

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to all persons authorised in terms of the Trusts and Trustees Act (Cap. 331)

Rules for Trustees of Family Trusts

1. Introduction

On 25th April 2014, a number of amendments to the Trusts and Trustees Act were brought into force by [Act No. XI of 2014](#). These amendments included, *inter alia*, the introduction of the concept of family trusts in Article 43B of the said Act. Family trusts are trusts created to hold property settled by the settlor for the present and future needs of family members or family dependants who are definite and can be ascertained. Trustee companies which satisfy the requirements set out in Article 43B are not required to obtain authorisation, although they are subject to a registration requirement. The amendments also included an amendment to Article 52, empowering the Authority to issue rules to regulate trustees which are subject to a registration procedure in terms of Article 43B.

In terms of the said Article 52, the MFSA issued for consultation draft rules applicable to trustees acting for family trusts as defined in Article 43B [[MFSA Ref. 09/2014](#)]. Following the conclusion of the consultation period, the MFSA reviewed the feedback and comments received from a number of industry players as well as relevant regulatory authorities in order to finalise the rules applicable to trustees of family trusts, which are the subject of this circular.

2. MFSA Considerations

(a) Composition of the Board of Directors

Whilst most respondents to the consultation procedure welcomed the introduction of this regulatory regime in relation to trustees of family trusts, the main reservation expressed by the industry related to the interposition of a professional trustee on the board of directors of the corporate trustee applying for registration in terms of Article 43B.

In this respect, the Authority has decided to take on the respondents' comments and it will not require trustees of family trusts to include a professional trustee on their board of directors. Nonetheless, all proposed directors, who must be individuals, shall be required to undergo a fit and proper assessment as defined in the Rules, and at least one of these directors, is required to have knowledge and experience in relation to the administration of trusts.

(b) Money Laundering Reporting Officer (“MLRO”)

Following the consultation procedure, the MFSA was also in discussion with the FIAU in relation to the status of such trustee companies vis-à-vis Anti-Money Laundering and Financing of Terrorism requirements. In this respect, a new Rule has been introduced, setting out a requirement for one of the directors or another senior officer of the company to assume the role of MLRO in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01, Laws of Malta) and the FIAU’s Implementing Procedures.

(c) Definition of Family Members and Family Dependants

The definition of ‘family members’ and ‘family dependants’ has been slightly amended to reflect comments and feedback received from various respondents in this respect, including a widening of the degrees of relation in the collateral line up to the fifth degree inclusively.

3. Conclusion

The Authority would like to emphasize that this regime has been created specifically for companies acting as trustees for family trusts, as defined in the Trusts and Trustees Act and in these rules, to mirror the private trustee regime applicable to individuals in terms of article 43A of the same Act.

In addition, the Authority would like to draw the attention of any interested applicants that, in terms of Rule 1(8), the Rules for Trustees of Family Trusts are considered to be in force as from the date of publication thereof. The Rules for Trustees of Family Trusts are available on the MFSA website at the following address:

[https://www.mfsa.com.mt/pages/readfile.aspx?f=/files/LegislationRegulation/regulation/trustees/Rules for Trustees of Family Trusts.pdf](https://www.mfsa.com.mt/pages/readfile.aspx?f=/files/LegislationRegulation/regulation/trustees/Rules%20for%20Trustees%20of%20Family%20Trusts.pdf)

4. Contacts

Any queries regarding the subject matter of this circular are to be directed to:

Dr. Michelle Mizzi Buontempo
Director
Conduct Supervisory Unit
Tel: 25485112
mmizzibuontempo@mfsa.com.mt

Dr. Petra Camilleri
Analyst
Conduct Supervisory Unit
Tel: 25485527
pcamilleri@mfsa.com.mt

**Communications Unit
Malta Financial Services Authority
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