



## **Trusts under Maltese Law**

Recent legislation in Malta has allowed Trusts to be set up in Malta. Previously Maltese legislation allowed the recognition of foreign registered Trusts. This has changed in order to offer more flexibility in the administration of moveable and immoveable property in Malta and elsewhere

The term “Trust” refers to the legal relationship created by a person, the “Settlor”, when assets have been placed under the control of a “Trustee” for the benefit of a “Beneficiary” or for a specific purpose. The assets constitute a separate fund or patrimony and are not part of the Trustee’s own estate, although the legal title to the assets will be in the name of the Trustee.

There are various ways in which a trust may be created, both written and orally. Under Maltese law trust formation is very wide and flexible. The law limits the life time of a trust to 100 years, that is to say that on the 100<sup>th</sup> anniversary of the date when the trust came into existence, it is terminated, unless the trust had been terminated at a previous date. The 100 year limit however does not include trusts set up for charitable purposes.

The Trustee has the power and duty (and is accountable for the way he exercises these) to manage, use or dispose of the assets in accordance with the terms of the Trust and any special duties imposed upon him by the law which governs the Trust. Trusts may be described as flexible arrangements that provide a number of benefits and may be used for a variety of objectives. Typical examples include; will trusts for a testator's children and family, pension trusts (conferring benefits on employees and their families), unit trusts (collective investment vehicles) and trusts set up for a charitable purpose.

The Trusts and Trustees Act regulated the effects of any transaction related to property held under a trust. The Act sets out a number of formalities which need to be followed for the transaction to have effect on third parties. Some trusts allow the Trustee to exercise discretion when distributing capital and/or income to the beneficiary/ies (discretionary trusts), whilst other trusts do not confer such discretion between beneficiaries (fixed interest trusts).



The Malta Financial Services Authority (MFSA) is the regulatory body which is responsible for the regulation and supervision of trustees in Malta. The MFSA requires high standards of due diligence to be carried out and the licenses issued by the MFSA are subject to the high standards set out by it.

### **The relevant legislation in Malta**

Malta introduced trust legislation in 1988 when Parliament enacted the Offshore Trusts Act 1988 which was designed to provide for the creation of trusts for non-resident Settlers and the Recognition of Trusts Act 1994, which enabled Malta to ratify the Hague Convention on the Law Applicable to Trusts and their Recognition.

The legislation was substantially overhauled in 2004 and there is now a fully-fledged integration of trusts in Maltese law through the Trusts and Trustees Act, Cap. 331. A Trust may come into existence, unilaterally or otherwise, by oral declaration, or by an instrument in writing including by a will, by operation of law or by a judicial decision. The Settlor may be a Beneficiary or one of the Beneficiaries as well as a Trustee or Co-Trustee but care is to be exercised so as not to arrive at a situation where the Trust is considered as a sham.

Maltese Trusts law draws heavily on UK law; however Maltese law is far more flexible and simple. This, coupled with the fact the Malta offers expert and professional services at highly attractive rates has led Malta to quickly become a leading jurisdiction for establishing both private and commercial Trusts.

The Trusts and Trustees Act offers a high level of protection to both the settlers and the beneficiaries. This is highlighted by the fact that in case of inconsistency between the trust agreement and the Law, the Law will always prevail, this helps to eliminate abuse. In Malta acquiring a trustee license is not an easy task and stringent criteria must be met.

### **The impact of taxation legislation in Malta**

The impact of taxation on Trusts, Trustees and Beneficiaries is provided for in the Income Tax Act, Cap. 123 of the Laws of Malta and will vary with the nature of the assets and, more importantly, on the timing of distributions of the Trust income and the residence status of the Beneficiaries.



Income attributable to a Trust is not charged to tax in the hands of the Trustee if it is distributed to a Beneficiary. Therefore on distribution of income to a Beneficiary, tax is charged directly to the Beneficiary. As a consequence, when all the Beneficiaries of a Trust are not resident in Malta and when all the income attributable to a Trust does not arise in Malta, there should be no tax due by the Trust in Malta nor by the Beneficiary in Malta since nonresidents are not subject to tax in Malta on income not arising in Malta.