

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Trusts and Trustees Act (Cap. 331)

RULES FOR TRUSTEES OF FAMILY TRUSTS

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 shall lay down additional requirements and conditions in relation to the activities of such trustees, their responsibilities to the Authority, adherence to any code of conduct or any other applicable rules or regulations, payment of fees and any other matter as the Authority may consider appropriate.

(3) The Authority may amend or revoke such Rules and any such amendment or revocation 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 provisions of the Act providing for the duties of trustees as well as the requirements established by any Code of Conduct or any Rules issued pursuant to Article 52 of the Act, as applicable.

(6) These Rules shall be binding upon the persons specified herein and do not constitute mere guidelines.

(7) Without prejudice to any other provision of the Act, any person who breaches any of these Rules shall be liable to an administrative penalty as may be prescribed under the Act.

(8) These Rules shall come into force upon date of publication.

Scope and 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 of family trusts at a time.
- (2) The trustees referred to in these Rules shall be subject to a registration process in the manner outlined in Section 5 of 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.
- (3) A trustee registered in terms of Article 43B shall not offer or carry out any other activity regulated by the Trusts and Trustees Act, including acting as mandate or as an administrator of private foundations, nor shall it offer or carry out the activities

of a company service provider as defined in the Company Service Providers Act or any other activity which would require authorisation in terms of Article 43 of the Trusts and Trustees Act. For the sake of clarity, a trustee registered in terms of Article 43B shall, upon being registered, be permitted only to act as trustee in relation to a specific settlor or settlors of family trusts and in any case for not more than five settlors at a time, and to provide administrative services only in respect of a specific family trust or trusts.

(4) A trustee registered in terms of Article 43B of the Act shall commence activities pursuant to its registration within twelve months from the date of the granting of registration. In the event that the trustee is, for any reason, not in a position to comply with this requirement, the Authority may cancel or suspend such registration in accordance with the provisions of the Act.

Family Trusts

3. For the purposes of these Rules and in terms of the Act, a family trust as referred to in Section 2 above, shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family members or family dependants as defined hereunder, who are definite and can be ascertained.

Provided that nothing in this definition shall preclude discretionary family trusts from being created for the benefit of a class of family members or family dependants as defined hereunder, who are identifiable or ascertainable but not yet definite.

Family Members and Family Dependants

4. The term ‘family dependants’ and ‘family members’ as used in terms of these Rules and as referred to in Article 43B of the Act shall mean an individual who is related to the settlor or to any one of the settlors setting up the trust, by consanguinity, adoption or affinity, in the direct line up to any degree, whether ascendant or descendant, or in the collateral line up to the fifth degree inclusively.

Provided that the trust instrument may provide for a charitable purpose, or an institution set up for a charitable purpose as defined in the Act, to benefit as a residual beneficiary upon the termination of the family trust.

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 shall satisfy the following conditions at application stage and on an ongoing basis:
- (a) The trustee shall be a limited liability company registered in Malta in terms of the Companies Act (Cap. 386);
 - (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. This Register shall be kept by the Authority and it shall be available to the public. The Register 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, in any case for not more than five settlors at a time, 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) All directors shall be individuals and must be determined by the Authority to be fit an proper persons;
- (g) In order to determine the fitness and properness of the proposed directors, such proposed directors shall be required to submit a personal questionnaire in the form and manner determined by the Authority, and whereby the Authority will determine the proposed director's:
 - i. Integrity - the proposed directors must be of good repute and act honestly and in a trustworthy manner in relation to clients and other involved parties;
 - ii. Competence and experience – the proposed directors must be able to demonstrate an acceptable level of knowledge, professional expertise and experience in relation to the role assumed by them;
 - iii. Financial soundness and solvency – the proposed directors must be able to demonstrate the ability to effectively manage their personal financial resources;
- (h) At least one of the proposed directors of the company shall possess knowledge and experience in relation to the administration of trusts;
- (i) One of the executive directors or another senior officer of the company shall take on the role of Money Laundering Reporting Officer (“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, and such officer shall be responsible to fulfil the obligations applicable to the MLRO in terms of the said regulations and procedures.

- (3) The applicant shall be required to submit the following documents to the Authority:
- (i) The Memorandum and Articles of Association of the company;
 - (ii) Copy of the relevant trust deed for each family trust which the trustee intends to administer at application stage;
 - (iii) Declaration that the proposed trust structure(s) complies, and shall continue to comply with the definition of a family trust as prescribed by the Act and these Rules;
 - (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.
- (4) The Authority may also request the applicant to produce any additional information which it may deem appropriate.
- (5) 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.
- (6) 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 30 calendar days, apply to the Authority for authorisation to act as a trustee in terms of Article 43 of the Act.
- (7) If the trustee company fails to seek authorisation to act as a trustee within the period specified in sub-paragraph (6) of this Rule, 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 Directors

6. (1) The directors 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, as well as the general duties applicable to directors in terms of the Companies Act.
- (2) Without prejudice to the generality of sub-paragraph 1 of this Rule, the directors' duties 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, if any at application stage;
 - (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 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 prescribed in Annex I to these Rules;
 - (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) Obtaining the prior written consent of the Authority before:
 - (i) registering any appointment or resignation of a director, or in the event that any of the directors have their engagement terminated or are otherwise hindered in the performance of their duties;
 - (ii) affecting any change which would have a bearing on the trustee company's eligibility for registration, including any change in its charter, statute, Memorandum and Articles of Association or other instrument constituting the company, directors or members;
 - (iii) surrendering its registration, as provided in Rule 7 below.

