

**ABBOZZ TA' LIĠI**  
**msejjah**

*ATT biex jirregola Skemi tal-Irtirar, Fondi għall-irtirar u Provdituri tas-Servizzi li għandhom x'jaqsmu ma' dan kollu.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħareġ b'liġi dan li ġej:-

**TAQSIMA I**

**Preliminari**

**1.** It-titolu fil-qosor ta' dan l-Att hu Att tal-2010 dwar Pensjonijiet tal-Irtirar. Titolu fil-qosor u bidu fis-seħh.

(2) Id-disposizzjonijiet ta' dan l-Att għandhom jidhlu fis-seħh f'dik id-data li l-Ministru tal-Finanzi jista' b'avviż fil-Gazzetta jistabbilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

**2.** (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ xort'oħra - Tifsir.

"Amministratur ta' Skema tal-Irtirar" tfisser persuna li jkollha liċenza biex tipprovi s-servizzi ta' amministrazzjoni tal-iskema tal-irtirar msemmija fl-Iskeda;

"l-Atti dwar it-Taxxi" tfisser kollettivament l-Att dwar it-Taxxa fuq l-*Income* u Att dwar l-Amministrazzjoni tat-Taxxa; Kap. 123.  
Kap. 372.

Kap. 330. "awtorità kompetenti" tfisser l-Awtorità għas-Servizzi Finanzjarji ta' Malta, mwaqqfa bl-artikolu 3 tal-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta, u dak il-korp għandu jaġixxi bhala l-awtorità kompetenti għall-finijiet ta' dan l-Att kif ukoll għall-finijiet rilevanti tad-Direttiva dwar Pensjonijiet Okkupazzjonali;

Kap. 330. "awtorità regolatorja barranija" tfisser awtorità f'pajjiż jew territorju barra minn Malta li jeżerċita xi funzjoni regolatorja jew superviżorja f'dak li għandu x'jaqsam ma' servizzi finanzjarji li tikkorrispondi ma' xi funzjoni tal-awtorità kompetenti kif imfissra fl-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta;

"azzjonijiet kwalifikanti" tfisser *holding* dirett jew indirett f'korp magħqud li jirrappreżenta għaxra fil-mija jew aktar tal-kapital azzjonarju maħruġ minn dak il-korp, jew tal-jeddijiet ta' votazzjoni konnessi ma' dak il-kapital azzjonarju jew li bih ikun possibbli li teżerċita influenza sinifikanti fuq it-tmexxija tal-korp magħqud;

"benefiċċju tal-irtirar" tfisser benefiċċji mhallsa b'riferenza għal meta persuna tirtira, jew tistenna li tasal biex tirtira jew, meta l-benefiċċji jkunu supplementari għal dawk il-benefiċċji u jiġu provduti fuq bażi anċillari, fl-għamla ta' hłasijiet meta tiġri xi mewt, diżabilità, jew terminazzjoni ta' impjeg jew fl-għamla ta' hłasijiet jew servizzi ta' sostenn fil-każ ta' mard, indigenza jew mewt;

"benefiċjarju" tfisser individwu li jkun qed jirċievi benefiċċji tal-irtirar kif hemm fid-dispożizzjonijiet ta' xi dokument ta' skema;

"detentur ta' liċenza" tfisser persuna jew korp magħqud jew korp mhux magħqud li jkollu liċenza taht dan l-Att;

"Direttiva dwar il-Pensjonijiet Okkupazzjonali" tfisser id-Direttiva 2003/41/KE tal-Parlament Ewropew u tal-Kunsill tat-3 ta' Ġunju, 2003 dwar l-attivitajiet u s-superviżjoni ta' istituzzjonijiet għall-provvista ta' irtirar okkupazzjonali kif tista' tiġi emendata minn żmien għal żmien u tinkludi kull miżura li timplimenta u li tista' tinhareġ tahtha;

"Direttiva dwar is-Solvibbiltà II" tfisser id-Direttiva 2009/138/KE tal-Parlament Ewropew u tal-Kunsill tal-25 ta' Novembru, 2009 dwar il-bidu u l-eżerċizzju tan-negozju tal-assigurazzjoni u tar-riassigurazzjoni (Solvibbiltà II), kif tista' tiġi emendata minn żmien għal żmien, u tinkludi kull miżura li timplimenta li tista' tinhareġ tahtha;

"direttiva" tfisser direttiva maħruġa taht l-artikolu 41;

"dokument" jew "dokumentazzjoni" tinkludi informazzjoni li

tkun reġistrata b'kull mod li jkun u, f'dak li għandu x'jaqsam ma' informazzjoni reġistrata b'mod differenti minn għamla li tista' tingara, kull riferenza għall-għemil tagħha tinkludi riferenza għall-produzzjoni ta' kopja ta' dik l-informazzjoni f'għamla li tista' tingara;

"dokument ta' skema" tfisser l-istrument miktub li jagħti xhieda dwar, jew jistabbilixxi, skema tal-irtirar u li jstipula l-benefiċċji tal-irtirar u l-kundizzjonijiet li dawn jinghataw taħthom;

"fond għall-irtirar" tfisser arrangament stabbilit bl-għan ewlieni ta' *holding* u li tinvesti l-kontribuzzjonijiet li jsiru f'xi skema waħda jew aktar skemi tal-irtirar u, jew f'xi skema waħda jew aktar skemi tal-irtirar barranin;

"l-impenni internazzjonali ta' Malta" tfisser l-impenni, ir-responsabbiltajiet u l-obbligi ta' Malta li jitnisslu minn shubija fi, jew affiljazzjoni jew relazzjoni ma', xi organizzazzjoni internazzjonali, mondjali jew reġjonali jew raggruppament ta' pajjiżi jew kif hemm f'xi trattat, ftehim jew qbil internazzjonali ieħor, b'kull mod li dan jista' jissejjaħ, sew bilaterali sew multilaterali, li Malta tkun parti fih;

"investitur" tfisser l-iskema tal-irtirar u, jew skema tal-irtirar barranija li tinvesti f'fond għall-irtirar;

"kontributor" tfisser -

(a) l-individwu li jikkontribwixxi unikament jew parzjalment fl-iskema tal-irtirar; u, jew

(b) il-prinċipal li jikkontribwixxi unikament jew parzjalment fl-iskema tal-irtirar,

għall-benefiċċju ta' membri tal-iskema tal-irtirar;

"liċenza" tfisser liċenza għal skema tal-irtirar jew liċenza għal fond għall-irtirar jew liċenza ta' provditur ta' servizz li jkun qiegħed jipprovdi xi wieħed jew aktar mis-servizzi elenkati fl-Iskeda, u "għoti ta' liċenza" u "li jkollu liċenza" għandhom jinftiehemu b'dan il-mod;

"membru" tfisser persuna li jkollha jedd jew li jista' jkollha jedd tibbenefika mill-irtirar kif hemm fid-dispożizzjonijiet ta' xi dokument ta' skema;

"il-Ministru" tfisser il-Ministru responsabbli għall-finanzi;

"persuna rikonoxxuta" tfisser detentur ta' rikonoxximent taħt dan l-Att;

"preskritt" tfisser preskritt b'regolamenti magħmulin taht dan l-Att kif hemm fl-artikolu 37;

"provvidur ta' servizz" tfisser kull persuna li jkollha liċenza taht dan l-Att biex tippovdi xi wiehed jew aktar mis-servizzi elenkati fl-Iskeda u, jew li tkun rikonoxxuta biex tippovdi xi wiehed jew aktar mill-attivitajiet amministrattivi sekondarji stabbiliti bir-Regoli tal-Pensjonijiet;

"Regola tal-Pensjoni" tfisser regola maħruġa mill-awtorità kompetenti kif hemm fl-artikolu 38(2);

"reklam" tfisser kull għamla jew mezz ta' reklamar jew attività ta' promozzjoni, li ma jkunx xi dokument ta' skema, dettalji ta' skemi jew dettalji ta' fond għall-irtirar u, mingħajr preġudizzju għall-generalità ta' dak hawn qabel imsemmi, tinkludi reklamar f'pubblikazzjoni, il-wiri ta' avvizi, sinjali, tikketti jew materjal li jintwera waqt il-konferenzi, permezz ta' ittri, ċirkolarijiet, katalogi, listi tal-prezzijiet jew dokumenti oħra, bl-esibizzjoni ta' stampi jew filmati fotografici jew cinematografici, b'xandir bil-hoss, televiziv jew xort'oħra, bid-distribuzzjoni ta' registrazzjonijiet jew b'kull mod ieħor, hekk li jkollhom kontenut li, jew jistieden lil persuni, jew ikun fihom materjal intiż biex iħajjar lil persuni jsiru jew joffru li jsiru membri fi skema tal-irtirar jew investituri f'fond għall-irtirar; u kull riferenza għall-ħruġ ta' reklam għandha tiftiehem b'dan il-mod;

"rikonoxximent" tfisser rikonoxximent taht dan l-Att maħruġ lil persuna li tkun qegħda ttwettaq attivitajiet amministrattivi sekondarji kif stabbilit bir-Regoli tal-Pensjonijiet, f'dak li għandu x'jaqsam ma' skema tal-irtirar u, jew fond għall-irtirar hekk kif japplika, u "li jirrikonoxxi" u "rikonoxxut" għandhom jiftiehem b'dan il-mod;

"servizz" tfisser kull servizz li jinkwadra fl-Iskeda, meta dan jiġi provdut f'dak li għandu x'jaqsam ma' xi strument; u, jew kull attività amministrattiva sekondarja kif stabbilit bir-Regoli tal-Pensjonijiet;

"skeda ta' hlasijiet" għandha tiftiehem kif hemm fl-artikolu 18;

"skema tal-irtirar" tfisser skema jew arrangament kif imfissra fl-artikolu 3;

"skema tal-irtirar barranija" tfisser skema jew arrangament, organizzat taht il-liġijiet ta' pajjiż barra minn Malta bl-għan ewlieni li jipprovdi benefiċċji tal-irtirar;

"skema tal-irtirar b'kontribuzzjoni fissa" tfisser skema tal-irtirar li jkollha l-għan ewlieni li tippovdi għall-ħlas ta' benefiċċji tal-irtirar

li jkunu stabbiliti b' riferenza għall-kontribuzzjonijiet li jithallsu f' dik l-iskema tal-irtirar, l-akkumulazzjoni ta' profitti, qligħ u dħul ieħor, wara t-tnaqqis ta' spejjeż u telf f' dak ir-rigward;

"skema tal-irtirar personali" tfisser skema tal-irtirar li ma tkunx skema tal-irtirar okkupazzjonali u għal liema skema isiru kontribuzzjonijiet għall-benefiċċju ta' individwu;

"skema tal-irtirar li tħallas benefiċċju fiss" tfisser skema tal-irtirar, li ma tkunx skema tal-irtirar b' kontribuzzjoni fissa, li jkollha l-għan ewlieni li tipprovdi għall-ħlas ta' benefiċċji tal-irtirar fiss jew li jista' jiġi stabbilit;

"skema tal-irtirar okkupazzjonali" tfisser skema tal-irtirar stabbilita għal, jew minn, prinċipal jew għadd ta' prinċipali jew minn assoċjazzjoni li tkun tirrappreżenta lill-prinċipali, solidament jew separatament, għall-benefiċċju tal-impjegati;

"Stat Membru" tfisser Stat Membru tal-Komunitajiet Ewropej;

"Stat ŻEE" tfisser Stat li jkun parti kontraenti fil-ftehim dwar iż-Żona Ekonomika Ewropea ffirmit f'Oporto fit-2 ta' Mejju, 1992 kif emendat bil-Protokoll iffirmit fi Brussell fis-17 ta' Marzu, 1993 u kif emendat b'kull att sussegwenti;

"strument" għandu jkollha l-istess tifsira mogħtija fl-Att dwar Kap. 370. Servizzi ta' Investiment;

"sussidjarja" għandha l-istess tifsira bħal dik mogħtija lill-frażi "impriza sussidjarja" taħt l-artikolu 2 tal-Att dwar il-Kumpanniji Kap. 386.

"taxxa" tfisser it-taxxa imposta bl-Atti dwar it-Taxxi.

(2) F'dan l-Att u fl-Iskeda u f'kull regolament magħmul jew fir-Regoli tal-Pensjonijiet mahruġin taħtu, jekk ikun hemm xi kunflitt bejn it-test Ingliż u dak Malti, jipprevali t-test Ingliż.

(3) Regolamenti magħmulin taħt dan l-Att u kull emenda jew revoka ta' dawk ir-regolamenti, jistgħu jiġu pubblikati bl-ilsien Ingliż biss.

(4) L-għan ta' dan l-Att hu, f'parti minnu, li jimplementa id-dispożizzjonijiet tad-Direttiva dwar il-Pensjonijiet Okkupazzjonali u miżuri relattivi tal-Unjoni Ewropea, u dan għandu jiġi hekk interpretat u applikat.

## TAQSIMA II

### Ghoti ta' Liċenza u Htiġiet ta' Rikonoxximent

#### Ghoti ta' Liċenza għal Skemi tal-irtirar

Tifsira ta' skema tal-irtirar.

**3.** (1) Skema tal-irtirar tfisser skema jew arrangament bl-għan ewlieni li dan ikun qiegħed jipprovdi benefiċċji tal-irtirar.

(2) Skema jew arrangament m'għandhomx jikkostitwixxu skema tal-irtirar taħt dan l-Att jekk dawn ikunu jipprovdu:

(a) għall-ħlas ta' benefiċċju tal-irtirar lil hames membri jew inqas; jew

(b) biex jibda jsir il-ħlas ta' benefiċċji tal-irtirar lil membru f'data li tkun aktar kmieni minn dik meta dak il-membri jkun kiseb l-età ta' hamsin sena, jew mhux aktar tard minn dik speċifikata fir-Regoli tal-Pensjonijiet, ħlief f'dawk il-każijiet meta l-iskema jew l-arrangament ikunu jipprovdu li:

(i) il-ħlas isir minħabba fid-dizabilità jew mewt ta' xi membru; jew

(ii) il-ħlas, fil-każ ta' skema tal-irtirar okkupazzjonali, isir lill-membri mingħajr il-htiġa tal-kunsens ta' dak il-membri konformement ma' kull Regola tal-Pensjonijiet fil-każ li l-membri ma jkunx għadu impjegat mill-principali.

(3) Skema tal-irtirar tista' tkun skema tal-irtirar okkupazzjonali jew skema tal-irtirar personali.

Htiġa ta' liċenza għal skemi tal-irtirar.

**4.** (1) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (6), ebda skema tal-irtirar m'għandha twettaq ebda attività għall-provdiment ta' benefiċċji tal-irtirar f'Malta jew minn ġewwa Malta, kemm-il darba dik l-iskema tal-irtirar ma tkunx tinsab f'Malta u debitament ikollha liċenza taħt dan l-Att.

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (6), ebda skema tal-irtirar magħmula kif hemm fi jew li teżisti taħt il-liġijiet ta' Malta m'għandha twettaq ebda attività għall-provdiment ta' benefiċċji tal-irtirar fi jew minn ġewwa xi pajjiż, territorju jew lok ieħor barra minn Malta kemm-il darba ma jkollhiex liċenza taħt dan l-Att.

(3) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (6), ebda persuna m'għandha taċċetta flus jew xi korrispettiv ieħor minn

kontributor dwar l-iskema tal-irtirar jekk din tkun qegħda twettaq xi attività għall-provdiment ta' benefiċċji tal-irtirar f'Malta jew minn ġewwa Malta kemm-il darba dik l-iskema tal-irtirar ma tkunx tinsab f'Malta u debitament ikollha liċenza taħt dan l-Att.

(4) L-awtorità kompetenti tista', b'avviż bil-miktub mogħti lil persuna, tistabbilixxi li għall-finijiet ta' dan l-Att, skema jew arrangament ieħor ikunu skema tal-irtirar -

(a) li jinsabu f'Malta, jew

(b) li jkunu qegħdin iwettqu xi attività f'Malta jew minn ġewwa Malta,

u bla ħsara għal kull appell taħt l-artikolu 44, dwar dik il-persuna, dak li tistabbilixxi l-awtorità kompetenti jkun konklużiv għall-finijiet kollha ta' dan l-Att.

(5) Għall-finijiet tas-subartikolu (4), "li jkunu qegħdin iwettqu xi attività f'Malta jew minn ġewwa Malta" tinkludi imma mhix limitata għal, tqegħid fis-suq, reklamar jew xort'oħra li tagħmel promozzjoni, kif jista' jiġi aktar stipulat f'Regoli tal-Pensjonijiet.

(6) Ebda skema tal-irtirar m'għandha tkun prekluzja, bid-dispożizzjonijiet tas-subartikoli (1) sa (3), milli tiegħu daww il-passi li jistgħu jkunu meħtieġa għall-inkorporazzjoni jew, kif jista' jkun il-każ, it-twaqqif tal-iskema tal-irtirar jew milli tiegħu daww il-passi li jistgħu jkunu meħtieġa biex jiġi assikurat l-għoti ta' liċenza tal-iskema tal-irtirar mill-awtorità kompetenti.

(7) Skema tal-irtirar li jkollha liċenza taħt dan l-Att ma tkun soġġetta għal ebda għoti ta' liċenza meħtieġa taħt l-Att dwar Servizzi ta' Investiment. Kap. 370.

#### Għoti ta' Liċenza għal Fondi għall-Irtirar

5. (1) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (5), ebda fond għall-irtirar m'għandu jwettaq ebda attività f'Malta jew minn ġewwa Malta f'dak li għandu x'jaqsam ma' skema tal-irtirar jew ma' skema tal-irtirar barranija kemm-il darba dak il-fond għall-irtirar ma jkunx jinsab f'Malta u ma jkollux debitament liċenza taħt dan l-Att.

Htieġa ta' liċenza għal fondi għall-irtirar.

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (5), ebda fond għall-irtirar magħmul kif hemm fil-liġijiet ta' Malta jew li jeżisti taħthom m'għandu jwettaq ebda attività f'dak li għandu x'jaqsam ma' skema tal-irtirar u, jew skema tal-irtirar barranija, f'xi jew minn ġewwa xi pajjiż, territorju jew lok ieħor barra minn Malta, kemm-il

darba dan ma jkollux liċenza taħt dan l-Att.

(3) L-awtorità kompetenti tista' b'avviż bil-miktub mogħti lil persuna tistabbilixxi li għall-finijiet ta' dan l-Att, fond ikun fond għall-irtirar:

(a) li jkun jinsab f'Malta, jew

(b) li jkun qiegħed iwettaq xi attività f'Malta jew minn ġewwa Malta,

u bla ħsara għal xi appell taħt l-artikolu 44, dwar dik il-persuna, dak li tistabbilixxi l-awtorità kompetenti għandu jkun konkluziv għall-finijiet kollha ta' dan l-Att.

(4) Għall-finijiet tas-subartikolu (3), "li jkun qiegħed iwettaq xi attività f'Malta jew minn ġewwa Malta" tinkludi imma mhix limitata għal, tqegħid fis-suq, reklamar jew xort'oħra li tagħmel promozzjoni, kif jista' jiġi aktar stipulat f'Regoli tal-Pensjonijiet.

