

Feedback Statement on the Consultation Document on the Trustees of Family Trusts Rulebook

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1. Introduction

The MFSA would like to thank stakeholders for their contribution to the [Consultation](#), issued by the Authority on 8 August 2023 (the 'Consultation Document') proposing changes to the Rules for Trustees of Family Trusts (the '**Rules**'). These Rules are intended for those wishing to apply for registration under Article 43B of the Trusts and Trustees Act (the '**Act**') and to regulate those trustees registered under this Article. The proposed changes to the Rules were aimed at strengthening the regulatory framework for these trustees whilst also addressing feedback received from registered trustees and relevant stakeholders along the years and clarifying certain aspects of the Rules as outlined in the [Consultation Document](#).

The consultation period closed on 11 September 2023 and the Authority received responses from regulated entities, industry stakeholder representative bodies (in particular, the Malta branch for the Society of Trust and Estate Practitioners – hereinafter '**STEP Malta**') and other Authorities.

The Consultation Document sought stakeholder feedback on:

1. The revised structure of the Rules and the formulation of the Trustees of Family Trusts Rulebook ('**the Rulebook**');
2. The introduction of high-level principles applicable to Registered Trustees underpinning the Authority's expectations of such trustees;
3. The enhancement of the Authority's registration considerations when considering whether to grant a registration in terms of Article 43B of the Act;
4. The extension of the fitness and properness assessment to any person significantly involved in the applicant's decision-making process, strategy and the implementation thereof;
5. Additional documents to be provided to the Authority as part of the registration process;
6. The removal of the requirement for Registered Trustees to appoint a Money Laundering Reporting Officer;
7. The strengthening of the framework regulating Registered Trustees, including the codification of Directors' duties;
8. Detailed rules governing regulatory submissions and other ongoing obligations such as record keeping; and
9. The introduction of rules relating to an alternative to insurance cover in case of inability to obtain professional indemnity insurance cover (the '**PII**').

Following the Consultation Procedure timeframe, the Authority also held meetings and engaged with various stakeholders in order to obtain further clarifications on the feedback received so as to better inform its assessment thereof with a view to arriving to the final version of the updated Rulebook published as at the date of this document. This Feedback Statement highlights the salient points of the responses received in relation to the [Consultation](#) and sets out the MFSA's response and position thereto. The Authority also received feedback from respondents covering legal and regulatory aspects of this regime which fell outside the scope of the consultation. Where possible this feedback was also addressed in the Rules, however where this was not possible, it will be addressed holistically in due course.

Further to the above, the Feedback Statement also refers to the introduction of certain additional considerations to facilitate the setting up of **Single Family Offices** in Malta. Such structures have been identified as a growth opportunity for Malta's financial services sector and to this effect, the MFSA has collaborated with the Malta Financial Services Advisory Council ('**MFSAC**') to update the regulatory framework, with some specific changes being introduced to better cater for such structures. For further detail on this matter, one may refer to the Circular [published](#) by the Authority titled 'Establishment of Single Family Offices in Malta'.

2. Feedback on the Structure of the Rulebook

In its Consultation Document the Authority proposed a change in the structure of the Rules and the formulation of a Rulebook divided into the following six chapters:

1. General Scope and Application;
2. Definitions;
3. Registration of Trustees of Family Trusts;
4. Duties of the Directors;
5. Ongoing Obligations; and
6. Surrender or Suspension or Cancellation of Registration.

This structure and formulation were proposed to enhance clarity and transparency providing delineation of all integral aspects of the Registration, mainly the registration process, the general obligations of Registered Trustees and other provisions such as those in relation to the surrender, suspension or cancellation of registration.

Feedback Received

All respondents agreed with the formulation of a Rulebook and the division of the Rulebook into the proposed six chapters, as outlined above and agreed that the new structure and formulation made it more user friendly.

MFSA Position

In view of the positive feedback received by all respondents, the Rulebook has been updated in line with the structure proposed, and the respective chapters as indicated above.

3. Feedback on the Proposed Amendments to the Rules

3.1 High-Level Principles

The Authority proposed to gather and introduce high-level principles governing Trustees of Family Trusts in Title 2 of the Rulebook, and introduce the below high-level principle, to be adhered to by all Registered Trustees with a view to guide Registered Trustees on the Authority's expectations in the conduct of their operations:

- i. Registered Trustees are expected to 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.

The Consultation Document asked for views on the introduction of this high-level principle in the Rules.

Feedback Received

All respondents agreed with the inclusion of the above high-level principle.

One respondent indicated that the use of the word 'client' both here and in R3-4.2 i, was not favourable in the context of trustees. Furthermore, the same respondent also indicated that in relation to the wording 'the best interests of', proper laws of other jurisdictions sometimes indicate that the trustee must act in the best interest of both the beneficiaries and the trust fund, and that therefore this should also be taken into consideration. Finally, the same respondent also indicated that the wording 'integrity of Malta's financial system' is regarded as too wide of a term to be used.

MFSA Position

Based on the feedback provided, the Authority will introduce this high-level principle in the Rulebook.

