

Key Facts Trusts

Mauritius trusts are regulated by The Trust 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 only become completely constituted at the time when the property settled in the Mauritius Trust is fully vested in the Trustees.

The Settlor

A Settlor is any person who has legal capacity to contract and may be a Trustee, Beneficiary, Protector or Enforcer. The Settlor cannot be the sole Beneficiary to the trust of which he is the Settlor. Where a non-citizen transfers or disposes of property on trust, this transfer or disposition cannot be set-aside on the basis that the disposition or transfer is in breach of the local law of the Settlor's domicile or nationality.

Duration of trust

A Mauritian trust is limited to 99 years in duration.

Beneficiaries of a trust

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

Trustees

- The trust may provide for the appointment of a Trustee who can either be a person of full age who has legal capacity to contract, or alternatively be a corporate permitted under its statute to act as Trustee. The trust instrument may appoint a Custodian Trustee or a Managing Trustee. The number of Trustees cannot exceed four. At least one has to be a qualified Trustee (a management company licenced by the Financial Services Commission).
- The Trustee may be liable 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 is making the request under duress. The Trustees will only make the information available 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 prosecution, and on proof beyond reasonable doubt that the confidential information is bone 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 economic crime and money laundering in Mauritius or elsewhere
- This disclosure shall be without prejudice to any of Mauritius' obligations under any international

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treaty, convention or agreement, and to the obligations of any public sector agency under any international arrangement.

Protector

- The trust may provide for the Office of Protector of a trust whose responsibility is to advise the Trustee of the trust. Subject to the terms of the trust, the Protector may exercise the following specific powers:
 - Remove a Trustee and appoint a new additional Trustee
 - Determine the law of which jurisdiction shall be proper law of the trust
 - Change the forum of administration of the trust
 - Withhold consent of specific actions of the Trustees either conditionally or unconditionally
- The Protector may also be a Settlor, Trustee, or Beneficiary of the trust.

Letter of wishes

A Settlor, Beneficiary, a member of a class of Beneficiaries or a Trustee may give to the Trustees a letter which sets out their wishes on the exercise of any functions conferred on the Trustees of the trust.

Income Tax

- The Trust Act 2001 amends the Income Tax Act, and allows for a trust to become exempt from income tax in respect of that income year provided that the Settlor and Beneficiaries appointed under the terms of the trust are non-resident, or throughout an income year the Beneficiaries hold a Category One or Category Two Global Business License under the Financial Services Act 2007 and a declaration of non-residence for an income year is deposited with the commissioner within three months after the expiry of the income year.

- 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 propriety 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.
- Careful advice and planning is required when deciding to utilise a trust for the purposes of preserving investment income. With correct planning a trust registered in Mauritius can be beneficial to clients.

Advantages of Creating a Trust

- A Settlor may save estate duty payable on the value of his trust assets should these be held in an offshore trust as opposed to his personal name upon his death.
- A Settlor may reduce residence-based, worldwide income tax 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 from any professional negligence claims or insolvency of the Settlor.
- A high degree of confidentiality in the details of the trust are not disclosed to anyone unless by order of the Mauritian Supreme Court.

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- The 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.
- The trust can be migrated to another jurisdiction should the financial need arise.
- The trust is not subject to exchange control.

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Summary

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| Legislation | Trust Act 2001 |
| Creation of Trust | By a disposition of property <i>inter vivos</i> or by will and can only be created by an instrument in writing |
| Usual Forms of Trust | - Settlement - Declaration of Trust |
| Registration | None required |
| Duration | - Except for a purpose trust, duration may not exceed 99 years - A charitable trust may be of perpetual duration - A non-charitable purpose trust may not exceed 25 years |
| Trustee | - At any one time, the trust must have at least one "qualified Trustee" - The number of Trustees shall not exceed four |
| Qualified Trustee | Management company (like Trident Trust Company (Mauritius) Ltd), or such other person resident in Mauritius as authorised by the Financial Services Commission |
| Settlor | - Cannot be the sole Beneficiary of the trust of which he is a Settlor - May be any person who has the legal capacity to contract |
| Property | Cannot consist of any immovable property situated in Mauritius if the Beneficiary of the trust is a not a citizen of Mauritius unless prior approval is received from the Prime Minister's office |
| Beneficiaries | - Must be identified by name or by reference to a class - Trustees and Settlers may be one of the Beneficiaries - Settlor or Trustee cannot be sole Beneficiary |

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| Protector | - Is allowed - Unless otherwise provided in the trust deed, the Protector may: <ul style="list-style-type: none"> ▪ remove a Trustee and to appoint a new or additional Trustee ▪ determine the law of which jurisdiction will be the proper law of the trust ▪ change the forum of administration of the trust ▪ withhold consent from specified actions of the Trustees either conditionally or unconditionally |
| Letters of Wishes | May be provided, but Trustees are not bound by the same |
| Disclosure | No disclosure is allowed except to the Settlor, the Protector or the Beneficiaries (if the terms of the trust deed permits), or by court order |
| Taxation | - A Mauritius Foreign Trust is a trust where the settlor and the beneficiaries are not resident in Mauritius. Such trusts are not subject to taxation in Mauritius. - In accordance with section 46(3) of the Income tax Act 1995, a trust qualifies for exemption from income tax in Mauritius by filing a declaration of non-residence for any income tax. - To qualify the Settlor and/or any of the Beneficiaries should be non-resident in Mauritius throughout an income year. - A trust can opt to hold a Category One Global Business Licence or a Category Two Global Business Licence under the Financial Services Act 2007. |

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