

Trustees of Family Trusts Rulebook

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	29/04/2016	Rules Issued
2.00	XXX	Rules updated and Revamped into this Rulebook

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Interpretation

Act	Refers to the Trusts and Trustees Act, Chapter 331 of the Laws of Malta.
Applicant	Refers to the company seeking registration in terms of Article 43B of the Act.
Authority	Refers to the Malta Financial Services Authority ('MFSA') as established in terms of Article 3 of the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta.
Family Trust	<p>Shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family members or family dependants as defined hereunder, who are definite and can be ascertained.</p> <p>Provided that nothing in this definition shall preclude discretionary family trusts from being created for the benefit of a class of family members or family dependants as defined hereunder, who are identifiable or ascertainable but not yet definite.</p>
Family Dependants/Family Members	<p>Shall mean an individual who is related to the settlor or to any one of the settlors setting up the trust, by consanguinity, adoption or affinity, in the direct line up to any degree, whether ascendant or descendant, or in the collateral line up to the fifth degree inclusively.</p> <p>Provided that the trust instrument may provide for a charitable purpose, or an institution set up for a charitable purpose as defined in the Act, to benefit as a residual beneficiary upon the termination of the family trust.</p>
Registered Company / Registered Trustee	Shall refer to a company registered in terms of Article 43B of the Act.

Regulations Shall refer to the Trusts and Trustees Act (Register of Beneficial Owners) Regulations (Legal Notice 373 of 2017 as amended)

Chapter 1 - General Scope and Application

Title 1 Scope and Application

- R1-1.1 This Rulebook is drawn up pursuant to Article 52(3) of the Trusts and Trustees Act (“the Act”), by virtue of which the Malta Financial Services Authority (“the Authority”) may issue Rules to regulate trustees which are subject to a registration procedure in terms of Article 43B of the Act.
- R1-1.2 The Rulebook lays down additional requirements and conditions in relation to the activities of such trustees, their responsibilities to the Authority, adherence to any code of conduct or any other applicable rules or regulations, payment of fees and any other matter as the Authority may consider appropriate.
- R1-1.3 The Authority may amend or revoke such Rulebook and any such amendment or revocation shall be officially communicated to the persons concerned.
- R1-1.4 The Authority also has the power to interpret any Rule or amendment thereof.
- R1-1.5 This Rulebook should be read in conjunction with the provisions of the Act providing for the duties of trustees as well as the requirements established by any Code of Conduct or any Rules issued pursuant to Article 52 of the Act, as applicable.
- R1-1.6 This Rulebook shall be binding upon the persons specified herein and does not constitute mere guidelines.

- R1-1.7 Without prejudice to any other provision of the Act, any person who breaches any provisions of this Rulebook shall be liable to an administrative penalty as may be prescribed under the Act.
- R1-1.8 This Rulebook shall come into force upon date of publication.
- R1-1.9 This Rulebook shall apply to trustees which in terms of Article 43B of the Act are set up as companies, and:
- i. whose object and activities are limited to acting as trustee in relation to a specific settlor or settlors and providing administrative services in respect of a specific family trust or trusts; and
 - ii. which do not otherwise hold themselves out as trustees to the public in terms of Article 43 of the Act; and
 - iii. which do not act habitually as trustees, in any case in relation to more than five settlors of family trusts at a time.
- R1-1.10 The trustees referred to in this Rulebook shall be subject to a registration process in the manner outlined in Chapter 3 of this Rulebook. Furthermore, every trustee falling within the remit of Article 43B and thereby requiring registration in terms of the Act is required to comply with this Rulebook as may be amended from time to time.
- R1-1.11 A trustee registered in terms of Article 43B shall not offer or carry out any other activity regulated by the Act, including acting as mandatary or as an administrator of private foundations, nor shall it offer or carry out the activities of a company service provider as defined in the Company Service Providers Act (Chapter 529 of the Laws of Malta) or any other activity which would require authorisation in terms of Article 43 of the Act. For the sake of clarity, a trustee registered in terms of Article 43B shall, upon being registered, be permitted only to act as trustee in relation to a specific settlor or settlors of family trusts and in any case for not more than five settlors at a time, and to provide administrative services only in respect of a specific family trust or trusts.

