

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

PROPOSED RULES FOR TRUSTEES OF FAMILY TRUSTS

[MFSA REF.: 09/2014]

25 November 2014

Closing Date: 23 December 2014

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.

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PROPOSED RULES FOR TRUSTEES OF FAMILY TRUSTS

1. Background and Purpose

On 30 January 2012 the Authority issued for consultation a proposed Bill entitled ‘Various Financial Services Laws (Amendment) Act, 2012’, which was primarily aimed at transposing Directive 2010/78/EU as well as other amendments to various financial services laws, including amendments to the Trusts and Trustees Act, Cap. 331, which are the subject of this consultation document. The proposed amendments to the Trusts and Trustees Act introduced the concept of ‘Family Trusts’. The introduction of Article 43B provided for the possibility of having a trustee set up as a company with specific objects as specified hereunder, which would not require authorisation in terms of the Trusts and Trustees Act, but would instead be required to apply for registration by the MFSA. Article 43B provides that a trustee set up as a company would be subject to this registration process if:

- (a) its objects 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
- (b) it does not otherwise hold itself out as a trustee to the public; and
- (c) it does not act habitually as a trustee, in any case in relation to more than five settlors at a time.

The consultation procedure was concluded on 29 January 2012 and no feedback was received from the public. The relative amendments were brought into force on 25 April 2014 upon the publishing of Act No. XI of 2014 amending the Trusts and Trustees Act.

The amendments to the Trusts and Trustees Act also included an amendment to Article 52, enabling the Authority to issue rules to regulate trustees which are subject to a registration procedure in terms of Article 43B. In this respect, the Authority is now proceeding with a second consultation relating to the issue of Rules applicable to trustees of family trusts (hereinafter referred to as ‘the Rules’).

2. Contents and the Authority’s Approach

The proposed Rules are designed to further regulate the activities of trustees which are eligible for registration in terms of Article 43B. The proposed Rules also provide a definition of persons who are deemed to be ‘family dependants’ in relation to family trusts. The Rules also set out further details relating to the registration process of such trustee companies and also put forward proposed additional requirements applicable to trustee companies which are the subject of these Rules. Furthermore, the proposed Rules also set out certain reporting obligations and duties of co-operation with regulatory authorities.

The Authority is also proposing that the Board of Directors of such trustee companies must be composed of at least three directors. Additionally, it is also being proposed that at least one of

these directors must be a person authorised in terms of Article 43(3) or 43(12) of the Trusts and Trustees Act, and such director is being referred to in the Rules as a “qualified director”. The Authority is proposing to impose this requirement in view of the fact that the other directors will not be subject to the Authority’s approval process, and thus the qualified director will be responsible to ensure that professional standards of trust management and compliance with legal requirements are fulfilled. In view of the fact that an authorised person will always be involved in the management of the trustee company, the Authority is also proposing that in the event that the assets held under the family trust include relevant property which would give rise to the requirement of appointing a qualified person in terms of Article 43(9), the qualified director would be deemed to take on the role of such qualified person, and would therefore also be required to comply with the obligations set out in Article 43(9). In such cases therefore, although relevant property would not be held by an authorised trustee, the requirement to appoint a qualified person would be considered to be satisfied in view of the “qualified director” forming part of the Board of Directors.

Q1. Do you agree with the Authority’s approach relating to the requirement of a “qualified director” as outlined above? If not, please explain the reasons.

Q2. Do you agree with the Authority’s proposal that the “qualified director” take on the function of a “qualified person” in the event that the registered trustee is holding relevant property in terms of Article 43(9)?

3. Contacts

The Authority invites comments on all matters in this consultation together with the questions outlined above. Interested parties are to send their comments in writing by not later than **23 December 2014**.

Please address any comments or enquiries to:

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