



Malta Trusts, Trustee Services and Fiduciary Services

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About us

Promethean Corporate Services ("**Promethean**") is a full-service legal and tax firm that offers cross-border solutions. Promethean Corporate Services is comprised of Promethean Advisory Limited with Company Registration No: C 33734 is authorised and regulated by the Malta Financial Services Authority ("**MFSA**") to act as a Company Service Provider (Category C) in terms of the Company Services Providers Act. Chapter 529 of the Laws of Malta. Promethean Trust-ees Limited with Company Registration No: C 51310 is authorised to act as a Trustee, act as an Administrator and provide Fiduciary Services in terms of the Trusts and Trustees Act. Chapter 331 of the Laws of Malta. Promethean assists clients with the setting up of trusts in Malta and through our multi-disciplinary approach to business, we also provide comprehensive tax and legal guidance and support in respect of all trust and fiduciary related matters.

Fiduciary services provided by Promethean involve the holding and administration of client assets on the basis of instructions provided by the owner of such assets. Promethean may accordingly be the registered holder of assets (under mandate or deposit).

In keeping with Promethean's philosophy, we ensure that all fiduciary services satisfy rigorous standards of customer confidentiality and discretion, and are underpinned by individually developed solutions, providing clients with absolute peace of mind.

The primary trust and fiduciary services provided by Promethean comprise the following services:

- ☒ Establishing trusts and foundations governed by Maltese law;
- ☒ Acting as Trustee or Foundation Administrator;
- ☒ Holding of assets (including shares) under title of mandate and/or deposit;
- ☒ Protection of financial and non-financial assets.

A. Malta Trusts, Trustee Services

1. The inception of Trust Law in Malta

Trusts became an integral part of the Maltese legal system as a separate and distinct legal institution, accessible to all individuals and applicable to any type of property, through the Trusts and Trustees Act of 2004 (the “**Act**”). This Act is primarily based on the Jersey trusts law, which is widely recognized for its effort to codify English trust law. The amendments made to the Act in 2014 enhanced Malta’s trust legislation, which is expected to further strengthen its international appeal in the field of trusts.

2. What does a ‘Trust’ truly mean?

Maltese Trusts are mainly regulated by the Act which provides for the creation of trusts and for the mandatory licensing and supervision of Trustees. Article 3 of the Act describes a Trust as follows:

“A trust exists where a person (called a trustee) holds, as owner or has vested in him property under an obligation to deal with that property for the benefit of persons (called the beneficiaries), whether or not yet ascertained or in existence which is not for the benefit only of the trustee, or for a charitable purpose, or for both such benefit and purpose aforesaid.”

In terms of the Act, a trust may be constituted in any manner. Trusts are typically created by instrument in writing (including by a will), but a Trust may also come into existence by oral declaration or by operation of law or judicial decision.

A trust deed is the document setting up the Trust and includes three key players, the Settlor, the Trustee, and the beneficiaries.

3. Essential Features of a Trust

A trust can be customized to meet individual preferences; however, it typically includes the following criteria:

- ☑ A trust is an obligation established by the settlor. The settlor can create this obligation by transferring assets to the trustee or by declaring that they hold assets in trust for the benefit of the beneficiaries. This creation can occur during the life of the settlor or after their death through a provision in their will.
- ☑ The trustee is responsible for holding the assets placed in trust for the benefit of the beneficiaries or until the purpose of the trust is achieved.
- ☑ The assets held in trust can take various forms, including paintings, shares in a company, money, real estate, and more.
- ☑ While the trustee becomes the legal owner of the trust assets, these assets must be segregated and kept separate from the trustee's personal assets and from any other property held by the trustee under different trusts.

Regarding the last point, it is important to note that Maltese law and the Trustee Code of Ethics, which trustees in Malta must adhere to, emphasize the need for proper and effective segregation of trust property. Consequently, personal creditors of the trustee cannot access the assets within the trust fund. Additionally, these assets do not become part of the trustee's personal estate in the event of insolvency or bankruptcy, nor do they form part of the trustee's estate after death. However, it should be noted that a trust is not a legal entity and does not have legal personality (unlike a company or a foundation). Therefore, the management of trust property is carried out under the legal personality of the trustee.