- R1-1.12 A trustee registered in terms of Article 43B of the Act shall commence activities pursuant to its registration within twelve months from the date of the granting of registration by the Authority. In the event that the Registered Trustee is, for any reason, not in a position to comply with this requirement, the Authority may cancel or suspend such registration in accordance with the provisions of the Act.

Title 2 High-Level Principles

- R1-2.1 A Registered Trustee shall act in an ethical manner with due care, skill and diligence, taking into consideration the best interests of their clients and the integrity of Malta's financial system.
- R1-2.2 A Registered Trustee shall co-operate with the Authority in an open and honest manner and shall provide the Authority with any information it may require. Registered Trustees are also expected to deal openly and in a spirit of co-operation with any other relevant authorities.
- R1-2.3 A Registered Trustee shall have in place arrangements for all records and accounts of its administration of family trusts to be maintained. Registered Trustees shall ensure that such records are easily retrieved and accessible so as to enable the Authority to monitor compliance with any requirements under the Act and under this Rulebook, particularly during any on-site compliance visits which may be carried out by the Authority. Registered Trustees shall arrange to maintain sufficient backups of all such records.
- R1-2.4 A Registered Trustee shall keep at the disposal of the Authority, the records relating to the management and administration of family trusts for a period of not less than ten years from the date of the termination of the trust or the trusteeship, whichever event occurs earlier.

Chapter 2 - Definitions

Title 1 Scope and Application

R2-1.1 The scope of this Chapter is to define the terms 'family trusts', 'family members' and 'family dependants'.

Title 2 Family Trusts

R2-2.1 For the purposes of this Rulebook and in terms of the Act, a family trust as referred to in the Interpretation Section above, shall mean a trust created to hold property settled by the settlor or settlors for the present and future needs of family members or family dependants as defined hereunder, who are definite and can be ascertained.

R2-2.2 Provided that nothing in this definition shall preclude discretionary family trusts from being created for the benefit of a class of family members or family dependants as defined hereunder, who are identifiable or ascertainable but not yet definite.

Title 3 Family Members and Family Dependants

R2-3.1 The term 'family dependants' and 'family members' as used in terms of this Rulebook and as referred to in Article 43B of the Act shall mean an individual who is related to the settlor or to any one of the settlors setting up the trust, by consanguinity, adoption or affinity, in the direct line up to any degree, whether ascendant or descendant, or in the collateral line up to the fifth degree inclusively.

R2-3.2 Provided that the trust instrument may provide for a charitable purpose, or an institution set up for a charitable purpose as defined in the Act, to benefit as a residual beneficiary upon the termination of the family trust.

Chapter 3 - Registration of Trustees of Family Trusts

Title 1 Scope and Application

R3-1.1 A trustee set up as a company which fulfils the criteria defined in Article 43B shall not require authorisation in terms of the Act but shall be subject to a registration process as established in this Rulebook.

R3-1.2 Where a Registered Trustee no longer satisfies the registration requirements set out in this Rulebook and wishes to provide trustee or other fiduciary services in terms of Article 43 of the Act, the Registered Trustee shall, within 30 calendar days, apply to the Authority for authorisation to act as a trustee or to provide other fiduciary services in terms of Article 43 of the Act.

R3-1.3 If the Registered Trustee fails to seek authorisation to act as a trustee within the period specified in R3-1.2 of this Rulebook, it shall be prohibited from providing further services, and the Authority shall proceed to cancel its registration as a Trustee for Family Trusts.

