

A BILL
entitled
Trusts and Trustees (Amendment) Act, 2013

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title. **1.** The short title of this Act is the Trusts and Trustees (Amendment) Act, 2013.

Amendments to the Trusts and Trustees Act. Cap. 331. **2.** (1) This Part amends and shall be read and construed as one with the Trusts and Trustees Act, hereinafter referred to as “the principal Act”.

Amendment of article 2 of the principal Act. **3.** Article 2 of the principal Act shall be amended as follows:

(a) the definition “the Act” shall be substituted with the following:

Cap. 331 “ “the Act” means the Trusts and Trustees Act;” ”

Cap. 330. (b) the definition “the Authority” shall be substituted with the following:

“ “the Authority” means the Malta Financial Services Authority established in terms of the Malta Financial Services Authority Act;”;

(c) the definition “body of persons” shall be deleted;

(d) immediately after the definition “charitable purpose”, there shall be inserted the following new definition:

“ “close links” means a situation in which two or more persons are linked in any of the following ways:

(a) by participation, in the form of direct ownership or by way of control, of twenty per centum or more of the voting rights or capital of a body corporate;

(b) by control, through the relationship between a parent undertaking and a subsidiary undertaking as defined in article 2(2) of the Companies Act, or a similar relationship between any natural or legal person and an undertaking; or

(c) permanently to one and the same third person by a control relationship;” ;

(e) In the definition “commercial transaction”:

(i) In paragraphs (h) thereof, for the words “structures, and”, there shall be substituted the words “structures;”;

(ii) paragraph (i) thereof shall be renumbered as paragraph (j); and

(iii) immediately after paragraph (h) thereof, there shall be inserted the following new paragraph:

“(i) settling an asset on trust as security for a loan obtained for commercial purposes; and”;

(f) immediately after the definition “Minister” there shall be inserted the following new definition:

“ “Notary keeper” means the person entrusted to be a keeper of notarial acts in terms of the Notarial Profession and Notarial Archives Act;”;

(g) the definition “operating in Malta” shall be substituted as follows:

“ “operating in or from Malta” includes the existence of an office, branch, or other centre of professional or commercial activities of a regular nature in Malta and does not include one or more unconnected and sporadic acts;”;

(h) the definition “person” shall be deleted;

(i) immediately after the definition “property” there shall be inserted the following new definition:

“ “qualifying shareholding” means a direct or indirect holding in a company which represents ten per centum or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence of the management of the company in which that holding subsists and “qualifying shareholder” shall be construed accordingly;”;

(j) immediately after the definition “resident in Malta” there shall be inserted the following new definition:

“ “securities” includes shares, debentures or any other similar instrument issued by a company or other commercial partnership;”.

(k) the definition “unilateral declaration of trust” shall be substituted as follows:

“ “unilateral declaration of trust” has the meaning assigned to it in terms of article 7(3);”

Amendment of article 9 of the principal Act.

4. Article 9 of the principal Act shall be amended as follows:

(a) for subarticle (2) thereof, there shall be substituted the following :

“(2) Rights of a beneficiary are personal to him and cannot be transmitted by inheritance. Subject to any applicable laws and only as stated in terms of the trust, creditors, spouses, heirs or legatees of the beneficiary may have rights only to the extent of the beneficiary’s entitlements under the trusts and have no other rights in relation to the trust property or the trustee.”; and

(b) in subarticle (12) thereof, for the words, “and such a disclaimer shall be irrevocable.”, there shall be substituted the words “and such a disclaimer shall be irrevocable , whether or not he has received any benefit from his interest.”.

Amendment of article 12 of the principal Act.

5. In subarticle (1) of article 12 of the principal Act, for the words, “the one-hundredth”, there shall be substituted the words, “the one hundred and twenty-fifth”.

Addition of new article 14A to the principal Act.

6. Immediately after article 14 of the principal Act, there shall be added the following new article 14A:

“Powers reserved by the settlor.”

