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**MCT MALTA PRIVATE RETIREMENT SCHEME** – a Personal Retirement Scheme licenced and regulated by the Malta Financial Services Authority

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## **Part I — Scheme Structure and Operation**

### **Interpretation**

1.1 In the Rules unless the context otherwise requires:

"Act" means the Retirement Pensions Act (Chapter 514 of the Laws of Malta).

“Banking Act” means the Banking Act (Chapter 371 of the Laws of Malta).

"Benefit" means pension or other benefits that are payable to a Beneficiary after retirement, permanent invalidity or death.

“Beneficiary” means an individual who is to receive current or future payments under the scheme, and includes a Member, but excludes any person of whose existence the Retirement Scheme Administrator is unaware after having made reasonable enquiries. Reference to Beneficiary in these Rules shall be deemed to refer to Current and Future beneficiaries as defined in Rule 2.6, unless the subject or the context otherwise requires.

“Contributions” shall have the same meaning as that in Rule 14 of these Rules.

“Data Protection Legislation” means the DPA and the GDPR and any other applicable data protection laws, as may be amended from time to time.

“DPA” means the Data Protection Act (Chapter 586 of the Laws of Malta).

“Data Retention Policy” means the data retention policy of the Scheme.

"Fund" means all transfer payments received by the Scheme and any other monies, investments, policies, property or other sums or assets for the time being held for the purposes of the Scheme.

“GDPR” means 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).

“General Fund” means any part of the Fund which is not a Member Account.

“HMRC” means Her Majesty’s Revenue and Customs.

"Member Account" in relation to a Member or Beneficiary means that part of the Fund which the Retirement Scheme Administrator determines is attributable to him/her having regard to:

- (i) any transfers made to the Scheme in respect of him/her;
- (ii) any allocation or reallocation of any part of the Fund in accordance with the Rules;
- (iii) any income, gains, losses (whether realised or not), fees, costs and expenses and any other actual or prospective liabilities of the Retirement Scheme Administrator

(other than liabilities to pay Benefits) borne by or attributable to the relevant Member Account.

"Investment Manager" means the entity or person that may be appointed by the Retirement Scheme Administrator or any of the Members of the Scheme to provide the investment service of managing investments within a Member Account.

"Insurer" means any insurer with whom the Retirement Scheme Administrator effects a policy.

"ISA" means the Investment Services Act (Chapter 370 of the Laws of Malta).

"ITA" means the Income Tax Act (Chapter 123 of the Laws of Malta).

"ITMA" means the Income Tax Management Act (Chapter 372 Laws of Malta).

"Pension Rules" means the Pension Rules for Personal Retirement Schemes issued in terms of the Act by the MFSA as may from time to time be amended or varied.

"Member" means a person admitted as a Member in accordance with Rule 13 and "Membership" has a corresponding meaning.

"MFSA" means the Malta Financial Services Authority.

"Money Purchase Scheme" means a "Defined Contribution Retirement Scheme" as defined in the Act, which accepts Contributions and has as its primary purpose that of providing for the payment of Benefits which are established by the transfers of accrued rights from United Kingdom Registered Pension Schemes and other contributions into that scheme, the accumulation of profits, gains and other income, after the deduction of expenses and losses in relation thereto;

"Net Asset Value" means the net asset value as defined by reference to generally accepted accounting principles accepted in Malta, as the Retirement Scheme Administrator may deem appropriate.

"Personal Data" means any information relating to a natural person that may render such natural person identifiable, whether directly or indirectly.

"Professional Member" means any Member, which in terms of Rule 5.3.5 of these Rules, is deemed, by the Retirement Scheme Administrator, to be qualified to manage/direct his/her Member Account, following the assessment procedure outlined in Rule 6.7 of these Rules.

"QROPS" means a pension scheme in respect of which HMRC have issued a letter of acceptance that the scheme is a qualifying recognised overseas pension scheme for UK purposes and where the manager of that scheme has not notified HMRC that the scheme has ceased to be a qualifying recognised overseas pension scheme.

"Retirement Scheme Administrator" refers to the retirement scheme administrator appointed in terms of the Act to receive, hold and deal with all or any monies, assets and investments belonging to and forming part of the Scheme and whether original, substituted or additional. The first Retirement Scheme Administrator is MC Trustees (Malta) Limited, a limited liability company registered under the Maltese Companies Act, bearing registration number C48412, having its

registered office at 157 Archbishop Street, Valletta, VLT 1440, Malta, telephone number +356 21383943 and e-mail address [mail@mctrustees.com.mt](mailto:mail@mctrustees.com.mt).

"Rule(s)" means these rules set out in this trust deed and as a Constitutional Document and any amendments or modifications to them.

"Scheme" means the scheme, established as a non-discretionary trust by virtue of this trust deed under the Trusts and Trustees Act (Chapter 221 of the laws of Malta), to which these rules apply i.e. MCT Malta Private Retirement Scheme

“Service Provider” means any person acting in the capacity as defined in Rule 6.7.

"Taxation" and "Taxes" includes income tax, capital gains tax, land tax, duty, VAT and all other taxes, duties, levies, rates, contributions, fees, imposts, withholdings and deductions imposed, assessed, charged or levied on or deducted from or paid or payable by any Member, former Member, Beneficiary or the Retirement Scheme Administrator on behalf of the Scheme under any law of Malta or elsewhere together with all penalties, fines, additions and interest relating thereto.

“Term Instalments” refers to Benefits payable by equal or unequal instalments.

Trustee" in relation to any Member Account shall mean the Retirement Scheme Administrator

“United Kingdom Registered Pension Schemes” means a scheme registered with Her Majesty’s Revenue & Customs (“HMRC”) under Part 4 Chapter 2 of the UK Finance Act 2004.

