

Trustees of Family Trusts Rulebook

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REVISIONS LOG

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1.00	29/04/2016	Rules Issued
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Interpretation

Act	Refers to the Trusts and Trustees Act, Chapter 331 of the Laws of Malta.
Applicant	Refers to the company seeking registration in terms of Article 43B of the Act.
Authority	Refers to the Malta Financial Services Authority as established in terms of Article 3 of the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta.
Companies Act	Refers to the Companies Act, Chapter 356 of the Laws of Malta.
Family client	shall mean any: <ul style="list-style-type: none"> i. former family member; ii. key employee; iii. former key employee; iv. non-profit or charitable organisation which is funded exclusively by one or more family member, family dependant or family client.
Family trust	<p>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.</p> <p>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.</p>
Family dependants/family members	<p>Shall mean:</p> <ul style="list-style-type: none"> i. An individual who is related to the settlor by consanguinity, adoption or affinity, in the direct

line up to any degree, whether ascendant or descendant, including persons related by affinity with the said ascendant or descendant, or in the collateral line up to any degree.

- ii. An individual who is in a stable and committed relationship with the settlor and who is living in a joint household with the settlor.
- iii. An individual with whom the settlor has descendants, by consanguinity, adoption or affinity.

Provided that the reference to 'settlor' in this definition shall refer to any one of the settlors setting up the trust, or who provides trust property, or makes a disposition to the family trust in their capacity as settlor, as defined in the Act, and provided that the existence of the family relationship link is established.

Provided further 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.

Provided further that, given that a Notified Professional Investor Fund ('NPIF') is a subject person in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, the definition of 'family dependant/family member', may also extend to include 'family clients' solely in the following circumstances:

- a) The Registered Trustee intends to invest, on behalf of the family trust, *inter alia* in a NPIF established under the Investment Services Act (List of Notified CISs) Regulations; and
- b) The NPIF is managed by an exempt manager pursuant to Rule 6.01 of Part A of the Investment Services Rules for Notified Professional Investor Funds and Related Due Diligence Service Providers; and

c) The family trust has aggregate net assets in excess of EUR50,000,000 or its currency equivalent, to ensure compliance with the Supplementary Rules applicable to NPIFs managed by Exempt Managers pursuant to Rule 6.01 of Part A of the Investment Services Rules for Notified Professional Investor Funds and Related Due Diligence Service Providers.

Financial Intelligence Analysis Unit	Refers to the Financial Intelligence Analysis Unit established under the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta.
Former family member	Shall have the same meaning as assigned to it in Rule 6.03(d) of Part A of the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.
Former key employee	Shall have the same meaning as assigned to it in Rule 6.03(e) of Part A of the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.
Key employee	Shall have the same meaning as assigned to it in Rule 6.03(f) of Part A of the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.
Notified Professional Investor Fund	Shall have the same meaning as assigned to it in regulation 2 of the Investment Services Act (Notified CISs) Regulations (S.L. 370.34). In this Rulebook a Notified Professional Investor Fund is also referred to as an 'NPIF'.
Prevention of Money Laundering and Funding of Terrorism Regulations	Shall refer to the Prevention of Money Laundering and Funding of Terrorism Regulations, (Legal Notice 372 of 2017 as amended).

Qualifying shareholding	Shall have the meaning in Article 2 of the Act and “qualifying shareholder” shall be construed accordingly.
Registered Trustee	Shall refer to a company registered in terms of Article 43B of the Act.
Regulations	Shall refer to the Trusts and Trustees Act (Register of Beneficial Owners) Regulations (Legal Notice 373 of 2017 as amended)
Spousal equivalent	Shall have the same meaning as assigned to it in Rule 6.03(g) of Part A of the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.