“14A. (1) The reservation or grant by the settlor of any beneficial interest in the trust property or of any of the following powers shall not affect the validity of the trust, nor delay the trust taking effect:

- (a) any powers to appoint, add or remove any trustees, protectors or beneficiaries;
- (b) any powers to appoint an investment adviser or investment manager.

(2) Where a power mentioned in subarticle (1) has been reserved or granted by the settlor, a trustee who acts in accordance with the exercise of the power shall not be deemed to be acting in breach of trust.”.

Amendment of article 16 of the principal Act.

7. Article 16 of the principal Act shall be amended as follows:

(a) for the marginal note thereof, there shall be substituted the following:

“Termination of a trust due to lapse of interest or lack of beneficiary”;

(b) for subarticle (1) thereof, there shall be substituted the following:

“(1) Subject to the terms of a trust and to any order of the court, where a trust terminates due to -

(a) a lapse of an interest under a trust ; or

(b) there being no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust,

the interest of the property affected by such lapse, or lack of beneficiary, shall be held by the trustee in trust for the settlor absolutely or, if he is deceased, for his heirs.”; and

(c) for subarticle (3) thereof, for the word, “section”, and wherever it appears throughout the Act, there shall be substituted the word “article”.

Amendment of article 17 of the principal Act.

8. In subarticle (3) of article 17 of the principal Act,

for the words “no one” there shall be substituted the word “none” and for the words “and distribute the trust property among them.”, there shall be substituted the words, “and distribute the trust property among them:

Provided that this subarticle shall not apply where the terms of the trust provide that the interest of a beneficiary is:

(a) liable to termination; or

(b) subject to a restriction on alienation or dealing; or

(c) subject to diminution or termination in the event of the beneficiary becoming bankrupt, or insolvent, or any of his property becoming liable to seizure for the benefit of his creditors; or

(d) not liable to attachment under a garnishee order issued against the trustee or to termination without the prior consent of the Court, when the interest is expressed to be for the maintenance of the beneficiary or as a pension.”.

Amendment of article 18 of the principal Act.

9. Article 18 of the principal Act shall be amended as follows:

(a) for subarticle (7) thereof, there shall be substituted the following:

“(7) In the case of death of a trustee, his heirs or testamentary executor shall be bound to immediately transfer all trust property to a successor trustee appointed in terms of the trust instrument or by the Court.”; and

(b) immediately after subarticle (7) thereof, there shall be inserted the following two new subarticles (8) and (9):

“(8) In the case of the insolvency, dissolution or winding up of a trustee set up as a company, any person having authority to bind the trustee being a director, liquidator, provisional administrator or similar functionary shall be bound to immediately transfer all trust property to a successor trustee, and this irrespective of any proceedings or formalities applicable upon such events.

(9) Without prejudice to the generality of subarticles (7) and (8), until such time as such obligation is performed, all persons in control of trust property shall be obliged to preserve the trust assets and shall be bound by fiduciary obligations towards the beneficiaries.”.

Amendment of article 19 of the principal Act.

10. Article 19 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, for the words, “after becoming aware of it by notice in writing to the settlor or to the other trustees.”, there shall be substituted the words, “after becoming aware of it by notice in writing to the testamentary executor, protector, settlor or to the co-trustees.”;

(b) in subarticle (3) thereof, for the words, “and there are no other trustees, the trustee”, there shall be substituted the words, “and there are no other trustees, the testamentary executor, protector, or the trustee”;

(c) in subarticle (4) thereof:

(i) for the words, “the death of the settlor, the heirs”, there shall be substituted the words, “the death of the settlor, the testamentary executor, the protector or the heirs”; and

(ii) for the words, “in accordance with the terms of the trust and this Act.”, there shall be substituted the words, “in accordance with the terms of the trust and this Act:

“Provided that the notary who published the will or the notary keeper of his deeds shall not be held liable for breach of duty under this subarticle if he proves that he was not aware of the death of the settlor.”; and

(d) immediately after the new proviso to subarticle (4), there

shall be inserted the following two new subarticles (5) and (6):

“(5) Until such time as the appointment of a trustee is accepted, all persons in control of trust property shall be obliged to preserve the trust assets and shall be bound by fiduciary obligations towards the beneficiaries.