4. Duration of a Trust

A Malta trust can exist for a maximum of 125 years, following amendments made in 2014 that extended the validity period from 100 to 125 years. This change was implemented to align with international trends in the trust industry. However, the 125-year limit does not apply to trusts created for charitable purposes, unit trusts, or qualifying retirement schemes established as trusts.

5. Key Players of a Trust

- ☑ Settlor – the individual who creates a trust by transferring property to the trustee, typically relinquishing any active role in the trust thereafter.
- ☑ Trustee – the person or entity that receives the property placed in the trust and holds it for the benefit of the beneficiaries or for specified charitable purposes, in accordance with the trust’s terms and legal requirements.
- ☑ Beneficiary/ies – the individuals entitled to benefit from the trust. Their rights related to the property are generally determined by the terms and nature of the trust. In Malta, a beneficiary has the right to sell, charge, transfer, or otherwise manage their interest in the trust, subject to the trust’s stipulations.
- ☑ Protector – the individual that holds certain supervisory powers over the trust’s administration.

6. Benefits of setting up a Trust

There are several reasons why one might choose to establish a Maltese trust, including the following:

- ☑ To prevent the property of a deceased person from passing directly to adult children, who would then have complete freedom to deplete the assets as they wish.
- ☑ To preserve and grow family wealth in a tax-efficient manner, helping to avoid the division of assets into smaller, less effective shares across generations.
- ☑ An individual can consolidate their estate into a trust, which will be administered and managed by a Trustee for the benefit of the beneficiaries.
- ☑ The assets within the trust are protected and kept separate from the personal assets of the Trustee, providing an additional layer of protection against insolvency or bankruptcy.
- ☑ There is tax transparency on the income distributed to the beneficiaries.
- ☑ The trust deed can be customized to meet specific desires and requirements.
- ☑ Creditors of the settlor have no recourse to the property held in the trust.

7. Trust Formation Use Cases

Trusts are versatile legal structures that serve various purposes in estate planning and asset management. Individuals often establish trusts to take advantage of their benefits, such as safeguarding assets and ensuring a smooth transfer of wealth.

One primary reason people set up trusts is for estate planning. This allows them to control how their assets are distributed in a tax-efficient manner. Additionally, trusts provide protection from creditors and lawsuits, creating a secure environment for wealth. They also play a vital role in managing the financial affairs of minors or individuals with special needs, ensuring their long-term welfare. Another important use of trusts is facilitating charitable giving, enabling individuals to support causes that are meaningful to them.

Trusts are also essential in business succession planning, allowing for a seamless transition of ownership. Furthermore, they offer privacy by keeping asset distribution details confidential. These diverse applications illustrate the flexibility and effectiveness of trusts in meeting various financial and family goals.

Before establishing a trust, it is crucial to consult with legal and financial professionals to ensure that it aligns with your specific objectives and circumstances. Trusts can be complex legal instruments, and the appropriate structure depends on individual needs and goals.

B. FIDUCIARY SERVICES

1. History of Fiduciary Obligations in Malta

The Maltese legal system is based on a codified Civil law framework, with its origins rooted in Roman law. The concept of fiducia, derived from Roman law, is reflected in the rules governing mandates, deposits, and various contracts and quasi-contracts, all of which emphasize the principles of good faith and a high standard of diligence.

In 2003, Malta introduced the concept of fiduciary obligations for directors. The following year, the country officially implemented a robust trust regime through Act XIII of 2004. In 2007, the introduction of foundations further strengthened this framework. By that time, there was a well-established culture and application of fiduciary obligations, especially concerning the duties of directors and administrators of trusts and foundations.

2. Source of a Fiduciary Obligation

The concept of fiduciary obligations is addressed in the Civil Code, specifically in Sub-title VII, titled “Of Fiduciary Obligations.” This section consists of two articles: Article 1124A and Article 1124B.

Article 1124A defines fiduciary obligations and outlines the circumstances under which they arise. Sub-article 1 specifies that fiduciary obligations can stem from “law, contract, quasi-contract, trusts, assumption of office, or behaviour.” While these sources may appear specific, they are integral to many legal obligations. For example, a contract creates a legal obligation, but not all contracts necessarily establish a fiduciary obligation.