Chapter 1 General Scope and Application

Title 1 Scope and Application

- R1-1.1 This Rulebook is drawn up pursuant to Article 52(3) of the Act by virtue of which the Malta Financial Services Authority may issue Rules to regulate trustees which are subject to a registration procedure in terms of Article 43B of the Act.
- R1-1.2 The Rulebook lays 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.
- R1-1.3 The Authority may amend or revoke such Rulebook and any such amendment or revocation shall be officially communicated to the public through the Authority's standard communication channels.
- R1-1.4 The Authority also has the power to interpret any Rule or amendment thereof.
- R1-1.5 This Rulebook 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.
- R1-1.6 This Rulebook shall be binding upon the persons specified herein and for the avoidance of doubt does not constitute mere guidelines.
- R1-1.7 Without prejudice to any other provision of the Act, any person who breaches any provisions of this Rulebook shall be liable to an administrative penalty as may be prescribed under the Act.
- R1-1.8 This Rulebook shall come into force upon the date of its publication.
- R1-1.9 This Rulebook shall apply to trustees which in terms of Article 43B of the Act are set up as companies, and:

- i. 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
- ii. which do not otherwise hold themselves out as trustees to the public in terms of Article 43 of the Act; and
- iii. which do not act habitually as trustees, in any case in relation to more than five settlors of family trusts at a time.

R1-1.10 The trustees referred to in this Rulebook shall be subject to a registration process in the manner outlined in Chapter 3 of this Rulebook. Furthermore, every trustee falling within the remit of Article 43B and thereby requiring registration in terms of the Act is required to comply with this Rulebook as may be amended from time to time.

R1-1.11 A trustee registered in terms of Article 43B shall not offer or carry out any other activity regulated by the Act, including acting as mandatary or as an administrator of private interest foundations, nor shall it offer or carry out the activities of a company service provider as defined in the Company Service Providers Act (Chapter 529 of the Laws of Malta) or any other activity which would require authorisation in terms of Article 43 of the 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 (5) settlors at a time, and to provide administrative services only in respect of a specific family trust or trusts.

R1-1.12 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 by the Authority.

Provided that, if the Authorised Person is for any reason not in a position to comply with the requirement prescribed in this Rule, it shall notify the Authority of this fact in writing and shall set out the reason/s for the delay together with a concrete plan indicating *inter alia* the proposed commencement of its activities. On the basis of the information available and the circumstances of the case, the Authority may cancel or suspend such registration in accordance with the provisions of the Act.

Title2 High-level Principles

R1-2.1 A Registered Trustee shall act in an ethical manner with due care, skill and diligence, taking into consideration the best interests of the beneficiaries and in accordance with the terms of the trust as well as the reputation and integrity of Malta's financial system.

R1-2.2 A Registered Trustee shall co-operate with the Authority in an open and honest manner and shall provide the Authority with any information it may require. Registered Trustees are also expected to deal openly and in a spirit of co-operation with any other relevant authorities.

R1-2.3 A Registered Trustee shall have in place arrangements to cater for the maintenance of all records and accounts of its administration of all family trusts which it administers. Registered Trustees shall ensure that such records are easily retrieved and accessible so as to enable the Authority to monitor compliance with any requirements under the Act and under this Rulebook, particularly during any on-site compliance visits which may be carried out by the Authority. Registered Trustees shall arrange to maintain sufficient backups of all such records.

R1-2.4 A Registered Trustee shall keep at the disposal of the Authority, the records relating to the management and administration of family trusts for a period of not less than five years from the date of the termination of the trust or the trusteeship, whichever event occurs earlier. Provided that the Authority may require that such records are kept for such longer period as it may direct. Such period as extended shall not exceed ten years.

Where a Registered Trustee ceases to be registered under the Act and the retention period has not yet lapsed, the record retention period will continue to run until it lapses in full and irrespective of this cessation.

R1-2.5 Provided that the requirements set out in the preceding Rule shall be without prejudice to:

- i. any other record keeping obligations that the Registered Trustee may have in terms of the Act, in particular Article 21(4)(b) thereof relating to the time period for retention of records by trustees;
- ii. any other record keeping obligations applicable to the Authorised Person in terms of any other law, rules or regulations; and

- iii. the right of any other authority, in terms of applicable law, to access the documents, data or information held by the Registered Trustee.