(6) Without prejudice to the forgoing subarticles, the obligations of the trustee under the Act shall be deemed to commence once the trustee obtains control of the trust assets.”.

Amendment of article 20 of the principal Act.

11. In subarticle (1) of article 20 of the principal Act, for the words, “by notice in writing to his co-trustees”, there shall be substituted the words, “by notice in writing to his co-trustee or co-trustees”.

Amendment of article 21 of the principal Act.

12. Article 21 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, for the words, “attention of a bonus paterfamilias and observe the utmost good faith.”, there shall be substituted the words, “attention of a bonus paterfamilias, observe the utmost good faith and avoid any conflicts of interest.”;

(b) subarticle (2) thereof shall be amended as follows:

(i) subarticle (2) thereof shall be renumbered subarticle (2)(a);
and

(ii) immediately after subarticle (2)(a), as renumbered, there shall be inserted the following new paragraph (b):

“(b) Trustees shall, when accepting their appointment, draw up an inventory and shall declare that the inventory includes all the property under the trust.”;

(c) for subarticle (3) thereof, there shall be substituted the following:

“(3) Except as permitted by this Act or as expressly provided by the terms of the trust, a trustee shall not, without the authority of the court-

- (a) directly or indirectly profit from the trusteeship; or
- (b) cause or permit any other person to profit directly or indirectly from the trusteeship; or
- (c) enter into any transaction related to trust property on

his own account; or

(d) enter into any transaction related to trust property with a person related to him by affinity or consanguinity in the direct line or up to the third degree in the collateral line or with a partner in any partnership; or

(e) generally enter into any transaction related to trust property that may give rise to a conflict of interest.”;

(d) subarticle (4) thereof shall be amended as follows:

(i) subarticle (4) thereof shall be renumbered as subarticle (4)(a); and

(ii) immediately after subarticle (4)(a) as renumbered there shall be inserted the following new paragraph (b):

“(b) Trustees shall be obliged to keep such accounts and records for a period of not less than ten years from the date of termination of the trust.”;

(e) in subarticle (7) thereof, for the words, “the duties and liabilities of trustees as stated in this Act may be varied by the terms of the trust and shall be regulated exclusively by the express terms of the trust or any applicable legislation.”, there shall be substituted the words, “the duties and liabilities of trustees as stated in this Act shall be regulated by the provisions of this Act or any applicable legislation unless varied by the terms of the trust.”; and

(f) immediately after subarticle (7) thereof, there shall be inserted the following new subarticle (8):

“(8) In the case where one of the beneficiaries of a trust is subject to tutorship or curatorship, the trustee shall, as the case may be, seek directions from the Court in the execution of his duties and shall thereafter be answerable to the Court for the duration of the tutorship or curatorship:

Provided that in case of conflict between the trustee and the curator or the tutor, or between the tutor and the curator as the case may be, shall, where necessary, seek directions from the Court.”.

Amendment of article 24A of the principal Act.

13. In paragraph (c) of subarticle (2) of article 24A of the principal Act, for the words, “to require the trustee to obtain his discretion.”, there shall be substituted the words, “to require the trustee to obtain his consent before exercising a discretion.”.

Addition of new articles 24B and 24C to the principal Act.

14. Immediately after article 24A of the principal Act, there shall be inserted the following new articles 24B and 24C:

“Enforcer.”

“24B. (1) The terms of a trust set up for a charitable purpose may provide:

- (a) for the appointment of an enforcer in relation to the trust; and
- (b) for the appointment of a new enforcer any time when the current enforcer in office has terminated his appointment.

