in the circumstances.

(9) A copy of any notice served on the person concerned in terms of sub-article (8) shall be served on the company to whose shares it relates.

(10) Without prejudice to the provisions of articles 46 and 48, where a shareholding in a service provider is acquired despite the objection of the competent authority, the competent authority shall have the power to make an order:

(*a*) restraining such person or service provider from taking, or continuing with such action;

(*b*) declaring such action to be null and void;

(*c*) requiring such person or service provider to take such steps, as may be necessary, to restore the position existing immediately before the action was taken;

(*d*) restraining such person or service provider from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attached to the shares acquired;

(*e*) restraining such person or service provider from taking any similar action or any other action within the categories set out in sub-articles (1) and (6).

(11) If the acquirer of the qualifying holding referred to in this article is -

(*a*) a person holding a licence or an equivalent authorisation from an overseas regulatory authority, or

(*b*) the parent undertaking of a person referred to in paragraph (*a*), or

(*c*) any person controlling a person referred to in paragraph (*a*),

and if, as a result of that acquisition, the service provider in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition by the competent authority must be the subject of prior consultation with the overseas regulatory authority taking into account Malta's international commitments.

(12) The requirements set out in this article shall apply to a retirement scheme set up as an investment company with variable share capital ("SICAV") under the Companies Act.

Cap. 386.

Compliance with tax requirements. *Amended by: V.2020.82.*

33. A retirement scheme or retirement fund shall comply with any requirements as established from time to time by the Commissioner for Revenue.

Advertisements. *Amended by: V.2020.83.*

34. No person, other than licence holders, may issue or causeto be issued an advertisement in connection with a retirementscheme or retirement fund in or from within Malta. The competent authority may, by Pension Rules made for the purposes of this article, determine the form and content of such advertisements andthe manner in which any promotional activity in connection with aretirement scheme or retirement fund shall be carried out or causedto be carried out.

Reporting Duties

Auditors' and actuaries' duty to report. *Amended by: V.2020.84.*

35. (1) Every auditor or actuary of a licence holder shall have the duty to report immediately to the competent authority any fact or decision concerning that licence holder of which it becomes aware in its capacity as auditor or as actuary of such licence holder which relates to any matter which may be prescribed or is likely to bring or has brought about the following:

(*a*) a serious qualification, or refusal of the auditor's or actuary's report on the accounts of such licence holder;

(*b*) a material breach of the provisions of this Act and regulations or any Pension Rules which lay down the legal or regulatory requirements applicable to a license holder in or under this Act; or

(*c*) a grave impairment of the licence holder's ability to meet the current or future liabilities attributable to it; or

(*d*) negatively and materially affects the interests of members and beneficiaries; or

(*e*) relates to any other matter which may be prescribed.

(2) An auditor or an actuary of a licence holder shall report to the competent authority any facts or decisions of which he becomes aware of in the course of carrying out his duties, which relate to or have a serious adverse effect, upon the members or beneficiaries, as specified in sub-article (1), of any person having close links with such licence holder within the meaning of article 9, of which he becomes aware in his capacity as auditor or actuary of the licence holder or of the person having such close links.

(3) The matters which may be prescribed for the purpose of sub-article (1)(*e*) may include matters related to persons or entities other than a retirement scheme or retirement fund, including but not limited to any person providing any one or more of the services listed in the Schedule.

(3A) Without prejudice to any provision contained in this Act, the competent authority may request the auditor or the actuary, as the case

may be, to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (1) or (2) concerning the licence holder.

(4) The competent authority may require a licence holder to change its appointed auditor or actuary where, in the competent authority's opinion, such auditor or actuary is considered unfit for this appointment, at any time during his term of office.

Duty to report.

36. (1) If a retirement scheme or Retirement Scheme Administrator or retirement fund or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, or any service provider of any retirement scheme or retirement fund knows, believes or otherwise suspects that any duty relevant to the operation of the retirement scheme or retirement fund imposed under this or any other law on any person acting in connection with the retirement scheme or retirement fund has not been or is not being complied with, he must immediately give a written report on the matter to the competent authority.

(2) The competent authority may by directive disqualify a person from its position if it appears to the competent authority that the person has failed to comply with sub-article (1).

