L.N. 71 of 2006

SPECIAL FUNDS (REGULATION) ACT(CAP. 450)

Special Funds (Regulation) Act
(European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2006

IN exercise of the powers conferred by article 50 of the Special Funds (Regulation) Act, the Prime Minister and Minister of Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Citation and commencement.

1. (1) The title of these regulations is the Special Funds (Regulation) Act (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations, 2006.

(2) These regulations shall come into force on the 30th March, 2006**.**

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

"the Act" means the Special Funds (Regulation) Act;

"competent authority" means the Malta Financial Services Authority appointed under article 2 of the Act;

"the Directive" means Directive 2003/41/EC of the European Parliament and of the Council of the 3rd June, 2003 on the activities and supervision of institutions for occupational retirement provision as may be amended from time to time and includes any implementing measures that may be issued thereunder;

"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 from time to time;

"European IORP" means an IORP in terms of the Directive authorized by a European regulatory authority;

"European regulatory authority" means the body or bodies designated by a Member State or an EEA State other than Malta to carry out the duties provided for in the Directive;

"home Member State" means Malta where the Maltese IORP is registered under the Act, or any Member State or EEA State other than Malta, in which the European IORP has its registered office and its main administration or, if it does not have a registered office, its main administration;

"host Member State" means the Member State or EEA State, including Malta, whose social and labour law relevant to the field of occupational pensions is applicable to the relationship between the sponsoring undertaking and employees entitled to retirement benefits;

"institution for occupational retirement provision" or "IORP" means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose 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 any employer and employee or their respective representatives, or

(b) with self-employed persons, in compliance with the legislation of the home and host Member States,

and which carries out activities directly arising therefrom;

"Maltese IORP" means an occupational scheme as defined in article 2 of the Act, registered by the competent authority in terms of the Act, and which qualifies as an IORP for the purposes of the Directive;

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

"occupational retirement plan" means the contract, agreement or rules stipulating the retirement benefits and the conditions under which these are granted, and for the purpose of these regulations, shall be the "scheme document" in terms of the Act in so far as Maltese IORPs are concerned;

"sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more

legal or natural persons, and which may be located in any Member State or EEA State including Malta, which acts as an employer or in a self-employed capacity or any combination thereof, and which pays contributions into an IORP.

(2) Words and expressions which are also used in the Act shall in these regulations have the same meaning as in the Act.

PART I

MALTESE IORPs RECEIVING CONTRIBUTIONS FROM SPONSORING UNDERTAKINGS LOCATED IN OTHER MEMBER STATES or EEA STATES

Sponsorship by sponsoring undertakings located within territories of Member States or EEA States other than Malta.

3. A Maltese IORP may accept sponsorship in terms of the Directive from sponsoring undertakings located within territories of Member States or EEA States other than Malta.

Notification to the competent authority.

4. A Maltese IORP wishing to accept sponsorship in terms of the Directive by a sponsoring undertaking located within the territory of a Member State or EEA State other than Malta, shall notify its intention to accept the sponsorship to the competent authority. The Maltese IORP, shall notify the competent authority of:

(a) the host Member State or the host Member States;

(b) the name of the sponsoring undertaking; and

(c) the main characteristics of the occupational retirement plan to be operated for the sponsoring undertaking.

Communication to Host Member State.

5. Where the competent authority has been notified in accordance with regulation 4 of these regulations, and unless it has reason to doubt that the administrative structure or the financial situation of the Maltese IORP or the good repute and professional qualifications or experience of the persons running the Maltese IORP are compatible with the operations proposed in the host Member State, it shall within three months of receiving all the information referred to in regulation 4 of these regulations, communicate that information to the European regulatory authority of the host Member State and inform the Maltese IORP accordingly.

Notification of requirements of social and labour law.

6. Before the Maltese IORP starts to operate an occupational retirement plan for a sponsoring undertaking in a Member State or EEA State other than Malta, the competent authority shall communicate to the Maltese IORP any information received from the European regulatory authority of the host Member State in accordance with Article 20 (5) of the Directive relating to the requirements of social and labour law relevant to the field of occupational pensions under which the occupational retirement plan sponsored by the sponsoring undertaking in the host Member State must be operated and any rules that are to be applied in accordance with Article 18(7) of the Directive and with regulation 8 of these regulations.