(2) The duty of the enforcer shall be that of ensuring that the trustee administers the trust in accordance with the terms of the trust and to promote the purposes of the trust:

Provided that where the enforcer observes that the charitable purposes prescribed in the terms of the trust are not being observed, the enforcer shall take action against the trustee for breach of trust.

(3) The enforcer of a trust is prohibited from also acting as trustee of the trust.

(4) Except –

- a) with the approval of the Court; or
- b) when permitted by this Act or when expressly provided by the terms of the trust, an enforcer shall not –
 - (i) directly or indirectly profit from his office;
 - (ii) cause or permit any other person to profit directly or indirectly from his office; or
 - (iii) on his own account, enter into any transaction with the trustee or relating to the trust property which may result in such profit.

(5) Unless authorised by the terms of the trust or by any order of the Court, an enforcer shall not be entitled to remuneration for services rendered.

“Resignation or removal of the enforcer.”

24C. (1) Subject to subarticle (2), an enforcer may resign from his office by notice in writing delivered to the trustee and such resignation shall be effective as from the date of delivery of the notice to the trustee:

Provided that a resignation given in order to facilitate a breach of trust shall be of no effect.

(2) An enforcer shall relinquish his appointment as enforcer of the trust set up for a charitable purpose

immediately upon –

- (a) the enforcer’s removal from office by the court;
- (b) the enforcer’s resignation becoming effective;
- (c) the coming into effect of a provision in the terms of a trust under which the enforcer is removed from office or otherwise ceases to hold office; or
- (d) the enforcer’s appointment as a trustee of the trust.

Amendment of article 29 of the principal Act.

15. Article 29 of the principal Act shall be amended as follows:

(a) in paragraph (d) of subarticle (1) thereof, for the words, “subject to the terms of the trust,” there shall be substituted the words, “without prejudice to subarticle (4) and (5),”; and

(b) in paragraph (f) of subarticle (1) thereof, for the words, “the Attorney General or the relevant authority”, there shall be substituted the words, “the Attorney General, the enforcer or the relevant authority”.

Amendment of article 34 of the principal Act.

16. Immediately after subarticle (3) of article 34 of the principal Act, there shall be inserted the following new subarticle (4):

“(4) The new trustee shall be entitled to be indemnified out of the trust property in respect of any claims against the outgoing trustee, except in respect of actions arising from breach of trust.”.

Amendment of article 35 of the principal Act.

17. In subarticle (2) of article 35 of the principal Act, for the words, “which is in favour of a class of persons.”, there shall be substituted the words, “which is in favour of a class of persons, and which is not a fixed interest.”.

Amendment of article 36 of the principal Act.

18. Article 36 of the principal Act shall be amended as follows:

(a) subarticle (4) thereof shall be renumbered as subarticle (5);

(b) immediately after subarticle (3) thereof, there shall be inserted the following new subarticle (4):

“(4) Where trust property is set up for a charitable purpose and any of the circumstances mentioned hereunder apply, the Court may, on application of the trustee or the enforcer, declare that the property or the remainder of the property, as the case may be, shall be held for such other charitable purpose, as the case may be, as the Court considers to be consistent with the original

intention of the settlor. The circumstances are that:

(a) the charitable purpose has ceased for whatever reason to be charitable; or

(b) the charitable purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.”; and

(c) in subarticle (5), as renumbered, for the words, “under this section”, there shall be substituted the words, “under subarticle (1)”.

Amendment of article 41 of the principal Act.

19. In subarticle (1) of article 41 of the principal Act, for the words, “shall not be barred by prescription except by lapse of thirty years.”, there shall be substituted the words, “shall not be barred by prescription.”.

Amendment of article 43 of the principal Act.