- (e) Notifying the Authority in writing and without delay of:
 - (i) any new engagement by the registered trustee in relation to any additional family trust(s) following registration, and providing the Authority with a copy of the relative trust deed and the relevant declaration as prescribed in Rule 5 (3)(iii) above;
 - (ii) any change to the shareholding of the registered trustee.

Cessation of business as a Trustee of Family Trusts - Surrender or Suspension or Cancellation of Registration

7. (1) A registered trustee shall inform the Authority at an early stage of its intention to surrender its registration. The Authority may require such registered trustee to delay the surrender of its registration as a trustee of family trusts, or to wind-up such business in accordance with any conditions which may be imposed by the Authority.

(2) A registered trustee shall, subject to any additional requirements which may be imposed by the Authority, abide with the following procedure for surrendering its registration:

- (a) Once the registered trustee has informed the Authority of its intention to surrender its registration, the registered trustee shall submit the following confirmations/documentation to the Authority:
- (i) A formal request asking for approval to surrender its registration;
 - (ii) A certified true copy of the Directors' Resolution confirming the company's intention to surrender its registration certificate, subject to the Authority's approval and once the necessary formalities are finalised;
 - (iii) Confirmation that the registered trustee has given due notice to its clients of its intention to surrender its licence;
 - (iv) A confirmation that no litigation is pending which arises out of any event that occurred whilst the registered trustee was registered;
 - (v) A confirmation that the registered trustee will remove from all letterheads, and any other stationery, any reference to being registered by the Authority;
 - (vi) A confirmation that the registered trustee has informed its auditor and insurer of its intention to surrender its registration.
- (b) Upon being satisfied that all the requirements set out in paragraph (a) above have been met, the Authority shall commence the process for approval of the surrender of the registration, and the final decision shall be conveyed to the registered trustee which will cease to be registered thereafter.
- (c) The registered trustee shall return its original registration certificate to the Authority.
- (d) Following the Authority's approval of the surrender, unless arrangements are made for the winding up of the registered trustee, a certified true copy of the Constitutional Document of the registered trustee, duly amended to remove all references to acting as trustee of family trusts from its Objects Clause and, (where appropriate) to change the name of the registered trustee, shall be submitted to the Authority.
- 8.** The Authority may at any time cancel or suspend the registration of a trustee registered in terms of Article 43B of the Act, as provided in these Rules if:

- (a) it considers that the holder thereof is no longer satisfies the registration requirements set out in these Rules, and fails to seek authorisation, where applicable, to act as a trustee within the period specified in sub-paragraph (6) of Rule 5;
- (b) it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the requirements of the Act or of these or any other Rules which are issued thereunder, or has failed to satisfy or comply with any obligation or condition to which it, or the Registration is subject;
- (c) if the Authority has been furnished by or on behalf of the registered trustee, with information or declarations which are false, inaccurate or misleading;
- (d) if the registered trustee does not commence activities pursuant to its registration within twelve months from the date of the granting of registration, as prescribed in sub-paragraph (4) of Rule 2.

Reporting Obligations and Co-operation with Regulatory Authorities

- 9.** (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, the records relating to the administration of family trusts for a period of not less than ten years from the date of the termination of the trust or the trusteeship, whichever event occurs earlier.

Annex I

Certificate of Compliance for Trustees of Family Trusts

To: Director – Conduct Supervisory Unit
Malta Financial Services Authority

Dear Madam,

Certificate of Compliance

With reference to the Registration of *[name of company]*....., authorizing the Registered Trustee to act as a trustee for a family trust(s) as defined in Article 43B of the Trusts and Trustees Act (Cap.331, Laws of Malta), and as further explained in the Rules issued thereunder, the Registered Trustee confirms that during the period to

(Kindly mark as appropriate)

- All activity has been conducted in accordance with:
 - a) the Trusts and Trustees Act, as applicable;
 - b) the Rules for Trustees of Family Trusts; and
 - c) any recommendations or directives issued to me by the Malta Financial Services Authority

and that the Malta Financial Services Authority has been notified of all matters which may influence its decision on the registration status of the Registered Trustee.

- The Registered Trustee is not acting as a trustee for more than five settlors of family trusts.
- The activities of the Registered Trustee are limited exclusively to acting as a trustee in relation to a specific settlor or settlors and providing administrative services in respect of a specific family trust or trusts.

I further confirm that during the above mentioned period, the Registered Trustee has:

- not received any complaints from clients;
- received (*please specify number*) complaints from clients.

.....

.....

.....

[Include details of the nature of any complaints received]

At the end of the period, the Registered Trustee has (*please specify no.*) complaints which have not yet been resolved.

Signed by

Name of Registered Trustee

Date