R3-1.4 The Authority shall base its decision as to whether an Applicant is to be registered in terms of the Act, on the basis of the information provided by the Applicant, and any other information that ought to have been disclosed by the Applicant. The MFSA shall not be liable in damages for any acts or omissions on the part of the Applicant.

Title 2 Registration Considerations

R3-2.1 In its determination as to whether to grant a registration to the Applicant, the Authority shall ensure that:

- i. there is a family relationship between the settlor(s) and the beneficial owner(s) of the Applicant; and

- ii. that any trust setup administered by the Applicant clearly consists of family relationship links in terms of the definitions of 'family dependants' and 'family members' set out in this Rulebook. Applicants shall be required to submit copies of trust deeds to the Authority to verify this family nexus, as set out in R3-3.2 below.

R3-2.2 All Applicants shall also be requested to confirm the rationale of the purpose of setup, including why Malta was the chosen jurisdiction for establishing the company in terms of Article 43B of the Act.

R3-2.3 The onus of proving the registration considerations set out in this Rulebook lies with the Applicant.

Title 3 Registration Process

R3-3.1 In order for an Applicant to be eligible for registration in terms of Article 43B, the Applicant shall satisfy the following conditions at application stage and on an ongoing basis:

- i. The Applicant shall be a limited liability company registered in Malta in terms of the Companies Act (Cap. 386);
- ii. The Applicant shall submit a request in the form and manner prescribed by the Authority, for inclusion in the Register of Trustees for Family Trusts. This Register shall be kept by the Authority and it shall be available to the public through the Authority's Financial Services Register. The Register shall be updated on a regular basis;
- iii. The Memorandum and Articles of Association of the Applicant shall limit the company's objects and activities to acting as trustee in relation to a specific settlor or settlors, in any case for not more than five settlors at a time, and providing administrative services only in respect of a specific family trust or trusts;
- iv. The Board of Directors of the Applicant shall be composed of at least three directors, and all directors shall be collectively responsible for

the proper management and administration of the trustee company, including the fulfilment of the relevant duties of trustees;

R3-3.2 The Applicant shall be required to submit the following documents to the Authority:

- i. An Application Form in terms of R3-3.1(ii). Applicants shall ensure that the appropriate Application Form, as determined by the Authority, is completed, and that any documentation requested in original are be submitted to the Authority. An Applicant shall also provide whatever additional information the Authority may deem appropriate for the purposes of determining whether registration should be granted to the Applicant;
- ii. The Memorandum and Articles of Association of the Applicant;
- iii. A complete shareholding structure outlining all layers up to the ultimate beneficial owner(s) which should include the natural person(s) and their percentage of ownership in the subject entity;
- iv. A comprehensive summary on the background of the settlor(s);
- v. Copy of the relevant trust deed for each family trust which the Applicant intends to administer at application stage, and on an ongoing basis;
- vi. Declaration that the proposed trust structure(s) complies, and shall continue to comply with the definition of a family trust as prescribed by the Act and this Rulebook; and
- vii. An application fee as may be prescribed by the Authority.

R3-3.3 The Authority may also request the Applicant to produce any additional information which it may deem appropriate.

R3-3.4 The Authority shall not initiate the review of any application submitted by an Applicant which is not complete and in line with R3-3.2 (i) above.

R3-3.5 Once the Authority is satisfied that the conditions and requirements mentioned above have been fulfilled, it shall proceed to issue a registration and register such trustee in the above-mentioned Register.

Title 4 Fitness and Properness

R3-4.1 All directors of the Applicant shall be individuals and must be determined by the Authority to be fit and proper persons.

