Malta Trusts

Malta is one of the few jurisdictions that cater for both trusts and foundations. While trusts are peculiar to systems of law based on common law and are not generally found in civil law countries, Malta, a civil law country, is an exception to this rule.

Built on the key concepts of certainty, security and confidentiality, Malta’s EU membership makes the country an attractive location for the establishment of trusts. It gives high-net-worth individuals (HNWI) the peace of mind that comes with a highly regulated environment that remains faithful to the original concept of a trust.

As a reputable trust jurisdiction and with the number of authorised trustees increasing every year, Malta introduced new amendments to its trust law in 2014. The updated law brings Malta in line with international developments and more importantly saw the introduction of the Private Trust Company (PTC), which offers interesting opportunities to HNWIs and families who favour tailor-made trustee solutions.

Maltese law caters for all the main types of trust normally found in traditional common law jurisdictions such as:
- Discretionary trusts
- Accumulation and maintenance trusts
- Fixed interest trusts
- Spendthrift trusts
- Charitable trusts
- Unit trusts
The country hosts both international top-tier firms as well as various boutique firms, both local and foreign, that assist with the establishment and administration of trusts and foundations in Malta. Protecting and enhancing the value of assets is increasingly important amidst the ongoing market volatility, and Malta trusts and foundations are an ideal financial instrument for those seeking solutions to their wealth management requirements.

**Flexible Trust Law**

Trusts have been established in Malta since 1988, however, the law governing trusts has in recent years undergone major changes. The Maltese trust laws were originally adapted from the 1984 Jersey Trust laws but were updated in 2004 under the new Trusts and Trustees Act. This law makes Malta one of the only countries to successfully incorporate the Anglo Saxon Trust concept with its Roman law based legal system. This new system has accelerated the process of setting up a trust by allowing the creation of customised solutions for each individual trust set-up making Maltese trusts an attractive solution to personal and business needs.

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**Benefits of Malta Trusts & Foundations**

- One of the few civil law jurisdictions that has developed its own domestic trust law
- Recognition of trusts set up under foreign laws
- Offering the set-up of domestic trusts and foundations
- Legislation published in English
- EU and eurozone location
- High professional standards with many accountants, bankers, lawyers, notaries and investment advisors holding overseas qualifications and having overseas experience
- Fast-track authorisation for trustees licensed in other (approved) jurisdictions
- English-speaking country with a pro-business government

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**The Private Trust Company (PTC)**

The Trusts and Trustees Act went under review in 2014 and culminated in the Trusts and Trustees (Amendment) Act, Act XI of 2014, published on the 25th of April 2014. Proving that this is indeed a dynamic area, the amendments were aimed at improving Malta’s legislative framework regulating both trusts governed by Maltese law and trustees resident or operating in or from Malta. The changes have provided greater certainty and at the same time bringing Malta’s trust law provisions in line with international developments in the area. Possibly one of the most – if not the most – noteworthy amendments is the introduction of the Private Trust Company (PTC) for family trusts in the new article 43B. A family trust is defined as ‘a trust created to hold property settled by the settlor or settlors for the present and future needs of family members and family dependants’. This new article provides that a trustee company:

- whose objects and activities are limited to acting as trustee in relation to specific settlers and providing administrative services in respect of specific family trusts;
- which does not hold itself out as trustee to the public and which does not act habitually as a trustee (in any case in relation to more than 5 settlers at a time);
- is not required to be authorised but is required to merely register with the MFSA. The aim of this new provision is that of incentivising the use of PTCs in Malta, in the context of family trusts, by facilitating the authorisation procedure in view of the fact that they are typically designed around the needs of a specific family and in any case would not be offering their services to the general public. PTC’s offer some very interesting opportunities to HNWIs and families who favour a tailor-made trustee solution in the design of which they can take part (and possibly also a role) when compared to the mainstream professional or institutional trustees.
Malta Trusts

**Reliable Service Providers**

In Malta, a professional trustee and a foundation administrator have to be licensed by the Malta Financial Services Authority (MFSA). This system ensures that certain standards are met and provides settlors with a higher degree of assurance. The MFSA has already licensed some 130 Maltese and international fiduciary companies to offer trust and trustee services in the country, including Maitland Group and Bentley Trust, proving this is a rapidly expanding segment of the financial services sector.

