The legislation allows for the set-up of two types of foundations: Private and Purpose Foundations, which have particular uses and benefits for certain clients.

**Private Foundations**:
Set up for the benefit of a named person or class of persons called beneficiaries. The foundation’s patrimony is owned by the foundation itself (due to its separate legal personality) and is administered by designated persons (known as ‘administrators’) for the benefit of such beneficiaries.

**Purpose Foundations**:
Set ups that have no ascertained or ascertainable beneficiaries, but are established exclusively:
- For any charitable, philanthropic or other social purpose
- As a non-profit making organisation
- For any other lawful purpose (not necessarily a social purpose and can be a private purpose)

*Separate Legal Identity*
Unlike trusts, foundations have a legal personality and the foundation itself becomes the legal owner of the foundation property. Based on Maltese company law principles and Italian and French civil law provisions, Maltese foundations require the appointment of administrators who are responsible for the administration of the foundation’s property. These are regulated under the Trusts and Trustees Act. The public deed creating a foundation must be registered. However, only a minimum of information is available to the public and confidentiality is retained.

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**Salient Differences between Malta Trusts and Foundations**

<table>
<thead>
<tr>
<th><strong>Trusts</strong></th>
<th><strong>Foundations</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not have a separate legal personality</td>
<td>Have a separate legal personality</td>
</tr>
<tr>
<td>Defined in terms of relationship</td>
<td>Defined in terms of the assets making up the foundation</td>
</tr>
<tr>
<td>Trustee is the legal owner of the assets</td>
<td>Foundation is the legal owner of its own assets</td>
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</tbody>
</table>
The Malta Foundation

FACT SHEET: 2015-2016

Key Features of a Foundation

Means of Establishment: A foundation can only be constituted in writing, either by a public deed published by a Notary, or by a will. The foundation deed must be registered with the Office of the Registrar of Legal Persons.

Assets: The assets of a foundation may originate from any lawful business or activity and may consist of present or future assets of any nature. The minimum endowment of money or property to set up a private foundation must be worth at least €1,165 (and €233 for a foundation established exclusively for a social purpose or as non-profit making, in the case of a purpose foundation).

Foundation deed: The foundation deed must contain the following information:
- The name of the foundation, which must include in it the word ‘foundation’
- The registered address in Malta
- The purposes or objects of the foundations
- The constitutive assets with which the foundation is formed
- The composition of the board of administrators, and if not yet appointed, the method of their appointment
- The legal representation (a local representative is necessary, if the administrators of the foundation are non-Maltese resident)
- The term for which it is established
- In the case of a private foundation, the deed of foundation must contain the names of the beneficiaries, or in the absence of such indication, a declaration that the foundation is constituted for the benefit of the beneficiaries. In the latter case, the beneficiaries must be indicated in a separate legal instrument, known as a beneficiary statement, which must be signed by the founder, addressed to the administrators and authenticated by the Notary Public who has published the foundation deed. In order to protect confidentiality, the beneficiary statement does not need to be filed; in its stead a note of reference referring only to the founder is filed with the Registrar of Legal Persons.

Legal Form: Once the foundation is established, the deed is published, and the foundation is registered with the Registrar for Legal Persons, a new legal person is created and the foundation itself becomes the owner of the foundation property.

Termination: Except when foundations are used as collective investment vehicles, in securitisation transactions or in the case of purpose foundations (which may be established for an unlimited term), foundations are valid for a maximum term of 100 years from their establishment.

Founder: The rights of the founder:
- The founder may exercise supervision over administration of the foundation, obtain a copy or copies of accounts, inventory and descriptive notes of property
- He/she may intervene in court proceedings concerning the appointment of administrators or the disposal of assets

Conditions for the founder:
- The founder may also be an administrator
- The founder may be a beneficiary during his lifetime but in this case, he/she cannot act as sole administrator of the foundation.

Administrator: Duties of the administrator:
- The administrators (whether natural or legal persons) are responsible for maintaining possession and control of the property of the foundation, safeguarding such property and ensuring compliance with the statute of the foundation and the law
- They are bound by fiduciary obligations stipulated in the Civil Code. Any fiduciary who breaches such obligations shall be bound to return any property, together with all other benefits derived by him, whether directly or indirectly, to the person to whom the duty is owed.

Conditions for the administrator:
- The administrator can be based outside Malta. However, a person resident in Malta must be appointed to act as the local representative of the foundation in this case;
- The administrator may be the founder; however, in such situation, the founder cannot be the sole administrator.

Supervisory Protector: The deed can provide for a supervisory council or the office of protector. They usually exercise supervision over the acts of the administrators, and may be vested with powers of appointment or removal of administrators.