R3-4.2 In order to determine the fitness and properness of the proposed directors, such proposed directors shall be required to submit a personal questionnaire in the form and manner determined by the Authority, and whereby the Authority will determine the proposed directors':

- i. Integrity - the proposed directors must be of good repute and act honestly and in a trustworthy manner in relation to clients and other involved parties;
- ii. Competence and experience – the proposed directors must be able to demonstrate an acceptable level of knowledge, professional expertise and experience in relation to the role assumed by them;
- iii. Financial soundness and solvency – the proposed directors must be able to demonstrate the ability to effectively manage their personal financial resources;

In this respect, reference should be made to the criteria set out above and as further explained in the [Guidance on the Fitness and Properness Assessments](#) applied by the Authority.

R3-4.3 At least one of the proposed directors of the company shall possess knowledge and experience in relation to the administration of trusts;

R3-4.4 The fitness and properness assessment shall be applicable to:
(i) the Board of Directors of the Applicant, and

- (ii) any other person significantly involved in the Applicant's decision-making process, strategy and the implementation thereof.

R3-4.5 All criteria referred to in this Rulebook must be met in satisfaction of the fit and proper test. It shall not be the duty of the Authority to prove the converse before it refuses to grant registration to an Applicant, or before it intends to suspend or withdraw a registration granted to, or held by, a Registered Trustee.

Chapter 4 - Duties of the Directors

Title 1 Scope and Application

R4-1.1 This Chapter outlines the duties and responsibilities of directors of Registered Trustees on an ongoing basis.

Title 2 Duties of Directors

R4-2.1 The directors shall be responsible for ensuring the proper operation and management of the Registered Trustee in line with the provisions of the Act and this Rulebook, as well as the general duties applicable to directors in terms of the Companies Act.

R4-2.2 The Registered Trustee shall be effectively directed or managed by at least two individuals in satisfaction of the dual control principle.

R4-2.3 Without prejudice to the generality of R4-2.1 and R4-2.2 of this Rulebook, the directors' duties include the following:

- i. Submission of an Application Form in terms of R3-3.1(ii) and R3-3.2(i), containing as a minimum the following information:
 - i. the name of the Applicant applying for registration;
 - ii. the names and addresses of the shareholders of the Applicant;

- iii. the names and addresses of the directors of the Applicant;
 - iv. the number of family trusts to be administered by the Applicant, if any, at application stage;
 - v. a statement indicating that the Applicant satisfies all the requirements which make it exempt from authorisation but eligible for registration as a Trustee for Family Trusts;
 - vi. details of the registered office and place of business of the Applicant.
- ii. On an ongoing basis, the directors of the Registered Trustee shall also be responsible for ensuring the trustee's reporting obligations are adhered to, as set out in Chapter 5 Title 2 of this Rulebook.

Chapter 5 - Ongoing Obligations

Title 1 Scope and Application

R5-1.1 This Chapter provides the ongoing obligations of Registered Trustees.

Title 2 Reporting Obligations

R5-2.1 The Registered Trustee shall ensure to report beneficial ownership information of all trusts under its administration, including all changes thereto, in line with the Regulations and any guidance issued by the Authority from time to time. The Registered Trustee shall also ensure to submit to the Authority any declarations or other submissions relating to the reported beneficial ownership information, as required by the Regulations.

R5-2.2 The Registered Trustee shall be required to submit the following to the Authority:

- i. Annual submission of an Annual Compliance Return within four months from the Registered Trustee's financial year end in the form prescribed by the Authority.

- ii. Annual submission of audited annual financial statements prepared in accordance with appropriate accounting standards, together with a copy of the auditors' management letter and the auditors' report within four months of the Accounting Reference Date as defined in the Companies Act, Chapter 386 of the Laws of Malta. Submission of these documents to the Malta Business Registry or any other register or authority shall not be deemed to have satisfied the submission requirement with the MFSA.

R5-2.3 A Registered Trustee registered in terms of Article 43B shall ensure that all submissions required in terms of this Rulebook or any applicable legislation, as well as any other submissions which the Authority may request from time to time, are submitted to the Authority in a timely manner and within any timeframes set out by the Authority, or by law, as applicable.

R5-2.4 Deadlines for all submissions to the Authority are listed in Annex 1.

