

Mauritius Trusts

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Trusts

Mauritius Trusts are governed by The Trusts Act 2001 (the "Act"). A trust is a flexible vehicle which can be structured to achieve a number of objectives, including asset protection, wealth preservation and continuity.

Uses of Trusts

A Trust has a wide variety of uses and benefits, which may include:

- Asset protecting and ring-fencing
- Estate planning / transmission
- Asset holding/ Immovable Property

Establishment of a Trust

Upon set up of a Trust, the settlor will transfer assets or some sort to a Trustee, to be held in Trust for the benefit of the beneficiary. The assets will be managed by the Trustee according to the terms of a deed for the benefit of the beneficiaries.

The trust is usually set up with a Trust Deed setting out the terms of the trust, the powers and the duties of the Trustees, the rights of the beneficiaries and the appointment of a protector or/and enforcer.

Types of Trust

There are different types of Trusts. The choice of a type of Trust will be decided after discussion between the client and the Trustee, having regard to the overall objectives of the Trust.

1. Discretionary Trust

- It is the most common type of trust used which permits the Trustee to appoint additional beneficiaries or to remove existing beneficiaries at the Trustee's discretion.
- It also permits the Trustee to distribute income and capital of the Trust to beneficiaries at their sole discretion.
- The settlor can provide the Trustee with a letter of wishes for guidance to the latter on the administration of the trust fund upon the demise of the settlor, but may not prescribe to the Trustee any action that they should take.
- Duration: This type of trust shall not exceed 99 years from the date of its coming into existence and may be terminated earlier.

2. Purpose Trust

- A Mauritius trust may be created for a specific purpose other than a charitable purpose, notwithstanding the absence of any beneficiary.
- The purpose must be specific, reasonable and capable of fulfilment; not immoral, unlawful or contrary to public policy.
- A purpose trust must have an enforcer who is capable of enforcing the terms of the trust.
- The instrument creating the trust must provide for the disposition of the assets upon its termination.
- Duration: A purpose trust whether charitable or not, may be of perpetual duration.

3. Charitable Trust

- A purpose trust can be set up for charitable purposes.
- A charitable trust must have as their exclusive purpose one or more of either:
 - (i) the relief of poverty
 - (ii) the advancement of education
 - (iii) the advancement of religion
 - (iv) the protection of the environment
 - (v) the advancement of human rights and fundamental freedoms
 - (vi) any other purpose beneficial to the public in general
- Duration: The Charitable Trust may be of perpetual duration.

4. Private Trust Company

- A Private Trust Company (PTC) is a company formed to serve as Trustee to a number of trusts, either for the benefit of a single family, or for distinct (but related) family groups.
- The PTC takes on the trusteeship of the various family trusts and act as the registered owner of their assets.
- A PTC provides:
 - (i) an elegant solution for a family situation where a greater degree of control over Trust assets is required
 - (ii) flexibility in investment decision making process and allows members of succeeding generations to sit on the Board and take part in running the family business.
- A PTC can be a Category 1/Category 2 Global Business Licence Company (GBC 1/ GBC 2).

Trustee

- The Trustees must administer the Trust and must execute their functions in accordance with the Act, the trust deed and in the interest of the beneficiaries.
- At least one Trustee of a Mauritius Trust must be a qualified Trustee.
- A qualified Trustee is one licensed by the Financial Services Commission (FSC) to carry out trust business.
- Subject to the foregoing, a settlor may be one of the trustees. The number of trustees may not exceed four.

Settlor

- A settlor can be a natural person or a body corporate.
- A settlor can also be a beneficiary, a protector, a trustee or an enforcer.
- The settlor cannot be the sole beneficiary of a trust.

Beneficiaries

- A beneficiary means a person, whether natural or corporate entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised.

Protector

- Any person of full age or anybody corporate, any firm, partnership or group of persons may be appointed as protector. The settlor, the trustee or a beneficiary may also be the protector.
- Unless otherwise provided in the terms of the Trust, a Protector shall have the following powers:
 - (i) Remove a Trustee and to appoint a new or additional Trustee
 - (ii) Determine the law of which jurisdiction shall be the proper law of the Trust
 - (iii) Change the forum of administration of the Trust
 - (iv) Withhold consent from specified actions of the Trustees either conditionally or unconditionally

Taxation

- Trusts are liable to income tax on its chargeable income.
- The Trust may deposit a declaration of non-residence for any income year to the Mauritius Revenue Authority within 3 months after the expiry of the financial year end:
 - (i) There is no withholding tax on distribution from a Trust
 - (ii) Distribution from a Trust is not taxable in Mauritius
 - (iii) Solidarity levy of 25% [on excess of MUR 3M] applies on distribution if the beneficiary is resident in Mauritius if its aggregate income exceeds MUR 3.5M

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.

HOW SAB&T IFC CAN HELP?

- Preparation and Review of Trust Deed
- Establishment of the Trust
- Provision of Trusteeship services
- Provision of Administration, Accounting and Tax services

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