

## Establishing a Trust in Malta

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### What is a Trust

A trust is created when one party, known as a settlor, transfers property to another party, the trustee, to hold, administer and perhaps employ and deal in the said property for the benefit of beneficiaries and/or for one or more charitable purposes in accordance with the terms of the trust and applicable law.

One of the most unique characteristics of this legal institute is the acquisition of ownership of the trust assets by the trustee in his or her fiduciary capacity. Having said this, the beneficial ownership of said assets will continue to vest in the beneficiaries of the trust.

### Malta As a Jurisdiction for Trusts

It is not a common thing to find trusts incorporated in the law systems of civil law countries. Malta however is different in the fact that a civil law jurisdiction that does recognise the trust concept. In the Maltese trusts and trustees act, a trust may validly exist until the 125th anniversary of the date on which it came into existence, and, unless sooner terminated, would then terminate. This limitation (against perpetuities) would not, however, apply in respect of a trust created for charitable purposes or a unit trust or a qualifying retirement scheme.

In a Maltese trust law, the comprehensive definition of a trust identifies three elements, including the trustee, beneficiary, and the settlor. The trustee and beneficiary are viewed as the key components of trusts in Malta, whereas the settlor is considered to be the third party that establishes the property in a trust.

- The Settlor – The person who makes the trust, person that provides trust property or the one that makes a disposition on trust;
- The Trustee – Legal or natural person, holding the property or whom the property is bestowed in terms of trust;
- The Beneficiary – The person entitled to benefit under the trust.

### The Components to Register a Trust in Malta

The settlor is the person that creates the trust by providing and transferring assets, which will constitute the subject matter of the trust, to the trustee that has been appointed. Once the settlor determines who is to benefit from the trust the settlor is left without any rights in regards to the property in the trust. However, the Trusts and Trustees Act highlights the rights of a settlor, which are provided along with the trust deed. Some of the rights the settlor may be entitled to are:

- To seek after court directives as far as establishing the validity of a trust is concerned;
- To seek information from the trustee as per the terms of the Trust Deed;
- To revoke trusts and variation of terms as provided by the Trust Deed;
- To granting himself any beneficial interest in the trust property;
- To reserve for himself any power to appoint, remove, or add beneficiaries, trustees, or protectors;
- To reserve for himself any power or capacity to appoint an investment manager or investment advisor;
- The trustee is obliged to hold a property for the settlor in the event of interest lapses, trust termination, or lack of existing or possible beneficiary.

The trustee is the person who has been appointed by the settlor as the legal owner of the trust property. Trustees in Malta are licensed, regulated, and supervised by the MFSA. The legal obligation that binds a trustee means that he/she must deal with the trust property over which he/she exercises control for the exclusive benefit of the objects of the trust. The trustee has a legally duty of care to the beneficiaries and cannot receive any personal benefit from the trust, other than fees and reimbursement of expenses incurred by the trustee in connection with the trust.

The beneficiary is the person(s) who benefits from a trust. A beneficiary must be mentioned by name or ascertained by relationship or class to the settlor. Children of all ages, including conceived children, who are beneficiaries must be mentioned in the trust deed. The beneficiary may, in writing, charge, sell, and deal with the property to their own interest in any manner. Some rights of a beneficiary include the following:

- Is entitled to solicit any information relevant to the trust from the trustee(s);
- Has the right to seek court directives on establishing the validity of a trust;
- Has the right to disclaim part of or their entire interest in a trust at any time as they wish, provided they do so in writing by involving a settlor;
- Has the right to request for trust termination or distribution of trust property, provided they are ascertained and in existence. However, this right might not apply to minors or interdicted persons. This right is also excluded from application in cases of protective trusts.

The protector is an optional party incorporated into the trust by the settlor, a protector is a person who has an honest position towards the party such as a trusted family friend/ member/ associate. The role and powers of a protector are specified in the trust instrument, which includes:

- Can remove a trustee if necessary;
- Can add additional or appoint new trustees to the trust deed if necessary;
- Provide discretion in matters that are relevant to the trust, including the sale of trust property.