“VAT” means value added tax

1.2 Where the context does not require otherwise:

1.2.1 references to all or part of a section or schedule shall be taken as references to the relevant provision of the Act;

1.2.2 references to any gender shall include any other gender;

1.2.3 references to the singular shall include the plural and vice versa.

1.3 Reference to any law, enactment, regulations or standards shall include reference to any statutory amendment or re-enactment for the time being in force and where appropriate any subsequent related regulations or other legislation or standards.

1.4 Indices and headings are included for convenience only and shall not affect the interpretation of the Rules.

## **2 Constitution of Scheme**

2.1 The Scheme created by this trust instrument shall be called the MCT MALTA PRIVATE RETIREMENT SCHEME.

- 2.2 The Scheme is a retirement scheme situated in Malta and registered under the Act, the principal purpose of which is:
- 2.2.1 the receipt of Contributions from one or more Contributors and the investment thereof in accordance with the investment policy of the Scheme with the aim of maximising return on such Contributions and
  - 2.2.2 the provision of Benefits to the Members in the event of their retirement or, in certain circumstances, for their Beneficiaries and
  - 2.2.3 is designed and operated for the exclusive benefit of the Members and/or their Beneficiaries and
  - 2.2.4 the carrying out of all matters or functions connected or ancillary to the above.
- 2.3 For this purpose, the Retirement Scheme Administrator may accept transfers in respect of Members of assets from other pension schemes or cash amounts representing the same, or other assets as may be applicable. The Scheme may also accept transfers from those Members resident in Malta at the time of making the transfer. If necessary, in-specie transfers will be valued using appropriate valuation methods applicable to the particular type of asset, having regard to generally accepted accounting principles acceptable in Malta, as the Retirement Scheme Administrator may deem appropriate.
- 2.4 The Scheme is a Money Purchase Scheme.
- 2.5 The Scheme operates solely as a member-directed scheme.
- 2.6 The Fund shall be vested in the Trustee, in its role as Retirement Scheme Administrator upon irrevocable trusts, to be applied in accordance with these Rules.
- 2.7 The Retirement Scheme Administrator shall maintain a separate record and segregation of each Member Account and its investment or other application. No Benefit shall be payable to or in respect of a Member (or any other Beneficiaries as applicable) other than from the Member Account.
- 2.8 The Retirement Scheme Administrator may conclusively determine whether or not any person is a Beneficiary and the amount of any Benefit, and may also conclusively determine all questions and matters of doubt arising in connection with the Scheme.
- 2.8.1 Current Beneficiaries are defined as Members of the Scheme, whose Member Account has received financial consideration.
  - 2.8.2 Future Beneficiaries may only be determined conclusively on the death of the Member and would normally include relatives of the Member and those dependant upon the Member for any necessities of life on the death of the Member. On the death of the Member, the Trustee will review the Nomination of Beneficiary completed by the Member and contact the Nominated Beneficiaries and the Executor of the Member's Estate to determine the identity of Future Beneficiaries.

- 2.9 No person shall have any claim, right or interest in respect of the Fund except in terms of these Rules.

### **3 Amendment of the Rules and associated documents**

- 3.1 The Retirement Scheme Administrator may at any time, with the prior permission of the MFSA, alter add to or delete all or any of the Rules and associated documents giving details of the Scheme and the rights of Members, with immediate future or retrospective effect provided that retrospective amendments shall only be made to take into account legislative changes requiring retrospective amendments.
- 3.2 The power in Rule 3.1 shall continue to be exercisable without restriction throughout the winding up of the Scheme.
- 3.3 The Retirement Scheme Administrator shall, notify the Members and Beneficiaries in writing, of any amendments, as approved by the MFSA, made to the Rules, together with the amending text or an updated version of the documents concerned, within one (1) calendar month, of any such changes in these Rules, and may determine the manner in which Beneficiaries shall be notified of any such alteration, addition or deletion provided that all documentation and information is accurate, complete and presented in a transparent and clear manner.
- 3.4 These Rules and any alteration, addition or deletion thereto shall, when duly disclosed to a Beneficiary, be binding on that Beneficiary, unless such Beneficiary notifies the Retirement Scheme Administrator of his/her written opposition within two (2) months from the receipt of the Rules; however, where a Beneficiary who is not a person who has transferred assets to the trust or put assets on trust, opposes these Rules s/he shall forfeit his/her status as a Beneficiary, unless the said Rules reduce the benefits due to him under previously accepted Rules.
- 3.5 The Retirement Scheme Administrator may at any time, propose to the MFSA alterations to a business plan submitted to the MFSA.

### **4 Retirement Scheme Administrator: Appointment, Removal and Resignation**

- 4.1 The MFSA may at any time cancel or suspend the registration of the Retirement Scheme Administrator
- 4.2 Should this occur the Retirement Scheme Administrator will arrange for another Retirement Scheme Administrator, which has been approved in advance by the MFSA, to be appointed.
- 4.3 The Retirement Scheme Administrator may resign on giving three (3) months' notice. The Retirement Scheme Administrator will immediately notify the MFSA and will arrange for another Retirement Scheme Administrator, which is acceptable to the MFSA, to be appointed.

- 4.4 Where a body corporate acts as a Trustee its powers, duties, authorities and discretions are to be exercisable by its board of directors.

## **5 Relationship of Trustee and Members and others**

- 5.1 Subject to Clause 5.3 below, in exercising its power of investment in relation to any Member Account, the Retirement Scheme Administrator may appoint an Investment Manager on such terms as may be agreed between the Investment Manager and the Retirement Scheme Administrator. For this purpose, the Retirement Scheme Administrator shall have regard to any letters of wishes received from a Member (or his Beneficiaries upon the Member's death), except where to do so would in the opinion of the Retirement Scheme Administrator:

5.1.1 breach the provisions of the Rules, prejudice the registration of the Scheme under the Act or prejudice the status of the Scheme as a QROPS or provide a Benefit not specifically permitted by these Rules;

5.1.2 prevent or unduly delay recovery of any amount under Rule 8.6 or payment of Benefits or any other payment required for the proper administration of the Scheme generally; or

5.1.3 breach any restrictions on particular investments or classes or descriptions of investment which the Retirement Scheme Administrator may in its absolute discretion impose from time to time for this purpose (whether those restrictions are imposed in respect of the whole Scheme or any particular category or description of Members or Beneficiaries).