Title 3 Record Keeping

R5-3.1 The Registered Trustee shall ensure that it keeps accurate accounts and records of its management and administration of the family trust and that it establishes adequate systems for maintaining proper records of the identity and residence of beneficiaries, and of the dealings and the assets in connection with the family trust and compliance with applicable law.

R5-3.2 The Registered Trustee is required to obtain and maintain, on an ongoing basis, accurate and up-to-date beneficial ownership information, as defined in the Regulations, with respect to all trusts under its administration. This information shall, as a minimum include the: name, date of birth, nationality, country of residence and the official identification document number for all the parties in the trust who are deemed to be beneficial owners, and any other information as may be required for the purposes of reporting beneficial ownership information of trusts in terms of the Regulations.

R5-3.3 Such accounts and records shall be maintained in a medium that allows the storage of information in a way that is accessible for future reference by the Authority and in such a form and manner whereby:

- i. the Authority must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- ii. it must be possible for any corrections or other amendments and the contents of the records prior to such corrections or amendments to be easily ascertained; and
- iii. it must not be possible for the records otherwise to be manipulated or altered.

R5-3.4 The Registered Trustee shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#), issued by the MFSA.

Title 4 Notifications and Prior Approvals

R5-4.1 The Registered Trustee shall obtain the prior written consent of the Authority before:

- i. registering any appointment or resignation of a director, or in the event that any of the directors have their engagement terminated;
- ii. affecting any change which would have a bearing on the Registered Trustee's continued eligibility for registration, including but not limited to, any change in its charter, statute, memorandum and articles of association or other instrument constituting the Registered Company, directors or members;
- iii. surrendering its registration, as provided in Chapter 6 below.

R5-4.2 A Registered Trustee shall notify the Authority immediately if:

- i. it is notified that its auditor intends to qualify the audit report;
- ii. it becomes aware of actual or intended legal proceedings against it; or
- iii. it decides to claim on a professional indemnity or other policy relating to its business.

R5-4.3 The Registered Trustee shall notify the Authority in writing and without delay and in any case by not later than one month, of:

- i. any new engagement by the Registered Trustee in relation to any additional family trust(s) following registration, and shall provide the Authority with a copy of the relative trust deed and the relevant declaration as prescribed above in R3-3.2(v) and (vi) respectively . This is without prejudice to the qualification set out in Article 43B(c) and R1-1.9(iii) above; and
- ii. any change to the shareholding of the Registered Trustee.

Title 5 Insurance Requirement

- R5-5.1 The Registered Trustee shall be required to obtain and maintain, on an ongoing basis, an insurance cover, which cover shall be proportionate to the nature and size of the activities carried out by the Registered Trustee, and ensure that the trust property is adequately insured, as may be applicable.
- R5-5.2 Should the Registered Trustee be unable to obtain an adequate professional indemnity insurance (PII), the Registered Trustee is expected to undertake a thorough assessment of the relative interests and the risks which the Registered Trustee would be exposed to in default of having such insurance cover in place. Such assessment is to be documented and revisited periodically and also upon the happening of key events (such as, an increase or variation in the assets held under trust; situations of conflict, disagreements or threatened action; any legal action) which may ordinarily be covered by insurance cover.
- R5-5.3 Following this assessment, the Registered Trustee shall consider any necessary measures, including but not limited to the consideration of setting aside reserves, to cater for any possible claims which the Registered Trustee may receive, and any such mitigating measures shall also be duly documented in the assessment referred to in R5-5.2, and made available upon request to the Authority.

