

*Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,366, 13 ta' Marzu, 2020*

*Taqsimha B*

**L.N. 48 of 2020**

**RETIREMENT PENSIONS ACT  
(CAP. 514)**

**Retirement Pensions (Cross-Border Activities and  
Cross-Border Transfers) Regulations, 2020**

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

1. (1) The title of these regulations is the Retirement Pensions (Cross-Border Activities and Cross-Border Transfers) Regulations, 2020. Citation, scope and commencement.

(2) The objective of these regulations is to implement Article 6 (in part) and Articles 11, 12, 14(3), 19(8), 33(1), 48(5), 48(6), 48(8)(d) and 59 of the Occupational Pensions Directive, and they shall be interpreted and applied accordingly.

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

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

"the Act" means the Retirement Pensions Act; Cap. 514.

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"cross-border activity" means operating an occupational retirement plan where the relationship between the sponsoring undertaking and the members and beneficiaries concerned, is governed by the social and labour law relevant to the field of occupational pension schemes of a Member State, other than the home Member State;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended from time to

time;

"European IORP" means an IORP in terms of the Occupational Pensions Directive authorised by a European regulatory authority;

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

"home Member State" means:

(a) Malta where the Maltese IORP is licensed under the Act; or

(b) any Member State or EEA State, other than Malta, in which the European IORP has been registered or authorised,

and in which its main administration is located in accordance with Article 9 of the Occupational Pensions Directive;

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

"institution for occupational retirement provision" or "IORP" means an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed:

(a) individually or collectively between the employer or employers and the employee or employees or their respective representatives; or

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

and which carries out activities directly arising therefrom;

"majority" means the Maltese IORP has obtained the

approval of an aggregate of not less than two-thirds of the members of the Maltese IORP and an aggregate of not less than two-thirds of the beneficiaries of the Maltese IORP, or where applicable their representatives;

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

"member" means a person, other than a beneficiary or a prospective member, whose past or current occupational activities entitle or will entitle him or her to retirement benefits in accordance with the provisions of an occupational retirement plan;

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

"Occupational Pensions Directive" means Directive (EU) 2016/2341/EC of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast), as may be amended from time to time, and includes any implementing measures, implementing technical standards, regulatory technical standards and any similar measures that have been or may be issued thereunder;

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

"sponsoring undertaking" means any undertaking or other body, regardless of whether it includes or consists of one or more legal or natural persons, and which may be located in any Member State or EEA State including Malta, which acts as an employer or in a self-employed capacity or any combination thereof, and which offers an occupational retirement plan or pays contributions to an IORP.

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

**PART I**  
**MALTESE IORPS CARRYING OUT CROSS-BORDER**  
**ACTIVITY IN OTHER MEMBER STATES OR EEA STATES**

Cross-border activity and acceptance of sponsorship by a Maltese IORP.

**3.** A Maltese IORP may carry out cross-border activity and accept sponsorship in terms of the Occupational Pensions Directive from sponsoring undertakings located within territories of Member States or EEA States other than Malta, subject to regulations 4 and 5.

Notification to the competent authority.

**4.** A Maltese IORP proposing to carry out cross-border activity and to accept sponsorship in terms of the Occupational Pensions Directive from a sponsoring undertaking located within the territory of a Member State or an EEA State other than Malta, shall notify its intention to the competent authority. The Maltese IORP, shall notify the competent authority of:

(a) the name of the host Member State or the host Member States, which shall, where applicable, be identified by the sponsoring undertaking;

(b) the name and the location of the main administration of the sponsoring undertaking;

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

(d) such other information as may be specified in the Pension Rules issued under the Act.

Application to the competent authority.

**5.** (1) Where the competent authority receives a notification by a Maltese IORP proposing to carry out cross-border activity and to accept sponsorship as referred to in regulation 4, it shall, before granting its approval, be satisfied that the Maltese IORP meets the conditions described in sub-regulation (2) of this regulation.

