

**MFSA**  

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MALTA FINANCIAL SERVICES AUTHORITY

**Explanatory Note**

**Date:** 5 May 2008

**Subject:** Subsidiary Legislation in terms of the Trusts and Trustees Act

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*The Malta Financial Services Authority invites comments, by 5th June 2008 on the draft Legal Notice that will be issued in terms of the Trusts and Trustees Act. Interested parties are invited to send their comments in writing addressed to Dr. Michelle Mizzi Buontempo, Deputy Director, Company Compliance Unit, MFSA or via e-mail on [cocomp@mfsa.com.mt](mailto:cocomp@mfsa.com.mt).*

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**Introduction**

At the moment, article 43 of the Trusts and Trustees Act (the "Act") grants a number of exemptions from the requirement to obtain authorisation from MFSA (the "Authority") to act as a trustee to those companies or persons which satisfy the requirements of sub-articles 6 or 7 of article 43 of the Act. The purpose of the attached Legal Notice (the "Legal Notice") is to exempt other activities or classes of persons and the enabling provision is article 57(1)(g) of the Act, which provision enables the Minister of Finance to make regulations exempting any activities or classes of persons from the requirements of article 43 and 43A and to impose conditions necessary for eligibility for exemption.

According to draft regulation 3 of the Legal Notice the persons who will benefit from this exemption from authorisation to act as a trustee are:

- a) those persons residing outside Malta and which have been approved by the relevant regulatory authority in an approved jurisdiction to act as a trustee to overseas retirement schemes, provided that such trustee services are limited to the holding upon trust of securities or interests, in or issued by a Maltese legal entity, forming part of the assets of a retirement scheme;
- b) companies or other legal entities that have been established in an approved jurisdiction, and which are wholly owned, including as trustees, and controlled by persons not required to obtain authorisation in terms of this regulation or subarticle (6)(a) and (c) of article 43 of the Act and which have been established principally for the purpose of holding trust property and ancillary acts, the details of which are notified in writing to the Authority by the parent company or an authorised agent;

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- c) persons resident outside Malta acting solely as trustees of units in a collective investment scheme which is licensed or recognised in terms of the Investment Services Act or which is exempt from licensing in terms of the said Act, provided that such person is established in an approved jurisdiction;
- d) persons resident outside Malta and acting as trustee in terms of paragraph 5(c) of the First Schedule to the Investment Services Act, in relation to a collective investment scheme licensed under the said Act and qualifying as a Professional Investor Fund in terms of the Investment Services Rules, provided the Authority is satisfied that such person is of sufficient standing and repute;
- e) persons acting as trustees of any scheme, other than a retirement scheme, established by a company for the benefit of its own employees, former employees or their dependants, as long as they do not act as trustees on a regular and habitual basis or hold themselves out to be trustees.

Paragraph (d) of draft regulation 3 is a consequential amendment to article 3(1) (h)(i) of Legal Notice 329 of 2007 that was issued in terms of article 12 of the Investment Services Act. The said article exempts the persons referred to in paragraph (d) of draft regulation 3 of the Legal Notice from the requirement of obtaining a licence for investment services in terms of article 3 of the Investment Services Act.

As a consequence of draft regulation 3, the persons referred to in paragraphs (a) to (e) would not need to apply to MFSA to be authorised to act as a trustee in Malta in terms of article 43 of the Trusts and Trustees Act. The persons who will benefit from the exemptions referred to above are professional persons that operate in the financial services sector and are already subject to a regulatory regime. Moreover, the need was felt to facilitate and encourage further the setting up and operation of the activities described in paragraphs (a) to (e). It is being proposed that such exemptions would not apply automatically but would be subject to a written confirmation from the Authority.

In view of the exemptions from authorisation to act as trustee that will be granted by draft regulation 3 of the Legal Notice, the persons referred to therein would also need to be exempted from the requirement of appointing a qualified person in terms of article 43(9) of the Act.

**Chairman**  
**Malta Financial Services Authority**

**Minister of Finance, the Economy  
and Investment**

**L.N. of 2008**

**TRUSTS AND TRUSTEES ACT  
(CAP. 331)**

**Trusts and Trustees Act (Exemption) Regulations, 2008**

IN exercise of the powers conferred by paragraph (g) of subarticle (1) of 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  
commencement.

**1.** (1) These regulations shall be cited as the Trusts and Trustees Act (Exemption) Regulations, 2008.

(2) These regulations shall come into force on the ....., 2008.

Interpretation.

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

“Act” means the Trusts and Trustees Act;

“the Authority” means the Malta Financial Services Authority;

“company” means a limited liability company duly formed and registered under any law for the time being in force in Malta, and includes a similar body corporate incorporated or registered abroad;

Cap. 370

“overseas retirement scheme” means a *bona fide* scheme or arrangement, organized under the laws of a country outside Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to beneficiaries for the principal purpose of providing retirement benefits”;

Cap. 386

“parent company” has the meaning assigned to it in article 2(2) of the Companies Act 1995;

“trustee” in relation to property means the person or persons holding or in whom the property is vested on terms of trust in accordance with the provisions of the Act or is otherwise deemed to be a trustee under the Act;

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Exemptions of activities or classes of persons from the requirements of article 43 of the Act.

3. (1) The following persons, when receiving property upon trusts, are hereby being exempted for the purposes of the requirement for authorisation to act as a trustee by the Authority in terms of article 43 (3) and from the requirements of appointing a qualified person in terms of article 43 (9) of the Act:

(a) a person resident outside Malta, approved by the relevant regulatory authority in an approved jurisdiction to act as a trustee to overseas retirement schemes, provided that such trustee services are limited to the holding upon trust of securities or interests, in or issued by a Maltese legal entity, forming part of the assets of an overseas retirement scheme;

(b) companies or other legal entities, established in an approved jurisdiction, and which are wholly owned, including as trustees, and controlled by persons not required to obtain authorisation in terms of this regulation or subarticle (6) (a) and (c) of article 43 of the Act and which are established principally for the purpose of holding trust property and ancillary acts, the details of which are notified in writing to the Authority by the parent company or an authorised agent;

(c) a person resident outside Malta acting solely as trustee of units in a collective investment scheme which is licensed or recognised in terms of the Investment Services Act, provided that such person is established in an approved jurisdiction;

(d) a person resident outside Malta acting as trustee in terms of paragraph 5 (c) of the First Schedule to the Investment Services Act, in relation to a collective investment scheme licensed under the said Act and qualifying as a Professional Investor Fund in terms of the Investment Services Rules, where the Authority is satisfied that such person is of sufficient standing and repute;

(e) a person when acting as trustee of a scheme, other than a retirement scheme, operated by a company for its own employees, former employees or their dependants as long as the person does not act as trustee on a regular and habitual basis or hold himself out to be a trustee.

(2) The exemptions laid down in this regulation shall not be automatically operative but their applicability shall be subject to a determination in writing by the Authority that the requested exemption applies.

Definitions of exemptions

4. (1) For the purposes of these regulations, the expression “approved jurisdiction” means those jurisdictions which the Authority determines has a level of regulation and supervision of an equal or comparable level to that provided for under the Act and under any other relevant legislation.

(2) For the purposes of the exemption in regulation 3(1) (a) the expression “approved by the relevant regulatory authority” means a person who is licensed, authorised or otherwise regulated in its country of residence, provided that such person is adequately regulated in such country to the satisfaction of the Authority.

Objective

5. The objective of these regulations is to exempt certain activities or classes of persons from the requirements of article 43 (3) and (9) of the Act, and they shall be interpreted and applied accordingly.