

**THE MALTA FINANCIAL SERVICES  
AUTHORITY**

**Trusts and Trustees Act, Cap. 331**

**Code of Conduct**

**Trusts and Trustees Act , Cap. 331  
Code of Conduct Pursuant to Article 52**

<b>Contents</b>	<b>Page</b>
<b>Introduction</b>	<b>3</b>
<b>1. Objectives</b>	<b>3</b>
<b>2. Application</b>	<b>3</b>
<b>3. Know Your Customer</b>	<b>4</b>
<b>4. Trustees to be Fit and Proper Persons</b>	<b>4</b>
<b>5. Business to be Directed by at least Two Individuals</b>	<b>5</b>
<b>6. Integrity &amp; Ethics</b>	<b>6</b>
<b>7. Trust Creation</b>	<b>7</b>
<b>8. Disclosure of Information</b>	<b>8</b>
<b>9. Internal Management Controls</b>	<b>9</b>
<b>9.1 Powers of Investment</b>	<b>9</b>
<b>9.2 Segregation of Funds</b>	<b>9</b>
<b>9.3 Prompt and Timely Execution</b>	<b>10</b>
<b>9.4 Competent and Effective Management</b>	<b>10</b>
<b>9.5 Delegation</b>	<b>11</b>
<b>9.6 Accounting &amp; Other Record Keeping</b>	<b>11</b>
<b>9.7 Adequate Personnel</b>	<b>11</b>
<b>9.8 Adequate Systems and Controls</b>	<b>12</b>
<b>9.9 Adequate Insurance</b>	<b>12</b>
<b>9.10 Fees and Remuneration</b>	<b>12</b>
<b>9.11 Internal Complaints Procedures</b>	<b>12</b>
<b>10. Disclosure of Licensing Body</b>	<b>13</b>
<b>11. Co-operation with Regulatory Authorities</b>	<b>13</b>

# **Trusts and Trustees Act, Cap. 331**

## **Article 52: Code of Conduct**

### **Introduction**

This Code is made pursuant to Article 52 of the Trusts and Trustees Act, Cap. 331 (“the Act”). Article 52 provides that the Malta Financial Services Authority, as the Competent Authority (“the Authority”), may publish (hereinafter referred to as “the Code”) rules which shall be binding on the trustees and other persons as may be specified therein. A copy of this document can be found on the Authority’s website ([www.mfsa.com.mt](http://www.mfsa.com.mt)).

### **1.0 Objectives**

The objectives of this Code are to provide guidance to trustees, whether authorised or not required to obtain authorisation in terms of the Act, as to the standards required under the Act and other financial services legislation, as well as to the best practice in the industry.

### **2.0 Application**

The Code applies to all trustees, whether authorised or not required to obtain authorisation in terms of Article 43 and Article 43A of the Act and also to mandatories, administrators or similar functionaries. The Code is of general application, and seeks to take account of the wide diversity of persons who act as trustees in practice. The Code may be revised from time to time. However, before the Authority makes a material change to the Code, it will first publish a draft of the proposed changes and consider any representations made to it regarding the contents of the draft.

Every trustee in Malta, whether authorised or not required to obtain authorisation in terms of the Act, in Malta, is expected to have regard to the Code as amended from time to time.

### **3.0 Know Your Customer**

Trustees must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new customer. As a minimum, trustees need to be able to comply with the Prevention of Money Laundering Act 1994, the Prevention of Money Laundering Regulations 2003, and the Prevention of Money Laundering Guidance Notes together with any other relevant legislation that may come into operation from time to time. To ensure compliance with these requirements, trustees should have adequate policies and procedures in place to ensure that they know the identity of each settlor, protector and custodian on an on-going basis and, to the fullest extent possible, the identity of the beneficiaries. They must also verify the source of all assets introduced, to satisfy themselves that they are not of illicit origin.

### **4.0 Trustees to be Fit & Proper Persons**

Every director and officer (defined in Article 2(1) of the Companies Act) of a trustee company, and every individual acting as a trustee must be a fit and proper person to hold the particular position which he holds or is to hold. In determining whether a person is fit and proper to hold any particular position, the applicant's competence and soundness of judgement for fulfilling the responsibilities of that position will be assessed. To this end, the Authority considers whether the person has had experience of similar responsibilities previously, the record in fulfilling them and, where appropriate, whether the person has appropriate qualifications and training. As to soundness of judgment the Authority looks to the person's previous conduct and decision taking. The diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of the company's clients, or his clients in the case of individual trustees, are in any way threatened by his holding that position are also considered.

The probity of the person concerned is very important: it is essential that a person with responsibility for the conduct of trust business is of high integrity. In contrast to the fitness element of this criterion which reflects an individual

judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.

Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record; convictions for fraud or other dishonesty would clearly be particularly relevant. Particular weight is also given to whether the person has contravened any provision of trust, banking, insurance, investment or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice. In addition, it considers whether the person has been involved in any business practices appearing to be deceitful or oppressive or improper or which otherwise reflect discredit on his or her method of conducting business.

