

L.N. ___ of 2013

**Trusts and Trustees Act
(Cap. 331)**

Trusts and Trustees Act (Notarial Trust Deeds Registration, Conservation and Access) Regulations 2013

Cap.331. IN exercise of the powers conferred by article 57 of the Trusts and Trustees Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

Citation and scope. **1.** (1) The title of these regulations is the Trusts and Trustees Act (Notarial Trust Deeds Registration, Conservation and Access) Regulations, 2013.

Cap.55. (2) The purpose of these regulations is to regulate the registration, conservation and access of notarial trust deeds, particularly with reference to article 43A(6) of the Trusts and Trustees Act and article 84A(2) of the Notarial Profession and Notarial Archives Act.

Interpretation. **2.** (1) In these regulations, unless the context otherwise requires -

Cap. 331. “the Act” shall mean 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;

Cap.55. “depository notary” shall refer to the person as defined in Article 43A of the Act;

Cap. 331. “publishing notary” shall mean the notary public who publishes a will containing a testamentary trust or receives a notarial trust deed *inter vivos*, irrespective of any other functions he may carry out in terms of article 43A of the Act, whether as a trustee or as a depository notary;

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

Conservation and registration in volumes by publishing notary – prior to the coming into force of these regulations.

3. (1) All notarial trust deeds published prior to the coming into force of these regulations, which have not been previously bound elsewhere, shall be bound in a separate volume, one for each notarial trust deed.

(2) If a notarial trust deed published prior to the coming into force of these regulations has been bound in any other volume the following rules shall apply:

(a) if the trust deed is in the volume of public deeds or in the volume of public wills and acts of delivery of secret wills, it shall remain in the same volume in the chronological order in which it was bound; and

(b) the publishing notary shall manually add to the index that the deed is a trust deed and the provisions applicable to trust deeds shall be applied in relation to this deed.

Conservation and registration in volumes by publishing notary – after the coming into force of these regulations.

4. (1) All notarial trust deeds published on or after the coming into force of these regulations, shall be bound by the publishing notary in a separate volume, one for each notarial trust deed.

(2) The publishing notary shall also create a register of the said trust deeds and this register shall be held by the depositary notary.

(3) All notarial trust deeds shall be submitted for inspection together with public deeds to the Court of Revision of Notarial Acts in terms of these regulations and they shall be conserved in the notarial archives.

Safekeeping of documents by the depositary notary.

5. (1) The depositary notary shall keep all documents relative to a trust as provided in article 43A of the Act.

(2) These documents shall be kept separate from all other documents held by such depositary notary in the execution of his functions and the depositary notary shall be responsible for establishing an adequate system for the preservation of all documentation relating to the trust while he is so engaged.

(3) The records of each trust shall be kept separate from those relating to other trusts and shall be held for safekeeping under lock and key.

(4) The records of a trust shall be kept in such a manner that:

- (a) they are immediately available for inspection in terms of article 43A(7) of the Act;
- (b) in the event that a new depositary notary is appointed, they may be delivered to such notary immediately; and
- (c) the documents forming part of such records shall be numbered consecutively as soon as they are received by the depositary notary.

(5) In the event that a depositary notary delivers documents relative to a trust to a new depositary notary and retains copies of such documents in accordance with article 43A(9) of the Act, these regulations shall *mutatis mutandis* apply to such copies.

Accessibility of trust documents.

- 6.** In the case of a trust set up by a testamentary disposition, where:
- (a) the terms of a trust form an integral part of a will; or
 - (b) are annexed to the will,

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they shall be accessible to any person after the death of the testator in accordance with the provisions of article 68 of the Notarial Profession and the Notarial Archives Act.

Returns to be submitted to the Notary to Government.

7. (1) Without prejudice to sub-regulation (2), a depositary notary shall, upon commencement of his office as depositary notary of any particular trust and upon termination thereof, submit to the Notary to Government, a return listing all trusts in relation to which he acts in such capacity.

(2) The return shall be submitted in the form and at the intervals which may be specified in any guidelines issued in terms of these regulations:

Provided that the Notary to Government may request the submission of the return referred to in this regulation at such intervals as may be deemed fit.

- (3) The return shall only contain the designation of the trust:

Provided that the depositary notary shall not be obliged to disclose the nature of the documents deposited with him in the execution of his duty as depositary notary.

