

Establishing a Foundation in Malta

What is a Foundation

Foundations are commonly referred to as the civil law alternative to trusts. In Malta foundations are non-commercial incorporated entities which have the benefits of a trust with the added protection of having a separate legal personality. Foundations fall under the regulations of the Maltese Civil Code. The principal legislation regulating Foundations in Malta is Act XIII of 2007 and is part of the legislation that also regulates trusts and fiduciary obligations.

A foundation may not be established to trade or carry out commercial activities, even if the proceeds of such efforts are destined for social purposes. Nonetheless, a foundation may:

- Be endowed with commercial property or a shareholding in a profit-making enterprise, a franchise, a trade mark or other asset which gives rise to income, as well as a ship as long as the organisation is only the passive owner of such assets;
- Subject to such authorisations as may be necessary under applicable laws, be used as a collective investment vehicle. They may issue units to investors therein for the passive holding of a common pool of assets, the management of which is delegated to a third party, including a pension or employee benefit arrangements;
- Be used as a vehicle for the purpose of a securitisation transaction, borrow monies against the issue of bonds, and do all relative and ancillary acts.

Types of Foundations in Malta

In Malta there are two types of foundations available this being either private or purpose foundations. The main difference between the two foundations in Malta is what they are used for. Public foundations are established specifically for a charity or social purpose. Private foundations however, are used for the benefit of a beneficiary or group of beneficiaries.

How to Set Up a Foundation in Malta

In Malta foundations must be established as a written document, via a public deed that is published by a public notary and is registered in the Public Registry or by a will created by the founders. In the case of a private foundation, a minimum of €1,165 in money or property must be transferred to the foundation. To set up a public foundation established exclusively for a social purpose or as a non-profit making foundation the minimum amount is lowered to €233.

Like a Maltese company a foundation will have a legal personality. For public foundations it will be set up on a public deed and a certified copy would need to be provided to the founder, administrators, and Notary issuing the deed.

For private foundations they are regulated under Article 33 of the Second Schedule and will be based on a testament. The beneficiaries of a Foundation must be named. However, if one is unable to do so the founder may list the beneficiaries in a written instrument outside the deed. This instrument is called the beneficiary statement and it must be signed by the founder and be authenticated by the notary public.

The deed of a foundation must contain the following information:

- The name of the foundation which must include the word “foundation”;
- The registered address in Malta;
- The purpose or objects of the Foundation;
- The assets with which it is formed;
- The composition of the board of administration and the names of the first administrators, and if not yet appointed, the procedure for their appointment;
- The Foundation’s legal representation;
- The term for which the Foundation is established, if any.

Board of Administrators of a Foundation

The foundation board of administrators for a Malta registered foundation is responsible for the management of the foundation. The administrators can be a non-resident however, in this case a person resident in Malta needs to be appointed to act as the local representative of the foundation in Malta. The founder can also be the administrator but, in such a situation, the founder cannot be the sole administrator. The administrators can be either a natural or a juridical person. In the case of the latter, there must be at least 3 directors within that particular company.

Founders and Beneficiaries of a Foundation

Founders in a Maltese foundation play a similar role to that of a settlor in a trust by contributing the endowment property or cash which forms the foundation. Founders can also retain as much control over the foundation as they wish, this is done either directly or in the role of administrator, member of the supervisory council and/or beneficiary. If a founder however is also the sole beneficiary then cannot be the sole administrator.

Beneficiaries of a Maltese foundation have the right to benefit from the foundation subject to the terms of the foundation deed. Public foundations do not require beneficiaries however, private foundations must have at least one and can be a natural or legal person, a trust or another foundation. In Malta beneficiaries also have a right to information including accounts and can have any other rights as set out in the foundation deed. Both rights provided by law and those set out in the foundation deed are legally enforceable in Malta.

Role of the Supervisory Council

The supervisory council is mainly applicable for public foundations as there will be a larger amount of administrative work. The Supervisory council can include a mixture of founders, beneficiaries and other legal or natural person.

Taxation

Private foundations can be taxed as a Company which is a flat rate of 35% however, if the foundation is taxed as a regular Maltese company the foundation is entitled to a refund of 6/7th of the Maltese tax. In most cases, foundations end up having to pay an effective tax rate of just 5%.

Public foundations can possibly be exempt from tax subject to approval by local taxation authorities since charitable activities are exempt from income tax. However, if the foundation is not approved for exemption the foundation will be taxed at 35%.

Benefits of Setting up a Foundation in Malta

Maltese Foundations have been a popular choice, key benefits have placed a crucial part. Such benefits being:

- Attractive tax rates with the ability to pay no taxes or as a regular company, paying an effective tax rate, as low as 5%;
- Foundations can be created by foreigners, holding foreign assets and distributing dividends to foreign beneficiaries;
- Provided privacy to the founders and beneficiaries as they do not have to be part of any public records.
- Can be converted to or from a Trust;
- Confidential as the law protects the details of the beneficiaries.

For more information on how Zeta can assist you please contact our Business Development department on bd@zeta-financial.com.

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