20. Article 43 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:

- (i) for the words, “any person, resident or operating in Malta, or a corporate trustee, who receives property”, there shall be substituted the words, “any company, resident or operating in or from Malta, which receives property”; and
- (ii) for the words, “and who-”, there shall be substituted the words, “and which.”;

(iii) in paragraph (c) thereof, for the words, “holds himself”, there shall be substituted the words, “holds itself”;

(b) in subarticle (2) thereof, for the words, “and when a person holds himself out as a trustee.”, there shall be substituted the words, “and when a company holds itself out as a trustee.”;

(c) in subarticle (3) thereof, for the words, “Any person, whether an individual or a company may apply”, there shall be substituted the words, “A company shall apply”;

(d) in subarticle (4) thereof:

(i) for the words, “The conditions referred to in the preceding subarticle are that.”, there shall be substituted the words, “The conditions referred to in subarticle (3) shall be satisfied on an ongoing basis and shall consist of the following.”;

(ii) in paragraph (i) of subarticle (4) thereof, the words “in the

case an applicant is a company:”, shall be deleted;

(iii) in subparagraph (a) thereof, for the words, “its objects”, there shall be substituted the words, “the objects of the company”;

(iv) in subparagraph (b) thereof, for the words, “its actual activities”, there shall be substituted the words, “the actual activities of the company”;

(v) subparagraphs (d), (e), (f) and (g) thereof shall be renumbered (e), (f), (g) and (h);

(vi) immediately after subparagraph (c) thereof, there shall be inserted a new subparagraph (d) as follows:

“(d) the company must have a minimum of twenty five thousand euros (€25,000) paid up share capital which it must maintain throughout the duration of the company; and”;

(vii) in subparagraph (f) thereof, as renumbered, for the words, “has a direct or indirect interest”, there shall be substituted the words, “has a qualifying shareholding”;

(viii) In subparagraph (h) thereof, as renumbered, for the words, “approved jurisdiction;”, there shall be substituted the words “approved jurisdiction.”;

(ix) paragraph (ii) and subparagraphs (a), (b) and (c) thereof shall be deleted;

(e) in subarticle (5) thereof, the words, “of any change or circumstance which would have a bearing upon his status as an authorised person and in the case of a corporate trustee,”, shall be deleted;

(f) In subarticle (6) thereof-

(i) in paragraph (a) thereof, for the words, “for which they are licenced”, there shall be substituted the words, “for which they are licensed, provided that the provision of trustee services is incidental and ancillary to the main activities for which they are licensed.”;

(x) in paragraph (c) thereof, for the words, “are limited to retirement schemes.”, there shall be substituted the words, “are limited

to retirement schemes:

Provided that where a person who is in possession of a licence in terms of paragraphs (a), (b) or (c) of this subarticle, intends providing trustee services as one of its main activities, it shall require authorisation in terms of this Act.”;

(g) in subarticle (7) thereof:

(i) for the words, “which may be applicable, the provisions of this article and article 43A shall not apply -”, there shall be substituted the words, “which may be applicable, and to the provisions of article 43A(11), the provisions of this article, of article 43A and article 43B shall not apply.”;

(ii) in paragraph (d) thereof, for the words, “for a period of not less than five years or longer period”, there shall be substituted the words, “for a period of not less than ten years from the date of termination of the trust or such longer period”;

(h) In subarticle (9) thereof, for the words, “(a) The holding upon trust of -

(i) securities or interests in or issued by a Maltese legal entity, other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction;
or

(ii) immovable property in Malta,

(hereafter referred to as "relevant property") by trustees who are not authorised shall be permitted only if a person –

(aa) authorised in terms of subarticles (3) and (8), or

(bb) not required to be authorised under subarticle (6)(a) and (c) and (7)(e), (g) and (h),

(hereafter referred to as a "qualified person") is engaged in writing by the trustee to carry out the compliance functions referred to in paragraph (b) on an indefinite basis with specific reference to such relevant property and such agreement is notified to the Authority prior to any acquisition of such relevant property taking place and shall be accompanied by such information as may be required by the Authority from time to time;