(5) Ebda fond għall-irtirar m'għandu jkun prekluz mid-dispożizzjonijiet tas-subartikoli (1) u (2) milli jieħu dawk il-passi li jistgħu jkunu meħtieġa għall-inkorporazzjoni jew, kif jista' jkun il-każ, it-twaqqif tal-fond għall-irtirar jew milli jieħu dawk il-passi li jistgħu jkunu meħtieġa biex jiġi assikurat l-għoti ta' liċenza tal-fond għall-irtirar mill-awtorità kompetenti.

Kap. 370.

(6) Fond għall-irtirar li jkollu liċenza taħt dan l-Att ma jkun soġġett għal ebda ħtieġa ta' għoti ta' liċenza taħt l-Att dwar Servizzi ta' Investiment.

#### Għoti ta' Liċenza għal Provdituri tas-servizzi

Htieġa ta' liċenza għal persuni li jkunu qiegħdin jipprovdu servizzi elenkati fl-Iskeda.

**6.** (1) Ebda persuna m'għandha tipprovdi jew tagħmilha li tkun qegħda tipprovdi xi wieħed jew aktar mis-servizzi elenkati fl-Iskeda f'Malta jew minn ġewwa Malta lil skema tal-irtirar jew fond għall-irtirar jew lil xi arrangament simili jew ekwivalenti stabbilit barra minn Malta, kemm-il darba ma jkollhiex liċenza taħt dan l-Att.

(2) Ebda korp magħqud, korp mhux magħqud jew assoċjazzjoni magħmula kif hemm fil-liġijiet ta' Malta jew li teżisti taħthom, m'għandhom jipprovdu jew jagħmluha li jkunu qiegħdin jipprovdu servizz f'pajjiż jew minn ġewwa pajjiż, territorju jew lok ieħor barra minn Malta kemm-il darba dawn ma jkollhomx liċenza taħt dan l-Att.

(3) L-awtorità kompetenti tista', b'avviż bil-miktub mogħti lil xi persuna, tistabbilixxi li servizz ikun jinkwadra fl-Iskeda meta dan



ikun provdut f'dak li għandu x'jaqsam ma' xi strument u bla ħsara għal kull appell taħt l-artikolu 44, dwar dik il-persuna, dak li tistabbilixxi l-awtorità kompetenti għandu jkun konkluziv għall-finijiet kollha ta' dan l-Att.

#### Rikonoxximent ta' Provdituri ta' Servizz

7. Kull persuna li, f'Malta jew minn ġewwa Malta, tipprovi lil detenturi ta' liċenza, jew lil persuni simili jew ekwivalenti barra minn Malta, xi wieħed jew aktar mill-attivitajiet amministrattivi sekondarji kif stabbiliti bir-Regoli tal-Pensjonijiet li minnhom infishom ma jikkostitwux attività liċenzjabbli taħt dan l-Att, tenħtieġ li tapplika għal rikonoxximent mill-awtorità kompetenti taħt dan l-artikolu, u ebda persuna m'għandha tipprovi dawk l-attivitajiet kemm-il darba ma tkunx hekk rikonoxxuta.

Htieġa ta' rikonoxximent ta' persuni li jwettqu attivitajiet amministrattivi sekondarji.

### TAQSIMA III

#### Applikazzjoni, Għoti, Thassir u Sospensjoni ta' Liċenzi u Rikonoxximenti

8. Applikazzjoni għal liċenza jew rikonoxximent, kif jista' jkun il-każ, għandha ssir fl-għamla u bil-mod meħtieġ mill-awtorità kompetenti u -

Applikazzjoni għal liċenza u, jew rikonoxximent.

(a) għandu jkun fiha jew ikollha magħha dik l-informazzjoni u dawk id-dettalji li l-awtorità kompetenti tista' teħtieġ jew kif jista' jkun preskritt;

(b) għandha tkun verifikata bil-mod u daqstant daqskemm ikun meħtieġ mill-awtorità kompetenti, jew hekk kif jista' jiġi preskritt.

9. (1) L-awtorità kompetenti tista' tagħti, jew tiċhad milli tagħti liċenza jew rikonoxximent, kif jista' jkun il-każ, li ssir applikazzjoni għalihom taħt dan l-Att.

Setgħa tal-awtorità kompetenti li tiċhad jew tagħti liċenza jew rikonoxximent.

(2) L-awtorità kompetenti m'għandhiex tagħti liċenza jew rikonoxximent, kif jista' jkun il-każ, li tkun saret applikazzjoni għalihom taħt dan l-Att, kemm-il darba ma tkunx sodisfatta li -

(a) fl-każ ta' skema tal-irtirar:

(i) din tkun magħmula u strutturata konformement mar-Regoli tal-Pensjonijiet, hekk kif dawn japplikaw;

(ii) l-iskema tal-irtirar u, jew l-Amministratur ta'

Skema tal-Irtirar, kif jista' jkun il-każ, ikun ser jikkonforma ruħu u josserva d-dispożizzjonijiet ta' dan l-Att u ta' kull regolamenti jew Regola tal-Pensjonijiet magħmulin taħtu;

(iii) l-iskema tal-irtirar u l-Amministratur ta' Skema tal-Irtirar huma persuni adatti u idoneji biex iwettqu l-funzjonijiet meħtieġa minnhom f'dak li għandu x'jaqsam mal-iskema tal-irtirar;

(iv) ikun hemm xi dokument ta' skema li jkun fih pattijiet u kundizzjonijiet konformi ma' kull Regola tal-Pensjonijiet;

(v) l-isem tal-iskema tal-irtirar ikun wieħed li, fil-fehma tal-Awtorità, ma jkunx iqarraq;

(vi) ebda aspett tal-applikazzjoni jew li jkollu x'jaqsam magħha, ma jqajjem xi thassib regolatorju;

(b) fil-każ ta' fond għall-irtirar:

(i) dan ikun magħmul u strutturat konformement mar-Regoli tal-Pensjonijiet, hekk kif japplika;

(ii) il-fond għall-irtirar u kull persuna, tissejjah kif tissejjah, responsabbli għall-operazzjoni, amministrazzjoni u manigġar tal-fond għall-irtirar, għandhom ikunu jikkonformaw ma' u josservaw id-dispożizzjonijiet ta' dan l-Att u xi regolament jew Regola tal-Pensjonijiet magħmulin taħtu;

(iii) il-fond għall-irtirar u kull persuna responsabbli għall-operazzjoni, amministrazzjoni u manigġar tal-fond għall-irtirar, ikun persuna adatta u idoneja biex twettaq il-funzjonijiet meħtieġa minnha f'dak li għandu x'jaqsam mal-fond għall-irtirar;

(iv) ikollu dokument ta' twaqqif li jkun fih pattijiet u kundizzjonijiet konformement mar-Regoli tal-Pensjonijiet;

(v) l-isem tal-fond għall-irtirar ikun wieħed li, fil-fehma tal-awtorità kompetenti, ma jkunx iqarraq;

(vi) kull aspett tal-applikazzjoni jew li jkollu x'jaqsam magħha ma jkun iqajjem ebda thassib regolatorju;

(è) fil-każ ta' provditur ta' servizz:

(i) l-applikant ikun persuna adatta u idoneja biex tipprovdi s-servizzi involuti, u

(ii) l-applikant ikun jikkonforma ma' u josserva d-dispożizzjonijiet ta' dan l-Att u xi regolament jew Regola tal-Pensjonijiet magħmulin tahtu;

(iii) kull aspett ta' jew li jkollu x'jaqsam mal-applikazzjoni ma jkun iqajjem ebda tħassib regolatorju.

(3) Mingħajr preġudizzju għall-artikolu 38, liċenza jew rikonoxximent maħruġin mill-awtorità kompetenti jkunu soġġetti għar-Regoli tal-Pensjonijiet li jkunu japplikaw u għal dawk il-kundizzjonijiet li l-awtorità kompetenti tista' minn żmien għal żmien tqis li jkunu adatti.

(4) Meta tkun qegħda tqis jekk għandhiex tagħti jew tiċhad milli tagħti liċenza u, jew rikonoxximent kif jista' jkun il-każ, l-awtorità kompetenti għandha, partikolarment, tikkunsidra:

(a) il-protezzjoni ta' benefiċjarji, membri, u investituri;

(b) il-promozzjoni tal-kompetizzjoni u l-għażla; u

(è) ir-reputazzjoni u adattabilità tal-applikant u fil-każ tal-iskema tal-irtirar u, jew fond għall-irtirar, il-persuni responsabbli għal dan, u l-partijiet l-oħra kollha konnessi mal-iskema tal-irtirar u, jew il-fond għall-irtirar kif jista' jkun il-każ.

(5) Kull liċenza għandha tispeċifika, kif jista' jkun il-każ:

(a) ix-xorta tal-iskema tal-irtirar li l-liċenza jkollha x'taqsam magħha;

(b) kull servizz li persuna tkun ingħatat liċenza biex tipprovdi.

(6) Kull rikonoxximent għandu jispeċifika, kif jista' jkun il-każ, l-attivitajiet li l-persuna tkun ġiet rikonoxxuta biex tipprovdi.

(7) Mingħajr preġudizzju għall-ġeneralità tas-subartikolu (3), ir-Regoli li l-awtorità kompetenti tassogġetta liċenza u, jew rikonoxximent għalihom jistgħu jintgħamli japplikaw għal -

(a) kull liċenza u, jew rikonoxximent li jingħataw;

(b) ċertu kategoriji ta' liċenzi;

(ċ) il-liċenzi kollha mogħtijin lil ċerti kategoriji ta' detenturi;

(d) il-liċenzi kollha f'dak li għandu x'jaqsam ma' servizzi jew skemi tal-irtirar jew fondi għall-irtirar partikolari, kif jista' jkun il-każ.

(8) Fi żmien sitt xhur mid-data meta tiġi pprezentata formola ta' applikazzjoni mimlija kif dovut flimkien mad-dokumentazzjoni meħtieġa, l-awtorità kompetenti għandha tgħarraf bil-miktub lil applikant bid-deċiżjoni tagħha jekk hija tkunx ser tagħti liċenza jew rikonossiment jew le; u fil-każ ta' rifjut l-awtorità għandha tgħarraf lill-applikant bir-raġunijiet tagħha għal dak ir-rifjut.

(9) Kull htieġa f'dan l-Att li persuna tkun persuna adatta u idoneja biex twettaq ċertu attivitajiet jew funzjonijiet għandha tkun interpretata bħala htieġa mhux biss li dik il-persuna tkun persuna adatta u idoneja biex twettaq dawk l-attivitajiet jew funzjonijiet, imma wkoll li kull detentur tal-ishma jew direttur jew uffiċjal ta' dik il-persuna kwalifikanti, jew kull persuna responsabbli għal dawk l-attivitajiet jew funzjonijiet tkun persuna adatta u idoneja biex twettaq dawk l-attivitajiet jew funzjonijiet.

(10) (a) Meta jkunu jeżistu rabtiet mill-qrib bejn applikant u xi persuna oħra l-awtorità kompetenti għandha:

(i) tagħti biss liċenza jekk tqis li dawk ir-rabtiet mill-qrib ma jcaħħduhiex milli effettivament teżerċita l-funzjonijiet superviżorji tagħha; u

(ii) tiċhad milli tagħti liċenza jekk hija tqis li l-ligijiet, regolamenti jew provvedimenti amministrattivi ta' xi pajjiż barra minn Malta li jkunu jirregolaw xi persuna waħda jew aktar persuni li magħhom l-applikant ikollu rabtiet mill-qrib, jew l-infurzar tagħhom, ikunu jipprevjenu l-eżerċizzju effettiv tal-funzjonijiet superviżorji tagħha.

(b) L-awtorità kompetenti tista' minn żmien għal żmien, permezz ta' Regoli tal-Pensjonijiet magħmula taħt dan l-Att, tiddefinixxi ċ-ċirkostanzi li fihom "rabtiet mill-qrib" għandhom jitqiesu bħala li jeżistu bejn xi żewġ persuni jew aktar.

(11) L-awtorità kompetenti għandha tistabbilixxi registru tad-detenturi ta' liċenza u, jew rikonossimenti kollha. Ir-registru, li għandu jkun disponibbli għall-pubbliku, għandu jkun ukoll jindika s-

servizzi u, jew l-attivitajiet li dwarhom inħarġet kull liċenza u, jew rikonoxximent u fil-każ ta' attivitajiet transkonfini mwettqa kif hemm fid-Direttiva dwar il-Pensjonijiet Okkupazzjonali, ir-reġistru għandu jindika wkoll dawk l-Istati Membri jew Stati ŻEE fejn ikun qed jopera d-detentur ta' liċenza rilevanti. Ir-reġistru għandu jiġi aġġornat regolarment.

**10.** (1) Mingħajr preġudizzju għal kull dispożizzjoni oħra ta' dan l-Att u ta' xi regolament jew Regola tal-Pensjonijiet magħmulin tahtu, l-awtorità kompetenti tista' f'kull żmien tħassar jew tissospendi liċenza u, jew rikonoxximent kif hemm fid-dispożizzjonijiet ta' dan l-Att.

Setgħa li għandha awtorità kompetenti li tħassar jew tissospendi liċenza jew rikonoxximent.

(2) Fl-każ ta' skema tal-irtirar, l-awtorità kompetenti tista' tħassar jew tissospendi liċenza:

(a) jekk hija tqis illi l-iskema tal-irtirar jew l-Amministratur ta' Skema tal-Irtirar, kif jista' jkun il-każ, ma jkunx persuna adatta u idoneja biex twettaq il-funzjonijiet meħtieġa tagħha f'dak li għandu x'jaqsam mal-iskema tal-irtirar; jew

(b) jekk hija tqis illi l-iskema tal-irtirar jew Amministratur ta' Skema tal-Irtirar, kif jista' jkun il-każ, ma jkunux jikkonformaw mad-dispożizzjonijiet ta' dan l-Att jew ta' xi regolament jew Regola tal-Pensjonijiet maħruġin tahtu, jew li kien hemm ksur ta' kull dispożizzjoni bħal dik, jew xi obbligu jew kundizzjoni li l-iskema tal-irtirar tkun soġġetta għalihom bis-saħħa ta' jew taht dan l-Att ma jkunux ġew sodisfatti jew mharsa; jew

(ċ) jekk tkun ingħatat informazzjoni lill-awtorità kompetenti minn jew f'isem ta' jew f'dak li għandu x'jaqsam mal-iskema tal-irtirar, liema informazzjoni tkun falza, mhux eżatta jew qarrieqa, jew jekk l-Amministratur ta' Skema tal-Irtirar ikun heba, jew jaħbi mill-awtorità kompetenti, jew jonqos milli javzaha, b'xi dokument jew informazzjoni jew bidla fihom li l-Amministratur ta' Skema tal-Irtirar kellu d-dmir li jizvela jew li javza taht dan l-Att u kull regolament magħmul tahtu jew taht xi Regoli tal-Pensjonijiet; jew

(d) jekk l-iskema tal-irtirar jew l-Amministratur ta' Skema tal-Irtirar, kif jista' jkun il-każ, ma jkunux bdew jipprovdu dawk l-attivitajiet li dwarhom ikollhom liċenza biex iwettquhom fiż-żmien provdut b'dik il-liċenza jew ikunu waqfu milli jwettqu dawk l-attivitajiet; jew

(e) jekk hija tqis li għandha tħassar jew tissospendi l-liċenza għall-protezzjoni ta' beneficijarji, membri, jew investituri; jew

(f) fuq talba tal-iskema tal-irtirar jew Amministratur ta' Skema tal-Irtirar, kif jista' jkun il-każ; jew

(g) f'xi waħda miċ-ċirkostanzi li taħthom l-awtorità kompetenti ma kinitx tithalla toħroġ il-liċenza taħt dan l-Att jew meta taħt dan l-Att kien ikollha jedd tiċhad milli tagħti dik il-liċenza.

(3) Fil-każ ta' fond għall-irtirar, l-awtorità kompetenti tista' tħassar jew tissospendi liċenza:

(a) jekk hija tqis illi l-fond għall-irtirar jew xi persuna, tkun kif tkun imsejha, li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond, kif jista' jkun il-każ, ma tkunx persuna adatta u idoneja biex twettaq il-funzjonijiet meħtieġa tagħha f'dak li għandu x'jaqsam mal-fond għall-irtirar;

(b) jekk hija tqis illi l-fond għall-irtirar li l-liċenza tkun tirreferi għalih u, jew kull persuna, tkun kif tkun imsejha, li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, kif jista' jkun il-każ, ma jkunx jikkonformaw mad-dispożizzjonijiet ta' dan l-Att jew ta' xi regolament jew Regola tal-Pensjonijiet magħmulin tahtu, jew li kien hemm ksur ta' xi dispożizzjonijiet bħal dawk, jew ta' xi obbligu jew kundizzjoni li l-fond għall-irtirar ikun soġġett għalihom bis-saħħa ta' dan l-Att jew tahtu, ma tkunx ġiet sodisfatta jew mharsa; jew

(ċ) jekk tkun ingħatat informazzjoni lill-awtorità kompetenti minn jew f'isem jew f'dak li għandu x'jaqsam mal-fond għall-irtirar li tkun falza, mhux eżatta jew qarrieqa; jew

(d) jekk il-fond għall-irtirar jew xi persuna, tkun kif tkun imsejha, li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, kif jista' jkun il-każ, ma jkunx bdew l-attivitajiet li jkollhom liċenza biex iwettqu fiż-żmien provdut fil-liċenza jew ikunu temmew milli jwettqu dawk l-attivitajiet; jew

(e) jekk hija tqis li għandha tħassar jew tissospendi l-liċenza għall-protezzjoni tal-benefiċjarji, membri jew investituri; jew

(f) fuq talba tal-fond għall-irtirar jew ta' xi persuna responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond kif jista' jkun il-każ; jew

(g) f'xi waħda miċ-ċirkostanzi li taħthom l-awtorità kompetenti ma kinetx tithalla toħroġ il-liċenza taħt dan l-Att jew meta taħt dan l-Att kien ikollha jedd tiċhad milli tagħti dik il-liċenza.

(4) Fil-każ ta' provditur ta' servizz, l-awtorità kompetenti tista' tħassar jew tissospendi liċenza u, jew rikonoxximent kif jista' jkun il-każ:

(a) jekk hija tqis illi l-provditur ta' servizz ma jkunx persuna adatta u idoneja biex tipprovdi xi servizz li dwaru jkollu liċenza u, jew li jkun rikonoxxut biex jipprovdi; jew

(b) jekk hija tqis illi l-provditur ta' servizz ma jkunx jissodisfa l-ħtiġiet ta', jew ikun kiser, xi dispożizzjoni ta' dan l-Att jew ta' xi regolament jew Regola tal-Pensjonijiet magħmulin tahtu, jew li jkun naqas milli jissodisfa jew iħares xi obbligu jew kundizzjoni li jkun soġġett għalihom bis-saħħa ta' dan l-Att jew tahtu; jew

(c) jekk l-awtorità kompetenti tkun ingħatat minn provditur ta' servizz jew f'ismu informazzjoni li tkun falza, mhux eżatta jew qarrieqa; jew

(d) jekk il-provditur ta' servizz ma jkunx beda jipprovdi s-servizz li dwaru jkollu liċenza u, jew li jkun rikonoxxut biex jipprovdi fiż-żmien kif provdut fil-liċenza u, jew rikonoxximent jew ikun waqaf milli jipprovdi dak is-servizz; jew

(e) jekk hija tqis li għandha tħassar jew tissospendi il-liċenza u, jew rikonoxximent għall-protezzjoni tal-benefiċjarji, membri jew investituri; jew

(f) fuq talba tal-provditur ta' servizz; jew

(g) f'xi waħda miċ-ċirkostanzi li taħthom l-awtorità kompetenti ma kenitx tithalla toħroġ il-liċenza u, jew rikonoxximent kif jista' jkun il-każ, jew meta taħt dan l-Att kien ikollha jedd tiċhad milli tagħti liċenza u, jew rikonoxximent bħal dawk; jew

(h) jekk il-provditur ta' servizz ikun kiseb il-liċenza u, jew ir-ikonoxximent permezz ta' dikjarazzjonijiet foloz jew b'kull mod ieħor irregolari.

