



Private Foundations in Malta

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The Foundation

- Not new to the legal system in Malta
- No Law until now, BUT Foundations have been used in a number of contexts
- Legality based solely on judicial pronouncements
- New Law now creates certainty and a well-defined legal structure

What is a Foundation?

- A Foundation is an organisation with separate legal personality
- Constituted in writing - including by means of a will
- Consists of money or property
- Assets used for a specific purpose **or** for the benefit of private individuals
- Assets entrusted to the administration of a designated person/s



Purpose Foundations

- A Foundation established exclusively for a lawful purpose including a charitable, philanthropic or other social purpose without beneficiaries
- Enrolling with the Office of the Commissioner for Voluntary Organisations in Malta



The Commissioner for Voluntary Organisations

Commissioner for Voluntary Organisations appointed by the Minister responsible for Social Policy. Responsibilities include:

- Providing information and guidelines to VOs and voluntary workers
- Making recommendations to the Minister on legislation and policies
- Investigating complaints relating to VOs
- Monitoring VOs to ensure accountability, transparency and compliance with law



Purpose Foundations *continued*

Enrolled VOs may:

- Make public collections
- Benefit from grants, sponsorships from the Government or the VOs Fund
- Be the beneficiary of any policies supporting voluntary action developed by the Government
- Be a party to contracts with the Government for the achievement of purpose



Purpose Foundations *continued*

Examples of Purpose Foundations in Malta:

- The Eden Foundation
- Arka Foundation
- Richmond Foundation
- Malta Cancer Foundation

Private Foundations

A Foundation established for the private benefit of one or more persons.

Private Foundation must name:

- The **class of persons** entitled to benefit; or
- The **person/s entitled** to benefit (Beneficiary Statement)



Set Up of a Foundation

A Foundation must be constituted by means of a Public Deed or by a will.

The Foundation Deed must contain the following:

- The name of the Foundation
- The Registered Address
- The Purposes or Objects
- Its Constitutive Assets
- Composition of the Board of Administration
- The Legal Representation
- The Term – may not be longer than 100 years



Incorporating the Foundation

- The Public Deed must be registered by a Notary with the Registrar for Legal Persons
- The Deed still remains confidential



Confidentiality

- Registrar of Legal Persons is obliged by law to ensure the privacy of Private Foundations
- Documents are not available to third parties unless such parties obtain consent from the Administrators to view records



Costs and Endowment

- Initial Costs include Notarial fees, Registration fees and possible Administrators' fees
- Deed must contain an endowment worth at least 1164.69 Euro
- Further endowments by the Founder or any other person with Founder's consent at any time – must inform Registry

Legal Personality of the Foundation

- Once registered, the Foundation obtains Legal Personality having a patrimony of its own
- Vested with its own assets and burdened with its own obligations
- Sue and be sued in its own name
- Legal and judicial representation



The right to Trade

- May not be established to trade, BUT
- May own commercial property or a shareholding in a profit making company



The Founder

The Person who establishes the Foundation:

- May exercise supervision over the administration
- May intervene in the manner of appointment of Administrators
- May intervene in the disposal of assets

The Founder continued

- May be an Administrator
- May be the Beneficiary of a Private Foundation during his lifetime
- May add, substitute or remove beneficiaries
- May freely amend the Deed – this must be done by means of another Public Deed



Administrators

- May either be natural persons or legal persons (having at least 3 directors)
- Owe fiduciary duties
- Administrators of Private Foundations - authorised to act by the MFSA
- A Private Foundation may have only one Administrator
- May be remunerated from the income or capital



Administrators *continued*

- May be granted the power to add or remove Beneficiaries
- May be granted the power to decide **which** Beneficiaries are entitled to benefit, the **quantity** of any benefit, **at what time** and in what **manner** Beneficiaries are to benefit



Accounts

- The Administrators of the Foundation must keep Accounts
- Not as yet any obligation to have Accounts of Private Foundations filed
- Minister may make regulations in the future establishing forms/content of Accounts and any filing requirements



Supervisory Council/Protector

- Deed may provide for the establishment of a Supervisory Council
- Independent - having the power to supervise the acts of Administrators
- Act or discretion of Administrators may be subject to the consent of the Supervisory Council



Beneficiaries

- Benefit personal to the Beneficiary
- Upon death of a Beneficiary the entitlement due to that Beneficiary will terminate
- Persons not yet conceived at the time of creation of a Foundation may be named as beneficiaries but rights only arise once born viable
- Subject to the terms of the Deed, Beneficiaries may request information



Beneficiaries *continued*

A person who may be appointed a Beneficiary in terms of a power or discretion granted to the administrator **shall not enjoy any rights in relation to the Foundation** or vis a vis the Administrator and shall **not be considered a Beneficiary until appointed** a beneficiary by the administrator.



