

Chairman,
Malta Financial Services Authority

Minister for Finance

L.N. ____ of 2014

Trusts and Trustees Act (Cap. 331)

Trusts and Trustees Act (Use of Trusts for Persons with Disability) Regulations

Cap.331.	IN exercise of the powers conferred by Article 57(1) of the Trusts and Trustees Act, the Minister for Finance, acting on the advice of the Malta Financial Services Authority, has made the following regulations:
Citation and scope.	<p>1. (1) The title of these regulations is the Trusts and Trustees Act (Use of Trusts for Persons with Disability) Regulations, 2014.</p> <p>(2) The purpose of these regulations is to regulate the administration of trusts formed for the benefit of beneficiaries who are persons with disability.</p>
Interpretation.	<p>2. (1) In these regulations, unless the context otherwise requires -</p>
Cap. 331.	"the Act" means the Trusts and Trustees Act;
Cap. 330.	"the Authority" shall mean the Malta Financial Services Authority established in terms of the Malta Financial Services Authority Act;
	"disability" means a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder one's full and effective participation in society on an equal basis with others, and may render such person dependant on other persons to sustain oneself;
	"family member", in relation to an individual, includes -
	(a) the parents;
	(b) the spouse;
	(c) a partner in civil partnership;
	(d) a son, daughter, brother or sister aged eighteen years or over; and
	(e) a legal guardian or curator of such individual;

	"parent" includes a step-parent and an adoptive parent;
	"person with disability" shall mean:
	(i) a person, being over compulsory school age, who, by reason of injury, disease, congenital deformity or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment or in undertaking work on his own account, of a kind which apart from that injury, disease, deformity or incapacity would be suited to his age, experience and qualifications;
Cap. 413.	(ii) a qualified person with a disability as defined in the Equal Opportunities (Persons with Disability) Act; or
Cap. 210.	(iii) a child certified to be suffering from physical and/or mental disability by the Medical Panel responsible to establish whether a child would be deemed eligible for a Disabled Child Allowance under article 77 of the Social Security Act;
	"trust for persons with disability" means a trust settled in terms of these regulations by a family member for the benefit of beneficiaries who shall include at least one beneficiary qualifying as a person with disability under these regulations;
Cap. 331.	(2) Words and expressions which are also used in the Act and are not defined herein shall have the same meaning as in the Act.
Purpose of trusts for persons with disability.	3. The purpose for establishing a trust under these regulations shall be specified clearly and in writing in the trust deed.
Threshold of trust assets.	4. Any trust set up for beneficiaries which include at least one person with disability as defined in these regulations, and the trustees thereof, shall be subject to these regulations, provided that the assets held on trust shall not exceed the cumulative value of four hundred and fifty thousand Euro (€450,000).
The trustee.	5. (1) A trust set up under the terms of these regulations shall have as its trustee either of the following, and such trustee shall not also be a beneficiary under the same trust:
Cap. 331.	(a) a professional trustee authorised to act as trustee under article 43 of the Act and who is either acting without being remunerated or, if such professional trustee receives or is entitled to receive remuneration, any such fee shall be fixed and agreed upon with the settlor, clearly set out in the trust deed and shall satisfy the conditions

	listed in regulation 6 hereunder; or
Cap. 331.	(b) a private trustee in terms of article 43A of the Act and who is a family member of the beneficiary or a person trusted by the settlor to administer such a trust for the benefit of the person with disability.
	(2) In the case that the trustee is a private trustee under regulation 5(1)(b), the following conditions shall be satisfied:
	(i) the private trustee so appointed shall have no beneficial or any other interest in the trust assets;
Cap. 331. Cap. 331.	(ii) although such trustee would not be a trustee duly authorised to so act in terms of article 43 of the Act, such trustee shall have to adhere to any applicable law that is already or may become so applicable or to any rules or regulations applicable to trustees as established by article 1(2) of the Act;
	(iii) a professional trustee as described in regulation 5(1)(a) shall be appointed co-trustee by the settlor and, in the event of the latter's death, by the protector;
	(iv) the person so appointed to act as trustee shall, within one year of being so appointed, undergo adequate training regarding the institute of trust and the legal obligations and powers of the trustee in order that such trustee may execute his duties in adherence to the law and regulations and as a <i>bonus pater familias</i> .
Cap. 331.	(3) The trustee of a trust set up under these regulations shall not be appointed or shall not continue to act as trustee should any circumstance that gives rise to a conflict of interest as defined in Article 2 of the Act arise.
Fees.	<p>6. (1) In the event that the professional trustee so appointed receives or is entitled to receive remuneration, the applicable fee shall be agreed upon with the settlor and clearly set out in the trust deed, and shall not exceed the amount of four hundred Euro (€400) per year, or such other amount, which may reflect changes in the cost of living or in the value of currencies, as may be prescribed in a Notice issued by the Minister.</p> <p>(2) Any fee imposed by the professional trustee in terms of subregulation (1) shall be fixed for a period of three years, and, in any case, any increase shall be proportionate to the increase in the index of inflation.</p>
Beneficiaries.	7. (1) Beneficiaries of a trust set up in terms of these regulations shall include at least one person with disability as defined in