Avviż ta' ċhid, tibril, thassir jew sospensjoni ta' liċenza u, jew rikonoxximent proposti.

**11. (1) Meta l-awtorità kompetenti tipproponi -**

(a) li tibdel xi kundizzjoni li xi liċenza u, jew rikonoxximent ikunu assoġġettati għalihom jew li timponi xi kundizzjoni fuqhom; jew

(b) li tiċhad applikazzjoni għal liċenza u, jew rikonoxximent jew li thassar jew tissospendi liċenza u, jew rikonoxximent,

hija għandha tagħti lill-applikant jew kif jista' jkun il-każ, lid-detentur ta' liċenza u, jew lil persuna rikonoxxuta, jew fil-każ ta' skema tal-irtirar lill-Amministratur ta' Skema tal-Irtirar, jew fil-każ ta' fond għall-irtirar lil xi persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, kif jista' jkun il-każ, avviż bil-miktub dwar dak li tkun bi ħsiebha tagħmel, u dak l-avviż għandu jispjega r-raġunijiet għall-azzjoni li tkun qegħda tipproponi.

(2) Kull avviż li jingħata taht is-subartikolu (1) għandu jkun jiddikjara li min jirċievi l-avviż jista', f'dak iż-żmien raġonevoli li jaħbat wara n-notifika ta' dak l-avviż hekk kif jista' jiġi dikjarat fl-avviż (li jkun żmien ta' mhux inqas minn tmienja u erghin siegħa u mhux itwal minn tletin ġurnata), iressaq l-ilmenti tiegħu bil-miktub lill-awtorità kompetenti fejn jagħti raġunijiet għaliex m'għandhiex tittiehed id-deċiżjoni proposta, u l-awtorità kompetenti għandha tqis kull ilment hekk magħmul qabel ma tasal għal deċiżjoni finali.

(3) L-awtorità kompetenti għandha hekk kif ikun prattikabbli tavża d-deċiżjoni finali tagħha bil-miktub lil xi persuna minn dawk li għandu jingħatalhom l-avviż taht is-subartikolu (1).

## TAQSIMA IV

### Regolamentazzjoni

Htieġa ta' Amministratur ta' Skema tal-Irtirar.

**12.** Skema tal-irtirar għandu jkollha Amministratur ta' Skema tal-Irtirar, li jkun iwettaq dawk id-dmirijiet, funzjonijiet u responsabbiltajiet li jistgħu jiġu speċifikati u li jkunu assoġġettati għal kull htieġa, kif jista' jiġi stipulat bir-Regoli tal-Pensjonijiet.

Dmir generali ta' kull persuna responsabbli għal xi skema tal-irtirar jew fond.

**13. (1)** L-Amministratur ta' Skema tal-Irtirar għandu jaġixxi fl-aħjar interess tal-iskema tal-irtirar u ma' jstax juża l-attiv tal-iskema tal-irtirar għall-finijiet tiegħu jew għal finijiet oħra.

(2) Persuna, tkun kif tkun imsejha, li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, għandha tagħxi fl-aħjar interess tal-fond għall-irtirar u ma' tistax



tuża l-attiv tal-fond għall-irtirar għall-finijiet tagħha jew għal finijiet oħra.

**14.** (1) Fl-eżekuzzjoni tad-dmirijiet, funzjonijiet u Responsabbiltà. responsabbiltajiet tiegħu, u mingħajr preġudizzju għar-responsabbiltà għad-danni taħt kull liġi oħra, l-Amministratur ta' Skema tal-Irtirar u kull persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, inkluż kull provditur ta' servizz, ikunu responsabbli għal kull telf jew hsara mgarrba minhabba f'xi frodi, nuqqas volontarju jew negliġenza tagħhom, inkluż in-nuqqas ingustifikat li jwettqu għal kollox jew f'parti minnhom l-obbligi tagħhom li joriginaw taħt dan l-Att, il-pattijiet u l-kundizzjonijiet tal-ftehim tal-hatra tagħhom, l-att jew strument ieħor li jkun qed iwaqqaf jew jirregola l-iskema tal-irtirar jew fond għall-irtirar, il-kundizzjonijiet ta' għoti ta' liċenza li jistgħu jkunu meħtieġa mill-awtorità kompetenti, u dawk il-htigiet oħra li jistgħu jiġu stipulati minn dawn l-aħħar imsemmija minn żmien għal żmien.

(2) Ir-responsabbiltà -

(a) tal-Amministratur ta' Skema tal-Irtirar u kull persuna, tkun kif tkun imsejha, li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar; u, jew

(b) tal-provditur ta' servizz,

m'għandhiex tonqos jekk dawn ikunu fdaw jew iddelegaw lil terza persuna xi parti mid-dmirijiet, funzjonijiet u responsabbiltajiet tagħhom, jew kollha kemm huma.

**15.** Amministratur ta' Skema tal-Irtirar, jew fond għall-irtirar, kif jista' jkun il-każ, jista' jiddelega xi wieħed jew aktar mid-dmirijiet tiegħu lil provditur ta' servizz jew lil xi entità simili, bla hsara għal kull Regola tal-Pensjonijiet li tkun tapplika. Delega.

**16.** (1) Kull skema tal-irtirar li tkun skema tal-irtirar okkupazzjonali, għandha taħtar awditur; u kull skema tal-irtirar li thallas benefiċċju fiss li tkun skema tal-irtirar okkupazzjonali, għandha wkoll taħtar attwarju. Awdituri u attwarji.

(2) Kull awditur u attwarju ta' detentur ta' liċenza jew persuna rikonoxxuta kif jista' jkun il-każ, għandu jkollu l-jedd jitlob dik l-informazzjoni jew spjegazzjoni li jqis li jkunu meħtieġa fit-twettiq ta' dmirijietu minn xi uffiċjal jew impjegat ta' detentur ta' liċenza jew persuna rikonoxxuta, jew minn persuna li tkun giet appuntata minnhom kif jista' jkun il-każ.

## TAQSIMA V

### Htiġiet oħra u Dispożizzjonijiet Ġenerali

#### Skemi tal-Irtirar

Attiv,  
investimenti  
permessi u  
setgħat ta' self  
ta' skema tal-  
irtirar.

**17.** (1) L-attiv ta' skema tal-irtirar għandu jintuża għall-fini esklużiv li jkun qiegħed jipprovdri benefiċċji tal-irtirar lill-membri u benefiċjarji tal-iskema tal-irtirar u li jkun qiegħed joħroġ l-ispejjeż kif stipulat fid-dokument ta' skema u kif permess kif hemm fir-Regoli tal-Pensjonijiet.

(2) Skema tal-irtirar għandha tkun konformi ma' dawk il-htiġiet kif hemm fir-Regoli tal-Pensjonijiet, dwar l-investiment, maniġġar, kontijiet u valutazzjoni tal-attiv tagħha u kemm din tista' tissellef flus.

Skeda ta'  
ħlasijiet ta'  
skemi tal-irtirar  
okkupazzjonali.

**18.** Amministratur ta' Skema tal-Irtirar ta' skema tal-irtirar okkupazzjonali għandu jiżgura l-manutenzjoni u minn żmien għal żmien ir-reviżjoni ta' skeda (hawn iżjed 'il quddiem u fl-artikolu 19 msejha "skeda ta' ħlasijiet"), li turi -

(a) ir-rati ta' kontribuzzjonijiet li għandhom jithallsu fl-iskema tal-irtirar minn jew f'isem kull prinċipal u, jew meta jkun japplika, minn kull kontributor ieħor fl-iskema tal-irtirar;

(b) id-dati meta jew li qabilhom għandhom jithallsu dawk il-kontribuzzjonijiet; u

(c) kull haġa oħra li tista' tiġi ordnata.

Ħlas ta'  
kontribuzzjonijiet  
et għal skemi  
tal-irtirar  
okkupazzjonali.

**19.** (1) Kull ammont li jithallas minn jew f'isem kontributor lil skema tal-irtirar okkupazzjonali kif hemm fl-iskeda ta' ħlasijiet għandu jithallas fi jew qabel id-data meta dan ikun dovut.

(2) Kull prinċipal ta' skema li jkun obligat jikkontribwixxi unikament jew parzjalment għal skema tal-irtirar okkupazzjonali li jonqos milli jagħmel dak il-ħlas fi jew qabel id-data dovuta speċifikata fl-Iskeda ta' ħlasijiet ikun ħati ta' reat.

(3) Amministratur ta' Skema tal-Irtirar u kull attwarju ta' skema tal-irtirar okkupazzjonali, għandu, meta jkun hemm xi ammonti li għandhom jithallsu minn jew f'isem il-prinċipal tal-iskema tal-irtirar kif hemm fl-iskeda ta' ħlasijiet li ma jkunux thallsu fid-data jew qabel id-data dovuta:

(a) javża b'dak il-fatt lill-membri u l-awtorità kompetenti mal-ewwel opportunità li jkollu; u

(b) jieħu dawk il-miżuri kollha li jistgħu jkunu meħtieġa jew adatti biex il-prinċipal li jkun qed jonqos jikkorreġi s-sitwazzjoni.

(4) Amministratur ta' Skema tal-Irtirar ta' skema tal-irtirar okkupazzjonali għandu javża lill-awtorità kompetenti bil-miktub b'dawk il-miżuri li jkunu ittieħdu jew li jkunu qegħdin jittieħdu kif hemm f'dan l-artikolu, kemm jista' jkun malajr.

(5) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu mingħajr preġudizzju għad-dritt li għandu l-Amministratur ta' Skema tal-Irtirar li jirkupra l-ammont li jibqa' mhux imħallas mill-prinċipal bħala djun ċerti, likwidi u dovuti taħt it-Titolu III tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

**20.** L-iskema tal-irtirar u Amministratur ta' Skema tal-Irtirar għandhom jikkonformaw ma' kull rappuratar ta' ħtiġiet hekk kif jista' jenħtieġ bir-Regoli tal-Pensjonijiet.

Rappuratar ta' ħtiġiet ta' skemi tal-irtirar.

**21.** (1) L-iskema tal-irtirar u Amministratur ta' Skema tal-Irtirar għandhom ikunu jikkonformaw ma' kull Regola tal-Pensjonijiet dwar il-preżentata lill-awtorità kompetenti u l-pubblikazzjoni u disponibilità għal membri u benefiċjarji ta' dokument, magħruf bħala "dettalji ta' skemi", li jkun fih informazzjoni dwar l-iskema tal-irtirar.

Żvelar ta' informazzjoni dwar skema tal-irtirar.

(2) Skema tal-irtirar u Amministratur ta' Skema tal-Irtirar għandhom ikunu jikkonformaw ma' kull ħtieġa oħra ta' żvelar hekk kif jista' jenħtieġ bir-Regoli tal-Pensjonijiet, inkluża x-xorta ta' dokumenti li għandhom jinħarġu, l-għamla u l-kontenut ta' kull dokument li jista' jenħtieġ u lil min dawk id-dokumenti jkunu meħtieġa li jiġu provduti.

**22.** Id-dokument ta' skema għandu jkun jorbot lil dawk il-membri u benefiċjarji hekk kif jista' jiġi provdut fir-regolamenti jew Regoli tal-Pensjonijiet magħmulin għall-fini ta' dan l-artikolu.

Dokument ta' skema hu ftehim li jorbot.

**23.** (1) Skema jew arrangament li jkun qed jopera jew li jkun intiz li jopera bħala skema tal-irtirar li ma jkollux liċenza kif hemm f'dan l-Att ma jistax jiġi infurzat fir-rigward ta' xi kontributor u dak il-kontributor ikollu jedd jirkupra flus li jithallsu, jew proprjetà oħra trasferita minnu taħt l-iskema tal-irtirar.

Skemi tal-irtirar li ma jkollhomx liċenza ma jistgħux jiġu infurzati.

(2) F'każijiet li jinkwadraw taħt is-subartikolu (1), meta dik il-proprjetà ma tkunx tista' tiġi hekk irkuprata, dak il-kontributor ikollu jedd li din tiġi sostitwita bil-valur tagħha fil-waqt tal-ftehim, flimkien ma' risarċiment għal kull telf mgarrab minnu b'konsegwenza ta' dak il-ħlas jew trasferiment jew tan-nuqqas ta' rkupru tal-proprjetà

trasferita u kull profitt li seta' akkumula minhabba f'illi dawk il-flus jew proprjeta' oħra jkunu ġew trasferiti minnu.

(3) Id-dispożizzjonijiet tas-subartikoli (1) u (2) għandhom ikunu mingħajr preġudizzju għal kull responsabbiltà li tista' toriġina taħt kull liġi oħra.

(4) Id-dispożizzjonijiet tas-subartikoli (1) u (2) m'għandhomx ikunu japplikaw għal skema tal-irtirar li tkun speċifikament eżentata mill-ġhoti ta' liċenza taħt dan l-Att kif ikun hemm f'regolamenti maħruġin taħt dan l-Att.

Assenjament  
jew sekwestru  
tal-attiv ta'  
skema tal-irtirar.

**24.** (1) Il-kredituri ta' kontributor ma jistgħux jinfurzaw id-drittijiet tagħhom fuq l-interess tal-kontributor fl-iskema tal-irtirar; lanqas ma jistgħu dawk il-kredituri jissekwestraw jew jassoġġettaw dak l-interess għal xi mandat kawtelatorju jew eżekuttiv:

Kap. 16.

Izda ebda haġa f'dan is-subartikolu m'għandha titqies bħala li ċċaħħad lil xi kreditur ta' dak il-kontributor minn xi jeddijiet mogħtijin lil kreditur taħt l-artikolu 1144 tal-Kodiċi Ċivili.

(2) Hlief hekk kif jista' jiġi ordnat taħt dan l-Att, kull ftehim li jsir minn kontributor biex jittrasferixxi, inehħi, jirhan jew xort'oħra jattiva l-interess tiegħu fl-iskema tal-irtirar ikun invalidu.

Distribuzzjonijiet  
et minn skemi  
tal-irtirar.

**25.** Bla ħsara għal kull regolament jew Regola tal-Pensjonijiet magħmulin għall-fini ta' dan l-artikolu, skema tal-irtirar għandha tqassam benefiċċji lil membri u, jew benefiċċjarji f'dawk l-ammonti u f'dawk iż-żminijiet speċifikati fid-dokument ta' skema li jkun japplika.

#### Skemi tal-Irtirar mix-Xogħol ta' Benefiċċju Definit

Htieġa ta'  
finanzjar  
tekniku.

**26.** (1) Kull skema tal-irtirar li tħallas benefiċċju fiss li jkun skema tal-irtirar okkupazzjonali, għandka tkun konformi mar-regolamenti tal-manigġar tekniċi, finanzjarji u attwarjali kif ukoll mar-regolamenti li jirrigwardaw is-sottoprovdimment jew is-sovrapprovdiment tal-htieġa ta' finanzjament tekniku hekk kif jista' jiġi ordnat.

(2) Meta fil-każ ta' skema tal-irtirar li tħallas benefiċċju fiss, li tkun skema tal-irtirar okkupazzjonali, ikun jidher lill-Amministratur ta' Skema tal-Irtirar jew lill-attwarju tal-iskema tal-irtirar, fi tmiem dak il-perjodu li jista' jiġi stipulat li fih ma tintlaħaqx il-htieġa ta' finanzjament tekniku, dak l-Amministratur ta' Skema tal-Irtirar jew attwarju, kif jista' jkun il-każ, għandu jagħti avviż bil-miktub lill-awtorità kompetenti dwar dak il-fatt flimkien ma' dik l-informazzjoni li tista' tiġi ordnata dwar dak in-nuqqas li jkun hemm konformità ma'

dik il-htieġa.

### Fondi għall-Irtirar

**27.** (1) L-attiv tal-fond għall-irtirar għandu jintuża għall-fini esklużiv li jiġu provduti benefiċċji tal-irtirar lill-benefiċjarji tal-skemi tal-irtirar jew lil skemi tal-irtirar barra minn Malta li jkunu investew f'dak il-fond għall-irtirar, u għall-ħruġ tal-ispejjeż ta' dik l-iskema tal-irtirar permessi taħt dan l-Att, jew l-ispejjeż bonafidi tal-iskema tal-irtirar barranija, kif japplika.

Attiv, investimenti permessi u setgħat ta' self ta' fond għall-irtirar.

(2) Fond għall-irtirar għandu jikkonforma ma' dawk il-htigiet kif hemm fir-Regoli tal-Pensjonijiet, rigward l-investment, maniġġar, kontijiet u valutazzjoni tal-attiv tiegħu u kemm dan jista' jissellef flus.

**28.** Fond għall-irtirar jew kull persuna, tkun kif tkun imsejġha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, kif jista' jkun il-każ, għandhom juru dawk il-kontijiet annwali, rapporti, ċertifikati u informazzjoni hekk kif jista' jenħtieġ mir-Regoli tal-Pensjonijiet.

Rappurtar ta' htigiet minn fondi għall-irtirar.

**29.** Fond għall-irtirar għandu jikkonforma ma' kull htieġa ta' żvelar li tista' tiġi stabbilita bir-Regoli tal-Pensjonijiet, inkluż it-tip ta' dokumenti li għandhom jinħarġu, l-għamla u kontenut ta' kull dokument li jista' jenħtieġ u lil min għandhom jiġu provduti dawk id-dokumenti.

Żvelar ta' informazzjoni dwar fond għall-irtirar.

### Ġenerali

**30.** Kull detentur ta' liċenza u persuna rikonoxxuta taħt dan l-Att għandha tħallas lill-awtorità kompetenti dawk id-drittijiet perjodiċi, u f'dak it-terminu, kif jista' jiġi ordnat minn żmien għal żmien.

Flas ta' drittijiet perjodiċi.

**31.** Detentur ta' liċenza, jew persuna rikonoxxuta, jew persuna li tkun responsabbli għall-operazzjoni, amministrazzjoni u maniġġar ta' skema tal-irtirar jew fond għall-irtirar għandhom jipprovdu lill-awtorità kompetenti kull dettal ta' bidliet fl-informazzjoni provduti taħt dan l-Att malli dik il-persuna jew delegat tagħha jkunu mgħarrfa b'dawk il-bidliet u għandu javża lill-awtorità kompetenti, kontinwament, b'kull bidla jew ċirkostanza li jagħtu lok għall-eżistenza ta' rabtiet mill-qrib fil-kuntest tat-tifsira tal-artikolu 9.

Bidliet fl-informazzjoni.