(2) The conditions to be met under sub-regulation (1) are:

(a) that the Maltese IORP is registered in the register referred to in article 9 (11) of the Act; and

(b) the matters set out in Articles 10(1)(a) and (b), 13(4), 22(1) and 37(1) of the Occupational Pensions Directive are satisfied.

(3) When giving such authorisation, the competent authority shall immediately inform EIOPA.

6. (1) Where the competent authority has been notified in accordance with regulation 4, the competent authority shall, unless it has issued a reasoned decision that the administrative structure or the financial situation of the Maltese IORP or the good repute or professional qualifications or experience of the persons running the Maltese IORP are not compatible with the proposed cross-border activity, within three months of receiving all the information referred to in regulation 4, communicate that information to the European regulatory authority of the host Member State and inform the Maltese IORP accordingly.

Communication to European regulatory authority of host Member State.

(2) Where the competent authority issues any reasoned decision as referred to in sub-regulation (1), such decision is to be issued within three months of receiving all the information referred to in regulation 4.

(3) Where the competent authority does not communicate the information referred to in regulation 4 to the European regulatory authority, it shall give the reasons for this to the Maltese IORP concerned within three months of receiving all that information. Such refusal in terms of sub-regulation (2) or failure to communicate such information within the three month period shall be subject to a right of appeal to the Financial Services Tribunal and the provisions of article 44 of the Act shall apply *mutatis mutandis*.

7. (1) Before the Maltese IORP starts to carry out cross-border activity, the European regulatory authority shall, within six (6) weeks of receiving the information referred to in regulation 4, inform the competent authority of:

Notification of requirements of social and labour law and information requirements.

(a) the requirements of social and labour law relevant to the field of occupational pension schemes under which the occupational retirement plan sponsored by a sponsoring undertaking in the host Member State must be operated; and

(b) the information requirements of the host Member State referred to in Title IV of the Occupational Pensions Directive which shall apply to the cross-border activity.

(2) The competent authority shall communicate the information received in terms of sub-regulation (1) to the Maltese IORP.

8. On receiving the communication from the competent authority as referred to in regulation 7(2), or if no such communication is received from the competent authority, on the expiry of the period of six (6) weeks provided for in regulation 7(1), the Maltese IORP may start to carry out cross-border activity in accordance with the host

Commencement of cross-border activity by a Maltese IORP.

B 522

Member State's requirements of social and labour law relevant to the field of occupational pension schemes and with the host Member State's information requirements, referred to in regulation 7.

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

**9.** A Maltese IORP carrying out cross-border activity shall be subject to the information requirements referred to in Title IV of the Occupational Pensions Directive imposed by the host Member State in respect of the prospective members, members and beneficiaries which that cross-border activity concerns.

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

**10.** (1) The European regulatory authority of the host Member State shall, in accordance with Article 11(9) of the Occupational Pensions Directive, inform the competent authority of any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the occupational retirement plan insofar as it concerns the cross-border activity, and of any significant change in the host Member State's information requirements as referred to in regulation 7.

(2) The competent authority shall communicate the information referred to in sub-regulation (1) to the Maltese IORP.

On-going supervision.

**11.** The Maltese IORP carrying out cross-border activity, shall be subject to on-going supervision by the European regulatory authority of the host Member State as to the compliance of its activities with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes and with the host Member State's information requirements, referred to in regulation 7. Where such European regulatory authority identifies irregularities and immediately informs the competent authority of such irregularities, the competent authority shall, in coordination with such European regulatory authority, take the necessary measures to ensure that the Maltese IORP puts a stop to the detected breach.

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

**12.** If, despite the measures taken by the competent authority pursuant to regulation 11, or because appropriate measures are lacking, the Maltese IORP persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes or the host Member State's information requirements, referred to in regulation 7, the European regulatory authority of the host Member State may, after informing the competent authority, take appropriate measures to prevent or penalise further irregularities, including, where appropriate, in so far as strictly necessary, preventing the Maltese IORP from operating in the host Member State for the sponsoring undertaking located in the host Member State.

**13.** (1) The competent authority may prohibit or restrict the activities of a Maltese IORP, if the Maltese IORP does not comply with the requirements of social and labour law of the host Member State relevant to the field of occupational pensions.