Chapter 2 Definitions

Title 1 Scope and Application

R2-1.1 The scope of this Chapter is to define the terms 'family trusts', 'family members' and 'family dependants'.

Title 2 Family Trusts

R2-2.1 For the purposes of this Rulebook and in terms of the Act, a 'family trust' as referred to in the Interpretation Section 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.

R2-2.2 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 in this Rulebook, who are identifiable or ascertainable but not yet definite.

Title 3 Family Members and Family Dependants

R2-3.1 The terms 'family dependants' and 'family members' as used in this Rulebook and as referred to in Article 43B of the Act shall mean:

- i. An individual who is related to the settlor by consanguinity, adoption or affinity, in the direct line up to any degree, whether ascendant or descendant, including persons related by affinity with the said ascendant or descendant, or in the collateral line up to any degree.
- ii. An individual who is in a stable and committed relationship with the settlor and who is living in a joint household with the settlor.
- iii. An individual with whom the settlor has descendants, by consanguinity, adoption or affinity.

Provided that the reference to 'settlor' in this definition shall refer to any one of the settlors setting up the trust, or who provides trust property, or

makes a disposition to the family trust in their capacity as settlor, as defined in the Act, and provided that the existence of the family relationship link is established.

Provided further 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.

Provided further that, given that a Notified Professional Investor Fund ('NPIF') is a subject person in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, the definition of 'family dependant/family member', may also extend to include 'family clients' solely in the following circumstances:

- a) The Registered Trustee intends to invest, on behalf of the family trust, *inter alia* in a NPIF established under the Investment Services Act (List of Notified CISs) Regulations; and
- b) The NPIF is managed by an exempt manager pursuant to Rule 6.01 of Part A of the Investment Services Rules for Notified Professional Investor Funds and Related Due Diligence Service Providers; and
- c) The family trust has aggregate net assets in excess of EUR 50,000,000 or its currency equivalent, to ensure compliance with the Supplementary Rules applicable to NPIFs managed by Exempt Managers pursuant to Rule 6.01 of Part 1 of the Investment Services Rules for Notified Professional Investor Funds and Related Due Diligence Service Providers.

Chapter 3 Registration of Trustees of Family Trusts

Title 1 Scope and Application

- R3-1.1 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 required to apply for registration as established in this Rulebook.
- R3-1.2 Where a Registered Trustee no longer satisfies the registration requirements set out in this Rulebook and wishes to provide trustee or other fiduciary services in terms of Article 43 of the Act, the Registered Trustee shall, within 30 calendar days, apply to the Authority for authorisation to act as a trustee or to provide other fiduciary services in terms of Article 43 of the Act.
- R3-1.3 If the Registered Trustee fails to seek authorisation to act as a trustee within the period specified in R3-1.2 of this Rulebook, it shall be prohibited from providing further services, and the Authority shall proceed to cancel its registration as a Trustee for Family Trusts.
- R3-1.4 The Authority shall base its decision as to whether an Applicant is to be registered in terms of the Act, on the basis of the information provided by the Applicant, and any other information that ought to have been disclosed by the Applicant. Such information may include information which was not provided by the Applicant, but which may be available to the Authority. The Authority shall not be liable in damages for any acts or omissions on the part of the Applicant.
- R3-1.5 All registration considerations, registration conditions and fitness and properness assessments must be satisfied at time of the registration process and thereafter on an ongoing basis; and without prejudice to the ongoing obligations set out in this Rulebook, the Authority has the right to request any information and, or documents from the Registered Trustee to verify ongoing compliance therewith.

Title 2 Registration Considerations

R3-2.1 In its determination as to whether to grant a registration to the Applicant, the Authority shall ensure that:

- i. there is a family relationship between (a) the settlor(s) and, or the beneficiaries of the trust administered by the Applicant or the Registered Trustee, as the case may be; and (b) the person holding a beneficial interest, whether directly or indirectly, in the Applicant or the Registered Trustee, as the case may be.

