

# Consultation Document on a New Rulebook for Trustees and Other Fiduciaries

Applicable to trustees, administrators of private interest foundations, and mandataries in terms of the Trusts and Trustees Act

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## Introduction

The Malta Financial Services Authority ('MFSA' or 'Authority') is tasked with the authorisation and regulation of the persons providing trustee and other fiduciary services in terms of the [Trusts and Trustees Act](#), Chapter 331 of the Laws of Malta ('Act'). These include trustees, mandataries and administrators of private interest foundations providing services in a professional capacity, and therefore by way of business, to third parties. The Act also regulates the activities of private trustees and qualified persons who provide limited and specific services in terms of articles 43A and 43(9) respectively.

The MFSA is issuing this consultation and publishing a draft Rulebook for Trustees and other Fiduciaries ('**Rulebook**') to enable existing licence holders and stakeholders to provide their feedback on the proposed rules. Once the Rulebook is published this will replace the current [Code of Conduct](#) issued pursuant to article 52 of the Act. Whilst the current Code of Conduct is already binding on the persons falling within its scope of application, it is deemed that the status of Rules would confer greater legal certainty to the regime since it would leave no room for doubt as to the compulsory nature of the obligations set out therein, and would provide for further standardisation within the industry.

For avoidance of doubt, the Rulebook is not intended to apply in relation to trustees registered under Article 43B of the Act or any person seeking registration under that Article and the [Rules for Trustees of Family Trusts](#), as amended from time to time, shall continue to apply to such trustees.

## 1. The Regulatory Objectives and Proposal

The MFSA's aim is to continue ensuring that a robust and sound regulatory framework applies to all trustees and other fiduciaries governed by the Act. One of the ways to achieve this is by having a clear and up to date set of rules incorporating a risk-based approach and applying the proportionality principle. In the proposed Rulebook the Authority is therefore proposing to:

1. Establish a wide-ranging and structured set of rules governing persons acting as trustees, administrators of private interest foundations, mandataries authorised and regulated by the MFSA in terms of the Act (collectively referred to as '**Authorised Persons**');
2. Introduce and carve out specific obligations applicable to private trustees and qualified persons;

3. Reflect international developments and expectations arising from international standards in the Rulebook, including but not limited to the Financial Action Task Force ('**FATF**') Standards;
4. Crystallise existing MFSA practices in the Rulebook; and
5. Where possible and relevant, align the rules applicable to Authorised Persons with relevant rules applicable to persons authorised to provide company services under the [Company Service Providers Act](#), Chapter 529 of the Laws of Malta ('**CSPs**').

The proposed Rulebook is intended to serve as a broad set of rules applicable to Authorised Persons, and for the first time also introduces specific requirements applicable to persons who act as qualified persons in terms of the Act, and individuals acting as private trustees. It also draws upon the Authority's experience authorising, regulating and supervising trustees and other fiduciaries, particularly since the far-reaching amendments to Maltese law were introduced in 2004 by means of the Trusts (Amendment) Act, setting out extensive amendments to the then existing Trusts Act, being renamed Trusts and Trustees Act, as well as to the Civil Code, followed by the subsequent significant legislative changes made to the Act in 2014<sup>1</sup>.

The MFSA's approach when drafting this Rulebook was to build upon the existing requirements in the current [Code of Conduct](#), which have been long-established rules and form an intrinsic part of the regulatory framework applicable to persons regulated by the Act. In drafting this updated proposal for this Rulebook, the MFSA has also taken into consideration the feedback received from the industry following the Consultation Procedure launched by the MFSA in [2016](#).

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<sup>1</sup> Act XI of 2014.

## 1.1 Overview of the Proposals

The Rulebook is proposed to be structured in the following manner:

1. General scope and high-level principles.
2. Authorisation considerations, requirements and procedure.
3. Ongoing obligations of authorised trustees, administrators of private interest foundations and mandataries.
4. Supplementary rules applicable to:
  - a. Authorised Persons providing company services in terms of the [Company Service Providers \(Exemption\) Regulations, 2021](#);
  - b. Authorised Persons acting as qualified persons in terms of 43(9) of the Act, and Notaries authorised to act as qualified persons in terms of the [applicable regulations](#);
  - c. Authorised Persons established as bodies corporate; and
  - d. Individuals acting as private trustees in terms of Article 43A of the Act.
5. Enforcement and Sanctions.