Beneficiaries *continued*

Terms may be included in the Deed that:

- Contemplate the termination of the Beneficiary's interest
- Restrict the alienation of the Beneficiary's interest
- Make Beneficiary's interest subject to termination in the event of the Beneficiary becoming bankrupt

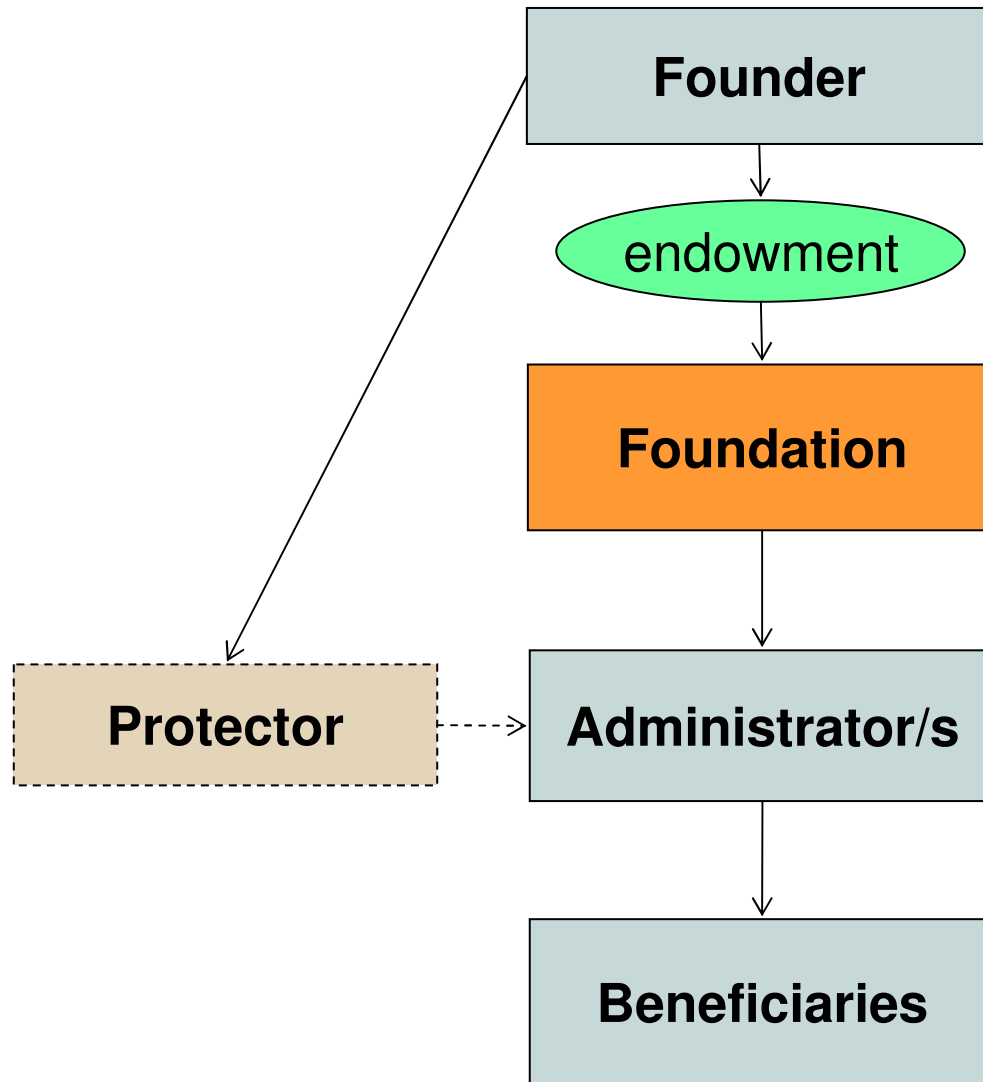


Beneficiary Statement

- Names of the beneficiaries need not be stated in the Deed but in a “Beneficiary Statement”
- Beneficiary Statement will indicate the names of beneficiaries and Deed will only state that the Foundation is created “for the benefit of Beneficiaries”
- Beneficiary Statement must be signed by the founder, addressed to the Administrators and authenticated by the Notary
- Beneficiary Statement is a secret document kept in the records of the Notary



Parties to the Foundation



Revocation of a Foundation

- Permissible to terminate a Private Foundation prior to the term for which it is established - if all beneficiaries demand this
- If the Founder is still alive his consent is also be required
- Founder may in the Deed exclude such a right of the Beneficiaries
- Deed may determine how the assets remaining in the Foundation are to be distributed on termination



Foundations in Practice

Foundations may be used:

- As an **estate planning** vehicle – preserving family wealth, confidentiality and providing continuity to 2nd and 3rd generations
- As an **asset protection** vehicle



Foundations in Practice *continued*

- As a vehicle through which to care for persons with **special needs**
- To **manage payments of money/distribution of assets** to family and provide for education, housing maintenance or profit sharing in the family
- To **hold shares** in companies both local and foreign



Foundations in Practice *continued*

- As a vehicle for the collection of **royalties**
- As a vehicle to **invest** in shares/bonds
- As a vehicle to **own real estate** or other assets of considerable value
- To manage **pension plans** for employees



Great Prospects for Foundations in Malta

- Law still relatively new
- More familiarity with the Foundation and more practical certainty to be obtained in general by service providers, the Registries and prospective users of this vehicle
- Private Foundation will take-off in Malta as this has already occurred in countries such as the Principality of Liechtenstein, Panama and Bahamas.

