VERŻJONI ELETTRONIKA

L.N. 50 of 2020

RETIREMENT PENSIONS ACT
(CAP. 514)

Retirement Pensions (General Provisions of Supervision) Regulations, 2020

IN EXERCISE of the powers conferred by articles 37 and 41B of the Retirement Pensions Act, the Minister responsible for the regulation of financial services, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

Title, scope and commencement.

1. (1) The title of these regulations is the Retirement Pensions (General Provisions of Supervision) Regulations, 2020.

(2) The purpose of these regulations is to implement Articles 19(2), 45, 46, 47, 48(6), 49(2), 50, 51 and 60(1) of the Occupational Pensions Directive.

(3) These regulations shall come into force on such date as the Minister responsible for the regulation of financial services may by notice in the Gazette establish, and different dates may be so established for different provisions of these regulations.

Main objective of prudential supervision.

2. (1) The main objective of prudential supervision is to protect the rights of members and beneficiaries and to ensure the stability and soundness of retirement schemes.

(2) The competent authority shall have the necessary means, and have the relevant expertise, capacity and mandate to achieve its main objective of supervision referred to in sub-regulation (1).

Scope of prudential supervision.

3. The competent authority shall ensure that a retirement scheme is subject to the prudential supervision including the supervision of the following, where applicable:

(a) conditions of operation;

(b) technical provisions;

(c) funding of technical provisions;

(d) regulatory own funds;

(e) available solvency margin;

(f) required solvency margin;

(g) conditions relating to the investments of a scheme;

(h) investment management function;

(i) custody function;

(j) systems of governance; and

(k) information to be provided to members and beneficiaries.

General principles of prudential supervision.

4. (1) The competent authority shall be responsible for the prudential supervision of a retirement scheme.

(2) The competent authority shall conduct its supervision on a retirement scheme on a forward-looking and risk-based approach.

(3) Supervision by the competent authority of a retirement scheme shall be carried out in a timely and proportionate manner and shall comprise an appropriate combination of off-site and on-site supervision.

(4) The competent authority shall apply the requirements laid down in the Act, regulations and Pension Rules issued thereunder in a manner which is proportionate to the nature, scale and complexity of the activities of the retirement scheme concerned.

(5) The competent authority shall duly consider the potential impact of its decisions on the stability of the financial system in the European Union, in particular, in emergency situations.

Transparency and accountability.

5. (1) The competent authority shall carry on its duties in a transparent, independent and accountable manner taking into account the protection of any confidential information.

(2) The competent authority shall publish the following information:

(a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta in the field of occupational pension schemes and information about whether Malta has undertaken to exercise the options in terms of Articles 4 and 5 of the Occupational Pensions Directive;

(b) information regarding the supervisory review process of an occupational retirement scheme, as set out in Article 41A of the Occupational Pensions Directive;

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(c) without prejudice to the obligations of confidentiality and the duty of professional secrecy in terms of the Retirement Pensions Act, aggregate statistical data on key aspects of the application of the prudential framework in Malta; Cap. 514.

(d) the objectives of its prudential supervision and information on its main functions and activities;

(e) any rules issued by the competent authority and any laws and regulations on administrative penalties and other measures applicable to breaches of the Act, regulations and Pension Rules made thereunder adopted pursuant to the Occupational Pensions Directive.

Supervisory Review Process of an occupational retirement scheme. Cap. 514.

6. When carrying out the supervisory review process of a Retirement Scheme Administrator or an occupational retirement scheme in terms of article 41A of the Retirement Pensions Act, the competent authority shall have in place monitoring tools, including stress-tests, that enable it to identify deteriorating financial conditions in an occupational retirement scheme, and to monitor how that deterioration is remedied.

Information to be provided by occupational retirement schemes for supervisory purposes.

7. (1) The competent authority shall, in respect of any occupational retirement scheme or Retirement Scheme Administrator, as applicable, have the necessary powers and means to:

(a) require the Retirement Scheme Administrator of an occupational retirement scheme, or persons who effectively run the scheme or who carry out key functions, to supply at any time information about all business matters or to forward all business documents;

(b) supervise relationships between the occupational retirement scheme and other companies, the Retirement Scheme Administrator and other companies or between schemes, when the Retirement Scheme Administrator outsources key functions or any other activities to those companies or schemes and all subsequent re-outsourcing, influencing the financial situation of the occupational retirement scheme or being in a material way relevant for effective supervision;

(c) obtain the following documentation:

(i) own-risk assessment;

(ii) statement of investment-policy principles;

(iii) annual accounts;

(iv) annual reports; and

(iv) all other documents necessary for the purposes of supervision;

(d) request any document which is necessary for the purposes of supervision, including:

(i) internal interim reports;

(ii) actuarial valuations and detailed assumptions;

(iii) asset liability studies;

(iv) evidence of consistency with investment-policy principles;

(v) evidence that contributions have been paid in as planned;

(vi) reports by the approved auditor;

(e) carry out on-site inspections at the occupational retirement scheme's and the Retirement Scheme Administrator's premises and, where appropriate, on outsourced and all subsequent re-outsourced activities to check if activities are carried out in accordance with the Act, regulations and Pension Rules issued thereunder;

(f) request information from the Retirement Scheme Administrator about outsourced and all subsequent re-outsourced activities at any time.

Powers of intervention of the competent authority.

9. The competent authority may restrict or prohibit the free disposal of the occupational retirement scheme's assets when, in particular:

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

(b) the occupational retirement scheme has failed to hold the regulatory own funds.

Credit assessment processes.

8. The competent authority shall, taking into account the size, nature, scale and complexity of the activities of the occupational retirement scheme supervised:

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(a) monitor the adequacy of the occupational retirement scheme's credit assessment processes;

(b) assess the use of references to credit ratings issued by credit rating agencies as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council, in their investment policies; and

(c) where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

Co-operation between Member States.

9. The competent authority shall ensure, in an appropriate manner, the uniform application of the Occupational Pensions Directive, through regular exchanges of information and experience with other Member States with a view to developing best practices in relation to occupational retirement schemes and closer cooperation, and by so doing, preventing distortions of competition and creating the conditions required for unproblematic cross-border membership.

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