Having duly considered the feedback received on this point as summarised above, the Authority has amended the proposed wording referring to 'clients' and substituted this to read "the best interests of the beneficiaries and in accordance with the terms of the trust...". The reference to 'clients' is being changed to 'beneficiaries' in R3-4.2 i., in order to take on board the feedback received on the use of the word 'clients'.

The Authority also considered the comment made relating to the use of the terminology “the integrity of Malta’s financial system”. However, it considers that since this terminology is being included in a high-level principle, there is no need to be prescriptive. The Authority’s expectation here is that due consideration is taken of the risks associated with the establishment of such a structure, including any reputational risks, and that measures are taken to mitigate and manage such risks so as not to prejudice Malta’s reputation and financial integrity. On this basis the Authority has updated the proposed wording to reflect this expectation.

3.2 Registration Considerations

The Authority also proposed to consolidate, and make public, the relevant registration considerations and checks that are carried out when deciding whether to grant a registration in terms of Article 43B of the Act. These are primarily focused on the establishment of a family nexus, which is a fundamental criterion when considering such registrations in view of the requirements of Article 43B of the Act. The registration considerations set out in the Consultation Document were stated as being the following:

- i. that there is an actual relationship between the settlor(s) and the beneficial owner(s) of the family trustee; and
- ii. that any trust administered by the family trustee presents family relationship links.

The Authority also proposed to request from all applicants the rationale as to why Malta was chosen as the jurisdiction for the establishing of the trustee of the family trust and to indicate that the onus of proving that the registration considerations have been satisfied lies with the applicant.

The Authority requested feedback from stakeholders in relation to the proposed inclusion of these registration considerations in the Rulebook.

Feedback Received

One respondent sought clarification as to whether the relevant considerations and checks carried out by the Authority are communicated to the applicant seeking registration in terms of Article 43B of the Act or communicated to the public.

Another respondent queried whether the above would be applicable for existing Registered Trustees.

Another respondent asked whether the wording in the Rulebook erroneously referred to the ‘Applicant trustee’ in R 3-2.1(i) of the Rulebook. The respondent queried why the settlor is required to be related to the beneficial owner(s) of the family

trustee/applicant. The query was raised as, in this respondent's opinion, the applicant can act as trustee for up to 5 unrelated settlors.

The respondent also pointed out that this requirement would be impossible to satisfy where certain types of structures are involved, such as, where the applicant trustee is owned "by an ownerless structure such as a charitable trust".

The same respondent also requested clarification of the rule of five settlors, suggesting that it should be clarified that a family trustee cannot act for more than five settlors but it is permitted to administer an unlimited number of trusts as long as the number of settlors is restricted to five.

A respondent also sought clarification on the requirement to prove that a family nexus exists. This respondent also queried whether the requirement to submit a copy of the trust deed to the Authority as evidence of this family nexus is necessary and whether instead the Authority could rely upon a certification by the trustee. Another respondent put forward the argument that in certain situations there may be the need for the Authority to obtain additional information and documentation to complement and/or verify what is set out in the trust deed to be able to determine the family link between the settlor(s) and the beneficial owners.

A respondent also proposed to consider the reference to the trust deed in R3-2.1(ii) as it may suggest that the trust deed is the only document that the MFSA will consider when verifying whether a family nexus exists or otherwise.

Another respondent indicated that sub-section (ii) is a repetition of the first sub-section.

A respondent sought clarification in relation to the proposal to request the rationale for choosing Malta and the reason behind requesting this clarification from the Registered Trustee. The respondent argued that this can sometimes be as mundane as the fact that other jurisdictions do not offer such an option.

Another respondent requested guidance in terms of what falls within the MFSA's risk appetite as this was regarded as useful in managing expectations in the interests of both applicants and the Authority alike.

MFSA Position

At the outset the Authority would like to clarify that any assessments made by it with respect to applicants applying for registration in terms of Article 43B of the Act, are strictly confidential in nature and will not be divulged to the public at large; nor was it ever proposed to do so in the Consultation Document. When referring to the element of publicity the Consultation Document was in fact referring to the publication of the registration considerations in R 3-2.1(i) and (ii) of the Rulebook, and therefore the internal processes and procedures undertaken by the Authority vis-à-vis such assessments.

Furthermore, the Authority would like to clarify that, as set out in the Consultation Document, these two registration considerations are already assessed by the Authority when processing an application for registration as a family trustee. It follows that, this proposal does not affect existing Registered Trustees in relation to trusts already notified to the Authority as the assessment whether the two registration conditions are satisfied would have already taken place at the time of registration of the trustee and notification of the trust. Existing Registered Trustees are, however, required to ensure that they satisfy these registration conditions in relation to any additional family trusts they decide to administer. To address this feedback, the Authority has added a reference to this in R3-2.3 of the Rulebook. This rule now clearly sets out that the registration considerations set out in R3-2.1 are to be satisfied both at registration stage and on an ongoing basis thereafter, and that the onus of proving this lies with the Applicant or Registered Trustee, as applicable. It also requires the Applicant or Registered Trustee, as applicable, to document the manner in which the registration conditions are satisfied.