Chapter 6 - Surrender, Suspension or Cancellation of Registration

Title 1 Scope and Application

- R6-1.1 This chapter outlines the steps to be taken by Registered Trustees in the case of a surrender, suspension or cancellation of its registration.
- R6-1.2 A Registered Trustee shall inform the Authority at an early stage of its intention to voluntarily surrender its registration. The Authority may require such Registered Trustee to delay the surrender of its registration as a trustee of family trusts, or to wind-up such business in accordance with any conditions which may be imposed by the Authority.
- R6-1.3 A Registered Trustee shall, subject to any additional requirements which may be imposed by the Authority, abide by the following procedure for surrendering its registration.
- R6-1.4 Once the Registered Trustee has informed the Authority of its intention to surrender its registration, the Registered Trustee shall submit the following confirmations and documentation to the Authority:
- i. A formal request asking for approval to surrender its registration;
 - ii. A certified true copy of the Directors' Resolution confirming the Registered Company's intention to surrender its registration certificate, subject to the Authority's approval and once the necessary formalities are finalised;
 - iii. Confirmation that the Registered Trustee has given due notice to its clients of its intention to surrender its registration;
 - iv. A confirmation that no litigation is pending which arises out of any event that occurred whilst the Registered Trustee was registered;
 - v. A confirmation that the Registered Trustee will remove from all letterheads, and any other stationery, any reference to being registered by the Authority;
 - vi. Following the surrender of the registration, unless arrangements are made for the winding up of the Registered Trustee, a certified true

- copy of the Constitutional Document of the Registered Trustee, duly amended to remove all references to the provision of trustee services from its objects clause and, (where appropriate) to change the name of the Registered Trustee, should be submitted to the Authority; and
- vii. A confirmation that the Registered Trustee has informed its auditor and insurer of its intention to surrender its registration.

Provided that, the above list should not be considered exhaustive, and it is the Registered Trustee's duty to ensure that all its responsibilities have been satisfied.

Provided further, that the Authority will not proceed with the surrender process until such time as the Registered Trustee remains appointed as a trustee of any trust in view of any such trust not having been terminated, or the trusteeship transferred to another trustee, in terms of the applicable trust instrument and/or the applicable requirements at law.

- R6-1.5 Upon being satisfied that all the requirements set out in this Chapter have been met, the Authority shall commence the process for approval of the surrender of the registration, and the final decision shall be conveyed to the Registered Trustee which will cease to be registered thereafter.
- R6-1.6 The Registered Trustee shall return its original registration certificate to the Authority.
- R6-1.7 Following the Authority's approval of the surrender, unless arrangements are made for the winding up of the Registered Trustee, a certified true copy of the memorandum and articles of association of the Registered Trustee, duly amended to remove all references to acting as trustee of family trusts from its Objects Clause and, (where appropriate) to change the name of the Registered Trustee, shall be submitted to the Authority.
- R6-1.8 The Authority may, at any time, cancel or suspend the registration of a Registered Trustee registered in terms of Article 43B of the Act, as provided in this Rulebook, if:
- i. it considers that the holder thereof no longer satisfies the registration requirements set out in Article 43B of the Act and in this Rulebook,

- and fails to seek authorisation, where applicable, to act as a trustee within the period specified in R3-1.2 above;
- ii. it considers that the holder thereof does not fulfil the requirements of, or has contravened, any of the requirements of the Act or of this Rulebook or any other Rules which are issued thereunder (as may be applicable), or has failed to satisfy or comply with any obligation or condition to which it, or the Registration is subject;
 - iii. if the Authority has been furnished by or on behalf of the Registered Trustee, with information or declarations which are false, inaccurate or misleading; and
 - iv. if the Registered Trustee does not commence activities pursuant to its registration within twelve months from the date of the granting of registration, as prescribed in R1-1.12.

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Annex I

Deadlines for submissions to the Authority

Submissions to the Authority	Deadline
Annual Compliance Return	4 months following financial year end
Audited annual financial statements and a copy of the auditor's management letter and auditor's report	4 months from the Accounting Reference Date
Registration Fee	On the date of submission of the Application for Registration
Annual Supervisory Fee	On the date of registration and annually on the anniversary of the date of registration

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