PART VI

Power to make Regulations

General Provisions

Minister's powers. *Amended by: V.2020.85.*

37. (1) The Minister, acting on the advice of the competent authority, may make regulations to give better 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:

(*a*) amend any of the definitions contained in article 2 and amend the Schedule;

(*b*) regulate retirement schemes and retirement funds, as well as the services provided and activities carried on in conjunction therewith or in relation thereto and provide for any matter he may deem expedient and may in particular grant rights to the members, beneficiaries and investors in respect of such retirement schemes and funds, as the case may be, and regulate the exercise thereof; provide for and regulate the payment of such fees and other charges as may be prescribed; regulate any fees and, or any other charges imposed directly or indirectly on members, beneficiaries or investors; provide for the safekeeping and oversight duties, and custody of the property of retirement schemes and retirement funds; provide for the protection of the property of the retirement scheme or retirement fund in the event of the insolvency of the custodian as may be applicable, and for the purpose of this paragraph "custodian" shall include a sub-

custodian; provide for and regulate the appointment of employee representation in the governance of retirement schemes; regulate the appointment and, or removal of a Retirement Scheme Administrator or any other person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme and, or retirement fund; establish the nature and classification of retirement schemes and funds and prescribe conditions pertaining thereto; regulate the dissolution and, or liquidation of retirement schemes and retirement funds;

(*c*) establish or make other arrangements for the compensation of members and, or beneficiaries or investors in cases where a retirement scheme or retirement fund is unable to satisfy claims in respect of any liability incurred by it; regulate the management and the financing of any such arrangements and the contributions and levies to be paid thereto; set the minimum and maximum levels of compensation payable thereunder and may under such arrangements distinguish between different classes of investors, members or beneficiaries and exclude certain classes from compensation and to make provision for the regulation of and for other aspects related to such arrangements and may moreover provide that such arrangements as may be prescribed shall have a legal personality distinct from that of the contributors thereto and of the competent authority and provide for the judicial and legal representation thereof; and such arrangements shall be exempt from the payment of income tax as from the date of establishment of such retirement schemes or retirement funds;

(*d*) prescribe the circumstances when and the conditions under which a scheme document becomes binding on members and beneficiaries;

(*e*) define the criteria for determining whether a holding is an indirect holding for the purposes of determining whether a qualifying shareholding exists;

(*f*) exempt any person, retirement scheme and, or retirement fund (including such class or type or description thereof as may be prescribed) or other licence holders or advertisement from any one or more of the provisions of this Act and subject to such conditions or other requirements, including other forms of authorisation and notification procedures, as may be prescribed;

(*g*) regulate the segregation of the assets of retirement schemes and retirement funds and the provision of any matter consequential, incidental to or connected therewith;

(*h*) establish the circumstances when ring fencing

measures may be applied and the measures and conditions applicable to retirement schemes and, or retirement funds in this regard;

(*ha*) regulate the restriction or prohibition of the free disposal of the assets of a retirement scheme falling within such description as may be prescribed, when in particular:

(i) that retirement scheme has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;

(ii) that retirement scheme has failed to hold any regulatory own funds as may be applicable.

(*i*) establish and regulate the maintenance of funding requirements by retirement schemes; prescribe regulations regarding the maintenance of a schedule of payments by retirement schemes or by service providers on behalf of retirement schemes; regulate the manner in which a scheme which provides cover against biometric risks or guarantees an investment performance or a given level of benefits deals with surplus funds and underfunding;

(*j*) regulate the payment (including the time thereof), nature and amount of benefits which may or may not be paid to beneficiaries and, or members;

(*k*) provide for and regulate the payment by any person, body, retirement scheme or retirement fund, or service provider as the case may be, of licence fees or other fees and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article, as may be prescribed;

(*l*) transpose, implement and give effect to the provisions and requirements of the Occupational Pensions Directive and of the Solvency II Directive insofar as applicable to occupational pensions, and including any implementing measures, implementing technical standards, regulatory technical standards and similar measures issued thereunder as may be applicable to retirement schemes that have or may be issued thereunder;

(*m*) provide for and regulate the vesting, acquisition, preservation of retirement rights and any matter ancillary thereto;

(*n*) transpose, implement and, or give effect to the provisions and requirements of Directives, regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified

therein; any such regulations strictly related to the transposition or implementation as aforesaid may contain provisions which are inconsistent with the provisions of this Act or of any other law, and for this purpose may provide that any provision in this Act or in any other law shall not apply to matters falling under the regulations, and in case of such inconsistency, such provisions in any such regulations shall prevail;

(*o*) provide for the application of specific provisions of the Occupational Pensions Directive to the occupational pensions provision business carried out by insurance undertakings authorised under the Insurance Business Act carrying on long term business;

Cap. 403.

(*p*) provide for any matter incidental to or connected with any of the foregoing paragraphs;

(*q*) provide for any matter that may or is to be prescribed under any provision of this Act.

(2) Deleted by Act *V.2020.85*.

(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 competent authority such powers of adaptation of the regulations as may be therein specified.

(4) Where regulations have been made in terms of this article, the competent authority may issue Pension Rules for the better carrying out and to better implement the provisions of the regulations.

(5) The exercise of any of the powers assigned under this article shall be subject to any obligations or rights arising from Malta's international commitments.

