

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

**Circular addressed to all persons authorised in terms of the Trusts and Trustees Act (Cap. 133) – The coming into force of the Trusts and Trustees (Amendment) Act (Act XI of 2014)**

### **1. Introduction**

During 2009, the Malta Financial Services Authority initiated a process of review of the Trusts and Trustees Act ('TTA') aimed at improving it by clarifying drafting errors and removing any ambiguity. Between 2010 and 2012 the Authority held regular meetings with representatives of the Institute of Financial Services Practitioners as well as other players in the industry to identify instances where the Act could be improved thus enhancing Malta's status as a trustee jurisdiction. A document outlining the proposed amendments to the Trusts and Trustees Act together with a revised TTA were issued for consultation on 14 December 2012 with the industry being given until 28<sup>th</sup> February 2013 to provide submissions. The Authority received various responses and reactions to the proposed amendments, the majority of which were in fact taken on board and reflected in the Trusts and Trustees (Amendment) Act, which was published on the 25<sup>th</sup> April 2014 ([Act No. XI of 2014](#)).

### **2. Main amendments to the Trusts and Trustees Act**

The main amendments being introduced in the Act are, *inter alia*, the following:

- i. **Revision of Article 1** – Applicability: This article has been revised to clarify that persons acting as trustees, but not required to obtain authorisation in terms of Article 43 and Article 43A, are subject to the provisions of the TTA, except for those provisions relating to authorisation or registration of trustees. Therefore all trustees are required to comply with the duties and obligations imposed by the TTA, apart from any other laws or regulations which such trustees may also be subject to.
- ii. **Revision of Article 9** – Rights of beneficiaries: This amendment clarifies that an heir of a beneficiary cannot advance a claim with regard to a beneficial entitlement, unless expressly provided for in the terms of the trust. Furthermore, an additional amendment to this article clarifies the concept that when a beneficiary wishes to disclaim his/her entire interest in a trust, this can be done irrespective of whether the beneficiary has received any benefit or otherwise.

- iii. **Revision of Article 12** – Duration of Trusts: The perpetuity period applicable to a trust is being extended to 125 years.
- iv. **Introduction of Article 14A** – Settlor Reserved Powers: The introduction of Article 14A provides for specific circumstances wherein the settlor may reserve powers under the terms of the trust. The introduction of such a provision does not give rise to the possibility of the trust being considered a sham, despite the settlor having retained control over the trust assets.
- v. **Revision of Article 18** - This amendment aims at streamlining the processes which are applicable in the case of death or insolvency and winding up of a trustee respectively.
- vi. **Introduction of Article 24B and 24C** - Introduction of the office of ‘Enforcer’ – One of the main amendments to the Act is the introduction of the office of enforcers in the case of trusts set up for a charitable purpose. In a traditional trust, the beneficiaries usually enforce the trust. However in the case of trusts set up for a charitable purpose, where there are no beneficiaries, it will be the role of the enforcer to monitor the trustee and ensure that the latter carries out his obligations vis-à-vis the trust.
- vii. **Amendments to Article 43** – A number of amendments have been made to this article. The most significant are the following:
  - a. The introduction of a minimum capital requirement of €15,000 for both trustees and mandatories, whether individuals or body corporates, which capital must be maintained on an on-going basis;
  - b. The introduction of a requirement for both trustees and mandatories, whether individuals or body corporates, to maintain insurance cover at all times;
  - c. The introduction of specific provisions which set out the requirement for persons intending to act as mandatories, or to act as an administrator, trustee, director or similar functionary of a private foundation, to obtain authorisation, as well as the applicable conditions to obtain such authorisation;
  - d. The introduction of the possibility of fiduciaries other than trustees as well as notaries to act as “qualified persons”;
- viii. **Amendment of Article 43A** – A number of amendments were made to this Article, mainly relating to the duties of notaries in the context of private trustees.
- ix. **Introduction of Article 43B** - This article introduces the concept of ‘Family Trusts’ and trustee companies set up to act as trustee only in relation to such family trusts. The introduction of this concept serves to align the TTA to international legislations on trusts and trustees, and to provide for a less stringent regulatory regime applicable to such trustee companies.

- x. ***Introduction of Article 43C*** – This article introduces the duty of an auditor of a trustee to report to the Authority certain issues or facts which he may become aware of in his capacity of auditor, including any facts which could lead to a serious qualification in the auditor’s report or which constitutes a material breach of the legal and regulatory requirements applicable to trustees.
- xi. ***Introduction of Article 46B*** – Introduction of a power to the authority to protect the public interest, including the power of the Authority to appoint a person to assume control of the assets of the trustee.

### **3. Transitory Periods**

Authorised trustees and other fiduciary services providers should note that they are required to comply with the following new requirements as set out in Act XI of 2014 within the following time-frames from the coming into force of the amendments (25<sup>th</sup> April 2014):

<b>New Requirements</b>	<b>Transitory Period</b>
Minimum Share Capital Requirement	2 years
Professional Indemnity Insurance	6 months
Compliance Officer	6 months
Auditor reporting requirements	6 months

### **4. Contacts**

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