Prohibition or restriction of the activities of a Maltese IORP.

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

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

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

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

**14.** (1) In the event of cross-border activity as referred to in regulation 3, the Maltese IORP is required to have its technical provisions at all times fully funded.

Technical provisions.

(2) If these conditions are not met, the competent authority shall promptly intervene and require the Maltese IORP to immediately draw up appropriate measures and implement them, without delay, in a manner that members and beneficiaries are adequately protected.

**15.** The competent authority shall report to EIOPA, any provisions of Maltese law of a prudential nature relevant to the field of occupational pension schemes, which are not covered by Maltese social and labour law on the organisation of pension systems. Such information shall be updated on a regular basis and not less than once every two (2) years.

Exchange of information with EIOPA.

## **PART II**

### **EUROPEAN IORPS CARRYING OUT CROSS-BORDER ACTIVITY IN MALTA**

**16.** Without prejudice to Malta's requirements of social and labour law, a sponsoring undertaking located in Malta may sponsor a European IORP which proposes to carry out cross-border activity. Such European IORP shall be exempt from the provisions of article 4 of the Act.

Cross-border activity in Malta by a European IORP.

B 524

Notification by European regulatory authority to competent authority.

**17.** Where a European IORP intends to carry out cross-border activity in Malta the following conditions shall be satisfied:

(a) the European IORP has given to its European regulatory authority a notice containing the information required in terms of Article 11(3) of the Occupational Pensions Directive; and

(b) the competent authority has received the information referred to in paragraph (a), from the European regulatory authority of the European IORP, within the three month period specified in terms of Article 11(4) of the Occupational Pensions Directive.

Notification of requirements of social and labour law and information requirements.

**18.** Before the European IORP starts to carry out a cross-border activity into Malta, the competent authority shall, within six weeks of receiving the information referred to in regulation 17 from the European regulatory authority of the home Member State of the European IORP, inform the said European regulatory authority of:

(a) the requirements of social and labour law relevant to the field of occupational pension schemes under which the occupational retirement plan sponsored by a sponsoring undertaking located in Malta must be operated; and

(b) the information requirements imposed by the competent authority, established by Pension Rules for Occupational Retirement Schemes made under the Act which shall apply to the cross-border activity.

Commencement of cross-border activity by a European IORP.

**19.** On receiving the communication of information referred to in regulation 18 from the European regulatory authority of its home Member State, in terms of the Occupational Pensions Directive, or if no such communication is received from such European regulatory authority, on expiry of the period of six (6) weeks provided for in regulation 18, the European IORP may start to carry out a cross-border activity in Malta in accordance with Malta's requirements of social and labour law relevant to the field of occupational pension schemes and with the information requirements referred to in regulation 18.

Information requirements imposed by the competent authority.

**20.** A European IORP carrying out cross-border activity shall be subject to the information requirements imposed by the competent authority, established by Pension Rules for Occupational Retirement Schemes made under the Act, in respect of the prospective members, members and beneficiaries which that cross-border activity concerns.



**21.** The competent authority shall inform the European regulatory authority of the European IORP of any significant change in Malta's requirements of social and labour law relevant to the field of occupational pension schemes which may affect the characteristics of the occupational retirement plan insofar as it concerns the cross-border activity, and of any significant change in the information requirements referred to in regulation 18.

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

**22.** The European IORP carrying out cross-border activity in Malta shall be subject to on-going supervision by the competent authority as to the compliance of its activities with Malta's requirements of social and labour law relevant to the field of occupational pension schemes and with the information requirements referred to in regulation 18. Where the competent authority identifies irregularities by a European IORP, the competent authority shall immediately inform the European regulatory authority of the home Member State of the European IORP of such irregularities. In terms of Article 11(10) of the Occupational Pensions Directive, the European regulatory authority of the home Member State of the European IORP shall, in coordination with the competent authority, take the necessary measures to ensure that the European IORP puts a stop to the detected breach.

On-going supervision.

