

Key Facts Trusts

The principal legislation regulating trusts in Malta is the Trust & Trustees Act, 2004 (“the Act”).

Some salient considerations in respect of Malta trusts are set out below:

- Neither the Settlor, nor the beneficiaries under a Maltese trust need to be residents of Malta.
- Malta trusts do not need to be registered.
- Having ratified the Hague convention, Malta recognises trusts set up under foreign laws.
- The Act provides the possibility of a Protector being appointed to monitor the actions of the trustee.
- Maltese rules on forced heirship only apply to the extent that the settlor is domiciled in Malta at the time of his/her demise.
- A Maltese trust may continue until the 125th anniversary of its creation, unless it is terminated earlier. This does not apply to a trust created for a charitable purpose, to a unit trust or to a retirement scheme.
- The Settlor may reserve powers to ‘appoint, add or remove trustees, protector or beneficiaries’ and powers to appoint any ‘investment adviser or investment manager’ without affecting the validity of the trust or delaying the taking effect of the trust.

Regulation of Trustees

In addition to anti-money laundering legislation, the Act requires all trustees to be authorised to provide trustee and fiduciary functions. Furthermore:

- All the trustee’s principal persons must be fit and proper.
- Trustees are required to comply with a Code of Conduct issued by the Malta Financial Services Authority (“the Authority”).
- Monitoring of trustees takes place through regular on-site visits by the Authority.

The Taxation of a Malta Trust

- Subject to the income attributable to a Trust consisting of income arising outside Malta or of interests/royalties or of specific types of capital gains, and provided that all the beneficiaries are non-resident, a Trust can be treated as a transparent vehicle for Malta income tax purposes under ‘look-through’ provisions of Malta’s tax legislation.
- Accordingly no tax on income or chargeable capital gains earned by the Trust is deemed to arise at the Trust level and the income/gains is treated as income derived directly by the beneficiaries. No tax leakage therefore arises in Malta.
- A Trust may alternatively elect to be treated as a corporate in which case provisions applicable to the taxation of companies apply.

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