

Maltese Registered Trusts



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The setting up of trusts in Malta is regulated by the Trusts and Trustees Act of 2004. The Act provides for the creation of trusts and authorisation and supervision of trustees. In this regard, the MFSA is the competent authority for the purposes of the Act. The Act incorporates within its provisions the Hague Convention on the Law Applicable to Trusts and on their Recognition which Malta has ratified.

The Maltese Regulatory Environment

The Malta Financial Services Authority (MFSA) is responsible for the authorisation, regulation and supervision of trustees. The MFSA also licenses, regulates and supervises banking and financial institutions, and investment services business.

The MFSA requires the highest standards of probity and honesty. Every licence is issued subject to standard conditions which may be adapted to suit certain circumstances so long as standards are not compromised.

The MFSA is an autonomous public authority constituted and regulated by the Malta Financial Services Authority Act (MFSA Act). The MFSA aims to provide a seamless regulatory function for financial services. It also houses the Registry of Companies.

Definition of Trusts

A trust is an obligation which binds a person or persons (called the 'trustees') to deal with property over which they have control (called 'the trust property') for the benefit of persons (called the beneficiaries) or for a charitable purpose in accordance with the terms of the trust.

Creation of Trusts

A trust can come into existence in any manner. A trust may come into existence by an instrument in writing including by a will. A unilateral declaration of trust is also possible. A unilateral declaration of trust is a declaration in writing made by a trustee stating that it is the trustee of a trust, containing all terms of the trust as well as the names or information enabling the identification of all beneficiaries.

A trust may also come into existence by oral declaration, with the exception of a unit trust which must be created by a written instrument. A trust may also come into existence by operation of law or by judicial decision.

Where assets are held, acquired or received by a person for another on the basis of oral arrangements of a fiduciary nature, express or implied, there shall be presumed to be mandate or a deposit rather than a trust, unless there is evidence of the intention to create an oral trust.

A trust may continue until the 100th anniversary of the date on which it came into existence, and, unless sooner terminated, shall terminate. This limit does not apply to a trust for a charitable purpose or to a unit trust.



Main characteristics of a Trust

The following characteristics must be present when establishing a trust:

1. The Settlor is the person placing the assets in the trust and it includes any person who provides trust property or who makes a disposition on trust or to a trust. The settlor ceases to have any active role in the trust once this has been created.
2. The Trustee is the person/s holding or in whom the property is vested in trust for the beneficiaries. These are usually appointed by the trust instrument. The trustees may be natural persons provided that they are of full age and legal capacity and not under any legal impediment to so act. A trustee may also be a juridical person the objects of which include acting as trustee.
3. The Beneficiary is the person entitled to benefit under the trust or in whose favour discretion to distribute property held in trust may be exercised. As the rights of the beneficiary are personal to him/her, he/she can only benefit under a trust if he/she is either identifiable by name or ascertainable by reference to a class or to a relationship to some person. Where the beneficiaries are not identifiable or ascertainable the trust shall fail, unless the purpose is a charitable one.
4. The Protector may be appointed only if the terms of the trust provide for this office. In this position the protector normally has powers to appoint new or additional trustees, removal of trustees, obtaining information as to the way the trustees are managing the trust assets.
5. The Trust Deed is the instrument by which the trust comes into existence and it includes any instrument varying the terms of the trust and also a unilateral declaration of trust.

Type Of Trusts

Trusts can be classified into three main types:

- Express Trusts are declared by the settlor and the intention to set up the trust is clearly and openly expressed.
- Implied Trusts are trusts arising from the unexpressed but presumed intention of the settlor, which intention is presumed from his words or actions. These trusts are also resulting trusts since the property will return to the person setting up the trust.
- Constructive Trusts arise by operation of law and are in no way dependent on the intention of the settlor. These are imposed by operation of law in situations where not to do so would result in one party's unjust enrichment.

Duties of Trustees

The duties of the trustees can be particularly onerous. Trustees shall in the execution of their duties and the exercise of their powers and discretions, act with prudence and diligence and shall observe the utmost good faith. Trustees should treat the interests of the beneficiaries as paramount subject to their legal obligations to other persons or bodies and they are obliged to act in accordance with the terms of the trust deed. They are also obliged to keep accurate records of the trusteeship, which records are to be disclosed to any beneficiary upon request. Trust property is to be kept separate and distinct from the trustee's own property.

Powers of Trustees

Trustees shall, in relation to the trust property, have all the powers of a natural person having the absolute title to such property. Trustees shall exercise their powers in the interest of the beneficiaries and according to the terms of the trust.