- 5.2 The Retirement Scheme Administrator shall provide to the Member or Beneficiary any information or assurance that may be requested or required in connection with such appointment.

- 5.3 The Members may direct the investments of their individual Member Account, subject to the following:

5.3.1 A document containing (i) details of the investment options applicable to Members, together with (ii) all costs payable under the terms of any investment option selected, and (iii) commissions payable to the investment advisor and/or Investment Manager both initially and on an on-going basis, must be made available from the Retirement Scheme Administrator on request, unless the Member is a Professional Member or has opted to appoint an Investment Manager in relation to all investments in his/her Investment Fund.

5.3.2 Subject to Rules 5.3.4 and 5.6 below, each Member must either appoint:

- an investment advisor, to be approved by the Retirement Scheme Administrator, to advise him/her on the choice of investments; or
- an investment manager, to be approved by the Retirement Scheme Administrator, to manage the investments of the respective Member's Member Account on a discretionary basis.

- 5.3.3 Each Member may, at any time, request written confirmation of the transactions pursued in respect of the investment decisions taken.
  - 5.3.4 Notwithstanding the provisions of Rule 5.3.2, each Member may opt to manage his/her own investments provided that such Member qualifies as a Professional Member. For this reason, the Member must submit a request in writing to the Retirement Scheme Administrator requesting permission to manage his/her own investments; and requesting that such Member be considered a Professional Member. The Retirement Scheme Administrator shall assess and conclusively determine whether a Member qualifies as a Professional Member in accordance with Rule 6.7 below.
  - 5.3.5 The assets of each Member Account shall be ring-fenced from the assets of the other Member Accounts.
  - 5.3.6 Each Member must adhere to the rules as issued by the MFSA from time to time and also the provisions of Rule 5.1 in respect of their own Member Account.
- 5.4 Where a Member appoints an investment advisor or Investment Manager in terms of Rule 5.3.2 above, the Retirement Scheme Administrator shall:
- 5.4.1 carry out due diligence and approve such investment advisor or Investment Manager;
  - 5.4.2 ensure that the due diligence exercise carried out in this respect is documented;
  - 5.4.3 ensure that the investment advisor or manager meets the requirements of the Pension Rules, the Act and any other regulations or directives issued thereunder, at all times; and
  - 5.4.4 enter into an agreement with the investment advisor on behalf of the Member in relation to the Member Account, setting out the services, roles and responsibilities of the investment advisor or Investment Manager as the case may be.
- 5.5 Where an Investment Manager is appointed, in terms of Rule 5.3.2 above, such Manager may appoint a custodian, provided that the Retirement Scheme Administrator has effective access to information relating to the Member Account and investments held by such custodian so as to ensure that the Retirement Scheme Administrator may effectively monitor the Scheme in aggregate and as a whole and retain overall control in terms of the Pension Rules, the Act and all regulations and directives issued thereunder. In this respect, the Retirement Scheme Administrator shall, where applicable:
- 5.5.1 carry out due diligence on the custodian;
  - 5.5.2 ensure that the due diligence exercise carried out in this respect is

documented;

5.5.3 ensure that the custodian meets the requirements of the Pension Rules, the Act and any other regulations or directives issued thereunder, at all times, and more specifically, must:

A. be either of the following:

i. a person licenced under the ISA to act as a custodian; or

ii. a credit institution licenced under the Banking Act; or

iii. a person established in another European Union Member State (“MS”) or EEA State and duly authorised for this activity in accordance with Directive 2014/65/EU or Directive 2013/36/EU, or accepted as a depository for the purposes of Directive 2009/65/EC or Directive 2011/61/EU, as amended from time to time, and carrying out its activities in relation to the Member pursuant to the respective Directives, as applicable; or

iv. in the case of a person established in a non-MS or non-EEA State, a person who is considered by the Retirement Scheme Administrator to be subject to an equivalent level of regulatory supervision in the jurisdiction where its operations take place, for it to undertake such custody services.

B. be authorised and regulated to provide such custody services; and

C. satisfy the conditions in points A. and B. above on an ongoing basis.

5.6 Where a Member does not appoint an investment advisor/Investment Manager in terms of Rule 5.3.2, or where the appointed investment advisor/Investment Manager does not, in the opinion of the Retirement Scheme Administrator, satisfy the applicable requirements of the Rules, the Pension Rules, the Act and any other regulations or directives issued thereunder at all times, the Retirement Scheme Administrator shall have sole discretion to decide to either:

5.6.1 unilaterally appoint an investment advisor/Investment Manager in accordance with the requirements of the Pension Rules for that particular Member Account at the expense of the Member; or

5.6.2 terminate the membership of such Member in the Scheme, at the expense of the Member.

## **6 Powers, Duties and Discretions**

6.1 The Retirement Scheme Administrator is granted all the powers, rights, privileges and

discretions it may require for the proper implementation of the Scheme, including the performance of all duties imposed by law and may do anything expedient or necessary for the support and maintenance of the Scheme or for the benefit of the Beneficiaries (including for the avoidance of doubt the institution, defence, compromise and settlement of legal proceedings, whether brought by or against a Beneficiary or otherwise). Any powers granted by these Rules shall be in addition to those granted by law.

6.2 The Retirement Scheme Administrator may effect such insurance for such risks and for such amounts as it considers prudent, including without limitation insurance against any loss or damage caused by any act or omission of the Retirement Scheme Administrator or any person appointed under this Rule 6. In particular and without limitation the Retirement Scheme Administrator shall have power to insure any part of the Fund comprising land, or any buildings or other property forming part of land, against any risks and for any amounts.