The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies. The application of those who have are unlikely to be acceptable to the Authority. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time, and a person's subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.

## **5.0 Business to be Directed by at least Two Individuals**

This criterion – sometimes known as the 'four eyes' requirement – provides that, in the case of a company, at least two individuals must effectively direct the business of the undertaking. When this criterion applies, the Authority requires that at least two independent minds be applied to both the formulation and implementation of the policies of the undertaking. The Authority does not regard it as sufficient for one of the two persons to make some, albeit significant, decisions relating only to a few aspects of the business. Each must play a part in the decision-making process on all significant decisions. They are not expected to duplicate each other's position but both must demonstrate

the qualities and application to influence strategy, day-to-day policy and their implementation, and both must actually do so in practice.

Where there are more than two individuals directing the business, it is not necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. Nevertheless at least two individuals must be involved in all such decisions. Both persons' judgments must be engaged in order that major errors leading to difficulties for the undertaking are less likely to occur. Similarly, both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person. Thus, where a single individual is particularly dominant in an undertaking this will raise doubts about the fulfilment of the criterion.

## **6.0 Integrity & Ethics**

Trustees, whether corporate or individual persons, must conduct business with integrity at all times and should not attempt to avoid or contract out of their responsibilities under this Code. They must exercise their fiduciary duties prudently and competently and, subject to the terms of the trust, consider the rights of all classes of beneficiaries when making decisions affecting the administration of the trust. They should invest, distribute or otherwise manage each trust's assets in accordance with the law and the trust instrument<sup>\*</sup>. They must deal fairly with all clients and seek to ensure that clients are not misled as to the service being provided and the duties and obligations of the service provider.

Trustees should treat the interests of beneficiaries as paramount (subject to any legal obligations to other persons or bodies) and should always act with due care, skill and diligence. Professional skills cover the general skills which the undertaking should have in conducting its business, for example the fiduciary

responsibilities, establishing and operating systems of internal controls, ensuring compliance with legal and supervisory requirements and in the standard of the various financial services provided. The level of skills required will vary according to the individual case, depending on the nature and scale of the particular trustee's activities. Subject to the terms of the trust, trustees should also act impartially between beneficiaries, while having regard to their legal and contractual obligations.

Trustees must have regard at all times to their legal obligations with regard to conflicts of interest. Generally they should avoid situations in which conflict of interest arises as between trusts administered by the trustee or between the trustee's business and that of the beneficiaries of a trust. Similarly, and unless authorised to do so, trustees should not enter into transactions in which they have a material interest without first disclosing it to the relevant parties. Where conflicts of interest do arise they must ensure that the circumstances are properly disclosed to those affected. Trustees need to exercise particular care and attention when taking on discretionary trust business to ensure that they are able to exercise appropriate independent discretion.

## **7.0 Trust Creation**

When establishing a trust, trustees should familiarize themselves with the objects of the trust and satisfy themselves that the trust is being established for a lawful purpose. They should also ensure that the settlor has access to all appropriate information, including relevant independent professional advice where necessary. In order to adequately perform their fiduciary and other duties, trustees must ensure that they have a complete understanding of the trust instrument in each case, and must seek legal or other advice where necessary. Trustees also have a responsibility to ensure that trust property is brought properly under their control.

When a trust is created by oral declaration, the trustee is to set out in writing,

---

\* For the purposes of this Code the term 'trust instrument' includes public deeds, private writings and

at the first available opportunity, all the terms of the trust and, where possible, have such declaration endorsed by the settlor.

Over and above their legal obligations to ‘know their customer’, trustees are expected to have a considered and agreed policy on new client engagements or acceptances, having regard to their assessment of the quality, nature and scale of the services involved and the ability of the trustee to provide the services in question. Trustees need to ensure that they understand fully the rationale for particular structures and to be comfortable that the business is suitable. These standards also apply *mutatis mutandis*, in relation to any trust business delegated to the trustee by another trustee. In such cases, the trustees must have full knowledge of the trust arrangements, and must retain in their files copies of all the records which would pertain to trust business introduced directly to the trust company by a settlor. No trustee should act as an agent for other trustees in the management of trust assets unless satisfied that the trustee for whom he acts as a delegate is subject to professional standards equivalent to its or his own.

## **8.0 Disclosure of Information**

Trustees should observe any obligation of confidentiality that may apply in respect of information communicated by persons concerned with trusts (e.g. settlors, protectors, beneficiaries and their professional advisers) unless the trustee is given relevant consent to disclose information, is required by applicable law to disclose information, or gives information in accordance with the terms of the trust instrument or in the ordinary course of the administration of the trust. In maintaining the confidentiality owed to those persons to whom the trustee has responsibility, the trustee should take particular care not to mislead third parties as to the beneficial ownership or origin of trust assets.

Employees, officers, directors and other persons who have access to

---

wills which set up trusts, and also unilateral declarations of trust.



confidential information of the trustee and the trusts it administers should be advised in writing upon their engagement and reminded periodically thereafter by the trustee of confidentiality issues.