**23.** If, despite the measures taken by the European regulatory authority of the home Member State of the European IORP or because those measures prove to be inadequate or are insufficient, the European IORP persists in breaching the applicable provisions of Malta's requirements of social and labour law relevant to the field of occupational pension schemes, or the information requirements referred to in regulation 18, the competent authority may, after informing the European regulatory authority of the home Member State of the European IORP, take appropriate measures to prevent or penalise further irregularities, including, in so far as strictly necessary, preventing the European IORP from operating in Malta for the sponsoring undertaking located in Malta.

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

**24.** In the case of a European IORP carrying out cross-border activity in Malta, the competent authority shall not lay down investment rules in addition to those set out in Article 19(1) to (6) of the Occupational Pensions Directive, for the part of the assets which cover technical provisions for cross-border activity.

Investment rules.

**25.** Pursuant to Article 33 of the Occupational Pensions Directive, a European IORP carrying out cross-border activity in Malta, shall appoint one or more depositaries for the safe-keeping of assets and oversight duties in accordance with Articles 34 and 35 of the Occupational Pensions Directive when carrying out cross-border activity in Malta.

Appointment of depositary.

**PART III**  
**CROSS-BORDER TRANSFER BY A MALTESE IORP TO A**  
**EUROPEAN IORP.**

Cross-border  
transfer by a  
Maltese IORP.

**26.** Where a Maltese IORP proposes to transfer all or part of its liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a European IORP, the provisions of this Part shall apply in relation to the proposed transfer.

Interpretation.

**27.** For the purposes of regulation 26 and regulations 28 to 34:

"European IORP" means an institution for occupational retirement provision or IORP in terms of the Occupational Pensions Directive authorised by a European regulatory authority, receiving from a Maltese IORP, all or a part of the Maltese IORP's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;

"Maltese IORP" means an occupational retirement scheme as defined in article 2 of the Act, licensed by the competent authority in terms of the Act, and which qualifies as an institution for occupational retirement provision or IORP for the purposes of the Occupational Pensions Directive, transferring all or a part of its liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a European IORP.

Transfer  
requirements.

**28.** (1) The proposed transfer of all or a part of a Maltese IORP's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a European IORP, shall be subject to:

(a) the authorisation of the European regulatory authority of the European IORP;

(b) the prior consent of the competent authority; and

(c) prior approval by:

(i) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives of the Maltese IORPs, and

(ii) the sponsoring undertaking, where applicable:

Provided that, for the purposes of obtaining the majority

referred to in regulation 28(1) (a)(i), the Maltese IORP shall provide information on the conditions of the transfer to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner before the application referred to in regulation 29(1) is submitted.

(2) In the case of a transfer, the Maltese IORP shall ensure that the costs of the transfer are not incurred by the remaining members and beneficiaries of the Maltese IORP.

**29.** (1) In the case of a proposed transfer by a Maltese IORP in terms of regulation 28, the European IORP is to submit to its European regulatory authority an application for the authorisation of the transfer.

Application for  
authorisation of  
transfer.

(2) The application for authorisation referred to in sub-regulation (1) is to contain the following information:

(a) the written agreement between the Maltese IORP and the European IORP setting out the conditions of the transfer;

(b) a description of the main characteristics of the occupational retirement plan;

(c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;

(d) the names and the locations of the main administrations of the Maltese IORP and the European IORP and the Member State in which the Maltese IORP and the European IORP are registered or authorised;

(e) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;

(f) evidence of the prior approval required in accordance with paragraph (c) of regulation 28(1);

(g) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the occupational retirement plan concerned.

(3) Pursuant to Article 12(6) of the Occupational Pensions Directive, the European regulatory authority of the European IORP shall forward the application referred to in sub-regulations (1) and (2)

B 528

above, to the competent authority without delay, following its receipt.

Assessment by  
the competent  
authority.