6.3 The Retirement Scheme Administrator may:

6.3.1 delegate any of its administrative duties;

6.3.2 grant authority for the execution of deeds and any other documents and/or to give receipts or discharges for any monies or other property

to any one or more persons including any Beneficiary (and in the case of a corporate Trustee, any director or other officer), subject to such terms as it in its absolute discretion thinks fit, provided that the liability of the Retirement Scheme Administrator towards the Beneficiaries shall not be diminished if the Retirement Scheme Administrator has delegated or entrusted to a third party some or all of its administrative duties and provided that the Retirement Scheme Administrator shall continue to be responsible for monitoring compliance with these Rules.

6.4 The Retirement Scheme Administrator shall appoint, in writing, an auditor approved by the MFSA and may remove, in writing, this auditor and shall arrange for the appointment and removal of:

6.4.1 any actuary, solicitor, accountant, or other adviser; In every case the person appointed shall have the necessary registration, licence or approval required from the MFSA.

6.4.2 any clerical or executive officers or staff as it may consider desirable in each case in relation to the whole or any part of the Scheme and upon such terms as to remuneration liability and indemnity and otherwise, as it thinks fit.

6.5 The Retirement Scheme Administrator may at its absolute discretion accept for the purposes of the Scheme or renounce any gifts, donations or bequests.

6.6 The Retirement Scheme Administrator shall report information relating to payments made or treated as made in respect of a Member to HMRC as required.

6.7 The Retirement Scheme Administrator shall, for the purpose of assessing whether a

Member qualifies as a Professional Member, assess the level of expertise, experience and knowledge of such Member and must be satisfied that such Member is capable of making his own investment decisions and of understanding the risks involved. In the course of the Retirement Scheme Administrator's assessment, s/he/it shall ensure that such Member satisfies at least two of the following criteria:

6.7.1 works or has worked in the financial services sector for at least three years in the last ten years, in a professional position, which requires knowledge of the transactions envisaged; and/or

6.7.2 the size of the Member's account within the Scheme, defined as including cash deposits and financial instruments exceeds EUR 500 000; and/or

6.7.3 the Member has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.

6.8 When assessing a Member's qualifications in terms of Rule 6.7 above, the Retirement Scheme Administrator shall properly document its assessment, and following such assessment, each Member must declare in writing, that s/he is aware that s/he is responsible for the investment decisions taken with respect to his/her Member Account.

6.9 The Retirement Scheme Administrator has the ultimate responsibility to ensure compliance by each Member, or any person acting on his/her behalf, with:

6.9.1 the objective(s) of the Scheme;

6.9.2 any applicable licence conditions;

6.9.3 all applicable regulatory requirements, including but not limited to, informing and ensuring that each Member, not being a Professional Member, appoints an investment advisor/Investment Manager in terms of Rule 5.3.2 above prior to becoming a Member, or if already a Member, within four (4) weeks from being notified by the Retirement Scheme Administrator; and

6.9.4 all other provisions of the law.

6.10 The Trustee may appoint by agreement and remove (or arrange for the appointment and removal of or vary the terms of the agreement):

6.10.1 any investment managers, nominees, custodians, sub-custodians and other persons concerned with the management or custody of assets;

6.10.2 any agents in any transaction or in any act of administration;

6.10.3 any actuary, solicitor, accountant, auditor or other adviser

in each case in relation to the whole or any part of the Member Account and upon such terms, as to remuneration liability and indemnity and otherwise, as they think

fit. In every case the person appointed shall have the necessary registration, licence or approval required from the MFSA.

## **7 Investment and maintenance of records**

7.1 Subject to any applicable provisions of the Pensions Rules, the Act, any regulations or directives prescribed thereunder, and any conditions which the MFSA may impose from time to time, the Trustee shall arrange for the assets of the Member Account to be invested in a timely, fair, prudent and diversified manner (in so far as diversification is prudent and appropriate in the particular circumstances), having regard to the best interests and any wishes of the Member, and in such a way so as to avoid accumulations of risk in the portfolio as a whole. An example of where diversification may not be prudent and appropriate may be where a Member is about to take benefits from the Scheme and has encashed all assets to enable the purchase of an annuity. The Trustee shall have full powers of investment and application, including all such powers which they could exercise if they were absolutely and beneficially entitled to the Member Account. All income of an Member Account shall comprise only of royalties, dividends, capital gains, interest, rents and any other income from investments, including from the reinvestment thereof in the Member Account. In line with the Scheme's primary purpose of providing for the payment of retirement benefits to Members, the Trustee may invest or apply all or any part of the Member Account in any part of the world (subject to 7.1.2 below) as follows, only and exclusively for the investment of assets for the generation of retirement benefits:

7.1.1 in deferred or immediate annuity policies, life assurance policies, retirement, endowment or sinking fund contracts or policies each of which are effected with an Insurer;

7.1.2 in any interest in land or property (including commercial and residential property);

7.1.3 in units, unit trusts or mutual funds or other common investment funds or securitised issues or any other form of collective investment;

7.1.4 in the purchase of or subscription for or in underwriting, sub-underwriting or guaranteeing the subscription of any stocks, shares, debenture stocks or other investments;

7.1.5 in entering into and engaging in any obligations or contracts or dealings including dealings in currencies, traded options, financial futures, commodities or commodity futures;

7.1.6 in choses in action and other personal chattels and any other asset, whether wasting or depreciating or otherwise;

7.1.7 in the insurance of any assets of the Member Account against any risks and for any amounts;

7.1.8 in structured notes, albeit up to a maximum of 30% of the total value of each Member Account, with no more than 20% of the Member Account to be

subject to the same issuer/guarantor default risk;

