

Investment Restrictions under the Special Funds (Regulation) Act 2002

Appendix 6

**EXTRACT FROM REQUIREMENTS UNDER THE SPECIAL FUNDS
(REGULATIONS) ACT, 2005**

- 2.7.3 In the case of assets held to cover the technical provisions, then:
- a) the assets shall be invested in a manner appropriate to the nature, currency and duration of the future retirement benefits and to ensure the security, quality, liquidity and cost efficiency of the portfolio as a whole;
 - b) the assets shall be properly diversified in such a way as to avoid accumulations of risk in the portfolio as a whole measured against its ability to finance the future retirement benefits.
- 2.7.4 Not more than 5% of the Scheme's assets shall be invested in Contributor-related Investments. For this purpose, the Scheme Administrator shall make the necessary arrangements with the Fund Administrator of the Fund(s) in which it invests.
- 2.7.5 The Scheme Administrator shall comply with the conditions laid out in the Special Funds Act (Control of Assets) Regulations, 2003.

Custody rules

Non-cash assets

- 2.7.6 Title to Retirement Fund shares shall be registered in the name of the Scheme Administrator (or such other person as the MFSA may agree) on behalf of the Scheme in a way which clearly distinguishes them from assets owned by the Scheme Administrator.
- 2.7.7 The Scheme Administrator shall acquire and hold any shares in any Retirement Fund, any entitlement thereto and any other property or right acquired or held by it for the purposes of the Scheme together with any interest therein and all rights and benefits attaching thereto or arising therefrom whether of a proprietary or personal nature for the purposes of the Scheme and the Scheme's Beneficiaries in accordance with the Scheme Document and the SFA.
- 2.7.8 The Scheme Administrator shall ensure that adequate arrangements are maintained to ensure that the Scheme's assets, including documents evidencing title thereto, are properly recorded, identified, segregated and controlled, so that they and the Beneficiaries' interests in them are safeguarded.

The Scheme Administrator shall ensure that the Scheme's assets are clearly identified in its records as property attributable to the Scheme and that the

register of the Retirement Fund(s) where the Scheme invests identifies the Scheme as a shareholder.

Cash assets

2.7.9 All ancillary cash and any other money which the Scheme Administrator holds or receives in respect of the Scheme (“Scheme Money”) which is not due to the Scheme Administrator shall be held by the Scheme Administrator for the purposes of the Scheme. The Scheme Administrator shall take steps to protect Scheme

EXTRACT FROM SPECIAL FUNDS (REGULATIONS) ACT (2002)
SUPPORTING REQUIREMENTS

Investment Restrictions

A Retirement Fund shall (unless agreed otherwise with the MFSA) comply with the prudential investment restrictions outlined below:

- a) The Fund shall be predominantly invested in regulated markets.
- b) The Fund shall not invest more than 10 per cent of its assets in securities which are not traded in or dealt on a market which:
 - i. is regulated, operates regularly, is recognised and is open to the public;
 - ii. has adequate liquidity and adequate arrangements in respect of the transmission of income and capital.
- c) The Fund shall be properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings.
- d) The Fund shall not invest more than 10 per cent of its assets in securities issued by the same body. Provided that this restriction shall not apply in the case of any transferable securities issued/ guaranteed by the government of Malta or of any other EU/ EEA Member State.
- e) No more than 10 per cent of the assets of the Fund shall be kept on deposit with any one body. This limit may be increased to 30 per cent in respect of money deposited with a bank licensed under the Banking Act of Malta, 1994, or with a bank outside Malta where this is established and regulated in EU/ EEA member states.
- f) The Fund shall not hold more than 10 per cent of any class of security issued by any single issuer.
- g) The Fund may invest in the Units of collective investment schemes subject to the following:
 - i. Where a commission is received by the Asset Manager or Administrator of the Fund by virtue of an investment in the Units of a collective investment scheme, that commission shall be paid into the property of the Fund.
 - ii. Where the Fund invests in the Units of a collective investment scheme which is administered/ managed by the same Fund Administrator/ Asset Manager or administered/ managed by an associate of the Fund Administrator/ Asset Manager, arrangements shall be made to eliminate more than one set of administration/ management charges and charges which the Administrator/ Asset Manager or associate of

the Fund Administrator/ Asset Manager may be entitled to charge in relation to the acquisition/ disposal of units in the underlying collective investment schemes.