For the purposes of this section, in relation to the establishment of the family relationship as set out above 'beneficiaries' shall not include 'family clients' and 'beneficial interest' means a direct or indirect interest that confers the rights of a shareholder (voting and financial) in the Applicant or the Registered Trustee, as the case may be, and is not tied to a specific percentage of shares owned or voting rights held by the person. This is determined on a case-by-case basis and by reference to the circumstances of the case; and

- ii. that any trust setup administered by the Applicant, or the Registered Trustee as the case may be, clearly consists of family relationship links in terms of the definitions of 'family dependants' and 'family members' set out in this Rulebook, and 'family clients' where applicable.

Provided that, in order to be eligible for registration in terms of Article 43B of the Act vis-à-vis family trusts which will include 'family clients' as beneficiaries, the Applicant shall be required to demonstrate, and provide documentary evidence of, the intention to invest, on behalf of the family trust, inter alia, in a NPIF as set out in R2-3.1, at registration stage. Should such actions not materialise within three (3) months from the date of granting of registration in terms of Article 43B, any inclusion of 'family clients' as beneficiaries or potential beneficiaries of the trust will result in the Registered Trustee not satisfying this registration consideration.

Provided further that, in the case of a Registered Trustee who, only after being issued with a registration in terms of Article 43B of the

Act, wishes to administer family trusts which are to include 'family clients' as beneficiaries, such Registered Trustee is required to demonstrate to the Authority, and provide documentary evidence of, its intention to invest, on behalf of the family trust, *inter alia*, in a NPIF, prior to:

- (i) including 'family clients' as beneficiaries in an existing family trust structure;
- or
- (ii) being engaged to act as trustee in relation to a trust which will include 'family clients' as beneficiaries.

R3-2.2 All Applicants shall also be requested to confirm the rationale of the purpose of setup, including why Malta was the chosen jurisdiction for establishing the company in terms of Article 43B of the Act, in particular but not limited to those situations where there is no apparent link between the trust and, or the parties to the trust with Malta

R3-2.3 The registration considerations set out in R3-2.1 shall be satisfied both at registration stage and on an ongoing basis thereafter. The onus of proving this lies with the Applicant or Registered Trustee, as applicable. In particular, the Applicant or Registered Trustee, as applicable, shall be responsible for documenting the manner in which the registration conditions are satisfied.

Provided that where a Registered Trustee is of the opinion that it may be the case that one of the registration considerations established in R3-2.1 may no longer be satisfied on an ongoing basis due to genuine reasons, the Registered Trustee shall be obliged to inform the Authority of this in writing in terms of R5-5.2 ii. hereof.

Provided further that it shall not be possible for an Applicant to be registered in terms of Article 43B unless it satisfies both registration considerations specified in R3-2.1 at the time of registration.

R3-2.4 Applicants or Registered Trustees, as applicable, shall submit any documents and, or information as may be required by the Authority for it to be able to verify that the registration considerations are satisfied.

Title 3 Registration Process

R3-3.1 In order for an Applicant 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:

- i. The Applicant shall be a limited liability company registered in Malta in terms of the Companies Act;
- ii. The Applicant shall submit an application in the form and manner prescribed by the Authority, for registration in terms of Article 43B of the Act and subsequent inclusion in the Register of Trustees for Family Trusts. This Register shall be kept by the Authority, and it shall be available to the public through the Authority's Financial Services Register. The Register shall be updated on a regular basis;
- iii. 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; and
- iv. 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 management and administration of the trustee company, including the fulfilment of the relevant duties of trustees.