Confirmation that the Registration Considerations will be adhered to will also be sought from the Applicant trustee at registration stage, by virtue of the inclusion of a new requirement to this effect.¹

Following discussions with STEP Malta in relation to aspects of their feedback on this specific issue, the Authority also considered the position of family trustees who satisfied the family nexus with the settlor at the time of registration but may no longer be able to satisfy this in relation to the settlor in the near future due to, for instance, the passage of time.

For this reason, the first registration consideration has been extended to refer to beneficiaries of the trust and not only to the settlor(s) when determining whether a family relationship exists with the person holding a beneficial interest, whether directly or indirectly, in the Applicant or the Registered Trustee, as the case may be. In this context, “beneficial interest’ means a direct or indirect interest that confers the rights of a shareholder (voting and financial) in the Applicant or the Registered Trustee, as the case may be, and is not tied to a specific percentage of shares owned or voting rights held by the person. This will be determined on a case-by-case basis and by reference to the circumstances of the case.

To cater for those genuine cases where one of the registration considerations established in R3-2.1 can no longer be satisfied on an ongoing basis, due to a justifiable reason, a rule to cater for this eventuality has been introduced requiring a Registered Trustee who is of the opinion that it may be the case that one of the registration considerations may no longer be satisfied on an ongoing basis due to genuine reasons, to inform the Authority of this in

¹ R3-3.2 vi. is proposed to require a declaration that the proposed trust structure(s) complies, and shall continue to comply on an ongoing basis with the definition of a family trust as prescribed by the Act and this Rulebook and satisfies the Registration Considerations as stated in R3-2.1.

writing. The Authority will then be in a position to take stock of the facts and give guidance or direction, as the case may require, to the Registered Trustee.

Next the Authority would like to address the feedback requesting it to clarify if there is an error in R 3-2.1(i) of the Rulebook. The wording in the said R3-2.1(i) is in fact correct. The intention behind the family trusts regime in Article 43B of the Act was always to regulate, in a more proportionate manner, those trustee relationships which are restricted to trust arrangements whereby there is the existence of a familial relationship between the settlor and the beneficial owners of corporate trustee which is set up solely to administer such trusts (i.e the Registered Trustee). The Authority has in fact always undertaken such an assessment vis-à-vis existing Registered Trustees. This concept is therefore being merely formalized through the inclusion of the registration considerations in the Rulebook applicable to trustees of family trusts. This is of course different to the situation proposed by the feedback where there would be no familial relationship between the Registered Trustee and the settlor(s), however as indicated above, that is not a matter that falls within the scope of this Consultation.

The MFSA would also like to address the query raised regarding the rule of 5 settlors, to the effect that a family trustee cannot act for more than 5 settlors but is permitted to administer an unlimited number of trusts, within reason, as long as the number of settlors is restricted to 5 and the two registration considerations specified in R3-2.1 are satisfied at application stage and on an ongoing basis thereafter. However, it is worth pointing out that, should the Authority note that the number of family trusts being administered by the Registered Trustee is increasing significantly, this would invariably be subject to increased scrutiny by the Authority to ensure that these set ups align with the spirit of the registration regime contemplated by Article 43B of the Act.

As explained further in this Feedback Statement, the Authority has taken on board the feedback received in relation to the provision of the trust deed (refer to section 3.4 of the Feedback Statement). As a result of this, the Rulebook will no longer specifically require the provision of the trust deed and instead it has been updated to state that applicants shall be required to submit any documents and, or information as may be required by the Authority to be able to verify the family nexus in line with the registration considerations.

In relation to the documentation that the Authority may consider as evidence of the 'family nexus', the Authority has the power to request any documentation as it deems appropriate in order to ensure that the family nexus exists. In fact, this general power to request documentation or information is set out in R3-3.3 of the Rulebook as amended (which reproduces Rule 5(4) of the previous Rulebook in force). In this regard, the amendments to the Rulebook have clarified that this request for documentation or information may be made at application stage and, or after registration has taken place.

In accordance with the Rulebook as amended, when assessing an application for registration the Authority will consider the rationale for the establishment of the family trustee in Malta as this also has a bearing on whether this falls within the Authority's risk appetite. In terms of what would satisfy the MFSA's expectations, this would be a documented explanation of the reason or reasons for the setting up of such a structure in Malta. Where for instance, professional advice is sought by a proposed settlor which recommends that a trustee under Article 43B of the Act is established, giving reasons for such recommendation, then that professional advice as well as any other reason(s) for the use of the family trustee company under the said Article 43B should be part of the documented explanation presented as the rationale for choosing Malta.

In relation to the request for guidance as to the Authority's risk appetite, the Authority hereby makes reference to the [MFSA's Risk Appetite Statement](#) together with the [Frequently Asked Questions \(FAQs\)](#) published on 6 January 2020.

In relation to the point made that sub-section (ii) of R3-2.1 is a repetition of the first sub-section, the Authority would like to clarify that (i) refers to the relationship between the persons having a beneficial interest in the family trustee company and the settlor and, or beneficiaries whilst (ii) refers to all the trusts that are administered by the family trustee having a family nexus.