## **9.0 Internal Management Controls**

### **9.1 Powers of Investment**

Trustees are to invest and manage or arrange for the investment and management of the funds of the trust in the light of the purposes, terms, distribution requirements and other circumstances of the trust and, where appropriate, in accordance with the applicable law.

Subject to any enlargement or restriction of a trustee's powers of investment set out in the trust instrument or by law:

- (a) a trustee may invest or otherwise apply trust property in the purchase or acquisition of property of any kind whether or not income-producing and whether for the purpose of receiving an appropriate total return from income and capital appreciation, controlling or limiting risk or benefiting persons interested in any way whatsoever in the income produced by trust property or for a mixture of such purposes;
- (b) in so investing or otherwise applying trust property, a trustee shall act as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust and by exercising reasonable care, skill and caution; and
- (c) in determining whether a trustee has acted in accordance with the above any decision to invest or otherwise apply trust property shall be evaluated in the context of trust property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

### **9.2 Segregation of Funds**

A trustee must ensure that trust funds are kept at all times separately from

those of the trustee and also that they are not co-mingled with funds from another trust.

### **9.3 Prompt and Timely Execution**

A trustee should deal effectively and in a timely manner with all requests from those persons to whom the trustee is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary. When the trustee has a discretion he should exercise it diligently paying regard to relevant factors relating to beneficiaries, present and future.

### **9.4 Competent and Effective Management**

Trustees should have effective management and systems that are commensurate with the scale and complexity of the trust business to be undertaken. They must also have appropriate management resources to control the company's affairs (or in the case of individual trustees their business affairs), including ensuring compliance with legal obligations and standards under this Code.

In the case of corporate trustees, the board of directors is responsible for the proper exercise of fiduciary powers and ensuring that the trustee company has proper policies, procedures and other arrangements in place. In discharging this responsibility the board of directors may assign the administration of such of the corporate trustee's fiduciary powers as it may consider proper to such directors, officers, employees or committees as it may designate in accordance with policies and procedures which provide for appropriate authorisation and signing powers.

## **9.5 Delegation**

A trustee should have regard to the trust instrument, the law and any powers conferred by the court with regard to the delegation of its duties and/or the granting of powers of attorney and delegate only in accordance therewith.

## **9.6 Accounting and other Record Keeping**

Trustees must keep and preserve appropriate records in Malta which will at least include such records as are appropriate for their functions, as required by any applicable law and as will enable the provision of information, to persons interested in trusts and entitled to the information, on a timely basis. This should include the identity of co-trustees, custodians, the settlor, protector, enforcer and, where appropriate, the principal beneficiaries, their personal circumstances, residence and a copy of the trust instrument, minutes of all decisions taken by trustees, other trust documents and trust accounts or records which would enable trust accounts to be drawn up. The trustee should hold title to the trust assets in its own name or through appropriate custodians or nominees. Where custodians or nominees are appointed to hold assets, the trustee should ensure that 9.5 above is complied with. Financial records must be maintained so as to permit a thorough and satisfactory supervisory activity and to permit the performance of trust audits as pre-arranged. They should also be sufficient to enable the undertaking to comply with any notification and reporting requirements.

## **9.7 Adequate Personnel**

Trustees must have available suitable numbers of staff who are appropriately trained and competent to discharge their fiduciary duties effectively. It should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles. A trustee also needs to formulate and keep up to date plans for staff training and development as

well as maintain records of training undertaken by staff.

## **9.8 Adequate Systems and Controls**

Trustees should ensure that they have in place systems, controls and procedures, to ensure that staff perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures including those dealing with new business acceptance, distributions of trust assets, investment reviews and staff training. The Authority also expects trustees to have in place a documented business interruption recovery plan, dealing with all their critical functions.

## **9.9 Adequate Insurance**

Trustees face a wide variety of potentially major financial risks in their business. It is recommended that an adequate level of insurance be in place.

## **9.10 Fees and Remuneration**

Trustees must agree on a clear fee structure with each relevant person in advance of taking on an appointment and ensure that the fees charged are transparent at all times. Trustees should also ensure that adequate notice is given before any material change in the fee structure is introduced.

## **9.11 Internal Complaints Procedures**

A trustee should ensure that client complaints are properly handled and dealt with on a timely basis. A record of the details of the complaint, the trustee's response and any action taken as a result should also be made and maintained.

## **10.0 Disclosure of Licensing Body**

When authorised, a trustee should ensure that its status as an authorised person is disclosed in all advertisements and correspondence. The following wording is suggested: “Authorised to act as a Trustee by the Malta Financial Services Authority.”

## **11.0 Co-operation with Regulatory Authorities**

A trustee is expected to deal openly and in a spirit of co-operation with the Authority and any other relevant regulatory authorities. Trustees should alert the Authority to any proposal to extend their business materially and in particular if it is proposed to undertake non-trust business within the authorised entity. Trustees should also be proactive in alerting the Authority to any significant developments relevant to their staffing or to their systems and controls environment.