**32.** (1) Ebda persuna m'għandha takkwista, direttament jew indirettament, azzjonijiet kwalifikanti fi provditur ta' servizz jew iżżid dawk l-azzjonijiet kwalifikanti biex hekk il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital azzjonarju miżmum minnha fil-

Avviz ta' kontroll ġdid jew miżjud.

provvditur ta' servizz jilhaq jew jeççedi 20 fil-mija, 30 fil-mija jew 50 fil-mija, jew biex il-provditur ta' servizz isir is-sussidjarju ta' dik il-persuna, kemm-il darba dik il-persuna ma tkunx innotifikat lill-awtorità kompetenti b'avviż bil-miktub li jkun jiddikjara li tkun bi ħsiebha takkwista jew iżżid dik il-parteeċipazzjoni azzjonarja, u -

(a) l-awtorità kompetenti tkun, qabel tmiem il-perjodu ta' tliet xhur li jibdedew għaddejn meta ssir in-notifika ta' dak l-avviż, avżatu bil-miktub li m'hemm ebda oġġezzjoni li hi takkwista jew iżżid dik il-parteeċipazzjoni azzjonarja; jew

(b) dak il-perjodu jkun skada mingħajr ma l-awtorità kompetenti tkun innotifikatu b'avviż ta' oġġezzjoni; jew

(ċ) l-awtorità kompetenti tkun, qabel tmiem dak il-perjodu ta' tliet xhur, innotifikat avviż ta' oġġezzjoni li jkun ġie sussegwentement irtirat, imħassar jew annullat għal kull raġuni li tkun:

Iżda l-akkwist jew iż-żjeda tal-azzjonijiet kwalifikanti isehħu fi żmien sena wara l-ġrajja msemmija fil-paragrafu (a), (b) jew (ċ) kif jista' jkun il-każ:

Iżda wkoll fil-każ li hemm provdut dwaru fl-imsemmi paragrafu (ċ), l-imsemmi perjodu ta' sena għandu jibda għaddej mid-data meta l-persuna involuta tkun ġiet notifikata bl-irtirar, tħassar jew annullament tal-avviż ta' oġġezzjoni, kif jista' jkun il-każ.

(2) Avviż notifikat lill-awtorità kompetenti taħt is-subartikolu (1) għandu jkun fih dik l-informazzjoni li l-awtorità kompetenti tista' tordna u l-awtorità kompetenti tista', wara li tirċievi dak l-avviż minn min ikun, teħtieġu b'avviż bil-miktub biex jipprovdi kull informazzjoni jew dokumenti addizzjonali li l-awtorità kompetenti tista' raġonevolment tkun teħtieġ biex tiddeċiedi jekk għandhiex tinnotifika avviż ta' oġġezzjoni.

(3) Meta jenħtieġu xi informazzjoni jew dokument addizzjonali minn xi persuna b'avviż taħt is-subartikolu (2), iż-żmien bejn l-għoti tal-avviż u meta jaslu l-informazzjoni jew id-dokumenti għandu jizjed mal-perjodu imsemmi fis-subartikolu (1)(a).

(4) Kull avviż ta' oġġezzjoni msemmi fis-subartikolu (1)(b) għandu jagħti r-raġunijiet għal dik l-oġġezzjoni u għandu jkun jiddikjara li min jirċievi l-avviż jista', f'dak iż-żmien raġonevoli wara li dan jiġi notifikat hekk kif jista' jiġi dikjarat fl-avviż (li jkun perjodu ta' mhux inqas minn tmienja u ergħin siegħa u mhux itwal minn tletin ġurnata), iressaq ilmenti bil-miktub lill-awtorità kompetenti fejn

jagħti raġunijiet għaliex l-avviż ta' oġġezzjoni għandu jiġi irtirat; u l-awtorità kompetenti għandha tqis kull ilment hekk magħmul qabel ma tasal għal deċiżjoni finali.

(5) L-awtorità kompetenti għandha tavża bid-deċiżjoni finali tagħha bil-miktub lill-persuna li tressaq l-ilment bil-miktub taħt is-subartikolu (4), fi żmien tletin ġurnata minn meta jaslu dawk l-ilmenti kif provdut fl-imsemmi subartikolu (4).

(6) Kull persuna li tipproponi li tbiegħ jew tneħhi, direttament jew indirettament, azzjonijiet kwalifikanti fi provdatur ta' servizz jew li tnaqqas l-azzjonijiet kwalifikanti li jkollha sabiex il-proporzjon tal-jeddijiet ta' votazzjoni jew tal-kapital azzjonarju li jkollha fil-provdatur ta' servizz jaqa' taħt l-20 fil-mija, 30 fil-mija jew 50 fil-mija, jew sabiex il-provdatur ta' servizz itemm milli jkun is-sussidjarju tagħha, għandha tgħarraf lill-awtorità kompetenti bil-miktub fejn tiddikjara x'intenzjoni jkollha li tbiegħ, tneħhi jew tnaqqas il-parteciġazzjoni azzjonarja tagħha u tiddikjara l-qjies tal-parteciġazzjoni azzjonarja tagħha wara l-bejgħ, tneħhija jew tnaqqis.

(7) Minnufih malli provdatur ta' servizz isir jaf b'kull akkwist propost jew attwali jew tneħhija ta' parti mill-parteciġazzjoni azzjonarja jew kollha kemm hi fil-kapital azzjonarju f'xi waħda miċ-ċirkostanzi trattati f'dan l-artikolu, huwa għandu jgħarraf lill-awtorità kompetenti bil-miktub.

(8) Meta l-influwenza eżerċitata minn persuna li tkun qegħda takkwista jew tipproponi li takkwista parti mill-kapital azzjonarju x'aktarx li tkun waħda preġudizzjevola għall-immaniġġar sod u prudenti ta' provdatur ta' servizz, l-awtorità kompetenti tista' toħroġ avviż ta' oġġezzjoni, u teżerċita xi setgħa minn dawk assenjati lilha taħt dan l-Att, inkluża s-setgħa li toħroġ ordnijiet, hekk kif tista' tqis li jkun raġonevoli u adatt fiċ-ċirkostanzi.

(9) Kopja ta' avviż notifikat lil persuna involuta kif hemm fis-subartikolu (8) għandu jiġi notifikat lill-kumpannija li jkun jirrigwarda l-ishma li din ikollha.

(10) Mingħajr preġudizzju għad-dispożizzjonijiet tal-artikolu 48, meta tinkiseb parteciġazzjoni azzjonarja fi provdatur ta' servizz minkejja l-oġġezzjoni tal-awtorità kompetenti, l-eżerċizzju tal-jeddijiet ta' votazzjoni korrispondenti għandhom ikunu sospiżi u l-voti li jintefgħu bi ksur ta' dan is-subartikolu jkunu nulli u bla effett.

(11) Jekk min jakkwista l-parteciġazzjoni kwalifikanti msemmija f'dan l-artikolu jkun -

(a) persuna li jkollha liċenza jew awtorizzazzjoni ekwivalenti minn awtorità regolatorja barranija, jew

(b) l-imprezza prinċipali ta' persuna msemmija fil-paragrafu (a), jew

(ċ) xi persuna li tikkontrolla persuna msemmija fil-paragrafu (a),

u jekk, minhabba f'dak l-akkwist, il-provditur ta' servizz li fih min jakkwista jipproponi li jakkwista parteċipazzjoni jsir sussidjarju ta' min jakkwista jew jaqa' taht il-kontroll tiegħu, il-valutazzjoni tal-akkwist mill-awtorità kompetenti għandha tkun soġġetta għal konsultazzjoni preċedenti mal-awtorità regolatorja barranija wara li jiġu kkunsidrati l-impenni internazzjonali ta' Malta.

Konformità mal-htigiet ta' taxxa.

**33.** Skema tal-irtirar jew fond għall-irtirar għandu jikkonforma mal-htigiet kollha stabbiliti minn żmien għal żmien mill-Kummissarju tat-Taxxi Interni.

Reklami.

**34.** Ebda persuna, li ma tkunx detentur ta' liċenza, ma tista' tohrog jew iġġieghel li jinħareg xi reklam f'dak li għandu x'jaqsam ma' skema tal-irtirar jew fond għall-irtirar f'Malta jew minn ġewwa Malta. L-awtorità kompetenti tista', b'Regola tal-Pensjonijiet magħmula għall-finijiet ta' dan l-artikolu, tistabbilixxi l-forma u l-kontenut ta' dawk ir-reklami u l-mod kif attivita' promozzjonali li jkollha x'taqsam ma' skema ta' rtirar jew fond ta' rtirar, għandhom jiġu ġestiti jew kaġunati li jiġu ġestiti.

#### Dmirijiet ta' Rappurtar

Dmirijiet li għandhom l-awdituri u l-attwarji li jirrapportaw.

**35.** (1) Kull awditur jew attwarju ta' detentur ta' liċenza jew persuna rikonoxxuta, hekk kif japplika, ikollu d-dmir li jirrapporta minnufih lill-awtorità kompetenti kull fatt jew deċizzjoni li jsir jaf bihom fil-kapaċità tiegħu ta' awditur jew attwarju ta' dak id-detentur ta' liċenza jew persuna rikonoxxuta li -

(a) x'aktarx iwasslu għal kwalifika gravi, jew ċhid milli jinħareg, ir-rapport tal-awditur jew tal-attwarju fuq dak id-detentur ta' liċenza jew persuna rikonoxxuta; jew

(b) jikkostitwixxu jew x'aktarx jikkostitwixxu ksur materjali tal-htigiet legali jew regolatorji li japplikaw għad-detentur ta' liċenza jew persuna rikonoxxuta f'dan l-Att jew tahtu; jew

(ċ) ifixklu serjament il-kapaċità li jkollhom detentur ta' liċenza jew persuna rikonoxxuta milli jiffaċċaw il-passiv



korrenti jew futur attribwibbli lihom; jew

(d) negattivament u materjalment jaffettwaw l-interessi ta' membri u benefiċjarji; jew

(e) ikollhom x'jaqsmu ma' xi haġa oħra li għad tista' tiġi preskritta.

(2) Awditur jew attwarju ta' detentur ta' liċenza jew persuna rikonoxxuta, hekk kif japplika, għandhom jirrapportaw lill-awtorità kompetenti kull fatt jew deċiżjoni kif speċifikati fis-subartikolu (1) ta' persuna li jkollha rabtiet mill-qrib ma' dak id-detentur ta' liċenza fil-kuntest tat-tifsira tal-artikolu 9, li huwa jsir jaf bihom fil-kapaċità tiegħu ta' awditur jew attwarju tad-detentur ta' liċenza jew persuna rikonoxxuta jew tal-persuna li jkollha dawk ir-rabtiet mill-qrib.

(3) Dawk l-affarijiet li jistgħu jiġu ordnati għall-fini tas-subartikolu (1)(e) jistgħu jinkludu affarijiet li jkollhom x'jaqsmu ma' persuni jew entitajiet li ma jkunux skema ta' irtirar jew fond għall-irtirar, inkluża imma mhux limitata għal xi persuna li tkun qegħda tipprovdi xi wiehed jew aktar mis-servizzi elenkati fl-Iskeda u, jew attivitajiet amministrattivi sekondarji kif stabbiliti bir-Regoli tal-Pensjonijiet.

(4) L-awtorità kompetenti tista' teħtieġ lil detentur ta' liċenza jew lil persuna rikonoxxuta, hekk kif ikun japplika, jibdel lill-awditur jew attwarju maħtur tiegħu meta, fil-fehma tal-awtorità kompetenti, dak l-awditur jew attwarju jitqiesu li ma jkunux idoneji għal dik il-ħatra, f'kull waqt matul iż-żmien ta' kariga tagħhom.

**36.** (1) Jekk skema tal-irtirar jew Amministratur ta' Skema tal-Irtirar jew fond għall-irtirar jew xi persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u manigġar tal-fond għall-irtirar, jew provditur ta' servizz ta' xi skema tal-irtirar jew fond għall-irtirar ikunu jafu, ikunu tal-fehma jew xort'oħra jissuspettaw li xi dmir rilevanti għall-operazzjoni tal-iskema tal-irtirar jew fond għall-irtirar impost taħt dan l-Att jew kull liġi oħra fuq xi persuna li tkun qegħda tagixxi f'dak li għandu x'jaqsam mal-iskema tal-irtirar jew fond għall-irtirar ma jkunux ġew jew ma jkunux qegħdin jiġu mharsa, huma għandhom minnufih jagħmlu rapport bil-miktub dwar dan kollu lill-awtorità kompetenti.

Dmir li jsir rapport.

(2) L-awtorità kompetenti tista' b'direttiva tiskwalifika lil persuna mill-pożizzjoni tagħha jekk l-awtorità kompetenti jkun jidhrilha li l-persuna tkun naqset milli tikkonforma ruħha mas-subartikolu (1).

## TAQSIMA VI

### Setgha li jsiru Regolamenti

#### Dispożizzjonijiet Ġenerali

Setghat li  
għandu l-  
Ministru.

**37.** (1) Il-Ministru, li jaġixxi bil-parir tal-awtorità kompetenti, jista' jagħmel regolamenti biex jagħti effett ahjar għad-dispożizzjonijiet ta' dan l-Att, u minghajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi jista', b'dawk ir-regolamenti, partikolarment, jagħmel kull ma ġej:

(a) jemenda kull waħda mit-tifsiriet li hemm fl-artikolu 2 u jemenda l-Iskeda;

(b) jirregola skemi tal-irtirar u fondi għall-irtirar, kif ukoll is-servizzi provduti u attivitajiet mwettqa f'dak li għandu x'jaqsam ma' dan jew f'dak ir-rigward u jipprovi dwar kull haġa li jqis spedjenti u jista' partikolarment jikkonċedi drittijiet lill-membri, benefiċjarji u investituri fuq dawk l-iskemi tal-irtirar u fondi, kif jista' jkun il-każ, u jirregola l-eżerċizzju tagħhom; jipprovi dwar u jirregola l-ħlas ta' dawk id-drittijiet u spejjeż oħra hekk kif jista' jiġi preskritt; jirregola kull dritt u, jew ħlasijiet oħra li jistgħu jiġu imposti direttament jew indirettament fuq membri, benefiċjarji jew investituri; jipprovi dwar iż-żamma fis-sikur u l-kustodja tal-proprjetà ta' skemi tal-irtirar u fondi għall-irtirar; jipprovi dwar il-protezzjoni tal-proprjetà tal-iskema tal-irtirar jew fond għall-irtirar fil-każ tal-insolvenza tal-kustodju hekk kif jista' jkun japplika, u għall-fini ta' dan il-paragrafu "kustodju" tinkludi sottokustodju; jipprovi dwar u jirregola l-ħatra ta' rappreżentanza tal-impjegati fir-regolamentazzjoni ta' skemi tal-irtirar; jirregola l-ħatra u, jew it-tneħħija ta' Amministratur ta' Skema tal-Irtirar jew ta' kull persuna oħra, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u manigġar tal-iskema tal-irtirar u, jew tal-fond għall-irtirar; jistabbilixxi x-xorta u l-klassifikazzjoni ta' skemi tal-irtirar u fondi u jippreskrivi dawk il-kundizzjonijiet li jkollhom x'jaqsmu ma' dan; jirregola ix-xoljiment u, jew likwidazzjoni ta' skemi tal-irtirar u fondi għall-irtirar;

(ċ) jistabbilixxi jew jagħmel arrangamenti oħra għall-ikkompensar ta' membri u, jew benefiċjarji jew investituri f'każijiet fejn skema tal-irtirar jew fond għall-irtirar ma jkunux jistgħu jissodisfaw pretensjonijiet dwar responsabbiltajiet li hija ġġarrab; jirregola t-tmexxija u l-iffinanzjar ta' kull arrangament bħal dak u l-kontribuzzjonijiet u imposti li għandhom jithallsu

għaldaqstant; jistipula l-inqas u l-ogħla livelli ta' kumpens li għandhom jithallsu taħthom u jista' taħt dawk l-arrangamenti jiddistingwi bejn klassijiet differenti ta' investituri, membri jew benefiċjarji u jeskludi lil ċertu klassijiet minn kumpens u jipprovdi għar-regolament ta' u għal kull aspekt ieħor relatat ma' dawk l-arrangamenti u jista' iktar minn hekk jipprovdi li dawk l-arrangamenti, hekk kif jista' jiġi preskritt, ikollhom personalità ġuridika distinta minn dik tal-kontributori għaliha u tal-awtorità kompetenti u jipprovdi għar-rappreżentanza ġudizzjarja u legali tagħha; u dawk l-arrangamenti għandhom ikunu eżenti mill-ħlas tat-taxxa fuq *l-income* sa mid-data ta' twaqqif ta' dawk l-iskemi tal-irtirar jew fondi għall-irtirar;

(d) jippreskrivi ċ-ċirkostanzi meta u l-kundizzjonijiet li taħthom xi dokument ta' skema jsir vinkolanti fuq membri u benefiċjarji;

(e) jiddefinixxi l-kriterji biex jiġi definit jekk azjenda tkunx azjenda indiretta għall-finijiet li jiġi determinat jekk ikunux jeżistu azzjonijiet kwalifikanti;

(f) jeżenta lil kull persuna, skema tal-irtirar u, jew fond għall-irtirar (inklużi klassijiet jew tipi jew deskrizzjoni tagħhom hekk kif jista' jiġi preskritt) jew detenturi oħra ta' liċenza jew persuni rikonoxxuti, jew reklam minn xi wieħed jew aktar mid-dispożizzjonijiet ta' dan l-Att u bla ħsara għal dawk il-kundizzjonijiet jew htigiet oħra, inklużi għamliet oħra ta' awtorizzazzjoni u proċeduri ta' avviż, hekk kif jista' jiġi preskritt;

(g) jirregola s-segregazzjoni tal-attiv ta' skemi tal-irtirar u fondi għall-irtirar u jipprovdi dwar kull haġa konsegwenzjali, incidental jew konnessa magħhom;

(h) jistabilixxi ċ-ċirkostanzi meta jistgħu jiġu applikati miżuri ta' ċirkoskrizzjoni u l-miżuri u l-kondizzjonijiet li japplikaw għal skemi tal-irtirar u, jew fondi għall-irtirar f'dan ir-rigward;

(i) jistabilixxi u jirregola l-manutenzjoni ta' htigiet ta' finanzjament minn skemi tal-irtirar; jippreskrivi regolamenti dwar il-manutenzjoni ta' skeda ta' ħlasijiet bi skemi tal-irtirar jew bi provdituri ta' servizz f'isem skemi tal-irtirar; jirregola l-mod li bih skema tal-irtirar li tħallas benefiċċju fiss tkun tittratta ma' fondi eċċessivi u ma' nuqqas ta' fondi;

(j) jirregola l-ħlas (inkluż meta dan għandu jsir), ix-

xorta u l-ammont ta' benefiċċji li jistgħu jew ma jistgħux jithallsu lill-benefiċjarji u, jew lill-membri;

(k) jipprovdi dwar u jirregola l-ħlas minn kull persuna, korp, skema tal-irtirar jew fond għall-irtirar, jew provditur ta' servizz kif jista' jkun il-każ, ta' drittijiet għal liċenza jew rikonoxximent jew kull dritt ieħor u kull ħlas ieħor li għandu jithallas lill-awtorità kompetenti dwar kull haġa oħra li hemm provdut dwarha, b'dan l-Att jew tahtu jew kull regolament magħmul taht dan l-artikolu, hekk kif jista' jiġi preskritt;

(l) jittrasponi, jimplimenta u jagħti effett lid-dispożizzjonijiet u l-ħtiġiet tad-Direttiva dwar Pensjonijiet Okkupazzjonali u tad-Direttiva dwar is-Solvibbiltà II sakemm din tapplika għal pensjonijiet okkupazzjonali, kif ukoll kull miżura legiſlattiva oħra tal-Unjoni Ewropea li tkun teħtieġ li tigi trasposta u, jew implimentata kif din tista' tiġi emendata minn żmien għal żmien, u inkluża kull miżura li timplimenta maħruġa taħtha hekk kif dan jista' jkun japplika għal skemi tal-irtirar;

(m) jipprovdi u jirregola l-mod li bih jiġu vestiti, akkwiziti jew preservati drittijiet tal-irtirar u kull haġa anċillari għal dan;

(n) jirregola l-provdiment ta' skemi tal-irtirar personali u jistabbilixxi kundizzjonijiet għall-provdiment tagħhom kif ukoll jistabbilixxi l-applikazzjoni jew in-nuqqas ta' applikazzjoni ta' ċertu dispożizzjonijiet tal-Att għal dawk l-iskemi tal-irtirar;

(o) jippreskrivi ċirkostanzi u, jew kundizzjonijiet dwar it-trasferiment, tneħħija, finanzjament, assenjament, ċediment, terminazzjoni u, jew sekwestru ta' drittijiet ta' pensjoni u, jew benefiċċji; partikolarment jippreskrivi ċ-ċirkostanzi li fihom u l-kundizzjonijiet li taħthom: benefiċjarju jista' jittrasferixxi l-jeddijiet akkumulati tiegħu minn skema tal-irtirar għal oħra; u skema tal-irtirar tista' tittrasferixxi kull passiv attribwit lilha lil skema tal-irtirar oħra; u skema tal-irtirar tista' tipprovdi għall-ħlas ta' benefiċċju tal-irtirar fl-għamla ta' somma flus f'daqqa u, jew annwalità; u kontributor jista' jittrasferixxi, ineħhi jew jimponi l-imgħax tiegħu fi skema tal-irtirar;

(p) jipprovdi dwar kull haġa inċidentali għal jew konnessa ma' xi wieħed mill-paragrafi hawn qabel;

(q) jipprovdi dwar kull haġa li tista' jew li għandha tigi preskritta taht xi dispożizzjoni ta' dan l-Att.

