

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

**PROPOSED REGULATION ON USE OF TRUSTS FOR
PERSONS WITH DISABILITY**

[MFSA REF.: 10 /2014]

12 December 2014

Closing Date: 5 January 2015

Note: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

CONSULTATION DOCUMENT

TRUSTS AND TRUSTEES ACT (USE OF TRUSTS FOR PERSONS WITH DISABILITY) REGULATIONS

1. Background and Purpose

Various initiatives are being taken at national level aimed at coming up with solutions which cater for various long term and short term patrimonial issues which are often faced by families having members with a disability. Various challenges faced by such persons may only be addressed through an appropriate regime which takes into consideration the various obstacles encountered by such families as well as by means of suitable legal structures and complementary regulatory regimes and guidelines.

The setting up of a trust for persons with disability is one of the possible legal structures which could provide an adequate solution for difficulties faced by such families, particularly those of a patrimonial nature. The fiduciary nature of the structure makes the trust an ideal structure to manage the family's patrimony whilst ensuring that the interests of the disabled member of the family are safeguarded.

Whilst the fiduciary nature of the trust relationship and the existing legislative and regulatory framework in place for trustees ensures that trustees are subject to a number of duties and obligations in the carrying out of their activities, it was felt that the beneficiaries of these type of trusts are more vulnerable and merit a greater degree of protection. It is for this reason that the Authority is proposing to issue regulations aimed at ensuring that trustees of such trusts are subject to additional duties which recognise the vulnerability of the persons who will eventually benefit under these trusts.

2. Contents and the Authority's Approach

The proposed regulations are designed to set out specific duties on trustees of trusts set up for persons with disability. The Authority is proposing that for a trust to fall under this regime, it must be 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. The proposed regulations set out that the trustee of such a trust must be either a professional trustee or a private trustee, although the latter must appoint a professional trustee as co-trustee. Furthermore, the proposed regulations also make the appointment of a protector obligatory. The proposed regulations also impose additional obligations and duties on the trustees of such trusts.

3. Contacts

The Authority invites comments on all matters in this consultation paper together with draft regulations attached herewith. Interested parties are to send their comments in writing by not later than **5 January 2015**

Please address any comments or enquiries to:

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