3.3 Fitness and Propriety Assessment

In its Consultation Document, the Authority proposed to crystallise its practice in terms of applying the fitness and propriety assessment to any person(s) significantly involved in the applicant's or Registered Trustee's decision-making process, strategy and the implementation thereof. The Authority considers that such persons should be assessed for their fitness and propriety before they are able to significantly influence the decision-making process and strategy of a Registered Trustee.

Feedback Received

One respondent indicated that people who sit on the board of directors of a Registered Trustee might not have an academic background, but would be successful from a business perspective, and that this should be taken into account by the Authority. The same respondent highlighted that persons exposed to certain industries might have been mentioned in the media or involved in 'high profile' cases and that this should not be taken as a disqualification factor. The reason provided was that Registered Trustees do not provide services to the public at large and are still subject to having a qualified director on the registered trustee's board of directors. Other feedback was also received in relation to the Authority's assessment on the materiality of certain circumstances when it comes to court cases, media reports and the like in relation to such individuals.

Another respondent pointed out that fitness and properness assessment should not end up delaying the registration process, which is distinct from the authorisation process applicable under article 43 of the Act. The respondent further pointed out that a similar rule does not exist for directors of “normal unregulated holding companies” and the question was raised why this assessment should be necessary for a company registered under Article 43B of the Act. The respondent further argued that the regulatory expectations should take into consideration the nature of the specific office being regulated which, in this case, has a limited operation but also the directors of the trustee company are very often chosen by the settlor(s) based upon the existing relationship with the family. The feedback suggested that some form of assessment of the proposed directors needs to be carried out albeit this should be done in light of the very specific circumstances of the case.

A respondent sought clarification as to who could possibly fall within the second category of individuals who need to satisfy the fitness and properness assessment. On the other hand, another respondent agreed with the introduction of this provision as this would be an additional step in ensuring that family trustees are not unduly abused for criminal or illicit purposes.

MFSA Position

The Authority would like to refer to R3-4.3 of the Rulebook as amended, which reproduced Rule 5(1)(h) of the previous iteration of the Rulebook, which sets out the requirement that at least one of the directors of the applicant or Registered Trustee is required to possess knowledge and experience in relation to the administration of trusts. The director having such knowledge and experience will be responsible to ensure that professional standards of trust management and compliance with legal requirements are fulfilled. Therefore, by way of clarification, the Authority does not expect that all three directors are required to have knowledge and experience that would be expected of a professional in the area of trust management and compliance with legal requirements. In fact, the provisions of the Rulebook vis-a-vis the competence requirement state that the proposed directors must be able to demonstrate an acceptable level of knowledge, professional expertise and experience in relation to the role to be assumed by them (R3-4.2 ii). Nevertheless, for avoidance of doubt the rule has been amended to include a reference to the specific role *and functions* to be assumed by such directors.

In relation to the comment made that the assessment of fitness and properness should not end up delaying the registration process, which is distinct from the authorisation process applicable under article 43 of the Act, the Authority is conscious that processing an application needs to be in conformity with the prescribed timeline. To ensure that the review process is timely and straightforward, the individual submitting the Personal Questionnaire (PQ) would be well advised to ensure that all queries in the PQ are addressed clearly and in sufficient detail, and that all supporting documents required to be provided with the PQ are submitted. The Authority will communicate with the individual if it has any queries and the individual should aim to respond to such queries promptly so as not to delay the process.

As for the comment made by a respondent that a similar rule to undergo the fitness and properness assessment does not exist for directors of “normal unregulated holding companies”, the Authority would like to point out that this is a company acting as a trustee of a family trust, which activity is in fact regulated by the Trusts and Trustees Act in the form of a registration regime, and therefore cannot be compared to a company undertaking the activity of a holding company. A trustee has specific duties and roles to be performed as required by the Act, hence a trustee is carrying out activities deemed subject to registration. The Authority is obliged in terms of its role as the competent authority under the Act to ensure that the direction and management of such registered trustee company is vested in individuals who are fit and proper to perform such duties in terms of the Act. In the context of its assessment of directors of Trustees of Family Trusts however, the Authority would like to confirm that it does take into consideration the limited operations of a registered trustee, and the fact that the directors of the trustee company are very often chosen by the settlors themselves.

With reference to the feedback received in relation to persons mentioned in the media, court cases or involved in ‘high profile’ cases, the Authority would like to clarify that the underlying assessment which is applied in determining the eligibility of individuals to be appointed or involved in Registered Trustees is the fitness and properness assessment as set out in the [‘Guidance on the Fitness and Properness Assessments applied by the Authority’](#) issued on 2 July 2019 (the ‘Guidance’), with specific focus on the ‘integrity’ limb in the context of the feedback received on this point. The Authority would like to highlight that Registered Trustees are involved in regulated activities and therefore, the satisfaction of the fitness and properness assessment is mandatory, both at registration stage and on an ongoing basis, as set out in the Guidance. For sake of clarification, this is the position already applicable to directors or proposed directors of Registered Trustees as these are already subject to this assessment. Furthermore, this may also be extended to any person involved in the structure should the Authority consider this necessary, and further documentation should be provided for the purposes of any integrity checks to be carried out in the course of such assessment. This has been clarified in the Rulebook in Rule R3-4.4 b.