(2) Regolamenti magħmulin taħt dan l-artikolu jistgħu wkoll jipprovdu biex membru, benefiċjarju, kontributor u ġeneralment kull persuna li tkun daħlet, jew offriet li tidhol, fl-iskema tal-irtirar, jkun jista' jhassar il-ftehim jew jirtira l-offerta f'dak il-perjodu u b'dak il-mod hekk kif jista' jiġi preskritt.

(3) Ir-regolamenti li jsiru taħt dan l-artikolu jistgħu jsiru bla hsara għal dawk l-eżenzjonijiet jew kundizzjonijiet hekk kif jistgħu jiġu speċifikati fihom, jistgħu jkunu jipprovdu b'mod differenti dwar każijiet, ċirkostanzi jew għanijiet differenti u jistgħu jagħtu lill-awtorità kompetenti dawk is-setgħat ta' adattament tar-regolamenti hekk kif jista' jiġi speċifikat fihom.

(4) Meta jkunu nharġu regolamenti kif hemm f'dan l-artikolu, l-awtorità kompetenti tista' toħroġ Regoli tal-Pensjonijiet biex jitwettqu aħjar u jiġu implimentati aħjar id-dispożizzjonijiet tar-regolamenti.

(5) L-eżerċizzju ta' setgħat assenjati taħt dan l-artikolu għandu jkun bla hsara għal kull obbligu jew dritt li joriġina mill-impenni internazzjonali ta' Malta.

## TAQSIMA VII

### Setgħat Regulatorji u Investigattivi

**38.** (1) L-amministrazzjoni ta' dan l-Att għandha tiġi vestita fl-awtorità kompetenti. L-awtorità kompetenti għandha twettaq dawk il-funzjonijiet l-oħra li l-Ministru jista' jqis li jkunu adatti f'dak li għandu x'jaqsam mat-tħaddim ta' dan l-Att.

Setgħat tal-awtorità kompetenti.

(2) Għall-aħjar twettiq tad-dispożizzjonijiet ta' dan l-Att, l-awtorità kompetenti tista', minn żmien għal żmien, toħroġ, temenda jew tirrevoka Regoli tal-Pensjonijiet li jkunu jimpenjaw lil detenturi ta' liċenza u, jew persuni rikonoxxuti taħt dan l-Att u lil oħrajn hekk kif jista' jiġi hemm speċifikat u jistgħu jkollhom x'jaqsmu ma' xi klassi partikolari ta' skema tal-irtirar u, jew fond għall-irtirar jew persuni jew sitwazzjonijiet jew persuni u sitwazzjonijiet b'mod ġenerali. Dawk ir-Regoli tal-Pensjonijiet jistgħu jistipulaw htigiet u kundizzjonijiet addizzjonali f'dak li għandu x'jaqsam ma' attivitajiet ta' dak id-detentur ta' liċenza jew persuna rikonoxxuta, it-tmexxija tal-kummerċ tagħhom, ir-relazzjonijiet tagħhom mal-membri, benefiċjarji, investituri, mal-pubbliku u partijiet oħra hekk kif jista' jkun japplika, ir-responsabbiltajiet tagħhom lejn l-awtorità kompetenti, il-htigiet ta' rappurtar, riżorsi finanzjarji, adegwatezza tal-kapital u htigiet relatati, u kull haġa oħra hekk kif l-awtorità kompetenti tista' tqis li tkun adatta, partikolarment f'dak li għandu

x'jaqsam ma' dan li ġej:

(a) il-forma legali u l-kostituzzjoni ta' skemi tal-irtirar u, jew fondi għall-irtirar, ir-regolamentazzjoni, strutturar u maniġġar ta' dawk l-iskemi tal-irtirar u, jew fondi għall-irtirar;

(b) il-ħatra u t-tneħħija, kwalifiki u esperjenza tal-Amministratur ta' Skema tal-Irtirar u, jew ta' kull persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-iskema tal-irtirar u, jew fond; u kull provditur ta' servizz ta' skema tal-irtirar u fond għall-irtirar bħal dawk;

(c) is-setgħat u d-dmirijiet tal-Amministratur ta' Skema tal-Irtirar u, jew ta' kull persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-iskema tal-irtirar u, jew fond għall-irtirar u kull provditur ta' servizz ta' kull skema tal-irtirar u, jew fond għall-irtirar bħal dawk;

(d) it-tmexxija u l-valutazzjoni tal-attiv u obbligi tal-iskema tal-irtirar u fond għall-irtirar;

(e) ir-restrizzjoni jew projbizzjoni tat-tneħħija libera tal-attiv ta' skema tal-irtirar li jinkwadra f'dik id-deskrizzjoni hekk kif jista' jiġi ordnat, partikolarment meta -

(i) dik l-iskema tal-irtirar tkun naqset milli tistabbilixxi dispożizzjonijiet tekniċi suffiċjenti dwar il-kummerċ kollu jew ikollha attiv insuffiċjenti biex dan ikopri d-dispożizzjonijiet tekniċi;

(ii) dik l-iskema tal-irtirar tkun naqset milli zzomm xi fondi regolatorji tagħha nnifisha hekk kif jista' jkun japplika,

Kap. 330.

kif hemm fil-proċedura stabbilita taħt l-artikolu 17B tal-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta, rigward l-iffriżar ta' attiv;

(f) ir-rappreżentanza ta' impjegati fi skemi tal-irtirar;

(g) il-provdiment ta' skemi personali tal-irtirar u r-regolament tagħhom;

(h) l-għamla u l-kontenut ta' applikazzjonijiet lill-awtorità kompetenti għall-għoti ta' liċenza jew rikonoxximent jew għal finijiet oħra kif jinsab f'dan l-Att; il-format, kontenut

jew emenda ta' xi dokument ta' skema, id-dokument ta' twaqqif ta' fond għall-irtirar, dettalji ta' skemi u dettalji tal-fond;

(i) il-htigiet għar-rikonoxximent u b'mod generali il-provdiment ta' dawk l-attivitajiet amministrattivi sekondarji; jiġi stabbilit liema attivitajiet jikkostitwixxu servizzi amministrattivi sekondarji għall-fini tar-rikonoxximent ta' dawk l-attivitajiet kif hemm fl-artikolu 7 u li jkun qiegħed jiġi b'mod generali provdut għal kull haġa anċillari jew konnessa mal-provdiment ta' dawk l-attivitajiet;

(j) dispożizzjonijiet dwar htigiet ta' riżorsi finanzjarji li japplikaw għal detenturi ta' liċenza u, jew persuni rikonoxxuti kif jista' jkun il-każ;

(k) htigiet ta' rappurtar u ta' żvelar, inkluża l-preparazzjoni ta' rapporti perjodiċi dwar skemi tal-irtirar u fondi għall-irtirar u l-għoti ta' dawk ir-rapporti lill-awtorità kompetenti, membri, benefiċjarji jew investituri kif jista' jkun il-każ;

(l) il-provdiment u li jiġu stabbiliti l-htigiet dwar it-tqegħid f'unitajiet ta' ċertu klassijiet u xorta ta' skemi tal-irtirar u, jew fondi għall-irtirar;

(m) li jiġu stabbiliti ċirkostanzi u kundizzjonijiet li japplikaw dwar it-trasferiment ta' benefiċċji tal-irtirar;

(n) li jiġu stabbiliti kundizzjonijiet u htigiet dwar il-hlas ta' spejjeż minn skemi tal-irtirar u, jew fondi għall-irtirar;

(o) li jiġu stabbiliti kundizzjonijiet u htigiet dwar il-hlas permezz ta' somma flus kontanti f'daqqa lil membru mingħajr il-htieġa tal-kunsens ta' dak il-membru fil-każ li l-membru ma jkunx għadu impjegat mill-prinċipal;

(p) mingħajr preġudizzju għad-dispożizzjonijiet tal-Att Kap. 386. dwar il-Kumpanniji, li jiġu stabbiliti l-persuni li jistgħu jagħmluha ta' awdituri ta' detenturi ta' liċenza u, jew persuni rikonoxxuti jew il-provdiment li l-persuni li jistgħu jaġixxu b'dak il-mod ikunu persuni li jkollhom kwalifiki professjonali jew esperjenza hekk kif jista' jiġi stabbilit jew dawk il-persuni l-oħra li jiġu approvati mill-awtorità kompetenti; mingħajr preġudizzju għad-dispożizzjonijiet tal-Att dwar il-Kumpanniji, billi jagħmlu dispożizzjonijiet li jkollhom x'jaqsmu mal-hatra, riżenja u tneħhija ta' awdituri ta' detenturi ta' liċenza u, jew persuni rikonoxxuti hekk kif japplika u d-dmir ta' detentur ta' liċenza jew persuna rikonoxxuta li tagħmel dokumenti

disponibbli lill-awdituri ta' dak id-detentur ta' liċenza jew persuna rikonoxxuta hekk kif japplika;

(q) li jiġu stabbiliti l-persuni li jistgħu jagħmluha ta' attwarji ta' skemi tal-irtirar jew il-provdiment li l-persuni li jistgħu hekk jagħmluha ta' attwarji jkunu persuni li jkollhom kwalifiki professjonali jew esperjenza hekk kif jista' jiġi stabbilit jew dawk il-persuni l-oħra li jkunu approvati mill-awtorità kompetenti; provdimenti dwar il-ħatra, riżenja u tneħħija ta' attwarji ta' skemi tal-irtirar u d-dmir ta' skema tal-irtirar jew Amministratur ta' Skema tal-Irtirar jew kull persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-iskema tal-irtirar, li tagħmel dokumenti disponibbli lill-attwarji ta' dik l-iskema tal-irtirar;

(r) li jiġu stabbiliti l-inqas livelli u htigiet li għandhom jiġu osservati mid-detenturi ta' liċenza meta jkunu qegħdin joħorġu jew japprovaw reklami kif hemm fl-artikolu 34; inkluż kull provdiment għal dawk l-eżenzjonijiet jew kundizzjonijiet hekk kif jista' jiġi speċifikat u dispożizzjonijiet differenti għal każijiet jew klassijiet differenti ta' każijiet, taħt dawk il-pattijiet u kundizzjonijiet hekk kif jista' jiġi stabbilit; li jimponu dawk il-kundizzjonijiet, limitazzjonijiet u restrizzjonijiet fuq detentur ta' liċenza dwar il-ħruġ, hekk kif tista' tqis li jkun adatt;

(s) li jinħarġu Regoli tal-Pensjonijiet biex jiġu regolati skemi tax-xogħol kif stabbiliti minn assoċjazzjonijiet ta' prinċipali;

(t) li jinħarġu Regoli tal-Pensjonijiet biex tiġi regolata l-kontribuzzjoni ta' flus jew korrispettiv ieħor għal skemi tal-irtirar.

**39.** (1) L-awtorità kompetenti tista', b'avviż bil-miktub, teħtieġ -

Setgħa ta' awtorità kompetenti li tikseb informazzjoni.

(a) lil kontributor, provditur ta' servizz jew persuna li tkun qegħda jew li kienet tipprovdi, jew li tidher li tkun qegħda jew li kienet qegħda tipprovdi servizz lil skema tal-irtirar, fond għall-irtirar jew skema tal-irtirar barranija, jew li tidher li tkun jew li kienet qegħda tiġġestixxi attivitajiet f'dak li għandu x'jaqsam ma' skema tal-irtirar, fond għall-irtirar jew skema tal-irtirar barranija; jew

(b) kontributor, provditur ta' servizz jew persuna li tkun ħarġet, jew li tidher li tkun ħarġet reklam li jaqa' taħt id-dispożizzjonijiet tal-artikolu 34; jew



(c) kull skema tal-irtirar jew fond għall-irtirar; jew

(d) kull kontributor jew provditur ta' servizz ieħor jew kull persuna oħra li tidher li jkollha għandha informazzjoni rilevanti,

biex jagħmel dan kollu li ġej jew xi parti minnu:

(i) li jipprovdi lill-awtorità kompetenti, f'dak iż-żmien u lok u b'dak il-mod li jista' jiġi speċifikat, dik l-informazzjoni u dokumentazzjoni li din tista' tenħtieġ, dwar xi servizz, dik l-iskema tal-irtirar jew fond għall-irtirar jew reklam kif hawn qabel imsemmi, jew dwar kull persuna li magħha d-detentur ta' liċenza jkollu rabtiet mill-qrib fil-kuntest tat-tifsira tal-artikolu 9;

(ii) li jipprovdi lill-awtorità kompetenti kull informazzjoni jew dokumentazzjoni hawn qabel imsemmija verifikata b'dak il-mod li tista' tispeċifika; jew

(iii) li tattendi quddiem l-awtorità kompetenti, jew quddiem persuna maħtura minnha, f'dak iż-żmien u lok li tista' tispeċifika, biex twieġeb għal domandi u tipprovdi informazzjoni u dokumentazzjoni dwar kull servizz bħal dak, skema tal-irtirar jew fond għall-irtirar jew reklam jew dwar xi persuna li d-detentur ta' liċenza jkollu rabtiet mill-qrib magħha fil-kuntest tat-tifsira tal-artikolu 9.

(2) L-awtorità kompetenti tista' tagħmel u żżomm kopji ta' kull dokument mogħti jew provdut taħt dan l-artikolu.

(3) Meta l-persuna li tkun meħtieġa tipprovdi informazzjoni jew dokumentazzjoni taħt dan l-artikolu ma jkollhiex l-informazzjoni jew dokumentazzjoni rilevanti, hija għandha tiżvela lill-awtorità kompetenti fejn, mill-aħjar li tkun taf hi, tkun tinsab dik l-informazzjoni jew dokumentazzjoni, u l-awtorità kompetenti tista' teħtieġ lil kull persuna, kemm jekk indikata kif hawn qabel imsemmi kemm jekk mhix, li jkun jidhrilha li jkollha għandha dik l-informazzjoni jew dokumentazzjoni, biex tipprovdiha.

(4) Dikjarazzjoni li ssir, u dokumentazzjoni li tiġi provduta, konformement ma' kull ħtieġa taħt dan l-artikolu tista' tingħieb bi prova kontra l-persuna li tkun qegħda tagħmel id-dikjarazzjoni jew li tkun qegħda tipprovdi d-dokumentazzjoni kif ukoll kontra kull persuna li dawn ikollhom x'jaqsmu magħha.

Kap. 9.

(5) Id-dispożizzjonijiet ta' dan l-artikolu m'għandhomx ikunu japplikaw għal informazzjoni jew dokumentazzjoni li tkun privileġġata kif hemm fid-dispożizzjonijiet tal-artikolu 642 tal-Kodiċi Kriminali.

(6) Is-setgħa tal-htieġa li tingieb dokumentazzjoni taht id-dispożizzjonijiet ta' dan l-artikolu tkun mingħajr preġudizzju għal kull rahan jew hlas li xi persuna tista' titlob f'dak li għandu x'jaqsam ma' dik id-dokumentazzjoni.

(7) Meta l-awtorità kompetenti tkun hatret persuna taht l-artikolu 40(1), dik il-persuna għandu jkollha, għall-finijiet li twettaq il-funzjonijiet tagħha li joħorġu mill-hatra tagħha, is-setgħat kollha mogħtija lill-awtorità kompetenti b'dan l-artikolu u htieġa li ssir minnu għandha titqies li tkun u li jkollha l-istess forza u effett bħal htieġa li ssir mill-awtorità kompetenti.

Kap. 204.

(8) Mingħajr preġudizzju għad-dispożizzjonijiet l-oħra ta' dan l-artikolu, detentur ta' liċenza jew rikonoxximent jista' jkun meħtieġ jippreżenta lill-Bank Ċentrali ta' Malta dik l-informazzjoni li l-Bank jista' raġonevolment jeħtieġ għall-qadi ta' dmirijietu taht l-Att dwar il-Bank Ċentrali ta' Malta.

Hatra ta' spetturi.

**40.** (1) L-awtorità kompetenti tista', kull meta tqis li jkun meħtieġ jew spedjenti li hekk tagħmel, tahtar spettur jew spetturi biex jinvestigaw u jirrapportaw dwar l-avvenimenti ta' xi skema tal-irtirar, fond għall-irtirar, provditur ta' servizz, skema tal-irtirar barranija jew persuna, msemmija fl-artikolu 39(1)(a) sa (ċ).

(2) Spettur mahtur taht is-subartikolu (1) -

(a) jista' wkoll, jekk jahseb li jkun hekk meħtieġ jew spedjenti għall-finijiet ta' dik l-investigazzjoni, jinvestiga l-avvenimenti ta' xi skema tal-irtirar, fond għall-irtirar, provditur ta' servizz, skema tal-irtirar barranija jew persuna, imsemmija fis-subartikolu (1);

(b) ikollu u jista' jeżerċita s-setgħat kollha mogħtija lill-awtorità kompetenti bl-artikolu 39, u kull htieġa magħmula minnu għandha titqies li tkun u li jkollha l-istess forza u effett bħal htieġa mill-awtorità kompetenti; u

(ċ) jista', u jekk hekk jiġi ordnat li jagħmel mill-awtorità kompetenti għandu, jagħmel rapporti interim u meta jtemm l-investigazzjoni tiegħu huwa għandu jagħmel rapport finali lill-awtorità kompetenti.