PART VII

Regulatory and Investigatory Powers

Powers of the competent authority. *Amended by: V.2020.86; XIX.2026.39.*

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

(1a) The competent authority shall carry out the functions and duties of the collection body in terms of the ESAP Regulation when it is the designated authority in accordance with this Act or any regulations made thereunder.

(2) For the better carrying out of the provisions of this Act, the competent authority may, from time to time, issue, amend, or revoke Pension Rules which shall be binding on licence holders under this Act and others as may be specified there in and to a particular category of retirement scheme and, or retirement fund or persons or situations or to persons and situations generally. Such Pension Rules may lay down additional requirements and

conditions in relation to activities of that licence holder, the conduct of their business, their relations with members, beneficiaries, investors, the public and other parties as may be applicable, their responsibilities to the competent authority, reporting requirements, financial resources, capital adequacy and related requirements, and any other matters as the competent authority may consider appropriate, in particular in relation to the following:

(*a*) the legal form and constitution of retirement schemes and, or retirement funds, the governance, structuring and management of such retirement schemes and, or retirement funds;

(*b*) the appointment and removal, qualifications and experience of the Retirement Scheme Administrator and, or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund; activities of that licence holder, the conduct of or fund; and any service provider of any such retirement scheme and retirement fund;

(*c*) the powers and duties of the Retirement Scheme Administrator and, or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund and any service provider of any such retirement scheme and, or retirement fund;

(*d*) the management and valuation of the assets and obligations of the retirement scheme and retirement fund;

(*e*) the restriction or prohibition of the free disposal of the assets of a retirement scheme falling within such description as may be prescribed, when in particular -

(i) that retirement scheme has failed to establish sufficient technical provisions in respect of the entire business or has insufficient assets to cover the technical provisions;

(ii) that retirement scheme has failed to hold any regulatory own funds as may be applicable;

(*f*) employee representation in retirement schemes;

(*g*) the provision of specific requirements for personal retirement schemes;

(*h*) the form and content of applications to the competent authority for licensing or other purposes in terms of this Act; the format, content or amendment of a scheme document, the constitutional document of a retirement fund, scheme particulars and fund particulars;

(*i*) *Deleted by Act V.2020.86.*;

(*j*) provisions on financial resources requirements applicable to licence holders;

(*k*) reporting and disclosure requirements, including the preparation of periodical reports with respect to

retirement schemes and retirement funds and the furnishing of those reports to the competent authority, members, beneficiaries or investors as the case may be;

(*l*) providing for and establishing the requirements regarding the unitisation of certain classes and nature of retirement schemes and, or retirement funds;

(*m*) establishing circumstances and conditions applicable regarding the transfer of retirement benefits;

(*n*) establishing conditions and requirements regarding the payment of expenses by retirement schemes and, or retirement funds;

(*o*) establishing conditions and requirements regarding the payment to a member in the event that the member is no longer employed by the employer;

Cap. 386.

(*p*) without prejudice to the provisions of the Companies Act, establishing the persons who may act as auditors of licence holders or providing that the persons who may so act shall be persons with professional qualifications or experience as may be established or such other persons as are approved by the competent authority; without prejudice to the provisions of the Companies Act, making provisions relating to the appointment, resignation and removal of auditors of licence holders and the duty of a licence holder to make documents available to the auditors of such licence holder;

(*q*) establishing the persons who may act as actuaries of retirement schemes or provide that the persons who may so act shall be persons with professional qualifications or experience as may be established or such other persons as are approved by the competent authority; make provisions relating to the appointment, resignation and removal of actuaries of retirement schemes and the duty of a retirement scheme or Retirement Scheme Administrator or any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme, to make documents available to the actuary of such retirement scheme;

(*r*) setting minimum standards and requirements which are to be observed by licence holders when issuing or approving advertisements in accordance with article 34, including provision for such exemptions or conditions as may be specified and different provision for different cases or classes of cases, under such terms and conditions as may be established; imposing such conditions, limitations and restrictions on a licence holder with respect to the issue, as it may consider appropriate;

(*s*) issuing Pension Rules to regulate occupational schemes established by associations of employers;

(*t*) issuing Pension Rules regulating the contribution of money or other consideration to retirement schemes;

(*u*) issuing Pension Rules in relation to occupational retirement schemes transferring all or part of their liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent to another retirement scheme;

(*v*) issuing Pension Rules to enable a member, beneficiary, contributor and generally any person who has entered or offered to enter into a retirement scheme, to rescind the agreement or withdraw the offer within such period and in such manner as stipulated in the said Rules.