In essence, the sources of fiduciary obligations include:

- ☑ **Office:** Fiduciary obligations can arise from holding a specific office, such as being a director of a company.
- ☑ **Obligation:** These obligations may also come from interactions between two or more individuals. For instance, a mandate occurs when person A engages person B to manage something related to A’s property, or in a deposit agreement where the depositor entrusts an object to a depository.
- ☑ **Legal Institution:** This is particularly relevant in the context of trusts, where a trustee has a fiduciary obligation to the beneficiaries, requiring the trustee to manage the property in the best interests of those beneficiaries.
- ☑ **Legal Person:** This applies mainly to foundations, where fiduciaries are appointed as administrators to manage property without holding ownership rights.

3. When does a Fiduciary Obligation arise?

Article 1124A outlines in which circumstances a fiduciary obligation is created:

- “(a) owes a duty to protect the interests of another person; or
- (b) holds, exercises control or powers of disposition over property for the benefit of other persons, including when he is vested with ownership of such property for such purpose; or
- (c) receives information from another person subject to a duty of confidentiality and such person is aware or ought, in the circumstances, reasonably to have been aware, that the use of such information is intended to be restricted.”

The first sub-article addresses situations where an individual is not looking out for their own interests but rather for those of another person. In this case, an obligation arises, requiring one to be selfless, impartial, and without any intention to derive personal benefit from the situation. This sub-article is often relevant when parents manage their children’s assets.

The second sub-article pertains to property and is typically invoked in contexts such as setting up a trust, where ownership of the property is transferred to a trustee. However, this sub-article deliberately does not directly mention trusts; it is applicable in any scenario where an individual is holding or controlling property that belongs to someone else. This sub-article should be connected to the first sub-article, as there is an implied obligation to protect the property in question. A practical example is setting up an escrow account. By agreeing to establish an escrow account, one becomes a fiduciary for the creditor according to the escrow agreement, even though their duties ultimately lie with the client. Another example is the role of a company director: when an individual assumes this position, they control the company’s property but cannot use it for personal benefit.

The third sub-article deals with situations where an individual receives confidential information, which is essentially treated as property. This sub-article is linked to the second and, consequently, to the first sub-article, as the information/property must be safeguarded. The intent behind this sub-article is to prevent the holder of the secret from disclosing it or using it for personal gain, unless it is for the benefit of the person who provided the secret, who is ultimately entitled to benefit from it.

4. Duties of a Fiduciary

Article 1124A(4) goes on to mention that apart from carrying out his obligations with utmost good faith, the fiduciary is bound:

- “(a) to exercise the diligence of a bonus pater familias in the performance of his obligations;
- (b) to avoid any conflict of interest;
- (c) not to receive undisclosed or unauthorised profit from his position or functions;
- (d) to act impartially when the fiduciary duties are owed to more than one person;
- (e) to keep any property as may be acquired or held as a fiduciary segregated from his personal property and that of other persons towards whom he may have similar obligations;
- (f) to maintain suitable records in writing of the interest of the person to whom such fiduciary obligations are owed;
- (g) to render account in relation to the property subject to such fiduciary obligations; and
- (h) to return on demand any property held under fiduciary obligations to the person lawfully entitled thereto or as instructed by him or as otherwise required by applicable law.”

This list is not exhaustive; therefore, additional fiduciary obligations may exist beyond those specified above.

5. Segregation of Assets

Article 1124B(2) establishes an important principle regarding fiduciary assets. It clearly states that the personal patrimony of a fiduciary is completely separate from the fiduciary patrimony. This separation ensures that fiduciary assets will never become part of the fiduciary’s personal estate, which is advantageous since these assets cannot be impacted by the fiduciary’s bankruptcy or legal actions against them.

Furthermore, Article 1124B(2) specifies that fiduciary property is not subject to the claims or rights of the fiduciary’s personal creditors, nor those of their spouse or heirs. This provision protects the fiduciary assets that belong to the beneficiary from being absorbed into the fiduciary’s personal account.

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