With respect to persons who are ‘significantly involved in the applicant’s decision-making process, strategy and the implementation thereof’, the Authority would like to clarify that these individuals may include the beneficial owners or the shareholders of the Registered Trustee, investment managers or advisors if they are deemed to fall within the criteria stipulated in the Rulebook i.e. that the individual is significantly involved in the trustee’s decision making process, strategy and the implementation thereof. This category also refers to an individual who is not referred to as a director but who carries out substantially the same functions in relation to the direction of the company as those carried out by a director. Malta is obliged, in terms of applicable international standards and legislation, to take measures to ensure to prevent criminals convicted in relevant areas from holding a management function in or being the beneficial owners of such entities, and these requirements by the Authority are therefore crucial to ensure alignment with these standards.

3.4 Additional Documentation to be Submitted to the Authority in relation to the Registration Process

In its Consultation Document, the Authority proposed to delineate all documentation to be submitted by applicants wishing to satisfactorily complete the registration process in R3-3.2 of the Rulebook. In this regard, the Authority proposed that the following documents were to be added in the Rulebook: an application form, a complete shareholding structure outlining all layers up to the ultimate beneficial owner/s including the natural person(s) and their percentage of ownership in the subject entity, and a comprehensive summary on the background of the settlor(s).

Moreover, the Authority also proposed that a new requirement be introduced for Registered Trustees to ensure that, if throughout the duration of such registration, the Registered Trustee will administer additional trusts, signed copies of such trust deeds are to be submitted to the Authority to ensure that they are being set up in line with the requirements of a trustee of family trusts.

Feedback Received

One respondent expressed concern about the requirement for Registered Trustees to submit a signed copy of the trust deeds of additional trusts administered post-registration, as this may be regarded as discouraging due to the highly sensitive nature of the contents of a trust deed. In this regard, the same respondent also queried as to whether a certification by the trustee would suffice, coupled with an extract from the deed with the definition of beneficiaries. The same respondent also sought clarification as to whether the requirement to submit the trust deed solely lies on the basis of confirmation of the 'family link'.

In relation to R3-3.2(iii) another respondent proposed to add the wording 'where applicable' to recognise those structures which do not have an individual ultimate beneficial owner at the very top, for example, where the Registered Trustee is owned by the trustee of a charitable trust.

MFSA Position

The Authority would like to confirm the proposal to request copies of trust deeds at registration stage, as well as post-registration in case of additional trusts taken on by the Registered Trustee, is for verification of the 'family link' in satisfaction of the Act and the Registration Considerations in the Rulebook. After due consideration, the Authority has amended the relevant proposed rule to provide for an alternative to the submission of the trust deed, being, the provision of a true copy of an extract of the trust deed, to be certified by specific persons to be detailed in the Rulebook, such as legal or accountancy professionals, clearly indicating who the beneficiaries are and confirming that there are no other documents or instruments indicating other beneficiaries. The Authority shall retain

discretion to request the full trust deed should such extract not be deemed satisfactory. The certified copy must be signed and dated by the certifier and is to include the certifier's details including contact details and indication of profession, designation or capacity.

In relation to the feedback received to add the text "where applicable" in Rule R3-3.2(iii) to reflect the position where there is an ownerless structure as the shareholder of the family trust, the Authority would like to emphasise that there is the requirement to ensure that such a structure is ultimately controlled by known individuals who have a family nexus with the family trustee and the trusts it administers. It is therefore to be clarified that a charitable trust cannot be a shareholder of the registered trustee as it does not satisfy the family nexus requirement. On the other hand, a private interest foundation would be a structure that is allowed to act as shareholder of the registered trustee as long as it can be shown that this entity is controlled by known individuals who have a family nexus with the family trustee and the trusts it administers. For these reasons the Rule concerned is being updated to clearly state what information is to be included in the structure chart required by the Authority.

3.5 Removal of the Requirements of Appointment of Money Laundering Reporting Officer ('MLRO')

The Authority proposed the removal of the requirement for Registered Trustees to appoint an MLRO which follows the determination by the Financial Intelligence Analysis Unit (the 'FIAU') that Registered Trustees, and their operations, do not fall within the definitions of 'subject person', 'trust and company service provider' and 'relevant activity', as set out in Regulation 2(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations, (S.L. 373.01) (the 'PMLFTR').

Feedback Received

All four respondents agreed to this proposal. One respondent also recommended the imposition of an obligation on the Registered Trustee to maintain a business relationship with a Malta subject person (such as a bank, accountant, auditor or company service provider) as this would give comfort that a subject person is undertaking ongoing monitoring to verify the ownership of the Registered Trustee.

MFSA Position

In view of the positive feedback received by all respondents, as well as the FIAU's determination as referred to above, the Authority is proceeding with the removal of the requirement for Registered Trustees to appoint an MLRO. The Authority did not deem the recommendation received in relation to the imposition of an obligation for Registered Trustees to maintain a business relationship with a Malta subject person to be necessary given the limited activities undertaken by the trustee of a family trust. Moreover, Registered

Trustees are also subject to the legislative requirements relating to reporting of accurate and up to date beneficial ownership information of the trusts under their administration, in the Trusts Ultimate Beneficial Ownership Register maintained by the MFSA.

