
L.N. 264 of 2009

**TRUSTS AND TRUSTEES ACT
(CAP. 331)**

Trusts and Trustees Act (Exemption) Regulations, 2009

IN exercise of the powers conferred by article 57(1)(g) of the Trusts and Trustees Act, the Minister of Finance, the Economy and Investment, acting after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. The title of these regulations is the Trusts and Trustees Act (Exemption) Regulations, 2009. Citation.

2. (1) In these regulations, unless the context otherwise requires: Interpretation.

"the Act" means the Trusts and Trustees Act; Cap. 331.

"approved jurisdiction" means those jurisdictions which the Authority determines to have a level of regulation and supervision of an equal or comparable level to that provided for under the Act and under any other relevant legislation;

"approved by the relevant regulatory authority" means a person who is licensed, authorized or otherwise adequately regulated in its country of residence to the satisfaction of the Authority;

"the Authority" means the Malta Financial Services Authority;

"company" has the meaning assigned to it in article 2(1) of the Act;

"overseas retirement scheme" means a *bona fide* scheme or arrangement, organized under the laws of a country outside Malta, which govern the rights and responsibilities of the parties thereto, and under which payments are made to beneficiaries for the principal purpose of providing retirement benefits;

"parent company" has the meaning assigned to it in article 2(2) of the Companies Act; Cap. 386.

"trustee", in relation to property, means the person or persons holding or in whom the property is vested on terms of trust in

accordance with the provisions of the Act or is otherwise deemed to be a trustee under the Act.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Exemption of activities or classes of persons from the requirements of article 43 of the Act.

3. (1) The following persons, when receiving property upon trusts, are hereby being exempted from the requirement for authorization to act as a trustee by the Authority in terms of article 43(3) and from the requirements of appointing a qualified person in terms of article 43(9) of the Act:

(a) a person resident outside Malta, approved by the relevant regulatory authority in an approved jurisdiction to act as a trustee to overseas retirement schemes, provided that such trustee services in Malta are expressly limited to the holding upon trust of securities or interests, in or issued by a Maltese legal entity, forming part of the assets of an overseas retirement scheme;

(b) a company, established in Malta or in an approved jurisdiction, and which is wholly owned and controlled by:

(i) persons exempted from the requirement for authorization to act as a trustee in terms of the other paragraphs of this regulation; or

(ii) persons not required to obtain authorization in terms of article 43(6)(a) and (c) of the Act:

Provided that such a company is established for the purpose of holding trust property and for acts ancillary thereto and does not act in Malta as a trustee on a regular and habitual basis or hold itself out as a trustee;

(c) a person resident outside Malta where such person in Malta is acting as trustee of units in a collective investment scheme which is licensed or recognized in terms of the Investment Services Act, provided that such person is established in an approved jurisdiction and does not act in Malta as a trustee on a regular and habitual basis or hold himself out as a trustee;

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(d) a person resident outside Malta acting as trustee in terms of paragraph 5(c) of the First Schedule to the Investment Services Act, in relation to a collective investment scheme licensed under the said Act and qualifying as a Professional Investor Fund in terms of the Investment Services Rules,

Cap. 370.

provided that such person is of sufficient standing and repute;

(e) a person when acting as trustee of a scheme, other than a retirement scheme, operated by a company for its own employees, former employees or their dependants provided that the person does not act as trustee on a regular and habitual basis or hold himself out to be a trustee.

(2) The exemptions laid down in sub-regulation (1)(a), (b) and (e) shall not be automatically operative, but their applicability shall be subject, following a request in writing to the Authority, to a determination in writing by the Authority that the requested exemption applies.