	<p>regulation 2, and any additional beneficiaries shall only be the parents and, or siblings of such persons.</p> <p>(2) The terms of trust may provide for persons with disability to be the sole beneficiaries of the trust during their lifetime, and upon their death, any residual trust assets would be held on trust for the settlor and, or the parents and, or the siblings of such persons with disability:</p> <p>Provided that where the trust assets include immovable property which constitutes the primary place of residence of the person with disability, such immovable property shall not be disposed of while the person with disability is still alive, unless it is the interest of such person with disability to do so.</p> <p>(3) During the lifetime of the person with disability, the trustee shall act and administer the trust assets in the paramount interest of such person with disability.</p>
<p>The protector. Cap. 331.</p>	<p>8. (1) When setting up a trust in terms of these regulations, a protector having the powers established by article 24A of the Act shall be appointed in all cases, and the protector's powers shall be exercisable and come into effect not later than the date when the disabled person becomes the main beneficiary.</p>
	<p>(2) The person so appointed must have the ability to exercise independence of judgment with respect to the trust and shall have no actual or potential interest in the present trust assets or any assets that may be settled on trust at any time in the future:</p> <p>Provided that in the case where more than one protector is appointed, it shall be sufficient that at least one of the protectors so appointed has the ability to exercise independence of judgment as set out in this regulation.</p>
<p>Cap. 331.</p>	<p>(3) The protector of a trust set up under these regulations shall not be appointed or continue to act as a trustee should any circumstance that gives rise to a conflict of interest as defined in Article 2 of the Act arise:</p> <p>Provided that in the case where more than one protector is appointed, it shall be sufficient that at least one of the protectors so appointed continues to comply with the requirements of this subregulation.</p>
<p>Cap. 331.</p>	<p>(4) Where the protector exercises his power to remove a trustee in terms of article 24A of the Act, such removal shall have no effect if it would result in there being no trustee unless, before the removal takes</p>

Cap. 331.	<p>effect, a new trustee is appointed or an application is made to the court for the appointment of a new trustee.</p> <p>Provided further that a trustee ceasing to be a trustee shall also be responsible to fulfil the obligations set out in Article 20(4) of the Act.</p>
Cap. 331.	<p>(5) In terms of Article 24A(2)(c) of the Act, the Protector shall not give his consent to the transfer of assets from the trust while the person with disability is still alive unless such transfer is justifiable and will effectively be in the best interests of the beneficiary:</p> <p>Provided that in case of uncertainty as to whether such transfer is in the best interests of the beneficiary, the Protector, trustee or any other person having a lawful interest may apply to the Court for directions, and the Court shall not approve any such transfer unless it is satisfied that such transfer is justifiable as being in the best interests of the beneficiary.</p>
	<p>(6) The protector appointed in terms of these regulations shall always be consulted in the following circumstances:</p> <p>(a) before the trustee exercises discretions and takes decisions relating to distribution of income or capital or transfer of assets;</p> <p>(b) before the trustee takes decisions relating to the medical and educational needs and the care of the person with disability.</p>
	<p>(7) In the event of the demise of the beneficiary who is a person with disability, the protector may, subject to the terms of trust and to the provisions of Article 17 of the Act, request that the trust be terminated and that the assets held on trust be distributed to siblings or to the nearest of kin of the beneficiaries or to their legal heirs <i>per stirpes</i>.</p>
Register of trusts for persons with disability.	<p>9. (1) The Authority shall keep a register of trusts established in terms of these regulations.</p>
	<p>(2) The trustee shall have the duty to duly notify the Authority by means of the form provided in the Schedule to these regulations whenever a trust under these regulations is set up, and to provide any other information that the Authority may request from time to time.</p>
	<p>(3) The notification referred to in subregulation (2) shall include all the details of the trust, including the following:</p>
	<p>(i) name of the trust;</p>
	<p>(ii) name of the trustee;</p>
	<p>(iii) name of the co-trustee (if applicable);</p>