- 7.1.9 by opening and operating accounts with any authority, bank, Insurer, building society or finance company upon such terms as the Trustee thinks fit;
- 7.1.10 by participating in any scheme of deposit administration or any managed fund administered by an Insurer, and
- 7.1.11 by participating in any investment (whether income producing or not), provided that transactions are made strictly on an arm's length basis or in the acquisition, and/or development of any interest in land or property jointly with any other party or parties whether as partners or as Trustee to hold it upon trust for sale or otherwise, even if the interest of the Trustee in any such venture is a minority interest;

and may

- 7.1.12 borrow on a short-term basis in relation to the management of its assets, lend monies to any person in each case for such purposes and upon such security and subject to such terms as they consider fit, provided that the Trustee is not authorised to make a loan to or provide any financial assistance to any Member or connected person thereto
- 7.1.13 sell, lend, lease, license, surrender, assign, convert, repair, alter, improve, maintain, develop, demolish, vary or transpose any assets of the Fund;
- 7.1.14 enter into any arrangements with an Insurer to reinsure the whole or any portion of the risks undertaken, and in particular including reinsuring against any excess of claims that might fall upon the Scheme owing to a catastrophe or epidemic;
- 7.1.15 make any other arrangements with an Insurer for the provision of all or any Benefits in each case alone or jointly with the Trustee of any other pension scheme or arrangement or any other person and whether or not any Trustee or any Beneficiary or any delegate, agent, adviser or other person appointed under Rule 6, or any person connected or associated with any of them, is a party to any transaction concerned or otherwise has a personal interest or interest in another fiduciary capacity. Provided that in case of a potential conflict of interest, the Retirement Scheme Administrator shall ensure that the investment activity is carried out in the sole interest of the Beneficiaries,

provided that, in investments may only be made in those investments which can be classified as suitable for a retail member, unless the Member in question has been classified as a Professional Member.

- 7.2 Any provision made under the power to insure in respect of any Benefit (whether immediate or contingent) may be made by effecting an individual annuity contract or policy in the name of the Beneficiary or in the names of the Trustee or (if the contract or policy was initially effected in the name of the Trustee) by assigning it to the Beneficiary.

- 7.3 The Scheme may not engage in transactions with any members or connected persons thereto.
- 7.4 The Scheme may engage in borrowing in connection with property purchases as permitted by the Act but may not borrow for the purpose of leverage
- 7.5 The Retirement Scheme Administrator shall keep proper records, books and accounts for the purpose of establishing the identity of the Member and his Beneficiaries; dealings with moneys and assets received in respect of each Member and investments relating to each Member Account. The Retirement Scheme Administrator shall also make suitable arrangements for custody of documents relating to the investments of each Member Account.
- 7.6 The Scheme shall have a December year end accounting reference date. The Retirement Scheme Administrator shall prepare financial statements of the Scheme for each financial year in accordance with generally accepted accounting principles acceptable in Malta. Financial statements shall be audited by the Auditor annually following the end of the financial year and at such other time or times as shall be required by the Retirement Scheme Administrator.
- 7.7 At the end of each financial year, the Retirement Scheme Administrator shall make a valuation of all assets of the Member Accounts. The Retirement Scheme Administrator shall also make a valuation of assets of a relevant Member Account at such other times as it considers fit (including without limitation at the time of the payment of a Benefit to a Member or a transfer of a Member Account to another scheme in accordance to Clause 9.1). Valuations shall be made in accordance with generally accepted accounting principles acceptable in Malta, as the Retirement Scheme Administrator may deem appropriate.
- 7.8 The Retirement Scheme Administrator shall, on an annual basis, provide each Member with the following information in relation to his/her Member Account, and upon ad-hoc request of each Member, during the relevant reporting period:
- 7.8.1 the underlying investments and their respective value;
  - 7.8.2 any contributions into the Scheme, if applicable;
  - 7.8.3 any retirement benefits paid, if applicable;
  - 7.8.4 the name of the investment advisor and/or Investment Manager, if applicable;
  - 7.8.5 all applicable charges, commissions and fees incurred by the Member;
  - 7.8.6 the availability of online access, which provides real time information of the investments held in his/her Member Account; and
  - 7.8.7 any material information and material changes, including suspension of funds, drastic fall in the value of investments, relating to the Member Account, upon the Retirement Scheme Administrator first becoming aware of such material information and/or changes.

## **8 Liability, Recovery of Charges, Expenses etc.**

- 8.1 In exercising any power, carrying out any duty or doing any act in connection with its duties, the Trustee shall exercise such care and skill in accordance with the provisions of Article 21 of the Trusts and Trustees Act.
- 8.2 Notwithstanding that the liability of the Trustee shall not be diminished if it has entrusted to a third party some or all of its functions as a Retirement Scheme Administrator, neither the Trustee nor any of its directors or officers shall be liable for anything done or omitted to be done in relation to the Scheme except in the case of fraud, wilful default or negligence
- 8.3 Except as specifically required by the Rules, Rules and as permitted by the Act and rules issued by the MFSA, the Trustee shall not be required to consult, or act upon the wishes of, Beneficiaries.
- 8.4 The Retirement Scheme Administrator shall be entitled to appropriate out of each Member's Member Account the professional fees due to him in respect of the provision of its services as Trustee and Retirement Scheme Administrator of the Scheme. The Retirement Scheme Administrator's remuneration in respect of the management and administration of the Scheme shall be set out in a charges sheet, which will be provided to the Member before joining the Scheme. Fees shall be increased in accordance with the Retail Price Index issued by the Maltese National Statistics Office for the preceding calendar year. Any such increase shall be effective from the commencement of the calendar year during which the Retail Price Index is issued. Notice of any changes, which are made to the fees chargeable, shall be provided by the Retirement Scheme Administrator to the Members/Beneficiaries.
- 8.5 Audit fees shall be agreed between the Retirement Scheme Administrator and the Auditors. Legal and other professional fees shall be agreed between the Retirement Scheme Administrator and the said advisors. Audit and legal/professional fees will be paid out of the Member Accounts. Any unrecoverable VAT, which may be incurred thereon, shall also be at the charge of the Member Accounts.
- 8.6 The Retirement Scheme Administrator is entitled to recover out of the relevant Member Accounts any losses, Taxes, liabilities, costs, charges or expenses (including any fees, charges or expenses of persons appointed pursuant to Rule 6 and any premium payable on insurances) or other amounts the Retirement Scheme Administrator may suffer or incur in connection with or in relation to:
  - 8.6.1 the investments;
  - 8.6.2 any proceedings brought in order to comply or procure compliance by any Beneficiary or other person with any obligation imposed by law or by this deed or any agreement made under it;
  - 8.6.3 any unsuccessful actions, proceedings or claims brought by or on behalf of a Beneficiary;
  - 8.6.4 any other actions, proceedings or claims;