R3-3.2 The Applicant shall be required to submit the following documents to the Authority:

- i. An application in terms of R3-3.1 ii. Applicants shall ensure that the appropriate application form, as determined by the Authority, and any information and, or documentation requested is submitted to the Authority in the manner and form prescribed by the Authority. An Applicant shall also provide whatever additional information the Authority may deem appropriate for the purposes of determining whether registration should be granted to the Applicant;
- ii. The draft Memorandum and Articles of Association of the Applicant reflecting the requirements of R3-3.1 iii. and iv. above;

- iii. A complete structure chart outlining all natural or legal persons, trusts or other legal arrangements involved in the structure of the Applicant and the percentage of ownership or control held by each such person, trust or other legal arrangement, as applicable, irrespective of the percentage of ownership or control held. This includes
 - (a) any person(s) owning or controlling the Applicant, whether directly or indirectly, through the ownership of shares, voting rights or ownership interest in a body corporate, irrespective of the percentage held or whether such person exercises control through other means;
 - (b) in the case of a trust or other legal arrangement involved in the Applicant's structure, the settlor, the trustee, the protector (where applicable), beneficiaries or where the individuals benefitting from the trust or other legal arrangement have yet to be determined the class of persons in whose main interest the trust or legal arrangement is set up or operates, and any other natural person exercising ultimate control over the trust or other legal arrangement by means of direct or indirect ownership or by other means.
- iv. A comprehensive summary on the background of the settlor(s);
- v. A certified true copy of the relevant trust deed for each family trust which the Applicant intends to administer upon being granted registration under Article 43B of the Act. The certifier should include a written statement to the effect that the document so certified is a true copy of the original trust deed and that the original trust deed has been seen by the certifier. Alternatively, the Applicant should provide a certified true copy of an extract of the trust deed clearly indicating the beneficiaries of the trust accompanied by a confirmation from the certifier that no other document or instrument indicating other beneficiaries exists can be provided instead of the trust deed. In either case, the certified copy must be signed and dated by the certifier and is to state the certifier's name and surname; address; contact details; and profession, designation or capacity.

Provided that should there be in place other documents or instruments indicating other beneficiaries, these are to be provided

to the Authority and are to be duly certified as true copies as aforesaid.

For the purposes of this section, a certifier shall mean legal or accountancy professionals, persons undertaking a relevant financial business or equivalent activities in reputable jurisdictions in terms of the Implementing Procedures published by the Financial Intelligence Analysis Unit, or any other person who is empowered by Maltese law to certify documents;

- vi. A declaration that the proposed trust structure(s) complies, and shall continue to comply on an ongoing basis with the definition of a family trust as prescribed by the Act and this Rulebook and satisfies both registration considerations as stated in R3-2.1; and
- vii. An application fee as may be prescribed by the Authority.

R3-3.3 The Authority may also request the Applicant, or the Registered Trustee as applicable, to produce any information or documentation which it may deem appropriate, both at application stage and on an ongoing basis.

R3-3.4 The Authority shall not initiate the review of any application submitted by an Applicant which is not complete and in line with R3-3.2 above.

R3-3.5 Once the Authority is satisfied that the conditions and requirements mentioned above have been fulfilled, it shall proceed to issue a registration and register such trustee in the above-mentioned Register.

Title 4 Fitness and Properness

R3-4.1 All directors of the Applicant or Registered Trustee, as applicable, shall be individuals. Any individual proposed as a director of a Registered Trustee must be determined by the Authority to be fit and proper prior to being so appointed.

R3-4.2 In order to determine the fitness and properness of the proposed individuals to act as directors, such individuals 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 directors’:

- i. Integrity - the proposed directors must be of good repute and act honestly and in a trustworthy manner in particular in relation to beneficiaries, but also other involved parties as may be applicable;
- 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 specific role and functions to be 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.

In respect of the above, reference should be made to the criteria set out above and as further explained in the [Guidance on the Fitness and Properness Assessments](#) applied by the Authority.

R3-4.3 At least one of the proposed directors of the Registered Trustee shall possess knowledge and experience in relation to the administration of trusts.