Power of competent authority to obtain information. *Amended by: V.2020.87.*

39. (1) Without prejudice to anything contained in any other provision of this Act which requires a Retirement Scheme Administrator, a retirement scheme and a retirement fund to furnish to the competent authority any information or documentation, the competent authority may, by notice in writing, require -

(*a*) any contributor, any service provider or any person who is or was providing, or who appears to be or to have been providing a service to a retirement scheme, a retirement fund or overseas retirement scheme, or who appears to be or have been carrying on activities in connection with a retirement scheme, a retirement fund or overseas retirement scheme; or

(*b*) any contributor, service provider or person who has issued, or appears to have issued an advertisement falling within the provisions of article 34; or

(*c*) any retirement scheme or retirement fund; or

(*d*) any other contributor, service provider or any other person who appears to be in possession of relevant information,

to do all or any of the following:

(i) to furnish to the competent authority, at such time and place and in such form as it may specify, such information and documentation as it may require, including existing telephone and existing data traffic records, with respect to any service, such retirement scheme or retirement fund or advertisement as aforesaid, or with respect to any person with whom the licence holder has close links within the meaning of article 9;

(ii) to furnish to the competent authority any information or documentation aforesaid verified in such manner and in such language as it may specify; or

(iii) to attend before the competent 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, retirement scheme or retirement fund or advertisement or with respect to any person with whom the licence holder has close links within the meaning of article 9.

(2) The competent authority may take and retain copies of any documents furnished or provided under this article or extracts from them.

(3) Where the person required to provide information or documentation under this article does not have the relevant information or documentation, he shall disclose to the competent authority where, to the best of his knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642 of the Criminal Code.

Cap. 9.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under article 40(1), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent 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 competent authority.

(8) Without prejudice to the other provisions of this article, a holder of a licence may be required to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act.

Cap. 204.

(9) The powers to obtain information available to the competent authority pursuant to this article with regard to the persons listed in sub-article (1), shall also be available with regard to the service providers of outsourced key functions or any other activities at any time.

Appointment of inspectors. *Amended by: V.2020.88.*

40. (1) The competent authority may, whenever it deems it necessary or expedient, appoint an inspector or inspectors to investigate and report on the affairs of any retirement scheme, retirement fund, service provider, overseas retirement scheme or person,referred to in article 39(1)(*a*) to (*c*) and to report thereon to it.

(2) An inspector appointed under sub-article (1) -

(*a*) may also, if he thinks it necessary or expedient for the purposes of that investigation, investigate the affairs of any retirement scheme, retirement fund, service provider, overseas retirement scheme or person, mentioned in sub-article (1);

(*b*) shall have and may exercise all the powers conferred on the competent authority by article 39, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement by the competent authority; and

(*c*) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his investigation shall make a final report to the competent authority.

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

Power to issue directives. *Amended by: V.2020.89.*

41. (1) Without prejudice to any of the powers conferred on it by articles 39 and 40, the competent authority may, whenever it deems it necessary, and whether upon a report by an inspector appointed under article 40 or not, give, by notice in writing, such directives as it may deem appropriate in the circumstances; and anyone referred to in article 39 to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or further directive:

Provided that the competent authority may give any such directive, even where a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when a licence holder, for whatever reason, ceases to hold a licence granted in terms of this Act.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may -

(*a*) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confers powers,with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(*b*) require a retirement scheme, or a retirement fund and any other person who may issue or redeem units or shares in the retirement scheme or retirement fund, as the case may be, to cease the issue or redemption of units or shares or all or any combination of those

activities, as may be specified in the directive;

(*c*) require that any officer or any person having functions in relation to the holder of a licence be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or be removed, or removed and replaced by another person acceptable to the competent authority;

(*d*) require a retirement scheme or Retirement Scheme Administrator or any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund as applicable, to wind up the retirement scheme or retirement fund by such date and in accordance with such procedure and other provisions as may be specified in the directive;

(*e*) require a retirement scheme or retirement fund or service provider or any person who is or was providing, or who appears to be or to have been providing a service, to cease operations and to wind up its affairs, in accordance with such procedures and directions as may be specified in the directive, which may provide for the appointment of a person to take possession and control of all documents, records, assets and property belonging to or in the possession or control of the retirement scheme or retirement fund or service provider or such other person;

(*f*) require the cessation of any practice that is contrary to the provisions adopted in the implementation of the Occupational Pensions Directive.

(3) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

(4) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

Supervisory review process of occupational retirement schemes. *Added by: V.2020.90.*

41A. (1) The competent authority shall review the strategies, processes and reporting procedures which are established by a Retirement Scheme Administrator or an occupational retirement scheme to comply with the provisions of this Act and any regulations and Pension Rules issued thereunder taking into account the size, nature, scale and complexity of the activities of the scheme.