**Lower Set-up Costs**

Another key attraction Malta offers for those considering where to set up a trust is its significantly lower set-up and administrative costs. On average, setting up a trust in Switzerland will cost a minimum of €5,000, while in Malta the cost of setting up a fully-fledged trust is around €1,500. Professional fees in Malta, including trust management fees, legal fees and audit fees, are also significantly lower than in other jurisdictions, while the country's professional classes enjoy an excellent international reputation.

**Private Trusts**

Maltese regulation also envisages the possibility of setting up a trust by notarial deed whereby the trustee is a family member of the settlor or someone who the settlor has known for at least 10 years. This procedure is supplemented by the role of the depositary notary who supports the lay trustee. This mode of setting up trusts is particularly attractive for smaller scale trusts where settlors opt to charge a trusted family member or a person they have known for a considerable number of years with the all-important function of the trustee.

**Recognition of Foreign Trust Law**

Malta’s trust law also allows settlors to establish trusts governed by a foreign law, and foreign trusts are fully recognised. The country not only recognises trusts created voluntarily and evidenced in writing as required under the Hague Convention, but also recognises any other trust of property arising under the law of another country, meaning that even constructive or resulting trusts arising under foreign law will be recognised and enforced in Malta. Maltese law ensures that rules such as the forced heirship rules only apply in cases where the settlor was domiciled (given the Anglo-Saxon interpretation) at the time of creating the trust. Accordingly, foreign investors seeking to use the Maltese trust to streamline their assets or organise their estate need not be concerned about the Maltese public policy rules.

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**Fiduciary companies offering trust/trustee services**

130+
### Key Features of a Trust

#### Means of establishment: A trust may be created unilaterally or bilaterally, by oral declaration or in writing. A unit trust must always be created in writing.

#### The Settlor: The settlor is the person who sets up the trust. 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 (which may be supplemented by the trust deed) 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)
- It is the trustee’s duty to provide the settlor with information, subject to the terms of the Trust Deed.

**NEW:** The settlor may reserve or grant himself:
- Any beneficial interest in the trust property
- Any power to appoint, add or remove trustees, protectors or beneficiaries
- Any power to appoint an investment adviser or investment manager

#### 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
- 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 potential 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.

**NEW:** all the beneficiaries who are in existence and have been ascertained, provided that none of them is interdicted or a minor, may request the trustee to terminate the trust and distribute the trust property. The new amendments preclude this rule from applying in the case of protective trusts.

#### 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. A letter of wishes is not legally binding on the trustee, but rather constitutes general guidance on a settlor’s wishes.

#### Legal Form: A trust 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 (for example the duty to prepare accounts).

#### Set-up time: There are no statutory restrictions that could delay the setting up of a trust in Malta. Therefore, the time required depends on the particular circumstances and mainly relates to the drafting of the Trust Deed.

#### Termination: The Malta trust has been amended to extend the permitted duration to 125 years (formerly maximum duration was 100 years), however, it can be terminated earlier if all beneficiaries acting in unison demand termination, which the trustees must accept under the conditions outlined in the Trusts and Trustees Act. With most trust deeds it is usual for the trustees also to be able to bring the trust to an end during the trust period.

#### Ensuring trustees’ performance: Professional trustees are licensed by the MFSA, which has also issued a code of conduct to provide guidance to trustees as to the standards required under the Trusts and Trustees Act and other financial services legislation, as well as to the best practice in the industry. Trustees must exercise their fiduciary duties prudently and competently and, subject to the terms of the trust and the provisions of the Trusts and Trustees Act, consider the rights of all beneficiaries when making decisions affecting the administration of the trust. If a trustee fails to administer a trust in accordance with the law and the respective trust deed, the trustee is liable for such a breach and can be sued for it.

**NEW:** the amendments include:
- trustees have the duty to avoid any conflicts of interests
- upon accepting appointment, trustees are duty-bound to draw up a written inventory of the trust assets and declare it includes all the trust property of which the trustees are aware
- trustees are obliged to keep accounts and records of their trusteeship for at least 10 years from the date of termination of the trust/trusteeship