In Chapter 1 of the Rulebook, it is being proposed that high-level principles are introduced, intended to serve as a high-level explanation of the Authority's expectations when it comes to persons falling within the scope of the Rulebook.

In Chapter 2, dealing with authorisation considerations, requirements and procedures, the proposed Rules are mainly crystallising current processes, clarifying certain aspects of the authorisation considerations and fitness and properness assessment, while also taking into consideration the introduction of the [MFSA's Authorisation Process Service Charter](#).

In Chapter 3, the proposed Rulebook establishes the general and specific ongoing obligations of Authorised Persons, including obligations vis-à-vis governance, risk and compliance, retention of data and records, the notification and approvals to be made to/sought from the Authority, financial resources and insurance requirements of Authorised Persons, to name a few. This Chapter also sets out the reporting obligations of Authorised Persons and Annex 1 clearly summarises these reporting obligations and the associated deadlines.

Chapter 4 deals with supplementary rules for certain categories of persons. By providing supplementary rules for these specific categories of persons, as explained in point 4 above,

the Authority is seeking to provide further clarity as to what it expects from such persons. The chapter introduces rules which explain what is expected of a person who provides the services of a qualified person, as defined in the Act, before taking on an engagement and what is expected of such qualified person on an ongoing basis during its engagement as such.

In relation to private trustees, in order to reflect international expectations relating to 'non-professional trustees', in particular vis-à-vis identification and transparency of beneficial owners, the proposed Rules establish the information to be obtained and maintained in relation to beneficial owners of the trust and the retention period for the same. This will be crucial to paving the way for imminent changes to the legislative and regulatory regime relating to the reporting of beneficial ownership information of trusts in the central register maintained by the MFSA, and which are likely to bring into scope private trustees as well, in order to align with international standards.

The supplementary rules for Authorised Persons who have notified the Authority that they are providing company services in terms of the [Company Service Providers \(Exemption\) Regulations, 2021](#) reflect the obligations that should be adhered to when providing specific company services, such as, the provision of director and/or company secretary services to companies, or holding a similar position in other legal persons, to ensure a level playing field with persons who are regulated to provide such services in terms of the Company Service Providers Act. This section also establishes the financial resources that need to be maintained when an Authorised CSP provides the services of a CSP, which are proposed to be over and above the financial resources required to be held in relation to its operations and the main services which it is authorised to provide under the Act. This is one of the cases where the proportionality principle and risk-based approach were applied, since the proposed financial resources requirements are based on the nature and extent of the company services provided. Finally, the supplementary rules for Authorised Persons in this Chapter are applicable to those established as corporate bodies and relate mainly to the expectations of the Authority in relation to audits of such entities.

The last chapter of the Rulebook deals with the Authority's power to enforce the rules made by the Authority pursuant to Article 51 of the Act and to apply sanctions in terms of the Act. Chapter 5 sets out the rules on administrative penalties and sanctions that may be imposed, while making it clear that it should be read in conjunction with, and is without prejudice to the provisions of the Act, as well as any policy or guidance issued by the Authority from time to time in relation to *inter alia* the principles which guide the MFSA when imposing administrative penalties and provide for aggravating and mitigating circumstances in case of misconduct. Further information and guidance on these policies can be found [here](#).

As a general observation the Authority, considers that there are sufficient similarities between the nature of the services provided by Authorised Persons under the Act and CSPs, particularly in view of the role these service providers have as gatekeepers of the financial system, to justify that the Rulebook is aligned with the rules applicable to CSPs, where

relevant and applicable, in a bid to reduce as much as possible regulatory arbitrage. This is also being proposed in view that Authorised Persons under the Act are often also providing company services pursuant to the [Company Service Providers \(Exemption\) Regulations, 2021](#).

## Conclusion

Authorised Persons and other relevant stakeholders are invited to submit their feedback on the proposed Rulebook on [tcpsupervision@mfsa.mt](mailto:tcpsupervision@mfsa.mt) by no later than **31 January 2025**.

Any questions in relation to the above may also be addressed to [tcpsupervision@mfsa.mt](mailto:tcpsupervision@mfsa.mt).

Updates in relation to this consultation will be made available on the Authority's website once the consultation has closed.