TRUSTS AND FOUNDATIONS

Trust relationships have been regulated in Malta since 1988, first in a ring-fenced manner for assets which were principally outside Malta, and then in a more integrated manner as part of our Civil Law since 2004. Such structures have since proved to be an important element in assisting and enhancing Malta’s ambitions to develop into an international financial centre of pristine reputation. Malta’s trusts and foundations are reliable and secure tools which provide financial stability.

Malta’s trust legislation is broadly built around the Jersey law model, and finds its place in the general civil law under a broad codification of fiduciary obligations arising from fiduciary relationships and structures.

The integrated approach adopted by Maltese legislators in the area of trusts has led to increased reference to our jurisdiction as a successful legal system, which integrates Anglo-Saxon and Continental notions of law in strategic areas required for sustained economic development in a Global context.

A trust exists where a Trustee holds as owner property for the benefit of others (called the Beneficiaries) or for a charitable purpose. It may be created in any manner whether through bilateral written agreements or unilateral declaration, testamentary arrangement, by operation of law and woven through oral arrangement in certain circumstances. Except for charitable trusts or unit trusts, the maximum duration of a trust is 99 years from the date the trust came into existence.

Malta has also ratified the Hague Convention on the Recognition and enforcement of Foreign Trusts.

The Maltese system provides for a comprehensive regulatory infrastructure. A trustee resident or operating in Malta must be licensed to provide trustee services by the Malta Financial Services Authority, irrespective of whether the proper law of the trust is Maltese or foreign law, and irrespective of whether or not part of the trust property is in Malta.

The high standards of regulation imply yearly audits which must be conducted. Malta’s legislation makes Trusts worthier investments since it only takes €1500 to set up a complete trust. In certain countries, the amount exceeds up to €5000. An essential component of Trusts in Malta is that they are tailor made according to the settler’s needs. This makes the agreement flexible and adaptable. In certain cases, clients may be exempt from taxation.

ESTABLISHMENT OF FOUNDATIONS

Foundations can be established as Private foundations or Public (Purpose) foundations. Private foundations are constituted for the private benefit of one or more beneficiaries who must be certain at the time the foundation is created, or for persons forming part of a defined class. Public foundations may be set up exclusively to serve a lawful purpose.

Foundations must be constituted through a notarial public deed inter vivos, or in the form of a will drawn up and received by a notary. It must be registered with the office of the Registrar for Legal Persons, however limited information goes into the public domain.

THE ANATOMY OF A TRUST

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