

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to companies authorised to act as trustees in terms of article 43 of the Trusts and Trustees Act

1. Introduction

Over the past year the Authority has received notifications from certain authorised trustees with respect to their intention of acting as administrators of private foundations, as well as numerous queries as to whether an authorisation to act as a trustee issued in terms of article 43 of the Trusts and Trustees Act (“TTA”) also covers this additional activity.

In view of this, the Authority is issuing this Circular for the purpose of informing authorised trustees of the approach which it has adopted in connection with this matter with the aim of addressing any existing ambiguities.

2. Authorised trustees acting as administrators of private foundations

A person (an individual or a company) who is currently authorised to act as a trustee in terms of article 43 of the TTA is not required to submit another application to be able to act as an administrator of private foundations. If an authorised trustee wishes to provide the said service, the Authority would treat it as an extension of the authorised trustee’s licence and in this respect it would require the said trustee to submit the following documentation:

- a covering letter notifying the Authority that the authorised trustee wishes to act as an administrator of private foundations;
- if the trustee is a corporate entity, a draft revised memorandum and articles of association empowering the authorised trustee company to act as an administrator of private foundations;
- an updated business plan indicating the additional service to be provided by the authorised trustee, the persons who will be principally involved in the provision of administrative services to private foundations (indicating their qualifications and experience in this field), the clients to be targeted and how the service of administering private foundations will be marketed;
- three year financial projections (depending on the scale of the business envisaged);
- Personal Questionnaires (PQs) of any individuals employed by an authorised trustee who will be involved in the day-to-day administration of private foundations and who will be required to report to the board of directors of an authorised trustee, provided they are not already known to the Authority; and
- in the case of those officers and employees (including directors) of an authorised trustee who are already known to the Authority and who will take part in the administration of private foundations - a declaration confirming whether there have been any changes to the information disclosed in their previously submitted PQs. However, a fresh PQ would need to be submitted where the previously submitted PQ is more than five years old.

Upon satisfactory receipt of the above documentation, the Authority will approve the extension of the authorised trustee's licence so as to include acting as an administrator of private foundations and will issue a revised trustee licence so as to include a specific reference to this additional activity.

3. Notification requirement

In view of the above, the Authority is hereby requesting all authorised trustees that are currently acting as administrators of private foundations and have never notified the Authority of engaging in this activity, as well as those authorised trustees which intend to provide this service, to notify it accordingly. Once the Authority has collected all the relevant information from its licensed trustees, it will be able to update its register of licence holders and to provide an accurate list of those authorised trustees that are also acting as administrators of private foundations.

4. Persons wishing to act solely as administrators of private foundations

Article 43(12)(b) of the TTA requires any person (not being a person referred to in article 43(6) of the TTA) who acts as an administrator, a trustee, director or similar functionary, exercising control over the assets, by whatever name he may be called, of a private foundation to be authorised in terms of article 43, irrespective of the extent of his activities, whether remuneration is payable therefor or whether he holds himself out as providing such services or not.

Thus, any person (being an individual or a company) who intends to act solely as an administrator of private foundations (and does not qualify for any of the exemptions contained in article 43(6) of the TTA) is required to apply for authorisation in terms of article 43(12)(b) of the TTA and to submit the relevant application documents referred to in the Trustee Guidance Notes and application form for prospective applicants which are available on the MFSA website (www.mfsa.com.mt).

5. Contacts

Any queries regarding the subject matter of this circular are to be directed to:

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