R3-4.4 a. The fitness and properness assessment shall be applicable to:

- i. All individuals seeking to be appointed as directors of the Applicant or Registered Trustee, as applicable, and
- ii. Any other person significantly involved in the Applicant’s or Registered Trustee’s decision-making process, strategy and the implementation thereof. Such person shall also be obliged to submit a personal or corporate questionnaire, as the case may be, in the form and manner determined by the Authority.

b. Without prejudice to R3-4.1 and R3-4.4 a., where the Authority deems fit, it may require a person or persons involved in the ownership or control structure of the Registered Trustee to submit a personal questionnaire and, or any other document as the Authority may require.

R3-4.5 Any person referred to in R3-4.4 a. and b. shall be fit and proper on an ongoing basis.

R3-4.6 All criteria referred to in this Rulebook must be met in satisfaction of the fit and proper test. It shall not be the duty of the Authority to prove the converse before it refuses to grant registration to an Applicant, or before it intends to suspend or withdraw a registration granted to, or held by, a Registered Trustee.

Chapter 4 Duties of the Directors

Title 1 Scope and Application

R4-1.1 This Chapter outlines the duties and responsibilities of directors of Registered Trustees, which are to be satisfied on an ongoing basis.

Title 2 Duties of Directors

R4-2.1 The directors shall be responsible for ensuring the proper operation and management of the Registered Trustee in line with the provisions of the Act and this Rulebook, as well as the general duties applicable to directors in terms of the Companies Act.

R4-2.2 The Registered Trustee shall be effectively directed or managed by at least two individuals in satisfaction of the dual control principle.

R4-2.3 Without prejudice to the generality of R4-2.1 and R4-2.2 above, the directors' duties shall include the following:

- i. Submission of an application in terms of R3-3.1 ii. and R3-3.2 i., for the purposes of the registration process as set out in Title 3 of Chapter 3, containing as a minimum the following information:
 - a. the name of the Applicant applying for registration;
 - b. the names and addresses of the shareholders of the Applicant;
 - c. the names and addresses of the directors of the Applicant;
 - d. the number of family trusts to be administered by the Applicant, if any, at application stage;
 - e. the declaration required by R3-3.2 vi.;
 - f. details of the registered office and place of business of the Applicant.
- ii. On an ongoing basis, the directors of the Registered Trustee shall also be responsible for ensuring that the registration considerations in R3-2.1 are satisfied on an ongoing basis.

- iii. The directors shall also be responsible for ensuring that the Registered Trustee adheres to the ongoing obligations set out in Chapter 5 of this Rulebook.

Chapter 5 Ongoing Obligations

Title 1 Scope and Application

R5-1.1 This Chapter provides the ongoing obligations of Registered Trustees.

Title 2 Reporting Obligations

R5-2.1 The Registered Trustee shall ensure to report beneficial ownership information of all trusts under its administration, including all changes thereto, in line with the Regulations and any guidance issued by the Authority from time to time. The Registered Trustee shall also ensure to submit to the Authority any declarations or other submissions relating to the reported beneficial ownership information, as required by and within the timeframes set out in the Regulations.

R5-2.2 The Registered Trustee shall be required to submit the following to the Authority:

- i. Annual submission of an Annual Compliance Return in the form prescribed by the Authority.
- ii. Annual submission of audited annual financial statements, prepared in accordance with appropriate accounting standards, and duly signed by at least two directors and the Auditor(s) of the Registered Trustee. Submission of these documents to the Malta Business Registry or any other register or authority shall not be deemed to have satisfied the submission requirement with the Authority. In addition, a Registered Trustee established as a company under the Companies Act shall comply with any other requirements applicable under the said Companies Act.

R5-2.3 A Registered Trustee registered in terms of Article 43B shall ensure that all submissions required in terms of this Rulebook or any applicable legislation, as well as any other submissions which the Authority may request from time to time, are submitted to the Authority in a timely manner and within any timeframes set out by the Authority, or by law, as applicable.

R5-2.4 Deadlines for all submissions to the Authority are listed in Annex 1.

Title 3 Record Keeping

R5-3.1 The Registered Trustee shall ensure that it keeps accurate accounts and records of its management and 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.