3.6 Duties of Directors

In its Consultation Document, the Authority proposed to amplify in the Rulebook the duties of directors of Registered Trustees in order to enhance clarity in relation to their duties and ongoing obligations and to further strengthen this regulatory regime. The proposed duties were the following:

- i. The directors are to ensure that the Registered Trustee is effectively directed or managed by at least two individuals in satisfaction of the dual control principle;
- ii. On an ongoing basis, directors are responsible for ensuring the Registered Trustee's reporting obligations are adhered to as set out in Title 2 of Chapter 5 of the Rulebook. In fact, a dedicated table outlining the applicable regulatory deadlines has also been introduced in Annex 1 of the Rulebook; and
- iii. The directors are responsible for ensuring the timely and correct reporting of beneficial ownership information of all trusts under administration in line with the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, 2018 (S.L. 331.10) (the **'Trusts and Trustees Register of Beneficial Owners Regulations'**) (reference is also made to Section 3.8 below).

Feedback Received

All respondents agreed with this proposal. One respondent also suggested the inclusion of a general 'catch-all' requirement to the effect that the directors of the family trustee should be responsible for informing the MFSA immediately of any information which may somehow impinge on its status or on the status of any of its officers or beneficial owners.

MFSA Position

The Rulebook includes an obligation to on the Registered Trustee to seek the MFSA's consent prior to any change which may have a bearing on the Registered Trustee's continued eligibility for registration. It is noted that a respondent suggested imposing an obligation on the directors of the Registered Trustee to notify the MFSA of any information that may somehow impinge upon the trustee's status as a registered family trustee. The Authority considered this feedback and considered that it would be best to leave such an obligation on the Registered Trustee generally, which is ultimately directed by its Board of Directors, who bear collective responsibility to comply with inter alia the Rules applicable to Registered Trustees.

In fact, the Rulebook provides that 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.*” However, for the sake of clarity vis-à-vis the MFSA’s expectations, two more provisions have been included in Rule 5-5.2 (previously numbered Rule 5-4.2) so as to make it clear that the Registered Trustee is to notify the Authority immediately of a proposed change to the qualifying shareholding of the Registered Trustee, or if it becomes aware that it may no longer be able to satisfy the registration considerations as stipulated in the Rulebook.

In this context the MFSA would like to draw the reader’s attention additional amendments which have been made to the Rulebook in this context, to distinguish between a proposed change in qualifying shareholding (as defined in the Act) which would need to be notified to the MFSA **in advance of such a change and within a stipulated timeframe**; whilst in the case of a change which does not result in a change in qualifying shareholding this has to be notified to the Authority without delay and in any case by not later than one month of the change taking place.

It should also be noted that in terms of Chapter 1 of the Rulebook as amended, a Registered Trustee is under a general obligation to co-operate with the Authority in an open and honest manner and provide the Authority with any information it may require.

In relation to the individuals who have applied to hold an approved position and have been authorised by the MFSA to hold such a position it is important to clarify that Section 4.6 of the Guidance sets out that such individuals have an ongoing obligation to notify the MFSA immediately when there is a change in the information provided or circumstances that could impinge on his/her fitness and properness.

3.7 Reporting Obligations

In its Consultation Document, the Authority proposed to set out Registered Trustee’s reporting obligations, including a comprehensive list of documents to be provided to the Authority as part of their ongoing obligations.

The Authority also proposed to remove the requirement for the submission of a Certificate of Compliance to the Authority. The declarations previously included in this regulatory submission will now be included in the Annual Compliance Return (**‘ACR’**), which is now being set out as one of the regulatory submissions due by Registered Trustees, in the Rulebook.

Feedback Received

One respondent questioned whether there is a template ACR as if the plan is to use the same ACR that is available to professional trustees, the concern is that many questions will not be applicable to trustees of family trusts in general.

Two respondents questioned whether the submission of an ACR and audited financial statements are necessary in the context of a trustee of family trusts and set out that the MFSA has the protection of the law that makes it very clear that a trustee of a family trusts can only administer trusts with beneficiaries of the trust who are related to the settlor up to the required degree and if they fail to do so, they render themselves liable to obtain an authorisation in terms of article 43 of the Act (rather than article 43B) and any regulatory action in terms of law. Thus, it is the trustee of a family trust's duty to ensure that it always remains in line with the law and failure to do so gives rise to very serious consequences.

MFSA Position

In response to the feedback received in relation to the template of the ACR, the Authority would like to clarify that there is indeed a dedicated ACR template in place, tailor-made for Registered Trustees, which has been available on the MFSA website for a number of years. In fact, the Authority has taken on board feedback received in the course of its supervisory work and has worked on updating the ACR for Registered Trustees in order to take into consideration the feedback received. The updated version can be found on the MFSA's website [here](#).

The Authority would like to highlight that the analysis of the ACR and the audited financial statements by the Authority form an integral part of the Authority's supervisory work, which is vital for the Authority to be able to adopt a risk-based approach to supervision.

