

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Trusts and Trustees Act (Cap. 331)

RULES FOR TRUSTEES OF FAMILY OFFICES

Introduction

1. (1) These Rules are drawn up pursuant to article 52 (3) of the Trusts and Trustees Act (“the Act”), by virtue of which the Malta Financial Services Authority (“the Authority”) may issue Rules to regulate trustees which are subject to a registration procedure in terms of article 43B of the Act.
 - (2) The Rules may lay down additional requirements and conditions in relation to the activities of such trustees, their responsibilities to the Authority, adherence to a code of conduct, payment of fees and any other matter as the Authority may consider appropriate.
 - (3) The Authority may amend or revoke such Rules. Any amendment or revocation thereof shall be officially communicated to the persons concerned.
 - (4) The Authority also has the power to interpret any Rule or amendment thereof.
 - (5) These Rules should be read in conjunction with the duties of trustees as set out in the Act as well as the requirements established by the Code of Conduct pursuant to Article 52 of the Trusts and Trustees Act, Cap. 331, as applicable.
 - (6) These Rules shall be binding upon the persons specified and do not constitute mere guidelines.
 - (7) These Rules shall come into force on **XX/XX/XXXX**

Application

2. (1) These Rules shall apply to trustees which in terms of Article 43B of the Act are set up as companies, and:
 - (a) whose object and activities are limited to acting as trustee in relation to a specific settlor or settlors and providing administrative services in respect of a specific family trust or trusts; and
 - (b) which do not otherwise hold themselves out as trustees to the public in terms of Article 43 of the Act; and
 - (c) which do not act habitually as trustees, in any case in relation to more than five settlors at a time.
- (2) The trustees referred to in these Rules shall not require authorisation in terms of the Act but shall be subject to a registration process in the manner outlined in these Rules. Furthermore, every trustee falling within the remit of Article 43B and thereby requiring registration in terms of the Act is expected to have regard to these Rules as may be amended from time to time.

Family Trusts

3. For the purposes of these Rules, a family trust as referred to in Section 3 above, shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family dependants who are definite and can be ascertained

Family Dependants

4. The term 'family dependants' as used in terms of these Rules and as referred to in Article 43B of the Act shall be deemed to refer to an individual who is related to the settlor, by consanguinity or affinity in the direct line up to any degree, whether ascendant or descendant, or in the collateral line up to the fourth degree inclusively.

Registration of Trustees of Family Trusts

5. (1) A trustee set up as a company which fulfils the criteria defined in Article 43B shall not require authorisation in terms of the Act but shall be subject to a registration process.
- (2) In order for such trustees to be eligible for registration in terms of Article 43B, the applicant must satisfy the following conditions:
- (a) The trustee must be a company registered in Malta;
 - (b) The applicant shall submit a request in the form and manner prescribed by the Authority, for inclusion in the register of Trustees for Family Offices, which register is to be kept by the Authority. The register shall be available to the public and shall be updated on a regular basis;
 - (c) The Memorandum and Articles of Association of the applicant shall limit the company's objects and activities to acting as trustee in relation to a specific settlor or settlors and providing administrative services only in respect of a specific family trust or trusts;
 - (d) The applicant shall maintain insurance cover at all times, which cover shall be proportionate to the nature and size of the activities carried out by the trustee company.
 - (e) The Board of Directors of the applicant shall be composed of at least three directors, and all directors shall be collectively responsible for the proper administration of the trustee company, including the fulfilment of the relevant duties of trustees;
 - (f) At least one of the directors (hereinafter referred to as "qualified director"), must be a person authorised in terms of Article 43(3) or Article 43(12)(a) of the Act and must be independent from the settlor or settlors setting up the family trust;
 - (g) All other directors, other than the qualified director, must be individuals.

(3) For the purposes of paragraph (f) of Rule 5(2), a qualified director shall be deemed to be independent if the said director has no business relationship with the settlor or settlors, as the case may be, or with the beneficiaries of the private trust and is not related by consanguinity or affinity thereto.