For the purposes of this paragraph:”, there shall be substituted the following:

“(9) (a) The holding upon trust of:

- (i) securities or interests in or issued by a Maltese legal entity, other than securities which are listed or traded on a regulated market or on a multilateral system established in Malta or in a recognised jurisdiction, or
- (ii) immovable property in Malta,

(either of which is hereinafter referred to as “relevant property”)

by trustees who are not authorised in terms of this Act shall be permitted only if a person authorised to act as trustee in terms of subarticle (3) or (8), (hereinafter referred to as a “qualified person”) is engaged in writing by the trustee to carry out the compliance functions referred to in paragraph (b) on an indefinite basis with specific reference to such relevant property, and such agreement is notified to the Authority prior to any acquisition of such relevant property taking place and shall be accompanied by such information as may be required by the Authority from time to time;

For the purposes of this subarticle;”

(i) in subarticle (12) thereof-

(i) for the words, “any person who –”, there shall be substituted the words, “any person, whether an individual or a company resident or operating in or from Malta, who”; and

(ii) in paragraph (a) thereof, for the words, “in the holding of property”, there shall be substituted the words, “in the holding of securities and, or immovable property”;

(j) subarticle (13) thereof shall be deleted;

(l) subarticle (14) shall be renumbered as subarticle (17); and

(m) immediately after subarticle (12) thereof, there shall be inserted the following new subarticles (13), (14), (15) and (16):

“(13) A company which intends to act as a mandatory in terms of subarticle (12) shall apply in writing to the Authority for authorisation and the Authority may grant authorisation upon being satisfied that the conditions prescribed hereunder have been met:

- (a) its objects include acting as a mandatory and carrying on activities ancillary or incidental thereto, and does not include objects which are not compatible with the services

- of a mandatory; and
- (b) its actual activities are compatible and connected with the services of a mandatory; and
- (c) the directors of the company are not less than three in number and are individuals who are approved persons;
- (d) the company must have a minimum of twenty five thousand euros (€25,000) paid up share capital which it must maintain throughout the duration of the company;
- (e) the company has established adequate systems for maintaining proper records of the identity and residence of the ultimate beneficial owners, of any transactions relating to the securities and, or immovable property subject to the mandate and of compliance with the applicable law;
- (f) every person who has a qualifying shareholding in the company is considered by the Authority as being fit and proper;
- (g) the name of the company is not inconsistent with its activity of mandatory; and
- (h) where the company is not registered in Malta, that company must be constituted or incorporated in an approved jurisdiction.

(14) Any person authorised in terms of subarticle (12)(a) shall notify the Authority of any change or circumstance which would have a bearing upon his status as an authorised person and in the case of a company, of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, directors or members, and in case of companies registered in Malta such changes shall not be registered unless and until they are so notified to and approved by the Authority.

(15) Any person who intends to act as an administrator, trustee, director or similar functionary by whatever name he may be called, exercising control over the assets of a private foundation shall apply in writing to the Authority for authorisation and the Authority may grant authorisation upon being satisfied that the conditions prescribed hereunder have been met:

- (i) in the case where an applicant is a company:
 - (a) its objects include acting as administrator, trustee, director or similar functionary by whatever name he may be called, exercising control over the assets of a private foundation and carrying on activities ancillary or incidental thereto, and does not include objects which are not compatible with such an activity; and
 - (b) its actual activities are compatible and connected with the services of an administrator, trustee, director or similar functionary by whatever name he may be called exercising control over the assets of a private

- foundation; and
 - (c) the directors of the company are not less than three in number and are individuals who are approved persons; and
 - (d) the company has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, of any transactions relating to the assets of the foundations and of compliance with the applicable law; and
 - (e) every person who has a qualifying shareholding in the company is considered by the Authority as being fit and proper; and
 - (f) the name of the company is not inconsistent with its activity of administrator, trustee, director or similar functionary, by whatever name he may be called, exercising control over the assets of a private foundation; and
 - (g) where the company is not registered in Malta, that company shall be constituted or incorporated in an approved jurisdiction;
- (ii) in the case of an applicant who is an individual, that such individual –
- (a) is resident or operating in or from Malta;
 - (b) is an approved person; and
 - (c) has established adequate systems for maintaining proper records of the identity and residence of beneficiaries, of any transactions relating to the assets of the foundations and of compliance with the applicable law.