	(iv) name of the beneficiary / beneficiaries;
	(v) name of the settlor;
	(vi) name of the protector, if any at the time of settlement;
	(vii) list of trust assets, including the value of each trust asset;
	(viii) a complete and detailed declaration regarding the nature and value of assets held on trust;
	(ix) a copy of the trust deed establishing the trust.
	(4) The trustee shall also notify the Authority in the event that he resigns, has his engagement terminated or is otherwise hindered in performing his duties hereunder, and must also notify the Authority of the identity of the trustee who would consequently be appointed in his stead.
Obligations of trustee. Cap. 331.	10. (1) A trustee appointed under these regulations shall, in addition to the duties imposed on trustees under the Act and without prejudice to any other duties set out in the trust deed, have the following duties:
	(a) open and maintain bank accounts in the name of the trustee and by reference to the name of the trust, for holding cash relating to the trust, and the trustee shall not be allowed to make use of clients' accounts in relation to trusts set up in terms of these regulations;
	(b) where the terms of trust so provide, receive and administer any donations and any assets that may be transferred to the beneficiary even <i>causa mortis</i> ;
	(c) seek income from assets held on trust by investing monies in accordance with the criteria set out in regulation 11, or leasing property when deemed to be in the interest of the person with disability.
Cap. 16.	(2) In the case where any one of the beneficiaries of a trust set up in terms of these regulations is subject to guardianship as defined in Title VI of the Civil Code, the trustee shall, as the case may be and in the event of any possibility of a situation of conflict of interest, seek directions from the Court in the execution of his duties and shall be obliged to comply with any directions so given by the Court.
Investment parameters.	11. (1) A trustee appointed under these regulations shall adopt a conservative investment policy in dealing with trust assets, including investment portfolios as well as individual securities that may form part of the trust assets, and shall maintain a balance between the generation of income and the preservation of capital, while generating sufficient proceeds to meet the expenditure requirements of the beneficiaries in accordance with the provisions of the trust deed.

	(2) No part of the trust assets shall be entered into leverage arrangements or utilised for the purchase of securities on margin or geared in any way through the use of financial derivative instruments, either directly or on a see-through basis.
	(3) A trust set up in terms of these regulations shall comply with the prudential investment restrictions outlined below:
	a) If any of the trust assets are invested, these shall be predominantly invested in regulated markets.
	b) The trustee shall not invest more than ten per cent of the trust assets in securities which are not traded in or dealt on a market which:
	(i) is regulated, operates regularly, is recognised and is open to the public;
	(ii) has adequate liquidity and adequate arrangements in respect of the transmission of income and capital.
	c) The trust assets invested shall be properly diversified in such a way as to avoid excessive exposure to any particular asset, issuer or group of undertakings. In any case, a trustee shall not invest more than ten per cent of trust assets in securities issued by the same entity.
	d) No more than fifty per cent of the assets of the trust shall be kept on deposit with any one body.
	e) The trust shall not grant loans or act as guarantor on behalf of any family member or any third party.
Resignation of trustee.	12. (1) In the event of the resignation of a trustee, such resignation shall, without prejudice to the provisions of article 20 of the Act, be subject to the following conditions:
Cap. 331.	(i) the trustee shall declare his intention and give notice as stipulated in article 20 of the Act to resign while allowing for a period of notice of not less than three months;
	(ii) the former trustee shall, when permitted by law, continue to act as trustee jointly with the newly appointed trustee for at least six months in order to ensure continuity and the proper handling of trust assets during the transition.
Power of the Authority to issue rules.	13. The Authority may issue rules in terms of article 52 of the Act, for the better carrying out and to better implement the provisions of these regulations.

SCHEDULE

Regulation 9

Form A Trusts and Trustees (Use of Trusts for Persons with Disability) Regulations, 2014

Notification to the Authority that a Trust has been set up for the benefit of a person/s with disability.

Pursuant to regulation 9

Name of the Trust.....

Name of the Trustee.....

Name of the Co-Trustee (if applicable).....

Name of the Beneficiary / Beneficiaries.....

Name of the Beneficiary/Beneficiaries who is/are a person/s with disability in terms of these Regulations

Name of the Settlor.....

Name of the Protector
(if any at time of settlement)

Delivered by.....

To the *Malta Financial Service Authority*:

The Trustee, hereby confirms that he is the current (whether Original or Substitute) Trustee of the aforementioned Trust and is hereby notifying the Authority that the aforementioned Trust has been set up solely for the purpose established by these Regulations and within the terms of these Regulations.

The Trustee is also providing the Authority with:

- (a) a declaration regarding the nature and value of assets held on trust
- (b) a copy of the trust deed establishing the trust

.....^a

Trustee

Dated this day of of the year.....

^a Insert signature of trustee.