

Malta Trusts

Malta Trust is the ideal financial instrument for those seeking solutions to their wealth management requirements. It is an effective and trustworthy vehicle that provides both certainty and security. The legal framework surrounding Maltese trust instruments allows for the creation of customised solutions for each individual trust set up.

The setting up of trusts is regulated by the Trusts and Trustees Act. Malta's legislation recognises all forms of trusts one would find in other jurisdictions such as discretionary trusts, accumulation and maintenance trusts, fixed interests trusts, spendthrift and charitable trusts. In addition, the trust law identifies a number of commercial situations within which the use of trusts would attract more favourable treatment. These include security trusts, unit trusts or collective investment schemes and securitisation, amongst others. One of the great attractions of the trust for the transaction planner designing a business deal is the convenience of being able to absorb into the ground rules for the business deal those fundamental and well-articulated principles of fiduciary law that protect trust beneficiaries of all sorts.

A trust under Maltese law is a legal agreement between two parties: the settlor and the trustee. The settlor places assets under the control of the trustee for the benefit of the beneficiaries or for a particular charitable purpose. As a result, a trust is seen as an efficient tool to ensure that family wealth is secured and protected. A trust may be created unilaterally or bilaterally, by oral declaration or in writing. A unit trust must always be created in writing.

Why Malta:

1. Recognition of foreign trust law
2. EU and eurozone location
3. Competitive fiscal environment
4. Legislation published in English
5. Lower operational costs
6. High professional standards with many accounts, bankers, lawyers and investment advisors holding overseas qualifications and having international experience
7. English-speaking country with a pro-business government

Powers and duties of the Trustee

- Full legal ownership of the property;
- Power to Administer;
- Power to Employ;
- Power to Dispose;
- Such other powers and duties as provided for under the terms of the trust;
- No entitlement to profit from his Trusteeship unless expressly provided for in the deed of trust;
- Entitled to a reimbursement for all costs and expenses incurred;
- Bound by fiduciary obligations in favour of the beneficiaries.

The Settlor

The settlor must be of age, have full capacity to contract and a free disposition of the assets settled on trust. While imposing fiduciary obligations upon the trustee in favour of the beneficiaries, trusts do not leave the settlor with any rights in relation to the trust property – except as specifically provided for in the Trusts and Trustees Act. The Trusts and Trustees Act lists the settlor's rights as follows:

- The settlor has the power to seek court directives as to trust validity;
- The settlor has the right to a variation of terms and revocable trusts where the Trust Deed so provides;
- In cases of trust termination, interest lapses or no existing or possible beneficiary, the trustee holds the trust property for the settlor (or his or her heirs) absolutely; and
- It is the trustee's duty to provide the settlor with information, subject to the terms of the Trust Deed.



The Protector

The protector is typically a person who is in a trustworthy position (e.g. the family lawyer). The protector may also act as investment advisor. Subject to the trust terms, the protector typically has the power to:

- Appoint new and/or additional trustees;
- Remove trustees; and
- Require trustees to obtain the protector's discretion (including approval) in relation to particular matters e.g. purchase / sale of trust property.

The Beneficiary

The beneficiary is the person who may benefit from the assets of the trust. All beneficiaries have to be mentioned by name or are ascertainable by class or by relationship to a person alive or dead.

For instance, children not yet born or conceived may be beneficiaries. The rights of the beneficiary are personal and are regarded as movable property.

Subject to the trust deed, the beneficiary may sell, charge or deal with his or her interest in any manner, provided that this is done in writing.

The beneficiary has the right to information from the trustee and may seek court directives regarding the validity of the trust.

The beneficiary may also disclaim his or her interest, or part thereof.

Trust Deed

The Trust Deed is the instrument whereby the trust is created and includes the terms of the trust and may also be in the form of a unilateral declaration of trust. For example, a Trust Deed may provide for the addition of new beneficiaries (e.g. for unborn children) or the exclusion of a specific benefit to certain beneficiaries under conditions clearly stated in the Trust Deed.

Letter of Wishes

The settlor can guide the trustee in a separate letter of wishes on how the trustee should exercise his discretion. Depending on the relationship between the settlor and the beneficiaries, the settlor can inform the beneficiaries of this letter, however, he/she may also choose not to disclose this letter to the beneficiaries.

Legal Form

A trust is a form of legal institute which does not have its own legal personality. Trusts are not registered anywhere and there are no formalities for the annual maintenance of trusts other than statutory obligations that are imposed on trustees in the administration of trusts (e.g. for example the duty to prepare accounts).

Taxation

The tax implications of a trust would be dependent on various factors, such as, the residence of the parties to the trust, the nature and location of the trust property and the various stages in the life of a trust (settlement of property on trust, administration of trust property, distribution of trust assets, reversion of trust property and the transfer of the beneficial interest in a trust).

The income attributable to a trust is not charged in the hands of the trustee if it is distributed to a beneficiary.

When all the beneficiaries of a trust are not resident in Malta, there is no tax impact under Maltese tax law.

Income attributable to a trust that is not distributed to beneficiaries is charged to tax in the hands of the trustee.

Capital gains are levied on the settlement, distribution or reversion of certain assets in a trust. However, no capital gains tax is charged on any capital gains derived by non-residents on transfer of assets situated outside Malta.