(16) Any person authorised in terms of subarticle (12)(b) of this article shall notify the Authority of any change or circumstance which would have a bearing upon his status as an authorised person, and in the case of a company, of any change in its charter, statute, memorandum or articles of association or other instrument constituting the company, directors or members, and in the case of companies registered in Malta such changes shall not be registered unless and until they are so notified to and approved by the Authority.”.

Amendment of article 43A of the principal Act.

21. Article 43A of the principal Act shall be amended as follows:

- (a) in paragraph (b) of subarticle (2) thereof, for the words, “he has known the settlor for at least ten years and, in both cases,”, there shall be substituted the words, “he has known the settlor for at least ten years; and
in both cases,”;

(b) subarticle (5) thereof shall be amended as follows:

(i) for the words, “who receives a will or notarial trust deed”, there shall be substituted the words, “who receives a will containing a trust, or a notarial trust deed”; and

(ii) for the words, “appointed as the trustee in such deed”, there shall be substituted the words, “appointed as the trustee in such will or deed”;

(c) in subarticle (6) thereof for the words, “All documents relative to a trust shall be submitted to the depository notary within fifteen days of coming into existence or of coming into possession”, there shall be substituted the words, “It shall be the duty of the trustee to submit to the depository notary all documents relative to the trust within fifteen days of coming into existence or of coming into possession”; and

(d) in subarticle (6) thereof, for the words, “from time to time.”, there shall be substituted the words, “from time to time:

“Provided that the depository notary shall not be held responsible for the failure of the trustee to deliver the documents relative to the trust as laid down in this subarticle.”.

Addition of new section and new article 43C to the principal Act.

22. Immediately after article 43B of the principal Act, there shall be inserted a new section entitled “Duty of Auditors” and a new article 43C:

“DUTY OF AUDITORS

Auditor’s duty to report.

43C. (1) An auditor of a trustee authorised in terms of the Act, shall have the duty to report immediately to the Authority any fact or decision of which he becomes aware in his capacity as auditor of such trustee which-

- (a) is likely to lead to a serious qualification or refusal of the auditor’s report on the accounts of such trustee; or
- (b) constitutes or is likely to constitute a material breach of the legal or regulatory requirements applicable to trustees under this Act; or
- (c) gravely impairs the trustee’s ability to continue as a going concern; or
- (d) relates to any other matter which may be prescribed:

Provided that the matters prescribed in paragraph (d) may include matters related to persons other than the trustee.

(2) The auditor of a corporate trustee shall report to the Authority any fact or decision, as specified in subarticle (1), regarding any person having close links with such trustee of which he becomes aware in his capacity as auditor of the trustee or of the person having such close links.

(3) No duty (including the duty of professional secrecy) to which an auditor of the trustee may be subject, shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of that trustee and which is relevant to any function of the Authority under the provisions of the Act or is required to be communicated by virtue of subarticle (1).”.

Amendment of article 44 to the principal Act.