(3) L-awtorità kompetenti jkollha s-setgħa tordna li l-ispejjeż

kollha ta', u inċidentali għal, investigazzjoni li ssir taht dan l-artikolu li għandhom jithallsu mill-skema tal-irtirar, fond għall-irtirar, provditur ta' servizz, skema tal-irtirar barranija jew persuna involuti.

**41.** (1) Mingħajr preġudizzju għal kull setgħa mogħtija lilha bl-artikoli 39 u 40, l-awtorità kompetenti tista', kull meta tqis li jkun hekk meħtieġ, u kemm wara rapport minn spettur mahtur taht l-artikolu 40 kemm jekk le, tagħti, b'avviż bil-miktub, dawk id-direttivi li tista' tqis li jkunu adatti fiċ-ċirkostanzi; u kull persuna msemmija fl-artikolu 39 li jingħatalha dak l-avviż għandha tobdi, thares u xort'oħra tagħti effett lil dik id-direttiva fiż-żmien u bil-mod dikjarat fid-direttiva nnifisha jew f'xi direttiva ulterjuri.

Setgħa li  
jinħargu  
direttivi.

(2) Mingħajr preġudizzju għall-generalità tad-dispożizzjonijiet hawn qabel imsemmija ta' dan l-artikolu, direttiva taht dan l-artikolu tista' -

(a) teħtieġ li ssir xi haġa jew li din ma tithallix issir, jew timponi xi projbizzjoni, restrizzjoni jew limitazzjoni, jew xi htieġa oħra, u tagħti setgħat, dwar kull transazzjoni jew att ieħor, jew għal kull attiv, jew għal kull haġa oħra tkun xi tkun;

(b) teħtieġ skema tal-irtirar, jew fond għall-irtirar u kull persuna oħra li tista' toħroġ, tifdi unitajiet jew ishma fl-iskema tal-irtirar jew fond għall-irtirar, kif jista' jkun il-każ, ittemm milli toħroġ, tifdi unitajiet jew ishma jew kull jew xi kombinazzjoni ta' dawk l-attivitajiet, hekk kif jista' jiġi speċifikat fid-direttiva;

(ċ) teħtieġ li kull persuna li jkollha xi funzjonijiet f'dak li għandu x'jaqsam mad-detentur ta' licenza jew rikonoxximent titneħħa jew titneħħa u tiġi sostitwita minn persuna oħra li tkun aċċettata mill-awtorità kompetenti;

(d) teħtieġ lil skema tal-irtirar jew Amministratur ta' Skema tal-Irtirar jew lil xi persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-iskema tal-irtirar jew fond għall-irtirar hekk kif japplika, li jagħlaq dik l-iskema tal-irtirar jew fond għall-irtirar sa dik id-data u kif hemm f'dik il-proċedura u dispożizzjonijiet oħra hekk kif jista' jiġi speċifikat fid-direttiva;

(e) teħtieġ skema tal-irtirar jew fond għall-irtirar jew provditur ta' servizz jew lil xi persuna li tkun qed tipprovdi jew li kienet qegħda tipprovdi, jew li tidher li tkun jew li kienet qegħda tipprovdi xi servizz, li ttemm l-operazzjonijiet u tagħlaq l-attivitajiet tagħha, kif ikun hemm f'dawk il-proċeduri u

ordnijiet hekk kif jistgħu jiġu speċifikati fid-direttiva, li jistgħu jipprovdu dwar il-ħatra ta' persuna biex tiegħu pussess u kontroll tad-dokumenti, *records*, attiv u proprjetà kollha li tappartjeni lil jew tkun fil-pussess jew il-kontroll tal-iskema tal-irtirar jew fond għall-irtirar jew provditur ta' servizz jew dik il-persuna l-oħra;

(f) teħtieġ it-terminazzjoni ta' kull prattika li tmur kontra d-dispożizzjonijiet adottati fl-implimentazzjoni tad-Direttiva dwar il-Pensjonijiet Okkupazzjonali.

(3) Meta l-awtorità kompetenti tkun sodisfatta li ċ-ċirkostanzi jkunu hekk jeħtieġu, hija tista' f'kull żmien tippublika kull direttiva li tkun taħt xi dispożizzjonijiet ta' dan l-artikolu.

(4) Is-setgħa li jingħataw direttivi taħt dan l-artikolu tinkludi s-setgħa li tibdel, timmodifika, iżżid ma' jew tirtira xi direttiva, kif ukoll is-setgħa li toħroġ direttivi godda jew ulterjuri.

Dritt li jsir dhul.

**42.** (1) Kull uffiċjal, impjegat jew aġent tal-awtorità kompetenti, wara li jgħib prova, jekk ikun meħtieġ jagħmel dan, tal-awtorizzazzjoni li jkollu, jista' jidhol għewwa xi fond li jkun okkupat minn persuna li tkun giet notifikata b'avviż taħt l-artikolu 39 jew li jkollha l-affarijiet tagħha li jkunu qegħdin jiġu investigati taħt l-artikolu 40, għall-fini li jikseb minn hemmhekk l-informazzjoni jew id-dokumenti meħtieġa b'dak l-avviż, jew xort'oħra għall-fini tal-investigazzjoni, u li jeżerċita xi setgħa mogħtija b'dawk l-artikoli.

(2) Meta xi uffiċjal, impjegat jew aġent tal-awtorità kompetenti jkollu tassew għaliex jaħseb li jekk dak l-avviż kif imsemmi fis-subartikolu (1) jkun gie notifikat, dan ma kienx ser jiġi mħares jew li xi dokumenti li jkun jirrigwarda jkunu ser jitneħħew, jiġu mbagħbsa jew meqruda, dik il-persuna tista', wara li jgħib prova, jekk tkun meħtieġa tagħmel dan, tidhol f'kull fond imsemmi fis-subartikolu (1) għall-fini li minn hemm tikseb kull informazzjoni jew dokument, li jkunu informazzjoni jew dokumenti li setgħu nħtieġu taħt dak l-avviż imsemmi fis-subartikolu (1).

(3) Għall-finijiet ta' kull azzjoni meħuda taħt id-dispożizzjonijiet ta' dan l-artikolu, l-awtorità kompetenti tista' teħtieġ l-għajnuna tal-Kummissarju tal-Pulizija, li jista' għal dak l-għan jeżerċita dawk is-setgħat li jiġu vestiti fih għall-prevenzjoni ta' reati u l-infurzar tad-dritt u l-ordni.

Koperazzjoni  
ma' awtoritajiet  
regolatorji  
barranin.

**43.** (1) L-awtorità kompetenti tista' teżerċita dawn is-setgħat li ġejjin fuq talba jew bil-għan li tassisti lil xi awtorità regolatorja barranija:

(a) is-setgħa li timponi, tirrevoka jew tvarja kundizzjonijiet dwar il-liċenza jew rikonossiment mogħtijin konformement mad-dispożizzjonijiet tal-artikolu 9(3);

(b) is-setgħa li tħassar jew tissospendi liċenza jew rikonossiment taħt l-artikolu 10(1);

(ċ) is-setgħat li jenħtieġu informazzjoni u dokumentazzjoni taħt l-artikolu 39;

(d) is-setgħa li jinhatru spetturi taħt l-artikolu 40;

(e) is-setgħat ta' intervent taħt l-artikolu 41;

(f) is-setgħat ta' dħul taħt l-artikolu 42;

(g) is-setgħa li tiġi komunikata lill-awtorità regolatorja barranija informazzjoni li tkun fil-pussess tal-awtorità kompetenti, kemm jekk b'riżultat tat-twetqiq ta' xi setgħa minn dawk hawn qabel imsemmija kemm jekk le.

(2) L-awtorità kompetenti għandha teżerċita setgħat bis-saħħa ta' dan l-artikolu:

(a) meta tenħtieġ l-għajnuna mill-awtorità regolatorja barranija għall-fini tal-eżerċizzju ta' xi waħda jew aktar mill-funzjonijiet regolatorji; jew

(b) meta hekk jenħtieġ kif hemm fit-termini tal-impenni internazzjonali ta' Malta; jew

(ċ) meta hekk jenħtieġ kif hemm fit-termini ta' impriżi mdaħħla f'kull ftehim bilaterali jew multilaterali għall-iskambju ta' informazzjoni u forom oħra ta' kollaborazzjoni ma' awtoritajiet regolatorji barranin, inkluża hteġa li toriġina taħt memorandum ta' qbil magħmul mal-awtorità kompetenti.

## TAQSIMA VIII

### Appelli, Rimedji, Sanzjonijiet u Kunfidenzjalità

**44.** (1) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, Appelli. jista' jsir appell quddiem it-Tribunal dwar Servizzi Finanzjarji, stabbilit taħt l-artikolu 21 tal-Att dwar Awtorità għas-Servizzi Kap. 330. Finanzjarji ta' Malta, dwar:

(a) avviz kif hemm fl-artikoli 4(4), 5(3) u 6(3);

(b) kull nuqqas li applikant jiġi mgħarraf kif hemm fid-

dispożizzjonijiet tal-artikolu 9(8);

(ċ) kull ċhid, tibdil, tħassir jew sospensjoni ta' liċenza jew rikonoxximent taħt l-artikoli 9, 10 u 11;

(d) kull deċiżjoni taħt l-artikolu 32(5);

(e) kull direttiva mogħtija taħt l-artikolu 41;

(f) kull piena amministrattiva jew miżura oħra imposta taħt l-artikolu 46;

(g) kull deċiżjoni li ssir dikjarazzjoni pubblika, taħt id-dispożizzjonijiet tal-artikolu 51, dwar l-imġiba ħażina ta' xi persuna.

(2) Appell magħmul taħt dan l-artikolu ma jissospendi ebda operazzjoni ta' xi deċiżjoni jew direttiva li jsir appell minnha:

Izda deċiżjoni biex tithassar liċenza jew rikonoxximent ma jkunux operattivi sakemm jintemm il-perjodu li fih jista' jsir appell taħt dan l-artikolu u, jekk appell isir f'dak il-perjodu, id-deċiżjoni ssir operattiva mid-data tad-deċiżjoni tal-Tribunal li jkun qed jiċċad l-appell jew mid-data meta l-appell ma jiġix segwit:

Izda wkoll deċiżjoni li tinħareġ dikjarazzjoni dwar l-imġiba ħażina ta' persuna m'għandhiex tiġi pubblikata qabel ma jiskadi l-perjodu li fih jista' jsir appell taħt dan l-artikolu u, jekk appell isir f'dak il-perjodu, id-dikjarazzjoni m'għandhiex tiġi pubblikata qabel id-data tad-deċiżjoni tal-Tribunal li tkun tiċċad l-appell jew id-data meta l-appell ma jiġix segwit.

Kap. 330.

(3) Id-dispożizzjonijiet tal-artikolu 21 tal-Att dwar Awtorità għas-Servizzi Finanzjarji ta' Malta għandhom ikunu *mutatis mutandis* japplikaw għal appelli li jsiru quddiem it-Tribunal taħt dan l-Att.

Setgħat tal-Qorti  
fil-każ li  
x'aktarx ikun  
hemm xi ksur.

**45.** (1) Jekk, wara li jsir rikors mill-awtorità kompetenti lill-Prim'Awla tal-Qorti Ċivili, il-Qorti tkun sodisfatta -

(a) li persuna x'aktarx tikser xi dispożizzjoni ta' dan l-Att jew ta' regolamenti jew Regoli tal-Pensjonijiet magħmulin taħtu, jew li tkun ser tikser jew tonqos milli tikkonforma ruħha ma' xi kundizzjoni, obbligu, ħtieġa, Regoli tal-Pensjonijiet, jew direttiva magħmulin jew mogħtijin taħt xi dispożizzjoni ta' dan l-Att; jew

(b) li persuna tkun kisret xi dispożizzjoni bħal dik jew tkun kisret jew naqset milli tikkonforma ruħha ma' xi

kundizzjoni, obbligu, htieġa, Regoli tal-Pensjonijiet, jew direttiva u li jistgħu jittiehdu passi biex jirrimedjaw dak il-ksur jew nuqqas,

il-Qorti tista' tagħti dawk l-ordnijiet li tista' tqis li jkunu adatti biex izzomm il-ksur jew, kif jista' jkun il-każ, biex teħtieġ li l-persuna msemmija fil-paragrafu (a) jew (b), jew lil xi persuna oħra li l-Qorti jidhriha li kienet xjentement involuta fil-ksur, milli tiegħu dawk il-passi li l-Qorti tista' tordnalha.

(2) Jekk, meta jsir rikors taħt is-subartikolu (1), il-Qorti tkun sodisfatta li persuna tkun għamlet xi transazzjoni bi ksur ta' xi dispożizzjoni ta' dan l-Att jew ta' xi regolamenti jew Regoli dwar il-Pensjonijiet magħmulin tahtu, il-Qorti tista' tordna lil dik il-persuna u lil kull persuna oħra li l-Qorti jidhriha li kienet xjentement involuta fil-ksur, li tiegħu dawk il-passi li l-Qorti tista' tordnalha biex tqiegħed lura lill-partijiet fil-pożizzjoni li kienu jinsabu fiha qabel ma tkun saret it-transazzjoni.

(3) Jekk, meta jsir rikors taħt is-subartikolu (1), il-Qorti tkun iktar minn hekk sodisfatta li -

(a) xi persuna tkun akkumulat profitti bħala riżultat tal-ksur; jew

(b) detentur ta' azzjonijiet, kontributor, membru jew benefiċjarju jew investitur ikun garrab xi telf jew intlaqat xort'oħra kuntrarju minhabba f'dak il-ksur,

il-Qorti tista' tordna lill-persuna responsabbli għall-ksur li tiddepożita fil-Qorti dak l-ammont li l-Qorti jidhriha li tkun ekwa fil-qjies ta' kemm isir profitt, telf jew effett kuntrarju kif hawn qabel imsemmi, u tordna li dak l-ammont jithallas hekk kif il-Qorti tista' tordna lill-persuni li jkunu għamlu transazzjonijiet li minhabba fihom jkunu akkumulaw profitti jew ikunu ggarbu telf jew effetti kuntrarji kif hawn qabel imsemmi.

(4) Għall-finijiet ta' dan l-artikolu il-Qorti tista' tordna lil persuna gġib dawk il-kontijiet u tagħti dik l-informazzjoni, li jiġu awtentikati b'dak il-mod li l-Qorti tista' tqis li jkun xieraq.

(5) Id-dispożizzjonijiet ta' dan l-artikolu jkunu mingħajr preġudizzju għal kull dritt ta' persuna aggravata li tibda proċedimenti direttament dwar xi dritt li dik il-persuna tista' xort'oħra jkollha indipendentement mill-awtorità kompetenti.

**46.** (1) Mingħajr preġudizzju għal kull setgħa oħra assenjata lill-awtorità kompetenti kif jinsab f'dan l-Att, meta detentur

Pieni amministrattivi u miżuri oħra.

ta' liċenza jew persuna rikonoxxuta jew *manager*, segretarju, direttur jew xi persuna oħra responsabbli għal detentur ta' liċenza jew persuna rikonoxxuta jiksru jew jonqsu milli jharsu xi waħda mill-kundizzjonijiet imposti f'liċenza jew rikonoxximent, u, jew meta l-awtorità kompetenti tkun sodisfatta li l-imgiba ta' persuna tkun tikkonsisti fi ksur ta' xi dispożizzjoni ta' dan l-Att, regolamenti jew Regoli tal-Pensjonijiet maħruġin taħtu, inkluż in-nuqqas ta' koperazzjoni f'investigazzjoni, l-awtorità kompetenti tista' b'avviż bil-miktub u mingħajr il-ħtieġa ta' ebda smiġh fil-Qorti timponi fuq id-detentur ta' liċenza jew persuna rikonoxxuta, *manager*, segretarju, direttur, u, jew xi persuna oħra kif jista' jkun il-każ, piena amministrattiva ta' mhux iżjed minn tlieta u disgħin elf u mitejn euro.

(2) Regoli tal-Pensjonijiet jistgħu jipprovdu li jiġu imposti pieni amministrattivi jew miżuri oħra li jistgħu jiġu imposti mill-awtorità kompetenti fuq detenturi ta' liċenza, persuni rikonoxxuti jew oħrajn, hekk kif jista' jiġi speċifikat, sew fl-għamla ta' piena fissa, piena ta' kull jum, jew it-tnejn flimkien, għal kull ksur tar-regoli.

(3) Meta l-awtorità kompetenti timponi piena amministrattiva kif hemm f'dan l-artikolu, dan ikun mingħajr preġudizzju għal kull konsegwenza oħra tal-att jew ommissjoni tal-ħati taħt id-dritt ċivili jew il-liġi kriminali:

Iżda, fil-każijiet kollha fejn l-awtorità kompetenti timponi piena amministrattiva dwar xi haġa li tkun saret jew ġiet ommessa milli ssir minn xi persuna u dak l-att jew ommissjoni wkoll jikkostitwixxu reat kriminali taħt dan l-Att, ebda proċedimenti m'għandhom jittieħdu jew jibqgħu jittieħdu kontra dik il-persuna dwar dak ir-reat kriminali.

(4) Meta jintemmu l-proċedimenti tal-appell kif hemm fl-artikolu 44, jew meta jiskadi t-terminu meħtieġ biex isir dak l-appell, l-awtorità kompetenti tista', permezz ta' dikjarazzjoni pubblika, tiżvela l-isem tal-persuna sanzjonata, il-ksur speċifiku tad-dispożizzjoni ta' dan l-Att, regolamenti jew Regoli tal-Pensjonijiet magħmulin taħtu, u l-piena jew miżura amministrattiva imposta. L-awtorità kompetenti għandha żżomm għaliha dak l-iżvelar pubbliku meta hija tqis li dak l-iżvelar ikun serjament jipperikola lis-swieq finanzjarji jew jikkaguna ħsara sproporzjonata lill-partijiet involuti.

(5) Meta l-awtorità kompetenti timponi xi miżura amministrattiva kif hemm f'dan l-artikolu, dan isir mingħajr preġudizzju għal kull konsegwenza oħra tal-att jew ommissjoni tal-ħati taħt id-dritt ċivili jew il-liġi kriminali:

Iżda, fil-każijiet kollha fejn l-awtorità kompetenti timponi xi miżura amministrattiva li tikkonsisti f'piena amministrattiva dwar xi



ħaġa li tkun saret jew ġiet ommessa milli ssir minn xi persuna u dak l-att jew ommissjoni wkoll jikkostitwixxu reat kriminali taħt dan l-Att, m'għandhom jittieħdu jew jibqgħu jittieħdu ebda proċedimenti kontra dik il-persuna dwar dak ir-reat kriminali.

**47.** Meta tkun qegħda teżerċita s-setgħat li għandha msemija fl-artikoli 41, 43 u 46, l-awtorità kompetenti għandha fid-deċiżjonijiet li tiegħu tiddikjara xi jkunu l-motivi li d-deċiżjonijiet tagħha jkunu ġew bażati fuqhom. Obbligu li jingħataw raġunijiet.