(4) The return referred to in sub-regulation (1) shall not include information relating to any trusts for which the depositary notary is no longer engaged and for which a substitute depositary notary has been engaged, even if the depositary notary has retained copies in accordance with article 43A(9) of the Act:

Provided that the depositary notary shall inform the Notary to Government of the termination of his engagement as depositary notary of any such trust.

(5) The Notary to Government shall keep the returns submitted by depositary notaries in relation to this regulation under lock and key and in such a manner as to safeguard at all times the confidentiality of the contents thereof.

Accessibility of
deeds of trust –
Notarial Archives.

8. (1) When a trust is set up by testamentary disposition, both in case of a public will or a secret will, and the same has been deposited for preservation in the Archives of Malta or the Archives of Gozo, the rules of accessibility of wills in terms of article 68A of the Notarial Profession and Notarial Archives Act shall apply.

(2) When any notarial *inter vivos* trust deed has been deposited for preservation in the Archives of Malta or the Archives of Gozo, as the case may be, as described in regulations 3 and 4, such trust deed shall not be accessible to any person, and copies thereof shall not be granted to any person except:

- (a) with the written authority of the original trustee or substitute trustee, as confirmed to be so by the depositary notary in the manner prescribed in the Schedule to these regulations, and provided that the trustee shall seek the advice of the depositary notary prior to granting access to such person; or
- (b) under the authority of any Court.

Inspection by the
Court of Revision
of Notarial Acts.

9. (1) All trust deeds shall be submitted for inspection to the Revising Officers of the Court of Revision of Notarial Acts in the same manner as other notarial deeds.

(2) When a testamentary trust forms part of a will and the same is subject to review and inspection by the Court of Revision of Notarial Act, this shall be reviewed and inspected in the same manner in which wills are inspected and reviewed.

(3) When reviewing and inspecting a notarial *inter vivos* trust deed, the Court of Revision of Notarial Acts shall, in particular, examine whether such deed contains an indication of:

- (a) the date in accordance with article 28(1)(a) of the Notarial Profession and Notarial Archives Act;
- (b) the designation of the settlor, if any, in accordance with article 28(1)(c) and article 28(1)(d) of the Notarial Profession and Notarial Archives Act;
- (c) the designation of the trustee in accordance with article 28(1)(c) and article 28(1)(d) of the Notarial Profession and Notarial Archives Act;
- (d) the assets which have been settled under trust in accordance with article 28(1)(f) of the Notarial

- (e) Profession and Notarial Archives Act; and the designation of a beneficiary in accordance with article 28(1)(c) and article 28(1)(d) of the Notarial Profession and Notarial Archives Act or at least a class of beneficiaries which is ascertainable in accordance with article 9(4) of the Act, or the purpose of the trust in the case of a trust set up for the fulfilment of a charitable purpose.

SCHEDULE

Form A

Trusts and Trustees (Notarial Trust Deeds Registration, Conservation and Access) Regulations, 2012

Authorisation by the Original Trustee for a person to have access to a notarial *inter vivos* trust deed deposited for preservation in the Archives of Malta and, or the Archives of Gozo.

Pursuant to regulation 8(2)(a)

Name of the Trust.....

Name of the Trustee.....

Delivered by.....

To the *Archives of Malta and the Archives of Gozo*:

The Trustee, hereby confirms that he is the current (whether Original or Substitute) Trustee of the aforementioned Trust and is hereby authorising^a to request a copy of the notarial *inter vivos* trust deed dated^b in the records of Notary^c which has been deposited for preservation in the Archives of Malta and, or the Archives of Gozo.

.....^d

Trustee

I, the undersigned Notary after having duly identified the said Trustee hereby confirm that the said _____^e is the Trustee of the said Trust and that the contents and

^a Insert the name and identity card/ passport number of the person who is being granted authority to access the notarial *inter vivos* trust deed.

^b Insert date of notarial *inter vivos* trust deed.

^c Insert the name of the notary who published the notarial *inter vivos* trust deed.

^d Insert signature of trustee.

^e Insert the name and identity card/ passport number of the trustee.

implications of this authorisation have been duly explained to the signatory Trustee by Depositary Notary _____^a of _____^b Trust.

.....^c

Depositary Notary

Depositary Notary Sealed Stamp

Dated this day of of the year

^a Insert name of depositary notary.

^b Insert name of trust.

^c Insert signature of the depositary notary.