23. Article 44 of the principal Act shall be amended as follows:

(a) article 44 thereof shall be renumbered article 44(1);

(b) paragraph (d) of subarticle (1) thereof ,as renumbered, shall be renumbered as paragraph (e);

(c) immediately after paragraph (c) of subarticle (1) thereof, as renumbered, there shall be inserted the following new paragraph (d):

“(d) be accompanied by a programme of operations setting out such matters as may be prescribed by the Authority from time to time;”;

(d) immediately after subarticle (1) thereof as renumbered, there shall be inserted the following new subarticle (2):

“(2) Where close links exist between an applicant and any other person, the Authority shall:

(a) only grant a licence if it considers that such close links do not prevent it from exercising its supervisory functions; and

(b) refuse to grant such a licence if it considers that the laws, regulations or administrative provisions of any country outside Malta governing one or more persons with whom the applicant has close links, or their enforcement prevent the effective exercise of its supervisory functions.”.

Amendment of article 46 to the principal Act.

24. For paragraph (d) of article 46 of the principal Act there shall be substituted the following:

“(d) if the authorised trustee does not commence activities pursuant to its authorisation within twelve months of its issue or within such other period as may be specified in the authorisation or has ceased to provide such service; or”.

Amendment of article 57 to the principal Act.

25. Article 57 of the principal Act shall be amended as follows:

(a) subarticle (1) thereof shall be amended as follows:

(i) paragraph (o) of subarticle (1) thereof shall be renumbered as paragraph (t); and

(ii) immediately after paragraph (n) thereof, there shall be inserted the following new paragraphs (o), (p), (q), (r) and (s):

“(o) regulate the authorisation and regulation of sub-trusts to be used in connection with collective investment schemes and retirement schemes;

(p) regulate the registration, conservation and access of notarial trust deeds as referred to in article 43A of the Act;

(q) regulate the matters in relation to the registration by the Authority of notaries acting as qualified persons, including the powers and duties of such qualified persons and any information which they might be required to submit to the Authority, and to establish any fees payable to the Authority in respect of the registration and the supervision thereof;

(r) exempt any activities or classes of persons from the requirements in article 43(12) and to impose conditions it may deem fit for eligibility for exemption;

(s) transpose, implement and give effect to the provisions and requirements of Directives, Regulations and any other legislative measures of the European Union requiring transposition and, or implementation, as they may be amended from time to time, including any implementing measures that have been or may be issued thereunder and relating to licence holders and others as may be specified therein or to any other matter falling within the terms of this Act, and for this purpose to provide that any provision in any other law shall not apply to matters falling under the regulations; and”;

(b) immediately after subarticle (2) thereof, there shall be inserted the following new subarticles (3), (4) and (5):

“(3) Regulations made under this article, may be made subject to such exemptions or conditions as may be specified therein, may make

different provision for different cases, circumstances or purposes and may give to the Authority such powers of adaptation of the regulations as may also be so specified.

(4) Where regulations have been issued in terms of this article, the Authority may issue Rules within the meaning of article 52 of this Act for the better carrying out and to better implement the provisions of the regulations.

(5) Regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (*multa*) of one hundred and fifty thousand euro (€150,000) or imprisonment for a term not exceeding one year, or both such fine and imprisonment.”

Note: These are suggested insertions to ensure that we have sufficient enabling powers in the future. They are taken from article 12 of the ISA.

Addition of new section and new article 58 to the principal Act.

26. Immediately after article 57 of the principal Act, there shall be inserted a new section entitled “Transitional Provisions” and a new article 58.

“TRANSITIONAL PROVISIONS

Act of ...
Transitional
Provisions.

58. (1) Subject to the provisions of the Act, trustees and providers of other fiduciary services in possession of an authorisation before the date of coming into force of these amendments shall take all necessary measures to comply with the provisions of the Act within six months from the said date.

(2) Notwithstanding the provisions of subarticle (1) above, trustees in possession of an authorisation prior to the coming into force of the amendments to the Act shall comply with the provisions of article 43(4)(d) within two years from the said date;

(3) Notwithstanding the provisions of subarticle (1) above, mandatories in possession of an authorisation prior to the coming into force of the amendments to the Act shall comply with the provisions of article 43(13)(d) within two years from said date.