**48.** (1) Kull persuna li tikser jew tonqos milli tħares xi dispożizzjoni ta' dan l-Att, jew li tikser jew tonqos milli tħares xi kundizzjoni, obbligu, ħtieġa, regolament, Regoli tal-Pensjonijiet jew direttiva magħmulin jew mogħtijin taħt xi dispożizzjoni ta' dan l-Att, tkun ħatja ta' reat. Reati.

(2) Kull persuna li għall-finijiet ta', jew konformement ma', xi dispożizzjoni ta' dan l-Att jew ta' regolamenti magħmulin taħtu, jew xi kundizzjoni, obbligu, ħtieġa jew Regoli tal-Pensjonijiet jew direttiva magħmulin jew mogħtijin kif hawn qabel imsemmi, tagħti informazzjoni jew tagħmel xi dikjarazzjoni li tkun taf li mhix eżatta, falza jew qarrieqa f'xi aspekk materjali tagħha, jew tagħti xi informazzjoni bi traskuraġni jew tagħmel xi dikjarazzjoni li mhix eżatta, jew li tkun falza jew qarrieqa f'xi aspekk materjali, tkun ħatja ta' reat.

(3) Kull persuna li xjentement tkun parti fit-tweqqif ta' xi skema tal-irtirar jew fond għall-irtirar jew attività li jkollha liċenza jew li tkun rikonoxxuta bil-ħsieb li tagħmel frodi jew għal xi fini ta' frodi, tkun ħatja ta' reat.

(4) Kull persuna li permezz ta' xi dikjarazzjoni, wegħda jew tbassir li tkun taf li jkunu qarrieqa, foloz jew li jingannaw, jew permezz ta' ħabi diżonest ta' xi fatti materjali, jew b'għemil traskurat (kemm diżonest jew xort'oħra) ta' xi dikjarazzjoni, wegħda jew tbassir li jkunu qarrieqa, foloz jew li jingannaw, tħajjar jew tittanta tħajjar lil xi persuna oħra tidhol jew toffri li tidhol fl-iskema tal-irtirar jew fond għall-irtirar, tkun ħatja ta' reat.

(5) Kull persuna li bil-ħsieb li tevita l-kxif tal-għemil ta' reat taħt dan l-Att tneħhi, teqred, taħbi jew b'mod frawdolenti timmodifika xi ktieb, dokument jew karta oħra, tkun ħatja ta' reat.

(6) Kull persuna li bil-ħsieb tfixxkel lil xi persuna oħra fit-tweqqif tad-dmirijiet li jkollha taħt dan l-Att tkun ħatja ta' reat.

**49.** Meta persuna tinsab ħatja ta' reat taħt id-dispożizzjonijiet tal-artikolu 48, hija tehel, kemm-il darba ma jkunx hemm stabbilita xi Pieni.

piena oħra u meta tinsab haġja tar-reat, multa ta' mhux izjed minn erba' mija u sitta u sittin elf euro jew prigunerija għal mhux izjed minn erba' snin, jew dik il-multa u prigunerija flimkien.

Proċedimenti  
kriminali.

**50.** (1) Ma jistgħu jinbdew ebda proċedimenti għal reat taħt dan l-Att mingħajr il-kunsens tal-Avukat Ġenerali.

(2) Id-dispożizzjonijiet ta' dan l-Att m'għandhom jaffettwaw ebda responsabbiltà kriminali li persuna jista' jkollha taħt xi liġi oħra.

Dikjarazzjoni  
pubblika dwar  
mġiba hażina.

**51.** (1) Jekk l-awtorità kompetenti jkun jidhrilha li detentur ta' liċenza u, jew persuna rikonoxxuta jew persuna oħra tkun kisret xi dispożizzjoni ta' dan l-Att jew ta' regolamenti magħmulin taħtu jew tkun kisret jew naqset milli tħares xi kundizzjoni, obbligu, hteġa, Regoli tal-Pensjonijiet jew direttiva magħmulin jew mogħtijin taħt xi dispożizzjoni ta' dan l-Att, l-awtorità kompetenti tista' tippubblika dikjarazzjoni dwar dan.

(2) Ebda haġa f'dan l-artikolu m'għandha żżomm jew xort'oħra tippregudika s-setgħat tal-awtorità kompetenti taħt l-artikolu 41(4).

Kunfidenzjalità.

**52.** (1) Kull informazzjoni li tinkiseb mill-awtorità kompetenti jew mill-uffiċjali, impjegati jew aġenti tagħha kif ukoll minn spetturi, awdituri, attwarji u esperti mqabbdha mill-awtorità kompetenti għall-finijiet ta', jew konformement ma', xi dispożizzjoni ta' dan l-Att, jew ta' regolamenti jew Regoli tal-Pensjonijiet magħmulin taħtu, jew fl-eżekuzzjoni ta' funzjonijiet taħt xi waħda minn dawk id-dispożizzjonijiet, għandha tkun ittrattata bħala kunfidenzjali u tiġi mħarsa bid-dmir ta' segretezza professjonali, u m'għandha tiġi żvelata lil ebda persuna oħra, hliet f'dawn il-każijiet li ġejjin:

(a) meta l-informazzjoni tiġi żvelata bil-ghan li jsiru, jew xort'oħra għall-finijiet ta', proċedimenti mill-awtorità quddiem qorti taħt dan l-Att;

(b) meta l-iżvelar ikun meħtieġ għall-kxif, prevenzjoni jew prosekuzzjoni ta' reati kriminali taħt id-dispożizzjonijiet kriminali ta' dan l-Att jew ta' xi Att ieħor;

(ċ) meta dan isir biex l-awtorità kompetenti tkun tista' jew tiġi mgħejjuna fit-tweqqif jew l-eżekuzzjoni ta' xi funzjoni li jkollha taħt dan l-Att;

(d) meta l-informazzjoni tkun intgħamlet disponibbli għall-pubbliku bis-saħħa li din tiġi żvelata f'ċirkostanzi li dwarhom, jew għal kull għan li dwaru, l-iżvelar ma jkunx

prekluz b'dan l-artikolu;

(e) meta jithejjew jew jigu provduti sommarju jew ġabra ta' informazzjoni hekk li ma tkunx tista' tiġi aċċertata l-identità ta' persuna li dik l-informazzjoni tkun tirrigwarda;

(f) meta l-informazzjoni tiġi żvelata lil awditur jew attwarju meta dak l-iżvelar ikun ta' ġhajjnuna għall-awditur jew attwarju fl-eżerċizzju tal-funzjonijiet tiegħu taht l-artikolu 16;

(g) meta l-informazzjoni tiġi provduta lill-Bank Ċentrali ta' Malta jew lill-Awtorità dwar l-Elenku, taht l-Att dwar is-Swieq Finanzjarji, meta dik l-informazzjoni tkun mehtieġa mill-Bank jew mill-Awtorità dwar l-Elenku fl-eżerċizzju tal-funzjonijiet rispettivi tagħhom taht il-liġi; Kap. 345.

(h) b'risposta għal talba mingħand, jew għall-fini li tingħata għajjnuna lil, awtorità regolatorja barranija konformement mal-artikolu 43;

(i) meta l-informazzjoni tkun provduta lil dawk l-awtoritajiet regolatorji, ġudizzjarji jew ta' infurzar oħra, lokali jew barranin, u meta l-iżvelar ikun mehtieġ għall-prosegwiment ta' kwistjonijiet regolatorji serji jew ta' xorta kriminali jew il-kxif, prevenzjoni jew prosekuzzjoni ta' reati kriminali;

(j) meta l-informazzjoni tinkixef fi proċedimenti ċivili jew kummerċjali f'dak li għandu x'jaqsam mal-falliment jew stralċ obligatorju jew xoljiment u stralċ konsegwenti mill-Qorti ta' detentur ta' liċenza jew persuna rikonoxxuta, sakemm dik l-informazzjoni ma tkunx tirrigwarda lil terzi u tkun mehtieġa għall-proċedimenti, jew tiġi żvelata lil xi korp barrani responsabbli għal-likwidazzjoni u l-falliment ta' persuna li jkollha liċenza jew rikonoxximent jew awtorizzazzjoni ekwivalenti minn awtorità regolatorja barranija:

Iżda, dan l-artikolu m'għandux iċaħħad lill-awtorità kompetenti milli tuza dik l-informazzjoni għal finijiet oħra meta l-korp jew il-persuna li jkunu qegħdin iwasslu l-informazzjoni lill-awtorità kompetenti jagħtu l-kunsens tagħhom għaldaqstant.

(2) Bla ħsara għad-dispożizzjonijiet tal-artikolu 43, informazzjoni miksuba minn awtorità regolatorja barranija tista' tiġi biss żvelata lil persuna oħra, lil awtorità regolatorja barranija jew lil xi terza persuna oħra bl-approvazzjoni bil-quddiem tal-awtorità li tkun ipprovdiet l-informazzjoni.

## TAQSIMA IX

## Mixellanji

Esklużjoni ta' responsabbiltà.

**53.** L-awtorità kompetenti u kull ufficjal jew impjegat tal-awtorità kompetenti, u kull persuna oħra maħtura biex taqdi xi funzjoni taħt dan l-Att, jew taħt xi regolament u, jew Regoli tal-Pensjonijiet magħmulin taħtu, jew taħt direttiva magħmula jew mogħtija taħt xi dispozizzjoni ta' dan l-Att, ma tkun responsabbli għal ebda ħsara għal dak li jista' jsir jew jonqos milli jsir fl-eżekuzzjoni jew twettiq intiż ta' funzjonijiet taħt dan l-Att, jew xi regolament u, jew Regoli tal-Pensjonijiet magħmulin taħtu, kemm-il darba l-att jew l-ommissjoni ma jintwerewx li jkunu saru jew naqsu milli jsiru b'malafidi.

Avvizi.

**54.** Avviż jew dokument ieħor li għandu jingħata jew jiġi notifikat taħt dan l-Att, jew regolamenti jew Regoli tal-Pensjonijiet magħmulin taħtu, għandu jitqies li jkun debitament ingħata jew ġie notifikat lil persuna jekk -

(a) ikun ġie kunsinnat lilha; jew

(b) ikun tħalla fl-indirizz li hija tkun tat lill-awtorità kompetenti, jew fl-aħħar indirizz magħruf tagħha; jew

(c) ikun intbagħtilha bil-posta, *e-mail* jew *telefax* f'xi wiehed mill-indirizzi hawn qabel imsemmija; jew

(d) fil-każ ta' korp ta' persuni, sew magħqud sew mhux magħqud, jew ta' skema tal-irtirar jew fond għall-irtirar, jekk dan ikun ingħata jew ġie notifikat b'xi mod hawn qabel imsemmi jew lil skema tal-irtirar jew fond għall-irtirar, Amministratur ta' Skema tal-Irtirar, xi persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-fond għall-irtirar, segretarju, skrivan, *manager*, jew ekwivalenti tagħhom, jew lil xi kontributor jew lil xi direttur jew membru ta' xi persuna, tkun kif tkun imsejha, responsabbli għall-operazzjoni, amministrazzjoni u maniġġar tal-iskema tal-irtirar jew fond jew rappreżentant maħtur.

Thassir tal-Att li Jirregola Fondi Speċjali.  
Kap. 450.

**55.** (1) Bla ħsara għad-dispożizzjonijiet tal-artikolu 56, l-Att li Jirregola Fondi Speċjali, qiegħed b'dan jiġi mħassar mingħajr preġudizzju għal kull haġa li saret jew li tista' ssir taħt dak l-Att, salv kull awtorizzazzjoni, approvazzjoni jew ordni meħudin jew mibdijin taħtu, li għandhom jibqgħu jkunu validi u fis-seħh, bħallikieku dik l-awtorizzazzjoni, approvazzjoni jew ordni jkunu ttieħdu jew inbdew taħt dan l-Att.

(2) Bla hsara għas-subartikolu (1), u kemm-il darba r-rabta tal-kliem ma tkunx teħtiegħ xort'ohra, kull referenza għall-Att li Jirregola Fondi Speċjali, użata f'kull liġi, regolament, regola jew dokument ieħor qabel id-dhul fis-seħħ ta' dan l-Att għandha titqies li tkun referenza għal dan l-Att. Kap. 450.

**56.** (1) Il-Ministru, li jaġixxi bil-parir tal-awtorità kompetenti, jista', b'regolamenti, jaġhmel dispożizzjonijiet transitorji rigward dawk il-persuni li, fid-data effettiva ta' dan l-Att, kienu registrati taħt l-Att li Jirregola Fondi Speċjali, u, mingħajr preġudizzju għall-ġeneralità ta' dak hawn qabel imsemmi, jista', b'dawk ir-regolamenti, partikolarment jordna perjodu li fih dawk il-persuni għandhom japplikaw għal liċenza taħt dan l-Att. Setgħa li għandu Ministru biex jaġhmel arrangamenti transitorji. Kap. 450.

(2) Bla hsara għad-dispożizzjonijiet tal-artikolu 55, kull detentur ta' liċenza taħt l-Att li Jirregola Fondi Speċjali, għandu mhux iżjed tard mill-perjodu preskritt skond is-subartikolu (1), jikkonforma ruħu mad-dispożizzjonijiet ta' dan l-Att jew inkella jtemm milli jkompli jwettaq l-attivitajiet li dik il-liċenza tkun inħarġet għalihom, u dik il-persuna għandha sa dak il-perjodu preskritt jew sakemm tikkonforma ruħha mad-dispożizzjonijiet ta' dan l-Att, skont liema jaħbat l-ewwel, tibqa' tiġi regolata bid-dispożizzjonijiet tal-Att li Jirregola Fondi Speċjali. Kap. 450.

(3) Meta persuna ttemm milli tkompli twestaq l-attivitajiet li jkollha liċenza dwarhom billi dik il-persuna ma tkunx, fid-data preskritta, ikkonformat ruħha mad-dispożizzjonijiet ta' dan l-Att, dik il-persuna għandha ttemm dawk l-attivitajiet b'seħħ immedjat u l-awtorità kompetenti tista' timponi dawk il-kondizzjonijiet li tista' tqis li jkunu adatti fiċ-ċirkostanzi.

**57.** L-Att dwar *Trusts* u *Trustees*, għandu jiġi emendat kif ġej: Emenda tal-Att dwar *Trusts* u *Trustees*. Kap. 331.

(a) fl-artikolu 2 tal-Att, fit-tifsira "*unit trust*", minnufih wara l-kliem "kif imfisser fl-Att dwar *Servizzi ta' Investment*" għandhom jizdiedu l-kliem "jew fi skema tal-irtirar jew fond għall-irtirar li jkollu liċenza taħt l-Att dwar *Pensjonijiet tal-Irtirar*, imwaqqaf bħala *unit trust*";

(b) fis-subartikolu (2) tal-artikolu 12 tal-Att, minflok il-kliem "jew għal skema għal min jirtira registrata taħt l-Att li Jirregola Fondi Speċjali u stabbilita bħala *trust*." għandhom jidhlu l-kliem "jew għal skema tal-irtirar li jkollha liċenza taħt l-Att dwar il-*Pensjonijiet tal-Irtirar*, u stabbilita bħala *trust*.";

(ċ) minflok il-paragrafu (ċ) tas-subartikolu (6) tal-artikolu 43 tal-Att, għandu jidhol dan li ġej:

"(ċ) Persuna li jkollha liċenża taht l-Att dwar Pensjonijiet tal-Irtirar, biex tagħmilha ta' Amministratur ta' Skema tal-Irtirar, biex tagħmilha ta' *trustee* fi skemi tal-irtirar ma tkun teħtieg ebda awtorizzazzjoni oħra kif jinsab f'dan l-Att iżda dawk is-servizzi ta' *trustee* jkunu limitati għal skemi tal-irtirar.";

(d) minflok il-paragrafu (iii) tas-subartikolu (8) tal-artikolu 43 tal-Att għandu jidhol dan li ġej:

"(iii) persuna liċenzjata taht l-Att dwar Pensjonijiet tal-Irtirar, biex tagħxi bħala l-amministratur tal-iskema tal-irtirar:"; u

(e) fil-paragrafu (h) tas-subartikolu (1) tal-artikolu 57 tal-Att, minnufih wara l-kliem "Att dwar is-Servizzi ta' l-Investment," għandhom jidiedu l-kliem "jew l-Att dwar Pensjonijiet tal-Irtirar,".

Emenda tal-Att  
dwar il-  
Kumpanniji.  
Kap. 386.

**58.** L-Att dwar il-Kumpanniji għandu jiġi emendat kif ġej:

(a) l-artikolu 84 tal-Att għandu jiġi emendat kif ġej:

(i) minflok is-subartikolu (2)(b)(ii) tal-artikolu, għandu jidhol dan li ġej:

"(ii) li tagħxi u topera bħala skema tal-irtirar jew fond għall-irtirar fil-kuntest tat-tifsira tal-artikolu 2 tal-Att dwar Pensjonijiet tal-Irtirar."; u

(ii) fis-subartikolu (11) tal-artikolu:

1. minflok il-kliem "l-Att li Jirregola Fondi Speċjali", għandhom jidhlu l-kliem "l-Att dwar Pensjonijiet tal-Irtirar"; u

2. minflok il-kliem "joperaw bħala Fond għal Min Jirtira skond kif imfisser fl-artikoli 2 u 4 ta' l-Att li Jirregola Fondi Speċjali;", għandhom jidhlu l-kliem "joperaw bħala skema tal-irtirar jew fond għall-irtirar fil-kuntest tat-tifsira tal-artikolu 2 tal-Att dwar Pensjonijiet tal-Irtirar";

(b) minflok is-subartikolu (6)(a) tal-artikolu 194 tal-Att, għandu jidhol dan li ġej:

"(a) in-negozju tal-kumpannija jikkonsisti fl-investiment tal-fondi tagħha prinċipalment f'titoli bil-għan li jinfirx ir-riskju ta' investment u li jinghata lil membri tal-kumpannija l-benefiċċju tar-riżultati tal-amministrazzjoni tal-fondi tagħha"; u

(ċ) fil-Ħames Skeda li tinsab mal-Att, minflok l-ewwel paragrafu tagħha, għandu jidhol dan li ġej:

"1. Mingħajr preġudizzju għall-htigiet stipulati mill-awtorità kompetenti taht l-Att dwar Servizzi ta' Investiment, jew l-Att dwar Pensjonijiet tal-Irtirar, il-kontijiet individwali ta' kumpannija tal-investiment b'kapital azzjonarju varjabbli għandhom mill-inqas jiżvelaw l-informazzjoni speċifikata f'dawn id-dispożizzjonijiet ta' din l-Iskeda li ġejjin."

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## SKEDA

(Artikolu 6)

### ATTIVITAJIET LI JEHTIEĠU LICENZA

#### 1. Amministrazzjoni ta' Skema tal-Irtirar

- amministrazzjoni tal-operazzjoni ta' skema tal-irtirar.

#### 2. Servizzi ta' Kustodju jew *Trustee*

- li tagħmilha ta' kustodju jew *trustee* ta' skema tal-irtirar

- li tagħmilha ta' kustodju jew *trustee* ta' fond għall-irtirar.