**30.** (1) When the competent authority receives the application of the proposed transfer by the European regulatory authority of the European IORP, pursuant to regulation 29(3), the competent authority shall, in order to provide its consent to the transfer as referred to in paragraph (b) of regulation 28(1), assess whether:

(a) in the case of a partial transfer of the Maltese IORP's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, the long term interests of the members and beneficiaries of the remaining part of the scheme are adequately protected;

(b) the individual entitlements of the members and beneficiaries are at least the same after the transfer;

(c) the assets corresponding to the occupational retirement plan to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the Act, regulations and Pension Rules issued thereunder.

(2) The competent authority shall, in order to allow the European regulatory authority of the European IORP to take a decision to grant or refuse the authorisation of the transfer, communicate the results of the assessment referred to in sub-regulation (1) to the European regulatory authority of the European IORP, within eight (8) weeks of receiving the application of the proposed transfer from the said European regulatory authority.

(3) The competent authority shall be informed of the decision by the European regulatory authority of the European IORP, to grant or refuse the authorisation of the transfer, within two weeks of the said decision.

Notification of  
requirements of  
social and  
labour law and  
information  
requirements.

**31.** (1) Where the transfer results in a cross-border activity, the competent authority shall, within four weeks of receiving the decision referred to in regulation 30(3), inform the European regulatory authority of the European IORP of Malta's requirements of social and labour law relevant to the field of occupational pension schemes under which the occupational retirement plan is to be operated and of the information requirements imposed by the competent authority, established by Pension Rules for Occupational Retirement Schemes, made under the Act, which shall apply to the cross-border activity.

(2) In terms of Article 12(11) of the Occupational Pensions

Directive, the European IORP is to be notified of the requirements referred to in sub-regulation (1), within one (1) week of receiving the said information by the competent authority.

(3) The competent authority shall inform the European regulatory authority of the European IORP of any significant change in the requirements of Malta's social and labour law relevant to the field of occupational pension schemes referred to in sub-regulation (1) which may affect the characteristics of the occupational retirement plan in so far as it concerns the cross-border activity, and of any significant change in Malta's information requirements referred to in sub-regulation (1).

**32.** Upon receipt of a decision granting authorisation by its European regulatory authority authorising the cross border transfer by a Maltese IORP to a European IORP in terms of regulation 28, or if no information on the decision is received from the European regulatory authority within the period referred to in regulation 31(1), the European IORP may commence to operate the occupational retirement plan as provided in terms of Article 12(12) of the Occupational Pensions Directive.

European IORP commencing operations.

**33.** Where the transfer results in a cross-border activity by the European IORP into Malta, the European IORP shall be subject to ongoing supervision by the competent authority as to the compliance of the activities of the occupational retirement plan with Malta's requirements of social and labour law relevant to the field of occupational pensions and information requirements, referred to in regulation 31(1). Where the competent authority identifies irregularities by the European IORP, the competent authority shall immediately inform the European regulatory authority of the European IORP of such irregularities. In terms of the Occupational Pensions Directive, the European regulatory authority of the European IORP shall, in coordination with the competent authority, take the necessary measures to ensure that the European IORP puts a stop to the detected breach.

Ongoing supervision.

**34.** If, despite the measures taken by the European regulatory authority of the European IORP or because those measures prove to be inadequate or are insufficient, the European IORP persists in breaching the applicable provisions of Malta's requirements of social and labour law relevant to the field of occupational pensions or the information requirements, referred to in regulation 31(1), the competent authority may, after informing the European regulatory authority of the European IORP, take appropriate measures to prevent or penalise further irregularities, including, in so far as strictly necessary, preventing the European IORP from operating the occupational

Breach of Malta's requirements of social and labour law and information requirements.

B 530

retirement plan for the sponsoring undertaking.

**PART IV**  
**CROSS-BORDER TRANSFER BY A EUROPEAN IORP TO A**  
**MALTESE IORP**

Cross-border  
transfer to a  
Maltese IORP.

**35.** Where a European IORP proposes to transfer all or part of its liabilities, technical provisions and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a Maltese IORP, the provisions of this Part shall apply in relation to the proposed transfer.

Interpretation.