Commencement of operations by a Maltese IORP.

7. On receiving the communication referred to in regulation 6 of these regulations, or if no communication is received from the competent authority on the expiry of the period provided for in Article 20 (5) of the Directive, the Maltese IORP may start to operate the occupational retirement plan sponsored by the sponsoring undertaking in the host Member State in accordance with the host Member State's requirements of social and labour law relevant to the field of occupational pensions, and any rules that are to be applied in accordance with Article 18 (7) of the Directive and regulation 8 of these regulations.

Information requirements imposed by the European regulatory authority of the host Member State.

8. In particular, a Maltese IORP sponsored by a sponsoring undertaking located in a Member State or EEA State other than Malta shall also be subject, in respect of the corresponding employees entitled to retirement benefits, to any information requirements imposed by the European regulatory authority of the host Member State on IORPs located in that Member State, in accordance with Article 11 of the Directive.

Notification of significant changes in requirements of social and labour law.

9. The European regulatory authority of the host Member State shall, in accordance with Article 20 (8) of the Directive, inform the competent authority of any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pensions which may affect the characteristics of the occupational retirement plan insofar as it concerns the operation of the occupational retirement plan sponsored by a sponsoring undertaking in the host Member State and in any rules that have to be applied in accordance with Article 18(7) of the Directive and with regulation 8 of these regulations.

Ongoing supervision.

10. The Maltese IORP shall be subject to ongoing supervision by the European regulatory authority of the host Member State as to the compliance of its activities with the host Member State's requirements of labour and social law relevant to the field of occupational pensions referred to in regulation 6 of these regulations and with the information

requirements referred to in regulation 8 of these regulations. Should this supervision bring irregularities to light, the European regulatory authority of the host Member State shall inform the competent authority immediately. The competent authority shall, in coordination with the European regulatory authority of the host Member State, take the necessary measures to ensure that the Maltese IORP puts a stop to the detected breach of social and labour law.

Breach of applicable provisions of host Member State's requirements of social and labour law.

11. If, despite the measures taken by the competent authority or because appropriate measures are not prevailing in Malta, the Maltese IORP persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pensions, the European regulatory authority of the host Member State may, after informing the competent authority, take appropriate measures to prevent or penalize further irregularities, including, insofar as is strictly necessary, preventing the Maltese IORP from operating in the host Member State for the sponsoring undertaking located in the host State.

Prohibition or restriction of the activities of a Maltese IORP.

12. (1) The competent authority may prohibit or restrict the activities of a Maltese IORP in particular if, in the case of cross-border activity as referred to in regulation 3 of these regulations, the Maltese IORP does not respect the requirements of social and labour law of the host Member State relevant to the field of occupational pensions.

(2) The competent authority may also restrict or prohibit the free disposal of the assets of the Maltese IORP when, in particular:

(a) the Maltese IORP has failed to establish sufficient technical provisions, as applicable, in respect of the entire business or has insufficient assets to cover the technical provisions;

(b) the Maltese IORP has failed to hold the regulatory own funds, as applicable.

(3) Any decision by the competent authority in terms of this regulation shall be supported by precise reasons and notified to the Maltese IORP in question.

Technical funding requirements.

13. (1) In the event of cross-border activity as referred to in regulation 3 of these regulations, the Maltese IORP is required to have its technical funding requirements at all times fully funded in respect of the total range of occupational retirement plans operated by it and article 35 of the Act does not apply.

(2) If these conditions are not met, the competent authority shall intervene in accordance with regulation 12 of these regulations. To comply with this requirement the competent authority may require ring-fencing of the assets and liabilities.

Investment by a scheme in one or more retirement funds.

14. In relation to Maltese IORPs and in accordance with the scope of these regulations as specified in regulation 23 of these regulations, the following conditions and different provisions shall apply:

(1) the word "shall" in article 4(1)(b) of the Act shall be read as if it were substituted by the word "may";

(2) article 19(1)(a) of the Act shall be read as if it were substituted by the following - "investing all contributions in accordance with the terms of the scheme document;"; and

(3) the words "may only" in article 37 of the Act shall be read as if they were substituted the word "may".

