

## Establishing a Trust in Gibraltar

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### What is a Trust

A trust is created in the form of a legal document known as a Trust Deed. It is a legal arrangement which is used for financial planning whereby the person setting up the Trust, the Settlor, settles the legal title of any interest he or she may have in any property on the named Trustees who have strict legal obligations to only deal with the property in accordance with the terms of the Trust Deed. In particular, the Trustees must only deal with and administer the property for the benefit of persons named in the Trust Deed who will benefit from the same, the beneficiaries.

### Discretionary Trusts

Apart from those established by law, the powers and duties of a Trustee are set out in the Trust Deed. Trustees can also be given a wide discretionary power in order to take account of changing circumstances such as changing beneficiaries. It is common for a Protector to be appointed to such Trusts whereby such person must approve the use by Trustees of some of the more important powers (such as changing beneficiaries).

### Duties of the Trustees

The Trustees have a fiduciary duty to look after the Trust's assets, consider distributions to the Beneficiaries in accordance with the terms of the Trust Deed and maintain the proper administration of the Trust, including maintaining the Trust accounts.

### Letter of Wishes

The Settlor typically provides the Trustees with an informal and confidential letter of wishes, which will guide how the Trustees might exercise their discretion. The letter of wishes is not binding on the Trustees and does not form part of the Trust, although Trustees would generally follow the Settlor's wishes in the administration of the Trust. The letter can be amended or added to at any time during the Settlor's lifetime.

### Protector

The Trust Deed can make provision for the appointment of a Protector. A Protector is a person with whom the Trustees can consult when administering the Trust and approves the use of a Trustee's discretionary powers. The role of the Protector is one of some responsibility. Therefore, he/she is usually a person that the Settlor has trust in, such as a trusted family friend, family member or close associate.

### Life of a Trust

Under Gibraltar law, both the perpetuity and accumulation periods of a Gibraltar trust must be a certain period of time which and it is common for the same to be 100 years.

## Reasons for setting up a Trust

Although tax efficiency is the most common reason why Trusts are set up to hold family wealth, there are other instances when they help an individual achieve objectives that might otherwise be hard to implement. The most common reasons for setting up a Trust are:

- To manage family wealth. A Trust can provide the appropriate distance from family issues to bring formality and control to the management of family wealth;
- To act as a living will. A trust can provide certainty to family members as to what happens on the death of key family members;
- To protect family property and ensure it passes in succession. A trust can name the order of devolution of the trust property over the life of the Trust;
- To hold property that cannot be held personally. In such cases, children that are yet to be born or incapacitated persons;
- Protection of assets. A well-structured trust can avoid assets being repatriated, distributed under forced heirship rules, or made accessible to subsequent creditors by severing ownership.

## Trust Law in Gibraltar

As a common law jurisdiction, the concept of Trusts is recognised and given full legal effect in Gibraltar. The provisions of the Gibraltar Trustee Act are founded on the trustee laws of England and Wales.

## Advantages of a Gibraltar Trust

Gibraltar offers a variety of advantages to those looking to set up a Trust, such as:

- Except for Asset Protection Trusts, there are no filing requirements, and no information needs to be disclosed to the authority as long as no liability to Gibraltar tax arises;
- The Trustees of a Gibraltar Trust can be residents in Gibraltar without affecting the Trust's tax status.
- As long as the Trust has no Gibraltar resident Beneficiaries and derives no taxable income locally, no tax will be charged on the Trust's income;
- Gibraltar boasts a wide choice of experienced and licensed professionals, banks and financial services infrastructure.

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

**Get in touch**  
Unit 57/58, Ground Floor, Europa Centre, St. Anne Street, Floriana FRN 9011  
[zeta-financial.com](http://zeta-financial.com)

**Michelle Dakes**  
Group Business Development Director  
T. +356 2011 9700 E. [bd@zeta-financial.com](mailto:bd@zeta-financial.com)



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