Taxation of Trusts

Taxation on trusts is regulated by the Income Tax Act, Cap 123. Trusts are considered as being transparent for tax purposes as income attributable to a trust which is distributed to a beneficiary is not charged tax in the hands of the trustee. Furthermore where the beneficiaries are not resident on Malta and where the trust income does not arise in Malta, there is no tax impact under Maltese law. Beneficiaries are charged to tax on income distributed by the trustees and any income attributable to a trust that is not so distributed to the beneficiaries is charged to tax in the hand of the trustee at the rate of 35% per year.

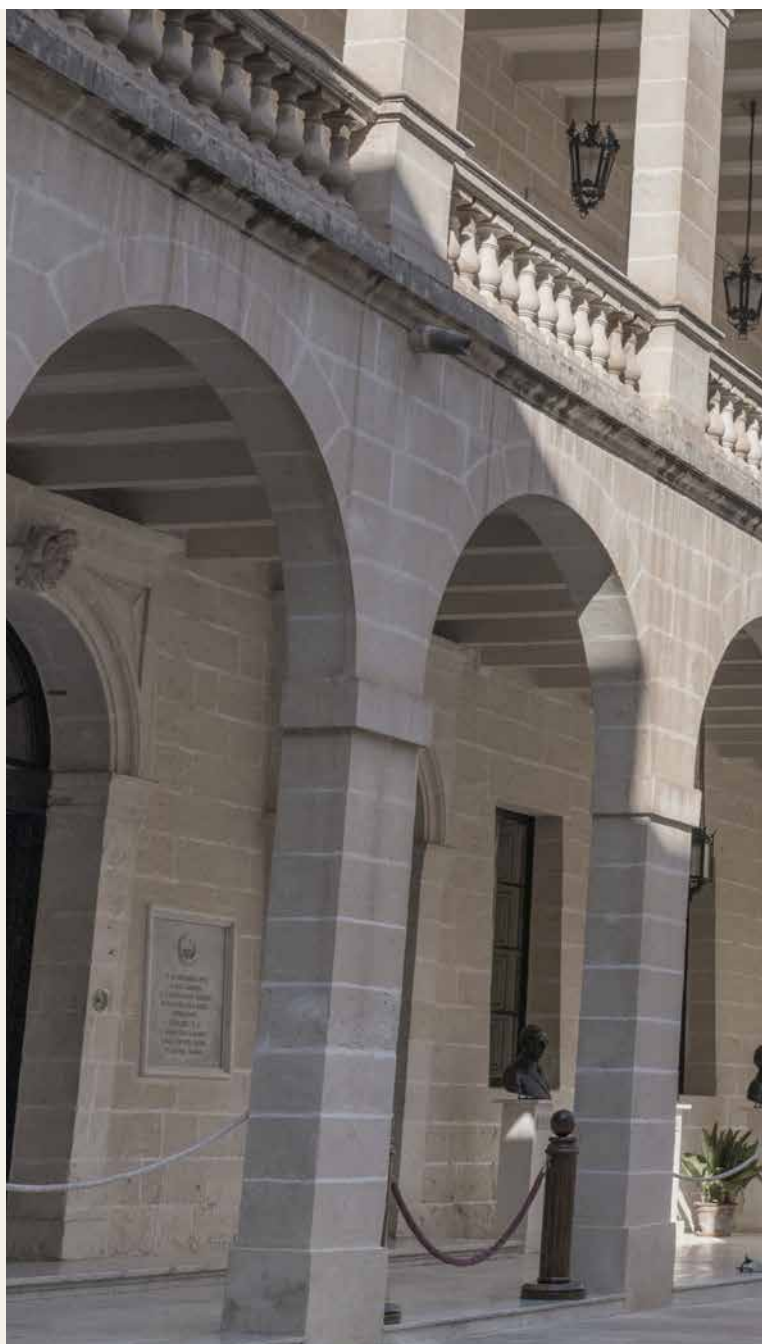
Legal effects and formalities

The effects of any transactions related to property under trust are regulated by the Act and other laws that apply specifically to trusts. The formalities required with respect to such transactions are as a general rule regulated in the normal manner. Transactions relating to the transfer of ownership or other rights to or in property under trust shall therefore be carried out in the form and manner required by the law applicable to such transactions.

Trustees are bound to follow the Code of Conduct issued by the MFSA.

Confidentiality

Under the Professional Secrecy Act 1994, lawyers, bankers, stock brokers and accountants cannot divulge any information about their clients unless international criminal activity (money laundering, drug dealing, etc.) is involved. Moreover, Licensed Nominee Companies fall under the Malta Financial Services Centre Act 1988 which also requires such companies to protect the confidentiality of the beneficial owners they represent. All our services are covered by these strict professional secrecy provisions.



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