#### 3. Maniġġar tal-Investment

- maniġġar tal-attiv ta' skema tal-irtirar

- maniġġar tal-attiv ta' fond għall-irtirar.

Għall-finijiet ta' dan il-paragrafu, maniġġar tal-investment tfisser li timmaniġġa jew taqbel li timmaniġġa attiv li jkun jappartjeni għal skema tal-irtirar jew fond għall-irtirar f'isem skema tal-irtirar jew fond għall-irtirar jekk dak l-attiv ikun jikkonsisti fi jew jinkludi

xi strument wiehed jew aktar jew l-arrangamenti għall-immaniġġar tagħhom ikunu tali li l-persuna tista' timmaniġġa dak l-attiv biex tinvesti f'xi strument wiehed jew aktar.

Referenza f'din l-Iskeda għal skema tal-irtirar jew għal fond għall-irtirar għandha tkun ukoll tinkludi referenza għal arrangament simili jew ekwivalenti stabbilit barra minn Malta fil-kuntest tat-tifsira tal-artikolu 6.

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### **Għanijiet u Raġunijiet**

L-għan ta' dan l-Abbozz hu f'parti minnu biex jimplimenta d-dispożizzjonijiet tad-Direttiva 2003/41/KE tal-Parlament Ewropew u tal-Kunsill tat-3 ta' Ġunju, 2003 fuq l-attivitajiet u s-sorveljanza ta' istituzzjonijiet li jipprovdu dwar l-irtirar okkupazzjonali, u miżuri oħra dwar l-Unjoni Ewropea li għandhom x'jaqsmu ma' dan u biex jemenda liġijiet oħra dwar is-servizzi finanzjarji.



**BILL**  
**entitled**

*AN ACT to regulate Retirement Schemes, Retirement Funds and Service Providers related thereto.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**PART I**

**Preliminary**

**1.** (1) The short title of this Act is the Retirement Pensions Act, 2010. Short title and commencement.

(2) The provisions of this Act shall come into force on such a date as the Minister responsible for finance may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Act.

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

"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;

Cap. 330.

"competent authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act, which body shall act as the competent authority for the purposes of this Act and also for relevant purposes of the Occupational Pensions Directive;

"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;

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

"defined contribution retirement scheme" means a 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;

"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;

"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;

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of 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, 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;

"the Minister" means the Minister responsible for finance;

"Occupational Pensions 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;

"occupational retirement scheme" means a retirement scheme established for, or by, an employer or a number of employers or an association representing employers, jointly or separately, for the benefit of employees;

"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

Cap. 330.

Financial Services Authority Act;

"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 Rule" means a rule issued by the competent authority in accordance with article 38(2);

"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 in accordance with article 37;

"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;

"recognition" means a recognition under this Act issued to a person carrying back-office administrative activities as established by Pension Rules, in relation to a retirement scheme and, or retirement fund as applicable, and "recognising" and "recognised" shall be construed accordingly;

"recognised person" means a holder of a recognition under this Act;

"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; and, or any back-office administrative activity as established by Pension Rules;

"service provider" means any person licensed under this Act to provide any one or more of the services listed in the Schedule and, or recognised to provide any one or more of the back-office administrative activities established by Pension Rules;

"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), as may be amended from time to time, and includes any implementing measures that may be issued thereunder;

"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

### Licensing and Recognition Requirements

#### Licensing of Retirement Schemes

Definition of retirement scheme.

**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 not 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 without the necessity of the member's consent in line with any Pension Rules in the event that the member is no longer employed by the employer.

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

Requirement of licence for retirement schemes.

**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 such retirement scheme is situated 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 such retirement scheme is situated 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) situated 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.

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

#### Licensing of Retirement Funds

**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 such retirement fund is situated in Malta and is duly licensed under this Act. Requirement of licence for retirement funds.

(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) situated 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.

Cap. 370.

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

#### 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

7. Any person who, in or from within Malta, provides to licence holders, or to similar or equivalent persons overseas, any one or more of the back-office administrative activities as established by Pension Rules which do not themselves constitute a licensable activity under this Act, shall be required to apply for recognition by the competent authority under this article, and no person shall provide such activities unless he is so recognised.

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

### PART III

#### Application, Grant, Cancellation, Suspension, of Licences and Recognitions

8. An application for a licence or recognition, as the case may be, shall be made in the form and manner required by the competent authority and shall -

Application for a licence and, or recognition.

(a) contain or be accompanied by such information and particulars as the competent authority may require or as may be prescribed;

(b) be verified in the manner and to the extent required by the competent authority, or as may be prescribed.

9. (1) The competent authority may grant, or refuse to grant a licence or recognition, as the case may be, applied for under this Act.

Power of competent authority to refuse or grant a licence or recognition.

(2) The competent authority shall not grant a licence or recognition, as the case may be, 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;

(ii) the retirement scheme and, or Retirement Scheme Administrator, as the case may be, will 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 persons 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;

(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 or recognition 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 considering whether to grant or refuse to grant a licence and, or recognition as the case may be, 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 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) Every recognition shall specify, as the case may be, the activities which the person has been recognised to provide.

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

(a) all licences and, or recognitions 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 or recognition; and in the case of a refusal it shall inform the applicant 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 a Pension Rule issued under this Act, define the circumstances in which "close links" are to be regarded as existing between any two or more persons.

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

Power of competent authority to cancel or suspend a licence or recognition.

**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 and, or recognition 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, 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 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 the activities it has been licensed to carry on within the time provided for in the licence 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 and, or recognition as the case may be:

(a) if it considers that the service provider is not a fit and proper person to provide any service he is licensed and, or recognised 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 and, or recognised to provide within the time provided for in the licence and, or recognition or has ceased to provide such service; or

(e) if it considers it desirable to cancel or suspend the licence and, or recognition 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 and, or recognition as the case may be, 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.

**11.** (1) Where the competent authority proposes -

(a) to vary any condition to which a licence and, or recognition is subject or to impose a condition thereon; or

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

Notification of proposed refusal, variation, cancellation or suspension of a licence and, or recognition.

it shall give the applicant or, as the case may be, to the licence holder and, or recognised person, 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 the 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 as soon as practicable notify its final decision in writing to any of the persons to whom notice is to be given under sub-article (1).

## 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.

**13.** (1) The Retirement Scheme Administrator shall act in the best interests of the retirement scheme 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.

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, wilful 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.

**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. Delegation.

**16.** (1) Every retirement scheme which is an occupational retirement scheme, shall appoint an auditor; and every defined benefit retirement scheme which is an occupational retirement scheme shall also appoint an actuary. Auditors and actuaries.

(2) Every auditor and actuary of a licence holder or recognised person, as the case may be, 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 or recognised person as the case may be.

## PART V

### Other Requirements and General Provisions

#### RETIREMENT SCHEMES

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

(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.

**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 - Schedule of payments of occupational retirement schemes.

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

(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.

**20.** The retirement scheme and Retirement Scheme Administrator shall comply with any reporting requirements as may be required by Pension Rules.

Disclosure of retirement scheme information.

**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.

**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.

Scheme document as binding agreement.

**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.

Unenforceability of unlicensed retirement schemes.

(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.

**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:

Assignment or attachment of retirement scheme assets.

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.

**25.** Subject to any regulations or Pension Rules made for the purpose of this article, a retirement scheme shall distribute benefits to

Distributions by retirement schemes.

members and, or beneficiaries in the amounts and at the times specified in the applicable scheme document.

### Defined Benefit Occupational Retirement Schemes

Technical  
funding  
requirement

**26.** (1) Every defined benefit retirement scheme which is an occupational retirement scheme shall comply with technical, financial and actuarial management regulations as well as regulations regarding under-provision or over-provision of technical funding requirement as may be prescribed.

(2) Where in the case of a defined benefit retirement scheme, which is an occupational retirement scheme, it appears to the Retirement Scheme Administrator or the retirement scheme actuary, at the end of such period as may be prescribed that the technical funding requirement is not met, such Retirement Scheme Administrator or actuary, as the case may be, shall give written notice to the competent authority of that fact together with such information as may be prescribed relating to the failure to meet that requirement.

### 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.

**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, shall produce such 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

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

Payment of periodic fees.

**31.** A licence holder, or recognised person, 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 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.

Changes in information.

**32.** (1) 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 -

Notification of new or increased control.

(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)(b) 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 article 48, where a shareholding in a service provider is acquired despite the objection of the competent authority, the exercise of the corresponding voting rights shall be suspended and any votes cast in contravention of this sub-article shall be null and void.

(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.

**33.** A retirement scheme or retirement fund shall comply with any requirements as established from time to time by the Commissioner of Inland Revenue. Compliance with tax requirements.

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

### Reporting Duties

Auditors' and actuaries' duty to report.

**35.** (1) Every auditor or actuary of a licence holder or recognised person, as applicable, shall have the duty to report immediately to the competent authority any fact or decision of which it becomes aware in its capacity as auditor or as actuary of such licence holder or recognised person which -

(a) is likely to lead to a serious qualification of, or refusal to issue, the auditor's or actuary's report on such licence holder or recognised person; or

(b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to a licence holder or recognised person in or under this Act; or

(c) seriously impairs the licence holder's or recognised person'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 or recognised person, as applicable, shall report to the competent authority any facts or decisions 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 recognised person 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 and, or back-office administrative activities as established by Pension Rules.

(4) The competent authority may require a licence holder or recognised person, as applicable, 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

**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:

Minister's  
powers.

(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 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 recognised persons, 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;

(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 defined benefit retirement scheme 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 or recognition 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 any other legislative measures of the European Union requiring transposition and, or implementation as may be amended from time to time, and including any implementing measures issued thereunder as may be applicable to retirement schemes;

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

(n) regulate the provision of personal retirement schemes and establish conditions for the provision thereof as well as determine the application or non-application of certain provisions of the Act to such retirement schemes;

(o) prescribe circumstances and, or conditions regarding the transfer, disposal, charging, assignment, surrender, termination and, or forfeiture of pension rights and, or benefits; in particular prescribe the circumstances in which, and the conditions subject to which: a beneficiary may transfer his accrued rights from one retirement scheme to another; and a retirement scheme may transfer the liabilities attributable to it to

another retirement scheme; and a retirement scheme may provide for the payment of a retirement benefit in the form of a lump sum and, or an annuity; and a contributor may transfer, dispose of or charge his interest in a retirement scheme;

(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) Regulations made under this article may also contain provision for enabling 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 may be prescribed.

(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.

**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.

(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 and, or recognised persons under this Act and others as may be specified therein and may relate to a particular class 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 or

recognised person, 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 scheme and, 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 scheme and, or 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,

in accordance with the procedure established under article 17B of the Malta Financial Services Authority Act with respect to freezing of assets; Cap. 330.

(f) employee representation in retirement schemes;

(g) the provision of personal retirement schemes and the regulation thereof;

(h) the form and content of applications to the competent authority for licensing or recognition 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) the requirements for recognition and generally the provision of such back-office administrative activities; establishing which activities constitute back-office administrative services for the purpose of recognition of such activities in terms of article 7 and providing generally for any matter ancillary or connected with the provision of such activities;

(j) provisions on financial resources requirements applicable to licence holders and, or recognised persons as the case may be;

(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 by means of a cash lump sum to a member without the necessity of the member's consent in the event that the member is no longer employed by the employer;

(p) without prejudice to the provisions of the Companies Act, establishing the persons who may act as auditors of licence holders and, or recognised persons 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, or recognised persons as applicable and the duty of a licence holder or recognised person to make documents available to the auditors of such licence holder or recognised person as applicable;

(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.

**39.** (1) 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

Power of competent authority to obtain information.

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, 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 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.

(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 or recognition 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.

**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).

Appointment of inspectors.

(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.

**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.

(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, and confer 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 person having functions in relation to the holder of a licence or recognition 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 scheme or 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.

**42.** (1) 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. Right of entry.

(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 authorisation, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents, 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 may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order.

**43.** (1) The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority: Co-operation with overseas regulatory authorities.

(a) the power to impose, revoke or vary conditions on

the licence or recognition granted pursuant to the provisions of article 9(3);

(b) the power to cancel or suspend a licence or recognition 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.

## PART VIII

### Appeals, Remedies, Sanctions and Confidentiality

Appeals.

Cap. 330.

**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:

(a) any notice in accordance with articles 4(4), 5(3) and 6(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 or recognition under articles 9, 10 and 11;

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

(e) any directive given under article 41;

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

(g) any decision to make a public statement, under the provisions of article 51, as to a person's misconduct.

(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 or recognition shall not become operative until the expiration of the period within which an appeal lies under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned:

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

(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.

**45.** (1) If, on an application by the competent authority made to the Civil Court, First Hall, the Court is satisfied -

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

(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.

**46.** (1) Without prejudice to any other powers assigned to the competent authority in terms of this Act, where a licence holder or recognised person or the manager, secretary, director or any other

person responsible for a licence holder or recognised person contravenes or fails to comply with any of the conditions imposed in a licence or recognition, 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 or recognised person, manager, secretary, director, and, or any other person as the case may be, an administrative penalty which may not exceed ninety-three thousand and two hundred euro.

(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, recognised persons or others, as may be specified, whether in the form of a fixed penalty, a daily penalty, or both, for any breach of the 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) Upon the conclusion of any appeal proceedings in terms of article 44, or the lapse of time required to lodge such an appeal, the competent authority may, by means of a public statement, disclose the name of the person sanctioned, the particular breach of the provision of this Act, regulations or Pension Rules made thereunder, and the penalty or administrative measure imposed. The competent authority shall withhold such public disclosure where it deems that such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

(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.

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

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

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

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

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

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

Penalties.

**49.** A person guilty of an offence under the provisions of article 48 shall, unless another penalty is prescribed, be liable on conviction to a fine (*multa*) not exceeding four hundred and sixty-six



thousand euro or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment.

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

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

**51.** (1) If it appears to the competent authority that a licence holder and, or recognised person or other person has contravened any of the provisions of this Act or of any regulations made thereunder or has contravened or failed to comply with any condition, obligation, requirement, Pension Rules or directive made or given under any of the provisions of this Act, the competent authority may publish a statement to that effect. Public statement as to misconduct.

(2) Nothing in this article shall restrict or otherwise prejudice the powers of the competent authority under article 41(4).

**52.** (1) Information obtained by the competent authority or by its officers, employees, agents as well as by inspectors, auditors, actuaries and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations or Pension Rules made thereunder, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any person, except in the following cases: Confidentiality.

(a) where the information is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings by the Authority before any court under this Act;

(b) where the disclosure is required for the detection, prevention or prosecution of criminal offences under the criminal provisions of this Act or any other Act;

(c) with a view to enabling or assisting the competent authority in the performance or discharge of any of its functions under this Act;

(d) where the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

(e) where a summary or collection of information is prepared or supplied in such a way as not to enable the identity

of any person to whom the information relates to be ascertained;

(f) where the information is disclosed to an auditor or actuary where such disclosure would assist the auditor or actuary in the exercise of its functions under article 16;

Cap. 345.

(g) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act, where such information is required by the Bank or by the Listing Authority in the exercise of their respective functions in terms of law;

(h) in response to a request from, or for the purpose of, assisting an overseas regulatory authority pursuant to article 43;

(i) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities and where the disclosure is required for the pursuance of serious regulatory concerns or criminal nature or the detection, prevention or prosecution of criminal offences;

(j) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up or dissolution and consequential winding up by the Court of a licence holder or recognised person, provided such information does not concern third parties and is necessary for the proceedings, or is disclosed to an overseas body responsible for the liquidation and bankruptcy of a person holding a licence or recognition or an equivalent authorisation from an overseas regulatory authority:

Provided that, this article shall not prevent the competent authority from using such information for other purposes where the body or person communicating information to the competent authority consents thereto.

(2) Subject to the provisions of article 43, information obtained from an overseas regulatory authority may only be disclosed to another person, to another overseas regulatory authority or to any other third party with the prior approval of the authority which had provided the information.

## **PART IX**

### **Miscellaneous**

Exclusion of liability.

**53.** The competent authority and any officer or employee of the competent authority, and any other person appointed to perform a

function under this Act, or under any regulation and, or Pension Rules made thereunder, or under a directive made or given under any of the provisions of this Act, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act, or any regulation and, or Pension Rules thereunder, unless the act or omission is shown to have been done or omitted to be done in bad faith.

**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 - Notices.

(a) it has been delivered to it; or

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

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

(d) in the case of a body of persons, whether corporate or unincorporated, or of a 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.

**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. Repeal of the Special Funds (Regulation) 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. 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 Minister's power to make transitional arrangements. Cap. 450.

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.

Amendment of  
the Trusts and  
Trustees Act.  
Cap. 331.

**57.** The Trusts and Trustees Act shall be amended as follows:

(a) in article 2 thereof, in the definition "unit trust", immediately after the words "as defined in the Investment Services Act" there shall be added the words "or a retirement scheme or a retirement fund licensed under the Retirement Pensions Act set up as a unit trust";

(b) in sub-article (2) of article 12 thereof, for the words "or to a retirement scheme registered in terms of the Special Funds (Regulation) Act and set up as a trust." there shall be substituted the words "or to a retirement scheme licensed in terms of the Retirement Pensions Act and set up as a trust.";

(c) paragraph (c) of sub-article (6) of article 43 thereof shall be substituted by the following:

"(c) A person licensed in terms of the Retirement Pensions Act to act as a Retirement Scheme Administrator acting as a trustee to retirement schemes shall not require further authorisation in terms of this Act provided that such trustee services are limited to retirement schemes.";

(d) paragraph (iii) of sub-article (8) of article 43 thereof shall be substituted by the following:

"(iii) a person licensed under the Retirement

Pensions Act as a retirement scheme administrator:"; and

(e) in paragraph (h) of sub-article (1) of article 57 thereof, immediately after the words "Investment Services Act," there shall be added the words "or the Retirement Pensions Act,".

**58.** The Companies Act shall be amended as follows:

Amendment of  
the Companies  
Act.  
Cap. 386.

(a) article 84 thereof shall be amended as follows:

(i) for sub-article (2)(b)(ii) thereof, there shall be substituted the following:

"(ii) to act and operate as a retirement scheme or retirement fund within the meaning of article 2 of the Retirement Pensions Act."; and

(ii) in sub-article (11) thereof:

1. for the words "the Special Funds (Regulation) Act", there shall be substituted the words "the Retirement Pensions Act"; and

2. for the words "operating as a Retirement Fund within the meaning of articles 2 and 4 of the Special Funds (Regulation) Act;", there shall be substituted the words "operating as a retirement scheme or a retirement fund within the meaning of article 2 of the Retirement Pensions Act";

(b) for sub-article (6)(a) of article 194 thereof, there shall be substituted the following:

"(a) the business of the company consists of investing in funds mainly in securities with the aim of spreading investment risk and giving members of the company the benefit of the results of the management of its funds"; and

(c) in the Fifth Schedule thereof, for the first paragraph thereof, there shall be substituted the following:

"1. Without prejudice to any requirements laid down by the competent authority under the Investment Services Act or the Retirement Pensions Act, the

individual accounts of an investment company with variable share capital shall disclose at least the information specified in the following provisions of this Schedule."

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## 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.

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### Objects and Reasons

The object of this Bill is to implement in part the provisions of 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, and other related European Union measures and to amend other financial services laws.