(2) The review carried out by the competent authority pursuant to sub-article (1), shall take into account the circumstances in which the occupational retirement scheme is operating, and where relevant, the parties carrying out outsourced key functions or any other activities for them. The review shall comprise of an assessment of the following elements:

(*a*) an assessment of the qualitative requirements

relating to the system of governance;

(*b*) an assessment of the risks which the occupational retirement scheme faces;

(*c*) an assessment of the ability of the occupational retirement scheme to assess and manage those risks.

(3) Where the competent authority identifies any weakness or deficiency as a consequence of the supervisory review process, it shall request the Retirement Scheme Administrator or an occupational retirement scheme to remedy such weakness or deficiency within such period and in such manner, as it may deem necessary or appropriate in the circumstances.

(4) The reviews, evaluations and assessments referred to in sub-articles (1) and (2), shall be conducted regularly and the competent authority shall establish the minimum frequency and the scope of the review referred to in sub-article (1) having regard to the nature, scale and complexity of the activities of a Retirement Scheme Administrator or the occupational retirement scheme.

Information to be provided for supervisory purposes. *Added by: V.2020.90.*

41B. Without prejudice to the provisions of the Act, an occupational retirement scheme shall submit to the competent authority the information which is necessary for the purposes of supervision, as may be specified by means of regulations or Pension Rules which shall also specify the period within which such information is to be submitted.

Right of entry. *Amended by: V.2020.91.* Cap. 386.

42. (1) Without prejudice to the provisions of the Companies Act, relating to the entry and search of premises, any officer, employee or agent of the competent authority, on producing, if required, evidence of his authorisation, may enter premises occupied by a person on whom a notice has been served under article 39 or whose affairs are being investigated under article 40, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the investigation, and of exercising any of the powers conferred by the said articles.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing if required, evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining from there any information or documents, specified in the notice, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who shall for such purpose exercise such powers as are vested in him for the prevention of offences and

the enforcement of law and order:

Provided that, where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.

Co-operation with overseas regulatory authorities and EIOPA. *Amended by: V.2020.92.*

43. (1) The competent 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 licence granted pursuant to the provisions of article 9(3);

(*b*) the power to cancel or suspend a licence under article 10(1);

(*c*) the power to require information and documentation under article 39;

(*d*) the power to appoint inspectors under article 40;

(*e*) the powers of intervention under article 41;

(*f*) the powers of entry under article 42;

(*g*) the power to communicate to the overseas regulatory authority information which is in the possession of the competent authority, whether or not as a result of the exercise of any of the above powers.

(2) The competent 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 competent authority.

(3) The competent authority shall cooperate with EIOPA for the purposes of the Occupational Pensions Directive in accordance with Regulation (EU) No 1094/2010. The competent authority shall, without delay, provide EIOPA with all information necessary to carry out its duties under the Occupational Pensions Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.

PART VIII

Appeals, Remedies, Sanctions and Confidentiality

Appeals. *Amended by: V.2020.93.*

44. (1) Subject to the provisions of this article, an appeal shall lie to the Financial Services Tribunal established under article 21 of the Malta Financial Services Authority Act with respect to:

Cap. 330.

(*a*) any notice in accordance with articles 4(4), 5(3) and 6(3);

(*aA*) any condition imposed in a licence in terms of article 9(3);

(*b*) any failure to inform an applicant within the terms of article 9(8);

(*c*) any refusal, variation, cancellation or suspension of a licence under articles 9, 10 and 11;

(*d*) any decision under article 32(5);

(*e*) any directive given under article 41; or

(*f*) any administrative penalty or other measures imposed under article 46.

(2) 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 licence 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.

(3) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals made to the Tribunal under this Act.

Cap. 330.

(4) The Financial Services Tribunal shall have exclusive competence to hear appeals on the matters listed in sub-article (1).

Powers of the Court in the case of a likely contravention.

45. (1) If, on an application by the competent 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 Pension Rules made thereunder, or will contravene or fail to comply with any condition, obligation, requirement, Pension Rules, or directive 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, Pension Rules, or directive 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 sub-article (1), the Court is satisfied that a person has entered into any transaction in contravention of any of the provisions of this Act or any regulations or Pension Rules made thereunder, 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 sub-article (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, member or a beneficiary or an investor 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 competent authority.

Administrative penalties and other measures. *Amended by: V.2020.94; XIX.2026.40.*

46. (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or an officer, or any other person responsible for a licence holder contravenes or fails to comply with any of the conditions imposed in a licence and, or where the competent authority is satisfied that a person's conduct amounts to a breach of any of the provisions of this Act, regulations or Pension Rules made thereunder, including failure to cooperate in an investigation, the competent authority may by notice in writing and without recourse to a court hearing impose on the licence holder, officer and, or any other person, as the case may be, an administrative penalty which may not exceed one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues.

(2) Pension Rules may provide for the imposition of administrative penalties or other measures that may be imposed by the competent authority on licence holders or others, as may be

specified, whether in the form of a fixed penalty, a daily penalty or both, for any breach of the said Pension Rules.