**36.** For the purposes of regulation 35 and regulations 37 to 43:

"European IORP" means an institution for occupational retirement provision or IORP in terms of the Occupational Pensions Directive authorised by a European regulatory authority, transferring all or part of its liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a Maltese IORP;

"Maltese IORP" means an occupational retirement scheme as defined in article 2 of the Act, licensed by the competent authority in terms of the Act, and which qualifies as an institution for occupational retirement provision or IORP for the purposes of the Occupational Pensions Directive, receiving from a European IORP, all or part of the European IORP's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof.

Transfer  
requirements.

**37.** (1) The proposed transfer of all or part of a European IORP's liabilities, technical provisions, and other obligations and rights, as well as corresponding assets or cash equivalent thereof, to a Maltese IORP, shall require, in the following order:

(a) the authorisation of the competent authority in terms of regulation 38;

(b) the prior consent of the European regulatory authority of the home Member State of the European IORP; and

(c) prior approval by:

(i) a majority of members and a majority of the beneficiaries concerned or, where applicable, by a majority of their representatives; and

- (ii) the sponsoring undertaking, where applicable:

Provided that, for the purposes of obtaining the majority referred to in sub-paragraph (i) of paragraph (c), the European IORP shall make available information on the conditions of the transfer to the members and beneficiaries concerned and, where applicable, to their representatives, in a timely manner before the application referred to in regulation 38 is submitted.

(2) In the case of a transfer, the Maltese IORP shall ensure that the costs of the transfer are not incurred by the existing members and beneficiaries of the Maltese IORP.

(3) In terms of Article 12(2) of the Occupational Pensions Directive, the European IORP shall ensure that in the case of a transfer, the costs of the transfer are not incurred by the remaining members and beneficiaries of the European IORP.

**38.** (1) In the case of a proposed transfer by a European IORP in terms of regulation 37, the Maltese IORP shall submit to the competent authority an application for the authorisation of the proposed transfer.

Application for authorisation of transfer to the competent authority.

(2) The application for authorisation referred to in sub-regulation (1) shall contain the following information:

(a) the written agreement between the Maltese IORP and the European IORP setting out the conditions of the transfer;

(b) a description of the main characteristics of the occupational retirement plan;

(c) a description of the liabilities or technical provisions to be transferred, and other obligations and rights, as well as corresponding assets or cash equivalent thereof;

(d) the names and the locations of the main administrations of the Maltese IORP and the European IORP and the Member State in which the Maltese IORP and the European IORP are registered or authorised;

(e) the location of the main administration of the sponsoring undertaking and the name of the sponsoring undertaking;

(f) evidence of the prior approval required in accordance with regulation 36(1)(c);

B 532

(g) where applicable, the names of the Member States whose social and labour law relevant to the field of occupational pension schemes is applicable to the occupational retirement plan concerned.

(3) The competent authority shall forward the application received pursuant to sub-regulation (1) to the European regulatory authority of the home Member State of the European IORP, without delay, following its receipt.

Assessment by  
the competent  
authority.

**39.** (1) When the competent authority receives the application of the cross-border transfer, in terms of regulation 38, the competent authority shall assess whether:

(a) all the information referred to in regulation 38(2) has been provided by the Maltese IORP;

(b) the administrative structure, the financial situation of the Maltese IORP and the good repute or professional qualifications or experience of the persons running the Maltese IORP are compatible with the proposed transfer;

(c) the long term interests of the members and beneficiaries of the Maltese IORP and the transferred part of the occupational retirement plan are adequately protected during and after the transfer;

(d) the technical provisions of the Maltese IORP are fully funded at the date of the transfer, where the transfer results in a cross-border activity; and

(e) the assets to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, in accordance with the Act and any regulations and Pension Rules issued thereunder.

(2) Subject to the requirements laid down in regulation 37(1)(b) and (c) and to the assessment carried out in terms of sub-regulation (1), the competent authority shall grant or refuse the authorisation of the proposed transfer and communicate its decision to the Maltese IORP within three (3) months of receiving the application pursuant to regulation 38(1).