(4) In its assessment of the independence or otherwise of a qualified director, the Authority shall, *inter alia*, take into consideration the following factors:

(a) whether the director has been an employee of the settlor, or an employee or an executive officer of a company owned or controlled by the settlor or of a parent or subsidiary of such company, as the case may be, for the past 3 years;

(b) whether the director has, or has had for the past 3 years, a significant business relationship with the settlor, either directly or as a partner, shareholder director or senior employee of a body that has such a relationship with the settlor;

(c) whether such director has close family ties with the settlor or with any of the other directors or senior employees of the trustee company;

(5) The applicant shall be required to submit the following documents to the Authority:

(i) The Memorandum and Articles of Association of the company;

(ii) Copies of the trust deed;

(iii) Details of the Qualified Director;

(iv) An application fee as may be prescribed by the Authority;

(v) Copies of any standard management agreements (client agreements) that the applicant intends to use.

(6) The Authority may also request the applicant to produce any additional information which it may deem appropriate. Once the Authority is satisfied that the conditions and requirements mentioned above have been fulfilled, it shall proceed to register such trustee in the above-mentioned Register.

(7) Where a trustee company which has been registered as a Trustee for Family Trusts no longer satisfies the registration requirements set out in these rules and wishes to provide trustee or other fiduciary services in terms of Article 43 of the Act, the trustee company shall, within thirty calendar days, apply to the Authority for authorisation to act as a trustee in terms of Article 43 of the Act. If the trustee company fails to seek authorisation to act as a trustee within such period, it shall be prohibited from providing further services, and the Authority shall proceed to cancel its registration as a Trustee for Family Trusts.

Duties of the Qualified Director

6. (1) The qualified director shall be responsible for ensuring the proper operation and management of the trustee company in line with the provisions of the Act and these Rules.
- (2) The qualified director shall ensure constant supervision of the trustee company.
- (3) The qualified director shall have the power to veto decisions taken by a majority of members of the Board of Directors;
- (4) The qualified director shall also take on the function of a “qualified person” in terms of Article 43(9) of the Act in cases where trustees registered in terms of Article 43B are holding upon trust:
 - (a) securities or interests in or issued by a commercial partnership registered in Malta, other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction, or
 - (b) immovable property in Malta.
- (5) The duties of the qualified director shall include the following:

(a) Upon submission of a request to the Authority for the registration of the trustee company as a Trustee for Family Trusts, providing the Authority with a declaration in the form prescribed by the Authority, containing as a minimum the following information:

- (i) the name of the trustee company applying for registration;
- (ii) the names and addresses of the shareholders of the trustee company;
- (iii) the names and addresses of the directors of the trustee company;
- (iv) the number of family trusts administered by the trustee company;
- (v) a statement indicating that the trustee company satisfies all the requirements which make it exempt from authorisation but eligible for registration as a Trustee for a Family Trusts;
- (vi) details of the registered office and place of business of the trustee company;

(b) Annual submission of a Certificate of Compliance on the anniversary of the date of registration, in the form as may be prescribed by the Authority;

(c) Ensuring that the trustee company keeps accurate accounts and records of its administration of the family trust and that it establishes adequate systems for maintaining proper records of the identity and residence of beneficiaries, and of the dealings and the assets in connection with the family trust and compliance with applicable law. Such accounts and records shall be available for inspection by the Authority;

(d) Notifying the Authority in the event that he resigns, has his engagement terminated or is otherwise hindered in the performance of his duties.

Provided that the qualified director's removal or resignation shall not have effect until another authorised trustee is appointed as qualified director in his stead;

(e) Notifying the Authority of any change or circumstance which would have a bearing on the trustee company's eligibility for registration, including any change in the company's shareholding, charter, statute, Memorandum and Articles of Association or other instrument constituting the company, directors or members;

- (f) Notifying the Authority of the trustee company's intention to surrender its registration.

Reporting Obligations and Co-operation with Regulatory Authorities

- 7. (1) A trustee registered in terms of Article 43B is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities.
- (2) A trustee registered in terms of Article 43B shall have in place arrangements for all records and accounts of its administration of family trusts, which records should be easily accessible to enable the Authority to monitor compliance with any requirements under the Act and under these Rules, particularly during any on-site compliance visits which may be carried out by the Authority. The trustee shall arrange to maintain sufficient backups of all such records.
- (3) A trustee registered in terms of Article 43B shall ensure that all submissions required in terms of these Rules, as well as any other submissions which the Authority may request from time to time, are submitted to the Authority in a timely manner.
- (4) A trustee registered in terms of Article 43B shall keep at the disposal of the Authority, for at least five years, the records relating to the administration of family trusts.