The file note of wishes is a document that gives guidance to the trustee. There document has no legal binding to the trustee and may be altered over time. The trustee still has total control over the distribution as per the trust instrument. However, as the Instrument may not specify how the settlor requires the assets to be distributed amongst the beneficiaries, the file note of wishes holds valuable advice to the trustee. A file note of wishes only holds significance in relation to particular types of trusts. In regards to life time or fixed interest trusts the rights of the Beneficiaries are clearly defined in the Trust Instrument and therefore a file note of wishes would be irrelevant.

The trust instrument is a legally binding document in writing made by the settlor, it is created to set the boundary between the legal ownership and beneficial ownership of a property when establishing a trust. The document displays the terms of a trust and the distribution guidelines. Such terms of a trust include the rights, interests, powers, duties, and responsibilities of the involved parties. The Trust Instrument specifies the duties of the trustee i.e. a duty to account, to ensure full protection for all parties involved.

### Taxation of a Malta Trust

Malta offers an attractive tax regime for individuals and companies. Where if at least one trustee is a Maltese tax resident, the trust itself is taxed in Malta on its capital and income and has to be registered for this purpose with the Commissioner for Revenue.

## Malta Tax Treatment

The Malta tax implications of a trust are driven primarily by the nature and location of the trust property and by the residence and/or domicile, for tax purposes, of the parties to the trust. As such, no Malta tax would be chargeable upon the creation of a trust when:

- The settler is not ordinarily resident and domiciled in Malta for tax purposes and the assets settled on trust are situated outside Malta; or,
- When the assets settled do not represent chargeable or dutiable assets.

In turn, a trustee would be wholly transparent for Malta tax purposes (insofar as all income and gains otherwise attributable to the trust would be deemed to have been derived directly by the beneficiaries of the trust) when;

- None of the beneficiaries are persons ordinarily resident and domiciled in Malta; and
- The relevant income and gains have a foreign source for Malta tax purposes and/or comprise of domestic source interest, royalties or gains realised pursuant to the disposal of shares in a Malta company (not being a property company).

Likewise, a trustee would be wholly transparent for Malta tax purposes (insofar as all income and gains otherwise attributable to the trust would be deemed to have been derived directly by the beneficiaries of the trust) when:

- None of the beneficiaries are persons resident in Malta; and
- The relevant income and gains comprise dividends distributed by a Malta company and/or have a foreign source for Malta tax purposes and/or include Malta source interest, royalties or gains realised pursuant to the disposal of shares in a Malta company not being a property company.

As the beneficiaries of a tax transparent trust would be deemed to have directly derived all income and gains otherwise attributable to the trust, such beneficiaries may or may not be chargeable to tax in Malta on such income or gains, depending on their tax residency and domicile. Should a resident trustee not be transparent for Malta tax purposes, then income and gains attributable to the relevant trust would be chargeable to tax in Malta at the flat rate of 35%. Finally, no Malta tax would be chargeable pursuant to the transfer of a beneficial interest in a trust:

- By a beneficiary who is not ordinarily resident and domiciled in Malta should the relevant trust not include chargeable assets situated in Malta; or
- Which does not include chargeable or dutiable assets.

## Why You Should Establish a Trust in Malta

- Reputable Services - Malta offers high-quality services in the form of professional trustees. Zeta itself is a Maltese service providers licensed and regulated by the Malta Financial Services Authority (MFSA). Our subsidiary Premier Fiduciary and Trusts Ltd can act on your behalf as trustee.
- Enforcement of Foreign Law - Malta is among one of the few countries which acknowledges and enforces foreign law or trusts governed by international laws. Whether the settlor is establishing a trust as per the Hague Convention requirements or setting up a property trust governed by foreign laws, Malta's trust jurisdiction will acknowledge and enforce any trust law.

- **Adaptable Trusts Law** - One of the key reasons as to why the Maltese trusts laws have become a popular tool around the world is the ability to establish a customised trust. Trusts can be established with solutions that meet your needs. Malta is also among the few jurisdictions that has successfully incorporated the Anglo-Saxon Trust concept.
- **Competitive Set Up Fees** - The establishment of a trust in Malta has are suggestively lower administration and set up costs that are required compared to other jurisdictions. Needless to say, while the setup cost remains reasonably lower the Maltese professional classes have upheld an unquestionable global reputation.

For more information on how Zeta can assist you please contact our Business Development department on [bd@zeta-financial.com](mailto:bd@zeta-financial.com).

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