- 8.6.5 Taxes in respect of any payment of Benefit;
- 8.6.6 fees payable to banks, valuers, Service Providers and other charges incurred in relation to the Scheme
- 8.6.7 the proper administration of the Scheme generally
- 8.6.8 any unrecoverable VAT which may be incurred on any of the above
- except to the extent that such amounts:
- 8.6.9 are recoverable under any policy of insurance and would not be recoverable but for this exception, or
- 8.6.10 are suffered or incurred by the Retirement Scheme Administrator as a result of its own fraud, wilful default or negligence.
- 8.7 Notwithstanding Rule 8.6 the Retirement Scheme Administrator shall not be obliged to bring, pursue, defend or appeal any proceedings or decisions in relation to the Scheme.
- 8.8 The Trustee may take out Trustees' indemnity insurance or (in the case of a corporate Trustee) directors' and officers' insurance to cover any liability or potential liability which they may have in respect of the Fund and the cost of premiums shall be borne by the Fund.
- 8.9 Where such costs and expenses are attributable to an Member Account, they will be charged to that Member Account. Where costs and expenses relate to matters common to more than one Member Account the Retirement Scheme Administrator is entitled to apportion these costs and expenses pro rata to the most recent Net Asset Value of each relevant Member Account available to the Retirement Scheme Administrator at that time. All expenses shall be charged either against income or against capital as the Retirement Scheme Administrator shall determine.
- 8.10 Each Member and Beneficiary shall indemnify and keep indemnified the Retirement Scheme Administrator against any amounts described in Rule 8.6 to the extent that the same are not recoverable by the Retirement Scheme Administrator under that Rule.
- 8.11 In this Rule 8:
- 8.11.1 references to the Trustee shall be taken to include any former Trustee and any present or former officer of any of them;
- 8.11.2 references to proceedings shall be taken to include any investigation by the MFSA or revenue authorities and any other form of action, proceeding or claim.

## **9 Transfers between Schemes**

- 9.1 The Trustee shall, at the request of a Member (or his Beneficiaries upon the Member's death) make a transfer of that Member's Member Account (or a cash amount

representing the equivalent value of such Member Account), to another pension scheme to provide such benefits under the other scheme as may be offered by the trustee or managers of the other scheme.

9.2 In connection with any transfer the Retirement Scheme Administrator must provide the Member opting to transfer that Member Account, with all adequate information as to their pension rights and choices which are available to them under the Scheme so as to enable such Members to make an informed decision, and any other information which may be required by the Pension Rules and the Act , including but not limited to:

9.2.1 information about the applicable fees and charges imposed by the Scheme relating to the transfer; and

9.2.2 confirmation that the transfer has been made to another retirement scheme and the details of the new retirement scheme administrator and the new retirement scheme.

9.3 A transfer made from the Scheme under Rule 9.1 shall (subject to any special terms or conditions imposed by the Retirement Scheme Administrator) extinguish the Member Account concerned and any corresponding entitlement to Benefits and the Retirement Scheme Administrator shall be released from any liability in respect of those Benefits.

## **10 Buying Out Benefits**

10.1 The Trustee may at any time arrange with an Insurer to secure outside the Scheme the benefits payable or prospectively payable out of that Member Account, by:

10.1.1 application of the Member Account or its proceeds towards the purchase of an appropriate policy from, or entry into an appropriate contract with, the Insurer,

10.1.2 assignment of the benefit of any policy or contract forming part of that Member Account and previously effected in the names of any of the Trustee or their nominees with that Insurer

in either case on such terms as the Trustee in its absolute discretion thinks fit.

10.2 Following such application, the Retirement Scheme Administrator shall be discharged from all claims in respect of such benefits.

## **11 Winding up and Dissolution**

11.1 The remaining provisions of this Rule 11 shall apply upon:-

11.1.1 the Retirement Scheme Administrator resolving that

the Scheme shall be determined and the Fund shall be wound up provided

that the trust shall remain in force and all powers under the Rules shall remain exercisable until the Fund has been completely wound up.

11.2 The Retirement Scheme Administrator shall apply any General Fund in accordance with Rule 21.

11.3 The Retirement Scheme Administrator shall apply each Member Account in the following order:

11.3.1 in discharging so much of the actual or anticipated costs, charges and expenses of and incidental to the application of the Fund (including the remuneration of professional advisers) as the Retirement Scheme Administrator in its absolute discretion may determine;

11.3.2 in provision of any benefit payable in respect of a death occurring before the application of this Rule 11;

11.3.3 securing benefits in respect of the Member or Beneficiaries in such one or more of the ways described in Rule 11.5 as the Retirement Scheme Administrator in its absolute discretion may determine having regard to the benefits that would otherwise have been payable from the Scheme.

11.4 The ways described in this Rule are:

11.4.1 purchase of an immediate or deferred annuity from an Insurer on any terms;

11.4.2 payment of a lump sum

11.4.3 payment of a transfer in accordance with Rule 9.1.