(3) The imposition by the competent authority of an administrative penalty in terms of this article shall be without prejudice to any other consequence of the act or omission of the offender under civil or criminal law:

Provided that, in all cases where the competent authority imposes an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence under this Act, no proceedings may be taken or continued against the said person in respect of such criminal offence.

(4) The competent authority shall, without undue delay, publish in such medium and in such manner and for such duration, as it may determine, as well as make accessible on ESAP in accordance with any regulations made under this Act, any administrative penalty or other measure which is imposed for breaches of the provisions of this Act, any regulations or Pension Rules issued thereunder, and with regard to which no appeal was filed within the time limit prescribed by law. Such publication shall include information on the type and nature of the breach and the identity of the natural or legal person responsible for the breach.

(4A) Notwithstanding sub-article (1), the competent authority may decide to defer publication, not to publish, or to publish on an anonymous basis, any administrative penalty or other measure imposed, in any of the following circumstances:

(*a*) where the publication of the identity of legal persons, or the identity or personal data of natural persons, is considered by the competent authority to be disproportionate, following a case by case assessment conducted on the proportionality of the publication of such data; or

(*b*) where the publication jeopardises the stability of financial markets or an ongoing investigation.

(5) The imposition by the competent authority of an administrative measure in terms of this article shall be without prejudice to any other consequences of the act or omission of the offender under civil or criminal law:

Provided that, in all cases where the competent authority imposes an administrative measure consisting of an administrative penalty in respect of anything done or omitted to be done by any person and such act or omission also constitutes a criminal offence under this Act, no proceedings may be taken or continued against the said person in respect of such criminal offence.

Obligation to give reasons.

47. In exercising its powers referred to in articles 41, 43 and 46, the competent authority shall in its decisions state the grounds on which such decisions have been based.

Offences. *Substituted by: V.2020.95.*

48. Any person who:

(*a*) for the purposes of obtaining a licence under this Act, or pursuant to any of the provisions of this Act, any regulations or Pension Rules issued thereunder, or any condition, obligation, requirement or Pension Rules or directive made or given as aforesaid, furnishes information or makes a statement or a declaration which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement or a declaration which is inaccurate, false or misleading in any material respect;

(*b*) is knowingly a party to the carrying out of any retirement scheme or retirement fund or licensable activity with an intent to defraud or for a fraudulent purpose;

(*c*) 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 scheme or retirement fund;

(*d*) with intent to avoid detection of the commission of an offence under this Act, any regulations or Pension Rules issued thereunder removes, destroys, conceals or fraudulently alters any book, document or other paper; or

(*e*) intentionally obstructs a person exercising rights conferred by this Act or any regulations or Pension Rules issued thereunder,

shall be guilty of an offence.

Penalties. *Amended by: V.2020.96.*

49. A person guilty of an offence under the provisions of article 48 shall, be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-six thousand euro (€466,000) or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

Criminal proceedings. *Amended by: V.2020.97.*

50. (1) No proceedings for an offence under this Act and any regulations made thereunder, shall be commenced without the sanction of the Attorney General.

(2) The provisions of this Act and any regulations made thereunder shall not affect any criminal proceedings that may be competent under any other law.

Public statement as to misconduct.

51. *Deleted by Act V.2020.98.*

Confidentiality. *Substituted by: V.2020.99.*

52. (1) Information obtained by the competent authority or its officers, employees, agents, including former officers, employees or agents, as well as by inspectors, auditors, actuaries and experts acting on behalf of the competent authority for the purposes of, or

pursuant to any of the provisions of this Act, or any regulations or Pension Rules issued 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.

(2) Without prejudice to cases covered by criminal law, the persons referred to in sub-article (1) shall not disclose information obtained, from a retirement scheme, a retirement fund and a service provider licensed under the Act, unless such disclosure of information is done in summary or aggregate form, so as not to enable the identity of such scheme, to whom such information relates, to be ascertained:

Provided that such persons may disclose confidential information in civil or commercial proceedings where a retirement scheme, a retirement fund or a service provider is being compulsorily wound up.

(3) The competent authority, when processing personal data for the purposes of the Act and any regulations and Pension Rules issued thereunder, shall do so in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as amended from time to time.

Use of confidential information. *Added by: V.2020.100.*

52A. (1) Where the competent authority receives confidential information under this Act and any regulations or Pension Rules issued thereunder, it may only use such confidential information in the course of its duties and for the following purposes:

(*a*) to verify that conditions for taking up the activity for the provision of retirement benefits are met by the retirement scheme before commencing its activities;

(*b*) to facilitate the monitoring of activities of the retirement scheme, including the monitoring of technical provisions, the solvency, the system of governance and the information provided to members and beneficiaries, as applicable;

(*c*) to impose corrective measures, including administrative sanctions;

(*d*) to publish key performance indicators for all individual occupational retirement schemes which may assist members and beneficiaries in taking financial decisions regarding their pension where permitted by national law;

(*e*) in appeals filed from decisions of the competent authority under article 44;

(*f*) in judicial proceedings relating to the provisions

of the Act, any regulations and, or Pension Rules issued thereunder.