R5-3.2 The records referred to in the previous Rule shall also include as a minimum but not be limited to the following:

- a. Information on the identity of:
 - i. the trustee and any co-trustee(s);
 - ii. the settlor(s);
 - iii. any beneficiaries, or the class of beneficiaries;
 - iv. any protector;
 - v. any other person exercising ultimate effective control over the trust including through a chain of control and, or ownership; (collectively i. to v. hereof are referred to as 'Trust Beneficial Owners' for the purposes of this Title); and
 - vi. any agents and service providers of the trust including but not limited to service providers such as investment advisers, managers, accountants, and tax advisors.

Provided that this information shall, as a minimum, include the: full name, date and place of birth, nationality(ies), residential address, the national identification number and document type, and tax identification number (or equivalent), where applicable, for all the Trust Beneficial Owners, and where any of the Trust Beneficial Owners is a body corporate or is a legal arrangement the information referred to in this proviso shall be obtained in relation to each natural person ultimate beneficial owner of such body corporate or legal arrangement.

Provided further that the Registered Trustee is required to obtain and maintain such information on an ongoing basis and ensure that it is accurate and up to date in relation to the Trust Beneficial Owners, with respect to all trusts under administration.

R5-3.3 Such accounts and records shall be maintained in a medium that allows the storage of information in a way that is accessible for future reference by the Authority and in such a form and manner whereby:

- i. the Authority must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- ii. it must be possible for any corrections or other amendments and the contents of the records prior to such corrections or amendments to be easily ascertained; and
- iii. it must not be possible for the records otherwise to be manipulated or altered.

R5-3.4 The Registered Trustee shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#), issued by the Authority.

Title 4 Disclosures to third parties

R5-4.1 Registered Trustees shall ensure that when engaging in dealings with third parties, the Private Trustee shall disclose that it is acting in such capacity as trustee. Such disclosure shall also be made to any subject persons as defined in the Prevention of Money Laundering and Funding of Terrorism Regulations when the Registered Trustee seeks to form a business relationship or carry out an occasional transaction; and the Registered Trustee shall also provide such subject person, upon request, information on the Trust Beneficial Owners and the assets of the trust under administration.

Title 5 Notifications and Prior Approvals

R5-5.1 The Registered Trustee shall obtain 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;
- ii. affecting any change which would have a bearing on the Registered Trustee's continued eligibility for registration, including but not limited to, any change in its charter, statute, memorandum and

articles of association or other instrument constituting the Registered Trustee, or any changes in directors or qualifying shareholders, as may be applicable;

- iii. surrendering its registration, as provided in Chapter 6 below.

R5-5.2 A Registered Trustee shall notify the Authority immediately if:

- i. it is proposed to make any change to the qualifying shareholding of the Registered Trustee. Such proposed changes should be notified to the Authority at least one month prior to such changes taking place, and such changes shall not be effected prior to written consent of the Authority in terms of R 5-5.1(ii) above ;
- ii. it becomes aware that it may no longer be able to satisfy the registration considerations as stipulated in the proviso to R3-2.3;
- iii. it is notified that its auditor intends to qualify the audit report;
- iv. it becomes aware of actual or intended legal proceedings against it; or
- v. it decides to claim on a professional indemnity or, to make any material claim on any other policy relating to its activities.

R5-5.3 The Registered Trustee shall notify the Authority in writing and without delay and in any case by not later than one month, of:

- i. any new engagement of the Registered Trustee in relation to any additional family trust(s). Such notification shall include the relative trust deed or an extract of the trust deed certified as a true copy in the manner set out in R 3-3.2 v. The notification shall also include a comprehensive summary on the background of the settlor, the relevant declaration as prescribed above in R3-3.2 iv. and vi. respectively. This is without prejudice to the qualification set out in Article 43B(c) and R1-1.9 iii. above; and
- ii. any change to the shareholding of the Registered Trustee, which does not result in a change in the qualifying shareholding of the Registered Trustee.

R5-5.4 The Authority may also request the Registered Trustee to produce any information or documentation which it may deem appropriate.

