

# Key Facts Trusts

Mauritius trusts are regulated by the Trusts Act 2001, the Code Civil Mauricien, and the common law relating to trusts.

## The Trust Instrument

A trust must be created by an instrument in writing and contain the name of the trustee, the intention of the settlor to create a trust, the object of the trust, the names of the beneficiaries or class of beneficiaries (if not discretionary), the property transferred or held on trust and the duration of the trust. A trust shall become completely constituted only at the time when the property settled in the Mauritius trust is fully vested in the trustee.

## The Settlor

A settlor can be any person who has legal capacity to contract and is of sound mind. The settlor may be a beneficiary, a protector or an enforcer, but cannot be the sole beneficiary to the trust of which he is the settlor. Where a non-citizen transfers or disposes of assets to a trust, this transfer or disposition cannot be set aside, avoided or declared invalid on the basis that the disposition or transfer is in breach of the local law of the settlor's domicile or nationality in relation to inheritance or succession.

## Duration of Trust

A Mauritian trust, other than a purpose trust, is limited to 99 years in duration. A purpose trust, whether charitable or not, may be of perpetual duration.

## Beneficiaries of a Trust

Beneficiaries must be identified by name or ascertainable by reference to a class or relationship to another person.

## Trustee

A trust must have, at all times, at least one qualified trustee (a management company licenced by the Financial Services Commission). Trident Trust Company (Mauritius) Limited is a qualified trustee.

A trustee may be required, under the terms of the trust deed, to disclose details of the trust property and the conduct of the trust administration to the settlor, the enforcer or the protector unless the trustee has reason to believe that such person making the request is under duress. The trustee will make this information available only to the court or a judge in chambers for the production of any confidential information, where the court has on application by the Director of Public Prosecutions, and on proof beyond reasonable doubt, that the confidential information is bona fide required for the purpose of any enquiry or trial into either:

- Trafficking of drugs
- Economic crime and money laundering
- Any act deemed an offence of trafficking or an economic crime and/or money laundering in Mauritius or elsewhere

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This disclosure shall be without prejudice to any of Mauritius' obligations under any international treaty, convention or agreement, and/or to the obligations of any public sector agency under any international arrangement.

## Enforcer

The role of an enforcer is connected to a purpose trust. His duty shall be to enforce the trust in accordance with its terms and purposes. No person shall at any time act as both trustee and enforcer of the same trust. An appointment as enforcer shall be effective when the appointment has been accepted by the enforcer. An enforcer may resign from his office by the delivery of a notice in writing to the trustee.

## Protector

The terms of the trust may provide for the office of protector of a trust whose function shall be to advise the trustee. Subject to the terms of the trust, the protector may exercise the following specific powers:

- Remove a trustee and appoint a new or additional trustee
- Determine which jurisdiction's law shall be the proper law of the trust
- Change the forum of administration of the trust
- Withhold consent of specific actions of the trustee either conditionally or unconditionally

The protector may also be a settlor or beneficiary of the trust.

## Letter of Wishes

A settlor, a beneficiary, or a member of a class of beneficiaries may give to the trustee a letter that sets out their wishes on the exercise of any functions conferred on the trustee by the terms of the trust.

## Income Tax

Under the Income Tax Act, a trust in Mauritius shall be deemed to be tax resident in Mauritius if:

- The trust is administered in Mauritius and a majority of the trustees are resident in Mauritius
- The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed
- A majority of beneficiaries or class of beneficiaries appointed under the terms of the trust are resident in Mauritius

Trusts that are considered to be resident in accordance to the above definition of residence will be liable to tax in Mauritius on their worldwide income.

However, a trust shall be deemed to be non-resident in Mauritius if its central management and control occur outside Mauritius. The determining conditions for a trust to have its central management and control outside Mauritius include:

- The settlor of the trust was not resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust; and
- A majority of the beneficiaries or class of beneficiaries appointed under the terms of the trust are not resident in Mauritius

A trust that throughout an income year is non-resident, shall be liable to tax only on its chargeable income attributable to its Mauritian source income (if any).

A trust shall, on an annual basis, submit an annual return of income to the Mauritius Revenue Authority.

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A trust can opt to hold a Category One Global Business Licence under the Financial Services Act 2007.