(3) The competent authority shall be informed by the European regulatory authority of the European IORP, of the results of the assessment of the proposed transfer carried out by the European regulatory authority in terms of Article 12(8) of the Occupational Pensions Directive within eight weeks of the receipt of the application



referred to in regulation 38(3).

(4) Prior to taking a decision to grant or refuse the authorisation of the proposed transfer in accordance with this regulation and regulation 38, the competent authority shall take into account the results of the assessment carried out by the European regulatory authority referred to in sub-regulation (3).

(5) The competent authority shall inform the European regulatory authority of the home Member State of the European IORP of its decision to grant or refuse the authorisation of the proposed transfer referred to in sub-regulation (2), within two (2) weeks of taking that decision.

(6) Where the competent authority refuses to authorise the proposed transfer, the competent authority shall provide the reasoning for such refusal within the three (3) month period referred to in sub-regulation (2). Such refusal or a failure to act within the three (3) month period shall be subject to a right of appeal to the Tribunal and the provisions of article 44 of the Act shall apply *mutatis mutandis*.

**40.** (1) Where the transfer results in a cross-border activity, the European regulatory authority of the European IORP is to inform the competent authority, of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes under which the occupational retirement plan is to be operated and of the information requirements referred to in Title IV of the Occupational Pensions Directive which shall apply to the cross-border activity, within four (4) weeks of receiving the decision as referred to in regulation 39(5).

Notification of the requirements of social and labour law and information requirements.

(2) The competent authority shall communicate the information received in terms of sub-regulation (1) to the Maltese IORP within one (1) week of receiving the said information.

(3) The competent authority shall, upon receiving from the European regulatory authority of the home Member State of the European IORP, information on any significant change in the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes referred to in sub-regulation (1) which may affect the characteristics of the occupational retirement plan insofar as it concerns the cross-border activity, and on any significant change in the host Member State's information requirements as referred to in sub-regulation (1), communicate the said information to the Maltese IORP.

B 534

Commencement  
of operations of  
a Maltese IORP.

**41.** Upon receipt of the decision taken by the competent authority to grant an authorisation of the proposed transfer as referred to in regulation 40(2), or if no information on the decision is received from the competent authority on expiry of the period of seven (7) weeks following the period referred to in regulation 40(2), the Maltese IORP may start to operate the occupational retirement plan.

Ongoing  
supervision.

**42.** Where the transfer results in a cross-border activity, the Maltese IORP shall be subject to on-going supervision by the European regulatory authority of the European IORP, as to the compliance of its activities with the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes and of the host Member State's information requirements as referred to in regulation 40(1). Where the European regulatory authority of the European IORP identifies irregularities and informs the competent authority of such irregularities, the competent authority shall, in coordination with the European regulatory authority, take the necessary measures to ensure that the Maltese IORP puts a stop to the detected breach.

Breach of social  
and labour laws  
and information  
requirements.

**43.** If, despite the measures taken by the competent authority, the Maltese IORP persists in breaching the applicable provisions of the host Member State's requirements of social and labour law relevant to the field of occupational pension schemes or the host Member State's information requirements as referred to in regulation 40(1), the European regulatory authority of the home Member State of the European IORP may, after informing the competent authority, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing the Maltese IORP from operating in the host Member State for the sponsoring undertaking.

#### PART IV MISCELLANEOUS

Mediation by  
EIOPA.

**44.** In the case of disagreement about the procedure or content of an action or inaction of the European regulatory authority of the European IORP, including a decision to authorise or refuse a cross border transfer, in terms of Article 12 of the Occupational Pensions Directive, the competent authority may, in the context of cross-border transfers under Parts III and VI of these Regulations, refer the matter to EIOPA and request it to carry out non-binding mediation in accordance with Article 31 of Regulation (EU) No 1094/2010.

**45.** The Retirement Pensions (European Passport Rights for Institutions for Occupational Retirement Provision) Regulations are hereby revoked.

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Revocation of  
Retirement  
Pensions  
(European  
Passport Rights  
for Institutions  
for  
Occupational  
Retirement  
Provision)  
Regulations.  
S.L. 514.05.

