

Invariably, the accumulation of wealth carries the need to protect assets. In this regard, offshore Trusts can provide a wide range of benefits to individuals or companies.

A Trust is established by the disposition of property, either between living persons in terms of a will or by the declaration of the Trustee that he is holding the property in Trust. To be valid, it must be evidenced by a deed which states:

- The name of the trustee
- The intention of the settlor to create a Trust or a declaration by the trustee that he holds the property in trust
- The object of the Trust or the beneficiaries of the Trust
- The property transferred or held in trust
- The duration of the Trust

Except with the approval of the Prime Minister, a Trust may not hold immovable property in Mauritius, in the case where the beneficial interest is held by non-citizens.

## MAURITIAN TRUSTS

Mauritian Trusts are governed by the Trusts Act 2001. A Trust formed under this Act has the following features:

- It can be formed by a resident or non-resident of the island.
- There is no requirement to register the trust with any registrar.
- It is a very flexible vehicle and can be formed as a **life interest trust**, a **discretionary trust**, a **purpose trust**, a **charitable trust**, a **protective trust** or an **asset protection trust**.
- It can have a Protector and a purpose trust must have an Enforcer.
- It can have a managing trustee in Mauritius and a custodian trustee in another jurisdiction.
- The forced heirship rules of other states will not be enforced by courts in Mauritius.
- The Settlor can be a beneficiary of the Trust, but may not be the only beneficiary.

## REASONS TO ESTABLISH A TRUST

A lack of proper planning can be both costly and time consuming to manage.

There are many reasons to establish fiduciary vehicles, and these include:

- Tax planning
- Wealth preservation
- Probate avoidance
- Estate planning
- Financial privacy
- Flexibility and confidentiality
- Ability to hold any type of asset

## KEY FEATURES

- A Trust can be a tax resident or a tax exempt entity.
- Trusts resident for tax can access double taxation agreements.
- There may be up to four Trustees, at least one of which should be resident in Mauritius.
- A Trust is protected in the event of bankruptcy or action by creditors, subject to safeguards against abuse (intent to defraud).
- The Court is unlikely to enforce a foreign judgement in the respect of heirship or marital disputes.
- A Trust may be publicly registered, but there is no statutory requirement to do so.

# TRUSTS

## TRUSTEE

At least one Trustee must be a qualified Trustee, licensed by the FSC. LC Abelheim Ltd is a qualified Trustee. A maximum of four Trustees is allowed.

## SETTLOR

Any person who has the legal capacity to contract may create a Trust. A Settlor may be a Trustee, Beneficiary, Protector or enforcer of the Trust but may not be the sole Beneficiary.

## BENEFICIARIES

The Beneficiaries of a Trust must be identifiable by name or ascertainable by reference to a class of persons or by relationship to another person. The terms of the Trust may provide for the addition and removal of beneficiaries at any time.

## DURATION OF THE TRUST

The Trust period cannot exceed more than 99 years, except in the case of a Charitable Trust where it may be of perpetual duration. In the case of a non-charitable purpose, the duration may not exceed 25 years.

## MIGRATION OF TRUSTS

Trusts established in other jurisdictions can be migrated to Mauritius, simply by ensuring that the majority of Trustees are resident in Mauritius and that the Trust is administered in Mauritius. Depending on the terms of the original Trust, the proper law of the Trust can be changed to that of Mauritius by a simple declaration by the Trustees in the deed of retirement and appointment.

## ASSET PROTECTION FEATURES

Mauritius legislation includes the following features:

- In the absence of intent to defraud, a Trust shall not be void or voidable as a consequence of a subsequent bankruptcy of the Settlor nor in consequence of any action taken against the Settlor by his creditors.
- Where the creditor has been proven beyond reasonable doubt that the Trust was made with the intent to defraud creditors of the Settlor, the court may declare a Trust to be void or voidable.
- No action may be brought in the above situation if more than two years from the transfer of assets into the Trust has lapsed.

## CONFIDENTIALITY

There is no register of Trusts in Mauritius, nor is there any need for any disclosure of Beneficial Owner to any authority at time of establishment. A Trustee has a requirement under the Act to keep confidential all information concerning the Trust. Under exceptional circumstances, a Trustee may be required to give confidential information to an authorised body or authorised persons under anti-money laundering, prevention of terrorism or prevention of corruption legislation or under the Financial Services Act 2007.

## FORCED HEIRSHIP PROVISIONS

The Mauritian Civil Code has been altered to ensure that the forced heirship provisions only relate to Trusts settled by Mauritian subjects or relating to property situated in Mauritius and subject to Mauritius national laws.

## TAXATION

Trusts with non-resident Settlers and Beneficiaries are exempt from tax if the election is made. Or, if no election is made, at an effective rate of 3% of their net income, after deductions for expenses; unless an election is made to be deemed non-resident and be exempt from tax. Resident Trusts enjoy the benefits of Mauritius's many favourable tax treaties. Trusts for residents are taxable at 15% on their net income after deductions for expenses.

**“SOMEONE’S SITTING IN THE SHADE TODAY BECAUSE SOMEONE PLANTED A TREE A LONG TIME AGO.”**

**- WARREN BUFFETT**

## DISCRETIONARY TRUST

Most common and flexible type of trust. No beneficiary has an automatic right to income or capital as it arises. The trustees have the power to decide who (from a class of beneficiaries named in the trust document) should receive the capital or income from the trust.

## PURPOSE TRUST

May be created for a purpose other than charitable. Purpose must be specific, reasonable and capable of fulfilment. Must have an enforcer capable of enforcing the terms of the trust. Must provide for disposition of assets upon termination. May be of perpetual duration.

## CHARITABLE TRUST

Its purpose must be beneficial to the public in general. Such as:

- The relief of poverty
- The advancement of education
- The advancement of religion
- The ongoing protection of the environment
- The advancement of freedoms and human rights

REGULATED BY THE FINANCIAL SERVICES COMMISSION OF MAURITIUS

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