Mauritian trusts are considered to be irrevocable by the settlor unless the trust instrument contains provision allowing for revocability. A trust may be declared void where it is established with the intent to defraud persons who are creditors of the settlor at the time when the trust property was vested in the trustee. Mauritian courts will not recognise the validity of any judgement to any claim against trust property made by another jurisdiction in respect of personal proprietary consequences of marriage, succession rights or the claim of creditors in an insolvency.

## Registration of the Trust

A Mauritian trust is not registered with any governmental body. A settlor may opt to register a trust with the Mauritius Registrar General.

The trustee must keep accurate accounts and records of a trust. Records are kept for a period not less than seven (7) years after the final distribution is made under a trust.

The qualified trustee must keep a register of the names and last known addresses of each beneficiary, the settlor, the protector and the enforcer. Such information is kept confidential and is made available to the Financial Services Commission upon request only. The register is not publicly available.

## Advantages of Creating a Trust

- A settlor may manage duty payable on the value of his trust assets should these be held in an offshore trust upon his death, as opposed to these assets held in his personal name

- A settlor may reduce the residence-based, worldwide cost payable on the investment income accrued by a trust where the beneficiaries are clearly defined

- An estate may be preserved from an attack from creditors, any professional negligence claims or insolvency of the settlor

- Trusts offer a high degree of confidentiality; the details of the trust are only disclosed by order of the Mauritian Supreme Court

- A trust is not subject to capital gains tax in Mauritius, unless gains are derived from the disposal of immovable property in Mauritius

- Devolution of the settlor's estate can take place without the drawn-out, complicated and expensive administration as required by probate or administration procedures

- Forced heirship rules can be avoided

- A trust can be migrated to another jurisdiction should the financial need arise

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## Summary

|                             |   |
|-----------------------------|---|
| <b>Legislation</b>          | Trusts Act 2001   |
| <b>Creation of Trust</b>    | By a disposition of property <i>inter vivos</i> or by will, and can be created only by an instrument in writing   |
| <b>Usual Forms of Trust</b> | - Settlement<br>- Declaration of Trust  |
| <b>Registration</b>         | None required   |
| <b>Duration</b>             | - Except for a purpose trust, may not exceed 99 years<br>- A purpose trust, whether charitable or not, may be perpetual   |
| <b>Trustee</b>              | - The trust must have at least one "qualified trustee" at all times   |
| <b>Qualified Trustee</b>    | A management company (like Trident Trust Company (Mauritius) Ltd), or such other person resident in Mauritius as authorised by the Financial Services Commission                              |
| <b>Settlor</b>              | - Cannot be the sole beneficiary of the trust of which he is a settlor<br>- May be any person who has the legal capacity to contract  |
| <b>Property</b>             | Cannot consist of any immovable property situated in Mauritius if beneficiaries of the trust are not citizens of Mauritius unless prior approval is received from the prime minister's office |
| <b>Beneficiaries</b>        | - Must be identified by name or by reference to a class<br>- Settlers may also be beneficiaries<br>- No settlor can be the sole beneficiary   |
| <b>Letters of Wishes</b>    | May be provided, but a trustee is not bound by same   |

|                   |   |
|-------------------|---|
| <b>Protector</b>  | - Is allowed<br>- Unless otherwise provided in the trust deed, the protector may: <ul style="list-style-type: none"> <li>▪ Remove a trustee and appoint a new or additional trustee</li> <li>▪ Determine which jurisdiction's law will be the proper law of the trust</li> <li>▪ Change the forum of administration of the trust</li> <li>▪ Withhold consent from specified actions of the trustee either conditionally or unconditionally</li> </ul>   |
| <b>Disclosure</b> | No disclosure is allowed except to the settlor, the protector or the beneficiaries (if the trust deed terms permit), or by court order  |
| <b>Taxation</b>   | - Under the Income Tax Act, a trust in Mauritius shall be deemed to be tax resident in Mauritius if: <ul style="list-style-type: none"> <li>▪ The trust is administered in Mauritius and a majority of the trustees are resident in Mauritius; or</li> <li>▪ The settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed</li> <li>▪ A majority of beneficiaries or class of beneficiaries appointed under the terms of the trust are resident in Mauritius</li> </ul> - Trusts considered resident will be liable to tax in Mauritius on their worldwide income<br>- A trust shall be deemed non-resident if its central management and control occur outside Mauritius<br>- See page 2, "Income Tax" section for further details |

# Offices

## The Americas/Caribbean

### Bahamas

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### Canada

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### Meridian Trust Company Ltd

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### Trident Fund Services, Inc

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