- h) The Fund may employ techniques and instruments relating to transferable securities for the purposes of efficient portfolio management. The Fund may employ techniques and instruments intended to provide protection against exchange rate and other risks in the context of the management of its assets and liabilities.
- i) The Fund may invest in derivatives as long as these are used as a means of reducing risk or facilitating efficient portfolio management. Such investments must be valued on a prudent basis, taking into account the underlying asset, and must be included in the valuation of the Fund's assets. The Fund shall also avoid excessive risk exposure to a single counterparty and to other derivative operations. The Fund shall not be leveraged or geared in any way through the use of futures, options or other derivatives.
- j) Subject to the provisions of the Fund's Constitutional Documents, the Fund may borrow as long as the borrowings do not exceed 10 per cent of the value of the Fund and provided such borrowing is temporary and for liquidity purposes.
- k) A Fund shall not grant loans or act as guarantor on behalf of a third party. This is without prejudice to the right of the Fund to acquire debt securities.
- l) The Fund shall not invest in a feeder collective investment scheme.
- m) A Fund shall be precluded from investing in another Fund.

The MFSA may be flexible in the application of certain of the above restrictions as considered appropriate in the circumstances, taking into account the nature of the Fund and the reasons justifying any requested derogation(s).

- 3.4.7 The Fund Particulars shall state the procedures and basis of valuation (including in respect of any foreign exchange conversion) to be applied to the exchange of units in one sub-fund for units in another.
- 3.4.8 The Fund Particulars shall state the basis of apportioning charges, expenses, liabilities and amounts received (which are not clearly attributable to only one fund) between sub-funds. This basis should be fair to the holders of units in each sub-fund.
- 3.4.9 The Fund Particulars for a sub-fund shall state that the Fund as a whole is constituted as an umbrella retirement fund and name the other sub-funds.
- 3.4.10 The Fund Particulars shall give details of all fees, charges, taxes, commissions and other costs to be borne directly or indirectly by the Fund.

B.3.5 The Fund's Investments

Investment Objective & Policy

- 3.5.1 The Fund's Investment Objectives and Policy must include the following:
- a) the Fund shall derive in each fiscal year at least ninety per cent of its gross income from dividends, rent or interest payments with respect to instruments or immovable property, or from gains from the sale or other disposition of such instruments or immovable property, or from other income derived with respect to its business of investing in such instruments or immovable property;
 - b) the extent (if any) to which it may invest in Contributor-related Investments and the type(s) of Contributor-related Investments which it may invest in;
 - c) the Fund's policy on the kind of investments to be held, the balance between different kinds of investments and any risk parameters.
- 3.5.2 In establishing its Investment Objectives and Policies, reviewing the same and investing the Fund's assets pursuant thereto, the Fund and where relevant any Asset Manager of the Fund shall:
- a) have regard to the security, quality, liquidity and profitability of the Fund's portfolio as a whole;
 - b) have regard to the need for the diversification of investments in such a way as to avoid accumulations of risk in the portfolio as a whole, insofar as appropriate to the circumstances of the Fund and any Scheme investing in the Fund;

- c) have regard to the suitability to the Fund's Investment Objectives and any such Scheme of any class of investments in which it is proposed to invest, and the suitability of any proposed investment as an investment in any such class;
- d) exercise its investment powers in accordance with and with a view to giving effect to the foregoing, in the best interests of the Fund's shareholders, and according to the 'prudent man' principle, this meaning discharging its duties with the care, skill, prudence and diligence that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and aims.

3.5.3 The MFSA may by directive, or by the imposition of conditions on a Fund's Registration, require a Fund to adopt specific investment restrictions. The nature of these restrictions may vary depending on the nature and purpose of the Fund and the Scheme(s) investing in it.

Generally, however, the MFSA would not consider it appropriate for a Fund intended or offered as the main form of pension provision for a private individual to adopt a high-risk investment profile.

In this regard, the investment restrictions set out in Appendix 9 will normally be expected to be adhered to by the Fund.

B.3.6 Management of the Fund's Assets

3.6.1 Subject to the SFA and the Scheme Document, it shall be the responsibility of the Directors of the Fund, either directly or through an Asset Manager, to invest all money and other assets received by the Fund in accordance with its Constitutional Documents.

3.6.2 The Directors of the Fund must establish and maintain clear arrangements for the investment management of the Fund's assets including the roles which will be adopted by the Directors and any Asset Manager(s) by reference to the Fund's Investment Objectives including:

- a) asset allocation responsibilities; and
- b) day-to-day investment decision making responsibilities.

3.6.3 The Directors of the Fund may appoint an Asset Manager to carry out some or all of their responsibilities in this regard. Where the Fund appoints an Asset Manager to advise on or manage the investment of all or any of the Fund's assets, such appointment must be effected or evidenced by a written agreement between the Fund and such Asset Manager approved by the Directors. Such written agreement must identify:

- a) the services to be provided and the powers of the Asset Manager to act on behalf of the Fund; and