(2) Articles 52 and 52A of the Act shall be without prejudice to the right of inquiry conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union, pursuant to Article 54 of the Occupational Pensions Directive.

Co-operation in supervisory duties and sharing of information. *Added by: V.2020.100.*

52B. (1) Notwithstanding the provisions of articles 52 and 52A, the competent authority:

(*a*) in the discharge of its supervisory functions, shall exchange information with:

(i) overseas regulatory authorities;

(ii) authorities responsible for the supervision of the financial sector entities and other financial organisations and the authorities responsible for the supervision of financial markets;

(iii) authorities or bodies charged with the responsibility for maintaining the stability of the financial system in Member States through the use of macro-prudential rules;

(iv) bodies involved in the winding up of retirement schemes and in other similar procedures;

(v) reorganisation bodies or authorities aiming at protecting the stability of the financial system;

(vi) persons responsible for carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;

(vii) authorities responsible for overseeing the bodies involved in the winding up of retirement schemes and other similar procedures;

(viii) authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of retirement schemes, insurance undertakings and other financial institutions;

(ix) independent actuaries of retirement schemes carrying out supervision of those schemes and the bodies responsible for overseeing such actuaries;

(*b*) shall disclose to bodies which administer the winding up of a retirement scheme the information necessary for the performance of their duties.

(2) Any information provided by the competent authority to authorities, bodies or persons referred to in sub-article (1)(a)(i) to (vi), shall be subject to the duty of professional secrecy.

(3) Notwithstanding the provisions of articles 52 and 52A, the competent authority may transmit information for the purposes of the exercise of their respective tasks to the following:

(*a*) the Central Bank of Malta, the central banks of the European System of Central Banks (including the European Central Bank) and other bodies with a similar function in their capacity as monetary authorities;

(*b*) where appropriate, other national public authorities responsible for overseeing payment systems; and

(*c*) the European Systemic Risk Board, EIOPA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council.

(4) Without prejudice to the provisions of this article and articles 52C and 52D, the authorities or bodies referred to in sub-article (4) shall communicate to the competent authority any information which the competent authority requires for the purposes of article 52A.

(5) Any information provided by the competent authority in accordance with sub-article (4) or received by the competent authority in accordance with sub-article (5) shall be subject to the duty of professional secrecy.

Disclosure of confidential information in relation to occupational retirement schemes. *Added by: V.2020.100.*

52C. (1) Notwithstanding the provisions of articles 52(1), 52(2), 52A and 52D(1), the competent authority may exchange information with other departments of central government administration responsible for the enforcement of legislation on the supervision of occupational retirement schemes, credit institutions, financial institutions, investment services and insurance undertakings, or inspectors acting on behalf of those departments, provided that:

(*a*) such disclosures shall be made only where necessary for reasons of prudential control and prevention and resolution of failing occupational retirement schemes; and

(*b*) without prejudice to sub-article (3), persons having access to such information shall be subject to the duty of professional secrecy.

(2) Any information obtained by means of an on-site

verification may be disclosed to the departments referred to in sub-article (1), only with the express consent of the competent authority from which the information originated from, or the overseas regulatory authority of the country in which the on-site verification was carried out.

(3) The competent authority may disclose confidential information relating to the prudential supervision of an occupational retirement scheme to national parliamentary enquiry committees or national courts of auditors and other national entities in charge of enquiries, where all the following conditions are satisfied:

(*a*) the entities have competence under national law to investigate or scrutinise the actions of authorities responsible for the supervision of occupational retirement schemes or for laws on such supervision;

(*b*) the information is strictly necessary for satisfying the competence referred to in paragraph (a);

(*c*) the persons with access to the information are subject to the duty of professional secrecy requirements;

(*d*) if the information originates from another Member State, that information is disclosed with the explicit agreement of the originating overseas regulatory authorities and solely for the purposes for which those authorities gave their agreement.

Conditions for the exchange of information. *Added by: V.2020.100.*

52D. (1) For exchanges of information under articles (1) to (3) of article 52B of the Act, transmission of information under sub-articles (4), (5) and (6) of article 52B and the disclosure of information under article 52C, the following conditions shall be satisfied:

(*a*) the information shall be exchanged, transmitted or disclosed for the purpose of carrying out oversight or supervision;

(*b*) the information received shall be subject to the duty of professional secrecy;

(*c*) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and where appropriate, solely for the purposes for which that authority gave its agreement.

