CHOOSING MALTA

MALTA AS A TRUSTS JURISDICTION

Since Malta’s accession to the EU in 2004, Malta has emerged as an attractive jurisdiction for the establishment of international corporate holding structures, to be used in multinational groups, owner-managed companies as well as the holding of assets for high-net-worths.

In the last decade Maltese legislature has been very active in the area of fiduciary obligations, specifically those resulting from the creation of trusts and foundations. A choice of trust jurisdiction will inevitably be the result of careful consideration of a number of factors including the regulatory framework, the expertise of service providers, costs and the judicial system. Since the inception of the concept of trusts back in 1984, Malta has gone a long way in establishing itself as a trust jurisdiction worthy of serious consideration. What better way to show its commitment to the trust institute than introducing a comprehensive regulatory and legal framework for trusts and trustees as well as introducing the concept of trust in its Civil Code and making it available to the domestic market? Since the introduction of trusts to Maltese residents in 2004, the domestic trust industry and practice has grown considerably.

CONTINUATION INTO AND OUT OF MALTA

The Continuation of Companies Regulations issued under the Companies Act, 1995 provide existing trust companies with a particularly attractive incentive to apply to be registered as being continued in Malta, hence allowing a company to re-domicile without the need of dissolution in its jurisdiction of incorporation and be re-incorporated in the jurisdiction of choice (in this case, Malta). Re-domiciliation allows continuation of legal personality from one jurisdiction to another, thereby eliminating the need to transfer all the trust business and trust assets to a new entity in the chosen jurisdiction. Conversely, a trust company set up in Malta can always have the option of continuing outside of Malta.

SETTING UP A BRANCH IN MALTA

A foreign trust company may wish to remain domiciled in its jurisdiction of incorporation but set up a branch in Malta. A company which has been issued with a licence to act as trustee by the relevant regulatory authority in its home jurisdiction can obtain the necessary authorisation to operate in Malta in a very quick and straightforward manner by following a ‘fast-track’ system. The company must simply give notice in writing to the Malta Financial Services Authority (MFSA) of its intention to act as a trustee in Malta at least 45 days prior to commencing its activities in Malta and ensure it has received confirmation that the MFSA does not object thereto. A foreign licensed trustee may therefore take advantage of its regulatory status in its own jurisdiction to simplify and accelerate the process by setting up a branch, thereby also eliminating the cost and effort that would usually be required for a full application.

ESTABLISHING A SUBSIDIARY IN MALTA

A company wishing to remain domiciled in its jurisdiction of incorporation may desire a stronger presence in Malta than a branch may offer, in which case the company may set up a subsidiary in Malta and apply to the MFSA for authorisation to act as a trustee.

OTHER BENEFITS

Where the proper law of a trust is a foreign law, the Act provides that its validity, construction, effect and administration shall be governed by the foreign law concerned. The trust would thus be recognised and given effect in Malta in accordance with The Hague Convention which has been ratified by Malta.

The Income Tax Act allows the taxability in Malta of a trust having a Maltese trustee. Furthermore, a Maltese trust can avail itself of the option of being treated as a company for income tax purposes, under the tax transparency model. Income attributable to a trust is not taxable in the hands of the trustee if it is distributed to the beneficiary.

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