11.5 The determination of the Retirement Scheme Administrator under this Rule 11 as regards the application of the Fund shall be absolute and final and every Member or other recipient shall accept the amount of his benefit in respect of him in full discharge of all claims against the Fund or the Scheme and shall have no further claim whatsoever.

11.6 If the assets of the Fund include annuity contracts or annuity policies effected in the names of the Trustee or its nominees with any Insurer, they shall either:

11.6.1 enter into an arrangement with the Insurer to assign them to, or transfer or secure them in trust for, the person or persons entitled to benefit under them, or

11.6.2 assign them to another pension scheme as appropriate.

## **Part 2 — Membership and Benefits**

## **12 Medical evidence and other relevant information**

- 12.1 The Retirement Scheme Administrator may at any time request any Beneficiary to supply such evidence of age, good health, marital status and other evidence and information as it may reasonably require, and may withhold payment of all or part of any benefits until the evidence or information is received and accepted by the Retirement Scheme Administrator as correct and sufficient.
- 12.2 Any Beneficiary shall without delay notify the Retirement Scheme Administrator of any event or fact which affects or may affect his eligibility to participate in the Scheme or his entitlement or prospective entitlement under it.

## **13 Admission to Membership**

- 13.1 Subject to the satisfactory completion of due diligence procedures, the Retirement Scheme Administrator may admit as a Member any individual, irrespective of the individual's residence.
- 13.2 Admission to Membership shall be subject to such requirements and on such terms, whether generally or in any particular case, as the Retirement Scheme Administrator may in his absolute discretion determine and shall include, but not be limited to, transfers from United Kingdom Registered Pension Schemes, Retirement Benefit Schemes registered in Malta or transfers made by residents of Malta.
- 13.3 Every Member shall be notified in writing, by the Retirement Scheme Administrator, upon his/her acceptance to Membership, and provided with a copy of the scheme document and scheme particulars. The Retirement Scheme Administrator shall keep a copy of such notification for the purpose of ensuring its compliance with this Rule. Moreover, this notification shall include, as a minimum:
- 13.3.1 the date of the acceptance;
- 13.3.2 information of the Member's right to opt out of the Scheme within thirty (30) calendar days from the date of acceptance in terms of Rule 13.4 below, and a cancellation notice, on a durable medium and including information on the conditions for exercising such right of cancellation, the consequences of not exercising the cancellation within the respective period and the practical instructions for exercising the cancellation period, indicating the address to which the notification of cancellation or withdrawal is to be sent;
- 13.3.3 the contact details of the Retirement Scheme Administrator;
- 13.3.4 full disclosure of all costs, commissions and fees whether investment or transaction costs (including one-off and recurring costs) which a Member is, or will be expected to bear in relation to his/her Member Account. For the better execution of this obligation, the Retirement Scheme Administrator shall ensure that it receives from an investment advisor appointed by the Member, a fee disclosure sheet, signed by the Member, which details all costs, commissions or fees payable to the investment advisor and investment company. In the event of any changes in the costs, commissions or fees of an investment advisor or investment company, the Retirement

Scheme Administrator shall ensure that notification is sent to the Member;

13.3.5 details of the Contributions or transfers-in received or to be received in the respective Member Account;

13.3.6 in the case of investment by the Scheme in a Retirement Fund, copy of the offering document (prospectus) for each underlying fund; and

13.3.7 the statement of investment policy which is included in the scheme particulars.

13.4 Upon admission to Membership, the Member shall have a period of thirty (30) calendar days within which such may, by written notice, cancel his application to join the Scheme, without incurring any penalty and without having to give any reasons.

13.5 Members may request that transfers of other benefits may be made to the Scheme. These may be from United Kingdom Registered Pension Schemes, Retirement Benefit Schemes registered in Malta or other pension schemes, and may be by means of cash or asset transfer. In-specie transfers will be valued at market value at the date of transfer using appropriate valuation methods applicable to the particular type of asset, having regard to generally accepted accounting principles acceptable in Malta, as the Retirement Scheme Administrator may deem appropriate.

## **14 Contributions**

14.1 Contributions, in cash can be made by Members who are resident in any country and are made solely at the discretion of the contributor.

## **15 Benefit for Member**

15.1 The benefits shall be paid out in the form of lump sums and income payments as requested by the Member.

15.2 The payments will be calculated by the Trustee in accordance with rules issued from time to time by the MFSA.

15.3 Benefits shall commence to be payable to a Member upon the Member reaching retirement age (being not earlier than fifty five (55) years but not later than seventy five (75) years of age (or such later date as permitted by the Act), unless payment is made by reason of the permanent invalidity of the Member

15.4 Benefits shall be provided out of the Member's Member Account applied in such ways as the Trustee in its absolute discretion may determine but may have regard to any Member's letters of wishes.

## **16 Benefit following Death**

16.1 On the death of a Member the Trustee shall apply the Member's Member Account

in favour of such of the Member's Beneficiaries and in accordance to such proportion as the Trustee in its absolute discretion may determine;

Provided that if no person exists for whom Benefits can be provided in accordance with this Rule 16.1, the Member Account shall be allocated to the General Fund.

## **17 Payment of benefits**

- 17.1 Any Benefit shall be paid by bank transfer or otherwise as may be agreed with the recipient.
- 17.2 If the Trustee has taken out an insurance policy with an Insurer to meet any obligations to pay benefits then those benefits shall be payable only if and to the extent that the Trustee is able to recover payment under the terms of the insurance policy.
- 17.3 If and for so long as a person entitled to a Benefit from an Member Account is a minor, or in the opinion of the Trustee unable to act by reason of mental disorder or otherwise, the Trustee may pay or direct the payment of the Benefit to any one or more of his parents, guardians, tutor, spouse or other person legally appointed or authorised to receive it on his behalf to be applied for his benefit.
- 17.4 Any payment made under Rule 16.3 shall operate as a complete discharge to the Trustee and it shall not be under any liability to enquire into its application.