(2) Notwithstanding the provisions of article 52A, the competent authority may exchange information with authorities or bodies responsible for the detection and investigation of breaches of company law applicable to sponsoring undertakings, for the purposes of strengthening the stability and integrity of the financial system,

provided that:

(*a*) the information is intended for the purpose of detection, investigation and scrutiny as referred to in article 52C(3)(a);

(*b*) the information received shall be subject to the duty of professional secrecy;

(*c*) where the information originates from another Member State, it shall not be disclosed without the express agreement of the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

(3) Where the authorities or bodies referred to in sub-article (2) perform their tasks of detection or investigation with the assistance of persons appointed in view of their specific competence and for that purpose, and who are not employed in the public sector, the possibility of exchanging information provided for in article 52C(3), shall apply.

Co-operation with EIOPA and the European Commission. *Added by: V.2020.100.*

52E. (1) The competent authority shall co-operate with EIOPA in accordance with Regulation (EU) No. 1094/2010 and with the European Commission for the purposes of the Occupational Pensions Directive and to facilitate supervision of the operations of retirement schemes.

(2) The competent authority shall provide EIOPA with all information necessary to carry out its duties under the Occupational Pensions Directive and Regulation (EU) No. 1094/2010, in accordance with Article 35 of Regulation (EU) No. 1094/2010.

(3) The competent authority shall inform EIOPA and the European Commission of any major difficulties which the application of the Occupational Pensions Directive gives rise to and the European Commission, EIOPA and the competent authority shall examine such difficulties as quickly as possible in order to find an appropriate solution.

PART IX

Miscellaneous

Exclusion of liability.

53. *Deleted by Act V.2020.101.*

Service of notices. *Amended by: V.2020.102.*

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

(*a*) it has been delivered to him; or

(*b*) it has been left at the address furnished by him to the competent authority, or to his last known address; or

(*c*) it has been sent to it by post or e-mail at any of the aforesaid addresses; or

(*d*) in the case of a body of persons, whether corporate or unincorporated, or of a retirement scheme or a retirement fund, if it has been given or served in any of the manners aforesaid to or on a retirement scheme or retirement fund, Retirement Scheme Administrator, any person, by whatever name designated, responsible for the operation, administration and management of the retirement fund, secretary, clerk, manager, or their equivalent, or to any contributor or to any director or member of any person, by whatever name designated, responsible for the operation, administration and management of the retirement scheme or fund or an appointed representative.

Repeal of he Special Funds (Regulation) Act. Cap. 450.

55. (1) Subject to the provisions of article 56, the Special Funds (Regulation) Act is hereby repealed without prejudice to anything done or which may be done under that Act, saving every authorisation, approval or order taken or commenced thereunder, which shall continue to be valid and in force, as if such authorisation, approval or order were taken or commenced under this Act.

Cap. 450.

(2) Subject to sub-article (1), and unless the context otherwise requires, any reference to the Special Funds (Regulation) Act used in any law, regulation, rule or other document before the coming into force of this Act, shall be deemed to be a reference to this Act.

Minister's power to make transitional arrangements. *Amended by: V.2020.103.* Cap. 450.

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

Cap. 450.

(2) Subject to the provisions of article 55, any person licensed under the Special Funds (Regulation) Act shall, not later than the period prescribed in terms of sub-article (1), conform with the provisions of this Act or otherwise cease to carry on the activities for which such licence was granted, and such person shall until the prescribed period or until it conforms with the provisions of this Act, whichever is the earlier, continue to be governed by the provisions of the Special Funds (Regulation) Act.

(3) Where a person ceases to carry on the activities for which it was licensed on the grounds that such person did not, on the prescribed date, conform with the provisions of this Act, that person shall cease such activities with immediate effect and the competent authority may impose such conditions as it may deem appropriate in the circumstances.

(4) The Minister, acting on the advice of the competent authority may, by regulations, make transitional provisions in respect of such persons who were granted a recognition by the competent authority under article 7 of the Retirement Pensions Act and, without prejudice to the generality of the foregoing may, by such regulations, in

Cap.514.

particular, prescribe a period within which back office administrators are to surrender their recognition, subject to such conditions and requirements as may be prescribed.

SCHEDULE

(Article 6)

LICENSABLE ACTIVITIES

1. Retirement Scheme Administration

   - administering the operation of a retirement scheme.

2. Custodian or Trustee Services

   - acting as custodian or trustee of a retirement scheme
   - acting as custodian or trustee of a retirement fund.

3. Investment Management

   - management of the assets of a retirement scheme
   - management of the assets of a retirement fund.

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

Reference in this Schedule to a retirement scheme or to a retirement fund shall also include reference to a similar or equivalent arrangement established overseas within the meaning of article 6.