3.8 Ongoing Obligations

In its Consultation Document, the Authority proposed to further crystallise the ongoing obligations of Registered Trustees, in particular record-keeping obligations, in the Rulebook. It also highlighted the importance of the obligation of Registered Trustees to report beneficial ownership information. Additionally, the Authority also proposed that reference is made to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#), issued by the MFSA, to be applied on a best effort basis. Furthermore, it was also proposed that an obligation to notify, or obtain approval from the Authority in specific circumstances, is introduced.

Feedback Received

One respondent, in relation to the reference to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#) (the '**Guidance on Technology**') provided that the Authority should be sensitive to the principle of proportionality, to avoid imposing unnecessary costs on Registered Trustees to keep up with systems which are unnecessary for the operations they are dealing with. In fact, **another respondent** provided that these requirements need to be assessed from an IT angle as they may be excessive in a trustee of family trust context. It was also stated that the word 'refer' does not give sufficient clarity about the MFSA's actual expectations from trustees of family trusts and more guidance was requested. The same respondent also questioned why the MFSA guidelines on ICT was selected, and whether there is a risk that the MFSA ask Article 43B trustees to 'refer' to any new MFSA guidance.

Another respondent sought clarification as to the reason why any actual or intended legal proceedings need to be notified, rather than just those that have a material impact on the registration considerations or on the continued existence of the Registered Trustees or that may lead to cancellation of the registration.

The respondent also provided that no reference is made in R5-3.2(i) of the Rulebook to the requirement to provide the Authority with a comprehensive summary on the background of the settlor(s) whenever a new mandate is accepted.

Another respondent sought clarification as to the reason why beneficial ownership requirements are set out in R5-3.2 of the Rulebook with the risk that if they are updated, the Rulebook would likewise need to be amended.

MFSA Position

In reply to the feedback provided in relation to the reference to the Guidance on Technology, the Authority would like to re-iterate that Registered Trustees are expected to apply this on a best effort basis. Registered Trustees are expected to determine what aspects of the said guidance are applicable to them based on their activities. The same guidance is also applicable to all other persons who are subject to the Authority's supervision and therefore, Registered Trustees are expected to apply them on a best-efforts basis.

In reply to the feedback provided about the submission of the settlor's background in the case of a new engagement being accepted by the Registered Trustee, the Authority has taken this feedback onboard and supplemented the provision in R5-5.3 i. which now requires this information to be submitted as well, in such a scenario.

In relation to the notification of any actual or intended legal proceedings against the Registered Trustee, this obligation was set out for sake of transparency so the Authority can ascertain whether the Registered Trustee has the necessary controls in place to mitigate any risks arising out of the actual or intended legal proceedings, and to pre-empt any circumstances which may possibly result in reputational risk situation.

The Authority would like to clarify that Section 4.6 of the Guidance sets out that applicants have an ongoing obligation to notify the MFSA immediately when there is a change in the information provided. Therefore, applicants and Registered Trustees are already subject to an obligation to immediately inform the Authority of changes in the information previously provided to it, and upon which the Authority has based its determination to either appoint a person or grant a registration. This obligation is further set out in R5-5.1(ii) of the Rulebook.

In terms of the feedback received on R5-3.1 of the Rulebook, such obligations in relation to the obtaining and maintaining of beneficial ownership was specifically set out because Registered Persons are no longer considered as subject persons, and therefore no longer subject to the customer due diligence requirements set out by the Prevention of Money Laundering and Financing of Terrorism framework. The Authority deemed it prudent to clarify that the obligation extends to both the obtaining and the reporting of beneficial ownership information, as required by the applicable regulations, currently being the Trusts and Trustees Register of Beneficial Owners Regulations. Having said that, the Authority has considered the feedback received and as a result decided to align the Rule to the reporting requirements under the applicable FATF standard, given this was recently updated, so the Rules may be aligned to international standards on beneficial ownership transparency.

In the Rulebook the Authority is introducing a rule to cater for the retention period of documents relating to the family trustee's management and administration of trusts, and a further provision to clarify that the retention period stipulated in the Rulebook is without prejudice to any other retention periods relating to such records which the Registered Trustee may be subject to by virtue of the Act, any other law, regulations or rules or which may be imposed by any other Authority.

3.9 Alternative Insurance Cover Requirement

The Authority proposed the introduction of an alternative option to the obtaining of a Professional Indemnity Insurance ('PII') and which is to be regarded as a means of last resort. In cases where the Registered Trustee is unable to obtain an adequate PII, Registered Trustees would be required to undertake a thorough assessment of the relative interests and the risks, which they would be exposed to in default of having such PII in place. Following this assessment, Registered Trustees would then be required to consider any measures to cater for any possible claims which may be received together with any mitigating measures they deem fit to adopt in such circumstances.

Feedback Received

One respondent outlined the difficulties encountered in obtaining a PII and that insurers have queried the notion of insurable interest. Furthermore, the respondent also indicated disagreement with the proposal that reserves are to be set aside since it is unlikely that a beneficiary will sue himself. It was also put forward that in most cases, underlying assets would be insured in their own right.