Title 6 Insurance Requirement

- R5-6.1 The Registered Trustee shall be required to obtain and maintain, on an ongoing basis, an insurance cover, which cover shall be proportionate to the nature and size of the activities carried out by the Registered Trustee, and ensure that the trust property is adequately insured, as may be applicable.
- R5-6.2 Should the Registered Trustee be unable to obtain an adequate professional indemnity insurance ('PII'), the Registered Trustee is expected to undertake a thorough assessment of the relative interests and the risks which the Registered Trustee would be exposed to in default of having such insurance cover in place. Such assessment is to be documented and revisited periodically and also upon the happening of key events (such as, an increase or variation in the assets held under trust; situations of conflict, disagreements or threatened action; any legal action) which may ordinarily be covered by insurance cover.
- R5-6.3 Following this assessment, the Registered Trustee shall consider any necessary measures, including but not limited to the consideration of setting aside reserves, to cater for any possible claims which the Registered Trustee may receive, and any such mitigating measures shall also be duly documented in the assessment referred to in R5-6.2, and made available upon request to the Authority.

Chapter 6 Surrender, Suspension or Cancellation of Registration

Title 1 Scope and Application

- R6-1.1 This chapter outlines the steps to be taken by Registered Trustees in the case of a surrender, suspension or cancellation of its registration.
- R6-1.2 A Registered Trustee shall inform the Authority at an early stage of its intention to voluntarily 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.
- R6-1.3 A Registered Trustee shall, subject to any additional requirements which may be imposed by the Authority, abide by the following procedure for surrendering its registration.
- R6-1.4 Once the Registered Trustee has informed the Authority of its intention to surrender its registration, the Registered Trustee shall submit the following confirmations and 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 Registered Trustee'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 the beneficial owners of the trusts it administers of its intention to surrender its registration;
 - 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 as to whether the Registered Trustee will be put into liquidation or wound up or otherwise, following the voluntary surrender of the registration. In the event that there is no intention for the Registered Trustee to be liquidated or wound up, a draft of the Memorandum and Articles of Association of the Registered

- Trustee whereby all references to the provision of trustee services from its objects clause are removed and, (where appropriate) the name of the Registered Trustee is changed to remove all references to the 'trust' or 'trustee', should also be submitted to the Authority; and
- vii. A confirmation that the Registered Trustee has informed its auditor and insurer of its intention to surrender its registration.

Provided that, the above list should not be considered exhaustive, and it is the Registered Trustee's duty to ensure that all its responsibilities have been satisfied.

Provided further, that the Authority will not proceed with the surrender process until such time as the Registered Trustee remains appointed as a trustee of any trust in view of any such trust not having been terminated, or the trusteeship transferred to another trustee, in terms of the applicable trust instrument and/or the applicable requirements at law.

- R6-1.5 Upon being satisfied that all the requirements set out in this Chapter 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.
- R6-1.6 The Registered Trustee shall return its original registration certificate to the Authority.
- R6-1.7 The Authority may, at any time, cancel or suspend the registration of a Registered Trustee registered in terms of Article 43B of the Act, as provided in this Rulebook, if:
- i. it considers that the holder thereof no longer satisfies the registration requirements set out in Article 43B of the Act and in this Rulebook, and fails to seek authorisation, where applicable, to act as a trustee within the period specified in R3-1.2 above;
 - ii. it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the requirements of the Act or of this Rulebook or any other Rules which are issued thereunder (as may be applicable), or has failed to satisfy or comply with any obligation or condition to which it, or the Registration is subject;

- iii. if the Authority has been furnished by or on behalf of the Registered Trustee, with information or declarations which are false, inaccurate or misleading; and
- iv. 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 R1-1.12.

Annex I

Deadlines for submissions to the Authority

Submissions to the Authority	Deadline
Annual Compliance Return	4 months following financial year end
Audited annual financial statements	4 months from the Accounting Reference Date
Registration Fee	On the date of submission of the Application for Registration
Annual Supervisory Fee	On the date of registration and annually on the anniversary of the date of registration

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