

MAURITIUS OFFSHORE TRUSTS

❖ Trust

- A Trust is an arrangement for the holding and administration of property under which property or legal rights are vested by the owner of the property (the Settlor) in a person or persons (the Trustees).
 - The Trustees then hold the property for or on behalf of other persons (the Beneficiaries).
 - It is essential that the transfer is gratuitous otherwise the transaction takes on the characteristics of some other legal entity.
 - A trust may therefore be defined as an equitable obligation which binds the trustees to hold and deal with the trust assets for the benefit of the beneficiaries in accordance with the terms of the trust.
 - A trustee administers the trusts assets and distributes them to the beneficiaries in accordance with the terms of the trust deed and the proper law of the trust.
- The flexibility and protection afforded by trust arrangements are such that they have become an important part of long term wealth management.
- Through the use of trusts it is often possible for family assets to be preserved over succeeding generations substantially free
 - from taxation,
 - probate requirements,
 - succession laws,
 - expropriation and
 - Foreign exchange controls.
- There is no requirement in Mauritius to register trusts, thereby maintaining confidentiality.
- A corporate structure allows its shareholders to have business conducted, own assets and limit liability. The ability to manage assets through a combination of trusts and companies is proving increasingly valuable and the legislation in force in Mauritius provides an effective framework for the conduct of

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international fiduciary activities and providing services in that respect.

❖ How is a Trust created?

- ❖ Trusts in Mauritius are governed by the Trusts Act, 2001.
 - A trust can only be created by an instrument in writing which should state its
 - object,
 - subject,
 - intention and
 - Duties and powers of the trustees.
 - It can be formed by a resident or non-resident of Mauritius.
 - There is no register of Trusts in Mauritius nor is there any disclosure of beneficial owner to any authority.

❖ Trust created by written documents will generally take two forms:

- Settlement:
 - This form of document will be entered into and signed by both the settler and the trustee and so provide clear evidence of the intentions of both parties and of the agreed obligations assumed by the trustee.
- Declaration of Trust:
 - This form of document is entered into and executed by the trustee only, and records that the trustee has received certain property, specified in the document, to hold upon the terms set out in the document.
- It is sometimes more convenient to create a trust by declaration of trust rather than by settlement, for example, the settler may not be available to sign the document, when it is prepared.

❖ Types of Trust

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- Most offshore trusts fall into four broad categories:
 - Private: including discretionary*, accumulation and maintenance, life interest and fixed interest trusts.
 - Corporate: including pension and employee benefit trusts.
 - Charitable: solely for the benefit of charitable organizations.
 - Purpose: trusts with no beneficiaries that are established for purposes that are certain, reasonable and certain.

❖ **Discretionary Trusts**

- The most common and flexible type of offshore Trust is the discretionary trust and it is used in wealth protection and tax planning.
- The discretionary trust is commonly used when, at the time the trust is established, no decision has been taken as to
 - what portion of the trust's income and capital should be reserved for each beneficiary, and
 - When it is desirable to maintain flexibility in that respect.
 - Under the provisions of a discretionary trust, the trustees are given the power to select
 - which person or persons are to receive a benefit from the trust and
 - The extent of such benefit.
 - They may also have the power to decide whether to distribute income or accumulate it.
 - The trustees very often have the power to add or remove beneficiaries and this gives considerable flexibility to the trust.
- Whilst the trustees of the discretionary trust will usually have the power to determine the beneficiaries of both the capital and income of the trust, and the amounts which they are to receive, **the Settlor will have given the trustees**

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- **guidance as to how they should administer the trust, both**
 - **during the settlor's lifetime and**
 - **after his death**; which will be set out in the
 - **"Letter of wishes"**. This letter can be varied from time to time during the settlor's lifetime to meet changing circumstances.
- A discretionary trust can also include
 - extensive investment powers to meet the requirements of international clients and it
 - Can hold all manner of assets both esoteric and otherwise.
- As this type of trust is very often used in combination with a Global Business company(ies), there will be power for the trustees to
 - establish wholly-owned companies, notwithstanding this,
 - The terms of the trust may provide that the trustees do not need to interfere in the management of such companies.

❖ **Duration, Protector, Asset Protection Trusts**

- **Duration**
 - Non-charitable purpose trusts must have a duration not exceeding 25 years.
 - Charitable purpose trusts can be of perpetual duration.
 - All other trusts must have a duration not exceeding 99 years.

- **Protector**
 - The Trust Act permits the appointment of a Protector, who owes fiduciary duty to the beneficial owners.
 - Unless otherwise provided in the Trust Deed, the Protector can
 - remove the Trustee and
 - Appoint new or additional Trustees.
 - The Protector may also be the Settlor, the Trustee or the Beneficiary of the

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Trust but in his capacity as Protector he is not accounted or regarded as a Trustee.

➤ **Asset Protection Trusts**

- In the absence of intent to defraud, a trust shall not be void or voidable as a consequence of a subsequent bankruptcy of the settler nor in consequence of any action taken against the settler by his creditors.
- The Courts may declare a Trust void or voidable only if the creditor proves beyond reasonable doubt that the Settlor's intent was to defraud creditors.
- No action may be brought against the Trust assets more than 2 years after settling the assets into the Trust.

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❖ **Taxation of Trusts**

- A trust is liable to income tax at the rate of 15% if the Settlor and beneficiaries are non-residents or hold a Category 1 or 2 Global Business license or is a purpose trust.
- However, such trusts will be entitled to the presumed foreign tax credit of the higher rate suffered or 80% of its chargeable income, or may deposit a declaration of non-residence within 3 months after the expiry of the income year, it will then be exempt from income tax.
- Chargeable income shall be the difference between the net income derived by the trust and the aggregate income distributed to the beneficiaries under the terms of the trust. Any amount of income distributed to the non-resident beneficiaries shall be exempt from income tax in the hands of the beneficiaries.
- To be tax resident, a Trust has to apply for a Tax Residence Certificate with the Commissioner of Income Tax, which is delivered under the following conditions:
 - At least one Trustee is resident in Mauritius
 - A bank account is maintained in Mauritius, through which all cash movements are routed.
 - All accounting records are kept with the local Trustee.
 - The local Trustee is a party to all decisions pertaining to the Trust.

❖ **Summary: Main features of Mauritius Trusts**

- Confidentiality of trustee' deliberations, identity of Settlor and Beneficiaries.
- Possibility to establish letters and memorandum of wishes.
- Anti forced heir ship rules.
- Migration of Trust possible.
- Concept of managing and custodian trustee (up to four trustees)
- Charitable Trusts are exempt from tax.
- The proper law of the trust is the one chosen by the Settlor, or the one implied in the Trust Deed. If no law is chosen, the one which is most closely connected at the time of creation of the Trust will be treated as the proper law.
- A resident trust may benefit from the network of Double Tax Treaties.