PART II

SPONSORING UNDERTAKING LOCATED IN MALTA SPONSORING A EUROPEAN IORP

Sponsoring undertaking located in Malta sponsoring a European IORP.

15. A sponsoring undertaking located in Malta may sponsor a European IORP.

Notification in accordance with Article 20(3) of the Directive.

16. In terms of the Directive, where the European regulatory authority of the home Member State has been notified by the European IORP in accordance with Article 20(3) of the Directive, and unless it has reason to doubt that the administrative structure or the financial situation of the European IORP or the good repute and professional qualifications or experience of the persons running the European IORP are compatible with the operations proposed in Malta, it shall within three months of receiving all the information referred to in the Directive, communicate that information to the competent authority and inform the European IORP accordingly.

Notification of requirements of social and labour law.

17. (1) Before the European IORP starts to accept sponsorship from a sponsoring undertaking located in Malta, the competent authority shall, within two months of receiving the information referred to in regulation 16 from the European regulatory authority of the home Member State of the European IORP, inform the said European regulatory authority, if appropriate of the requirements of social and

labour law relevant to the field of occupational pensions under which the occupational retirement plan sponsored by a sponsoring undertaking located in Malta must be operated and any rules that are to be applied in accordance with Article 18(7) of the Directive and with regulation 19 of these regulations.

(2) In terms of the Directive, the European regulatory authority of the home Member State shall communicate this information to the European IORP.

Commencement of operations by a European IORP.

18. On receiving the communication referred to in regulation 17 of these regulations, or if no communication is received from the European regulatory authority of the home Member State on expiry of the period provided for in the said regulation, the European IORP may start to operate the occupational retirement plan sponsored by a sponsoring undertaking located in Malta in accordance with Malta's requirements of social and labour law relevant to the field of occupational pensions, and any rules that are to be applied in accordance with Article 18 (7) of the Directive and regulation 19 of these regulations.

Information requirements imposed by the competent authority.

19. In particular, a European IORP sponsored by a sponsoring undertaking located in Malta shall also be subject, in respect of the corresponding employees entitled to retirement benefits, to any information requirements imposed by the competent authority on Maltese IORPs**,** in accordance with Article 11 of the Directive.

Notification of significant changes in requirements of social and labour law.

20. The competent authority shall inform the European regulatory authority in the home Member State of the European IORP of any significant change in Malta's requirements of social and labour law relevant to the field of occupational pensions which may affect the characteristics of the occupational scheme insofar as it concerns the operation of the occupational retirement plan and in any rules that have to be applied in accordance with Article 18(7) of the Directive and with regulation 19 of these regulations.

Ongoing supervision.

21. The European IORP shall be subject to ongoing supervision by the competent authority as to the compliance of its activities with Malta's requirements of labour and social law relevant to the field of occupational pensions referred to in regulation 17 of these regulations and with the information requirements referred to in regulation 19 of these regulations. Should this supervision bring irregularities to light, the competent authority shall inform the European regulatory authority in the home Member State of the European IORP immediately. In terms of the Directive, the European regulatory authority of the home Member State shall, in coordination with the competent authority, take the

necessary measures to ensure that the European IORP puts a stop to the detected breach of social and labour law.

Breach of applicable provisions of Malta' s requirements of social and labour law.

22. If, despite the measures taken by the European regulatory authority of the home Member State or because appropriate measures are lacking in the home Member State, the European IORP persists in breaching the applicable provisions of Malta's requirements of social and labour law relevant to the field of occupational pensions, the competent authority may, after informing the European regulatory authority of the home Member State, take appropriate measures to prevent or penalize further irregularities, including, insofar as is strictly necessary, preventing the European IORP from operating in Malta for the sponsoring undertaking located in Malta.

PART III

SCOPE

Scope.

23. (1) The objective of these regulations is intended to implement the relevant provisions of the Directive and they shall be interpreted and applied accordingly.

(2) In the event that any of these regulations are in conflict with the provisions of the Directive, the Directive shall prevail.

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