Another respondent provided feedback in terms of obtaining a D&O as an alternative cover or in conjunction with PII, as applicable. Further clarity on the amount of cover was also requested.

MFSA Position

The Authority would like to clarify that no amount of cover was set out in the Rulebook in order to provide for leeway to Registered Trustees in determining the cover to be obtained, recognising that different considerations will apply in relation to PII, depending on the trust being administered and the assets forming part thereof. In order to determine the appropriate level of cover, Registered Trustees are to conduct an assessment to determine this, and which assessment is to be duly documented. After due consideration of the feedback received the Authority did not deem it appropriate to make any further amendments.

3.10 Miscellaneous

3.10.1 Administration of foundations forming part of the structure administered by the family trustee

A respondent requested the Authority to consider whether the trustee should be allowed to administer foundations forming part of the same structure being administered by the family trustee.

MFSA Position

The position taken by the Act in relation to this matter is clear in the sense that it requires administrators of private interest foundations to be specifically so authorised by the Authority. Therefore, in this regard the requirements of Article 43 in relation to acting as administrator of private interest foundations apply.

3.10.2 Definition of 'family member' and 'family dependant'

A respondent queried whether the MFSA would consider updating the definition of 'family member' and 'family dependants' to better reflect the 'modern family' concept considering that family members and dependants are considered in a different manner in today's day and age especially with life partners who do not marry, spouses who are divorcees with children from previous marriages or relationships, but would still be considered part of the family for the purpose of the trust, or with structures set up by elderly family members very high up the line of living generations. Feedback included that the MFSA should consider extending benefit beyond the fifth degree in the collateral line.

A respondent also pointed out that settlors looking at setting up a trust, administered by a family trustee, when they already have foundations or trusts set up for their or their family's benefit (which family members would themselves be qualifying members) and who they want to provide benefit for under the family trust, to be administered by the family trustee, are unable to do so because of the limited definition of 'family member' that precludes foundations, companies or trustees from benefitting even if these have family members amount their beneficiaries/shareholders.

MFSA Position

The Authority has decided to update the definition of 'family member' and 'family dependant' to take into consideration the points made by stakeholders on this subject and to reflect its experience of queries raised in relation to this definition from lawyers and stakeholders advising on these structures. When considering how to extend the 'family member' and 'family dependant' definitions the Authority looked at other jurisdictions and definitions in certain rules. In arriving to the definition of 'family member' and 'family dependant' the Authority also re-considered the relevance of retaining the reference to the fifth degree in the collateral line and included persons who although not related by affinity are in a stable and committed relationship and are living in a joint household with the settlor. For these reasons the definition has been amended to cater for these changes.

3.10.3 The introduction of a category of 'family clients' who may be included as beneficiaries of a family trust set up within the context of a Family Office investing in a Notified Professional Investment Fund

As explained in the introduction, the Consultation on the amendments to the Trustees of Family Trusts regime triggered discussions with the MFSAC, vis-à-vis the interposition of a trust administered by a Registered Trustee in the context of a Single Family Office. In this scenario the Registered Trustee would be investing the assets of the trust (in part or in whole), on behalf of the family trust, in a Notified Professional Investment Fund ('NPIF'). In this respect it was necessary to also include certain criteria to be satisfied in this scenario and this included further amendments to the²¹ definition of 'family member' and 'family dependant' which may be extended to include beneficiaries falling under a new definition

of 'family clients'. This definition comprises of: i. former family members; ii. key employees; iii. former key employees; iv. non-profit or charitable organisations funded exclusively by one or more family member, family dependent or family client. The Authority considered such extension of the definition in the context of these setups to be acceptable in the light of the fact that a NPIF is a subject person in terms of the PMLFTR.

3.10.4 Allowing for charitable donations during the life of the trust

A respondent asked whether it would be considered to allow for charitable donations during the life of the trust rather than only on termination of the trust to a philanthropic beneficiary who is only a residual beneficiary. This is particularly relevant to families who have a philanthropic purpose as part of their core values.

MFSA Position

While it is a known fact that families often have a philanthropic purpose as part of their core values and wish to donate funds to charities of their choice, allowing them to name charities as beneficiaries during the lifetime of the trust rather than only as a residual beneficiary poses considerations as to the risk that this would bring about particularly as charities are sometimes used as vehicles for fraud and other illicit activities such as terrorist financing. At this stage the Authority needs to conduct a more in-depth assessment of the risks posed by allowing for this and re-consider this feedback in the light of such assessment. Nevertheless, in the context of family trust set ups whereby the Registered Trustees invests in a NPIF, the inclusion of 'family clients' as potential beneficiaries in such set ups, the term 'family clients' also provides that a non-profit or charitable organisation which is funded exclusively by one or more family member, family dependent or family client, may be included as a beneficiary in such contexts only.

4. Conclusion

Having considered stakeholder feedback, the Authority has made the necessary amendments in line with the above stated positions. An updated version of the **Trustees of Family Trusts Rulebook** is now available on the MFSA website [here](#).

Any comments or queries in relation to this Feedback Statement should be directed to tcsp supervision@mf sa. mt.