## **18 Application of the General Fund**

- 18.1 The Retirement Scheme Administrator may at any time recover out of the General Fund any amounts described in Rule 8.6 to the extent the same are not recoverable from the relevant Member Accounts and may set aside so much of the remaining General Fund as it in its absolute discretion considers may be required to meet any such amounts in the future.
- 18.2 The Retirement Scheme Administrator may at any time apply any General Fund not applied or set aside under Rule 18.1 in such ways as it in its absolute discretion may determine:

## **19 Nominations and Notices**

- 19.1 Any nomination under the Rules shall be made by notice to the Retirement Scheme Administrator.
- 19.2 Notices to the Trustee shall be given in writing and shall not be effective until actually received. Any trustee may waive all or part of these requirements in relation to any notice to be given to him.

## **20 Taxation and Overpayments**

- 20.1 The Retirement Scheme Administrator shall be responsible for the discharge of functions conferred or imposed on him by or under the ITA and the ITMA.
- 20.2 The Retirement Scheme Administrator may in its absolute discretion and provided the conditions of the ITA are satisfied, elect to register the Scheme under the ITA.
- 20.3 Without prejudice to any other provision of the Rules, the Retirement Scheme Administrator shall be entitled to deduct from any payment made to any person or body (including any allocation or reallocation within the Scheme of any amount for the benefit of any person or any other act which may be deemed to be a payment) a sum equal to any charge to Taxes to which any of the Trustee are, or may become, liable as a result of the payment and shall remit the amount to the appropriate revenue authority.

## **21 Forfeiture, etc**

- 21.1 The Trustee may in its absolute discretion determine that any Benefit of a Beneficiary payable from an Member Account shall, even if it would otherwise belong absolutely to the Beneficiary, be forfeited if:
  - 21.1.1 the prescriptive period allowed by law for the Beneficiary to claim it has expired; or
  - 21.1.2 the Beneficiary attempts to assign or surrender it or it becomes the subject of a transaction or purported transaction which under the Rules or by operation of law is of no effect.
- 21.2 In a case to which Rule 21.1.1 applies, the part of the Member Account representing the amount forfeited shall become part of the General Fund.
- 21.3 In a case to which Rule 21.1.2 applies, any part of the Member Account representing the amount forfeited may be applied to provide such one or more other benefits to or in respect of the Beneficiary as are permitted by the Rules and as the Trustee in its absolute discretion may determine, and any remainder shall become part of the General Fund.

## **22 Registration under the Act**

- 22.1 Unless otherwise prescribed under the Act, there exists no statutory provision for compensation where the Scheme is unable to satisfy the liabilities attributed to it. The registration of the Scheme is not an endorsement by the MFSA of the Scheme's financial performance.
- 22.2 In the event of any inconsistency between the Rules and the Act, the Act shall prevail and the Rules shall be deemed to be amended to the extent necessary to conform to the Act.

## **23 Data Protection**

- 23.1 Personal Data supplied by the Member and/or Beneficiary in accordance with the [*insert name of contract / agreement*], whether orally or in writing, shall be processed by the Scheme in accordance with the Data Protection Legislation. The Scheme is considered to be a Data Controller of Personal Data, that is, a body which collects, processes and determines the purposes and means of the processing of Personal Data. The Scheme has appointed a number of functionaries to carry out various functions on its behalf (including but not limited to the Retirement Scheme Administrator) and such functionaries shall be considered to be the Scheme's Data Processors for the purpose of applicable Data Protection Legislation.
- 23.2 As part of the application procedure, Personal Data relating to all prospective Members, Beneficiaries and other natural persons (also referred to as "Data Subjects"), are required in the submission of various documents and information. The Scheme requires this information, amongst others, to perform its services, manage its relationship with the Members and/or Beneficiaries and generally to comply with any requests of the Members and/or Beneficiaries which the Scheme wishes to entertain and all applicable legislation and regulatory requirements. Information collected may include Personal Data, including special categories of Personal Data defined under the relevant privacy laws as information revealing racial or ethnic origin, religious or philosophical beliefs and data relating to the health of a natural person, amongst others. Such Personal Data and/or special categories of Personal Data that is supplied by the Members or Beneficiaries and/or collected by the Retirement Scheme Administrator shall be limited to what is necessary for the administration of the Scheme and the Benefits resulting therefrom.
- 23.3 The Scheme and its appointed functionaries shall ensure that information held on the computer systems and in paper filing systems is secure to safeguard against unauthorised or unlawful processing or accidental loss, destruction of, or damage to Personal Data.
- 23.4 The Member and Beneficiary have the right to exercise the rights emanating from the GDPR including the right to request access to, and rectification of, his personal data held by the Scheme and its functionaries by directing the signed written request to the Scheme and/or the Retirement Scheme Administrator. The Member or Beneficiary should immediately inform the Scheme and the Retirement Scheme Administrator about any changes made to the Personal Data and/or special categories of Personal Data to enable the Scheme to update the records accordingly.
- 23.5 Personal data and/ or special categories of Personal Data shall be kept according to the Data Retention Policy of the Scheme.
- 23.6 For further information on the Scheme's processing activities, please refer to the Privacy Notice provided to you by the Scheme.
- 23.7 You hereby acknowledge to have been informed of and provided with a copy of the Data Protection Notice on the processing of Personal Data.

## **24 Governing law and Jurisdiction**

- 24.1 The trust deed, Rules and the trust, powers and provisions set forth in the trust deed and Rules shall be governed and construed and shall take effect in accordance with the laws of Malta from time to time.
- 24.2 The Trustee, Retirement Scheme Administrator, Members, Beneficiaries and all persons claiming under them shall accept and submit to the courts of Malta and all courts having appellate jurisdiction therefrom.