

GUIDE TO FOUNDATIONS IN MAURITIUS

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PREFACE

This Guide is a summary of the law and procedures relating to the Foundations Act (the **Act**) which was brought into force on 1 July 2012. The existence of a new wealth management product along with the many structuring opportunities that accompany it is likely to be of considerable interest to a wide variety of clients. For this reason it is essential that all private client lawyers and wealth management advisers are familiar with the key features and requirements of a Mauritius foundation as well as some of the many uses to which it can be put.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

1.1 Purpose and Objects

A foundation may be formed in Mauritius or elsewhere, for such purposes and objects as may be provided in its charter. In line with the Act, a foundation may be established by means of a will, and property and rights may be transferred to or endowed upon a foundation.

The objects of a foundation may be:

- charitable or non-charitable, or both;
- for the benefit of a person or a class of persons, or carry out a specified purpose, or both.

1.2 Name

The name of a foundation registered under this Act shall end with the word "Foundation"; or a word in a foreign language which has the same meaning as the word "Foundation". No foundation shall be registered under a name which includes the word "limited" or an abbreviation of the word "limited"; the word "company" or an abbreviation of the word "company"; the word "partnership" or "Société", or an abbreviation of the word "partnership" or "Société"; or a translation of the word "limited", "company", "partnership" or "Société" in the language or practice of any other country which conveys a similar meaning.

Moreover, no foundation shall be registered under a name which is identical to that of an existing foundation, an existing company under the Companies Act or a business registered under the Business Registration Act, or so nearly resembles that name as to be likely to mislead, except where the existing foundation, company or business is in the course of being dissolved and signifies its consent in such manner as the Registrar may require.

Except with the Minister's written consent, no foundation shall be registered under a name which includes:

- the word "Authority", "Corporation", "Government", "Mauritius", "National", "President", "Presidential", "Regional", "Republic", "State", or any other word which, in the Registrar's opinion, suggests, or is likely to suggest, that it enjoys the patronage of the Government, a statutory corporation, or the Government of any other State;
- the word "Municipal" or "Chartered" or any other word which, in the Registrar's opinion, suggests, or is likely to suggest, a connection with a local authority in Mauritius or elsewhere;
- the word "co-operative"; or
- the words "Chamber of Commerce".

Moreover, except with the consent of the court, no foundation shall be registered under a name which, in the opinion of the Registrar, is undesirable or misleading.

A foundation shall ensure that its name is clearly stated in every written communication sent by it or on its behalf and on every document issued or signed by it or on its behalf.

(a) Change of Name

An application to change the name of a foundation shall be in the approved form and subject to its charter or articles (if any) be made by passing a resolution of the council to that effect and filing a copy of the resolution with the Registrar. The Registrar shall then record the new name of the foundation, record the change of name on the foundation's certificate of registration and require the foundation to cause a notice to that effect to be published in such manner as the Registrar may direct.

1.3 Founder

It is important to note that a founder may be a beneficiary of a foundation of which he is the founder. A beneficiary means a person who is entitled to benefit under a foundation or in whose favour a power to distribute any foundation property may be exercised.

1.4 Endowment of Property by a Non-citizen

A founder who is a non-citizen and endows property to a foundation shall be considered to have had the capacity to endow property to the foundation where, at the time of the transfer, he was of full age and sound mind under either the laws of Mauritius; or the laws of his domicile or nationality; or the proper law of the transfer.

Where a non-citizen endows property to a foundation, the transfer shall not be set aside, avoided or otherwise declared invalid or ineffective by virtue of any rule or law:

- of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature;
- restricting the right of a person to dispose of his property during his lifetime so as to preserve the property for distribution at his death, or any rule or law having similar effect.

2. ESTABLISHMENT

2.1 Registration

A founder or executor (in the case of a foundation established by will) may apply for registration of a foundation. The foundation shall have a legal personality upon registration and issuance of a certificate of registration.

2.2 Foundation Established by Will

Where a foundation has been established by means of a will, there shall be only one founder who shall be the testator. Where two or more testators have made concurrent wills establishing a foundation and those wills take effect simultaneously, the testators shall be deemed to be one founder. A council shall be appointed by the executor and on registration of the foundation; the executor shall keep the council informed of the progress of the will periodically (in any case at intervals of not more than 60 days).

Where the registration of a foundation has not been effected after one year since the death of the founder, an application shall be made by the executor to the court for the appointment of an administrator to ensure that the endowment of the property to be the initial assets of the proposed foundation is made in accordance with the will and the proposed foundations is registered under the Act. Upon receipt of the application, the court may appoint an administrator who shall be under the supervision of the court.

The responsibilities of the administrator shall be as follows:

- where there is no council, appoint a council in accordance with the will;
- take such steps, including the institution of legal proceedings in Mauritius or elsewhere, to ensure that the initial assets are, or shall be, duly acquired by the proposed foundation;
- administer, or cause to be administered, conserve and improve in a proper manner, without undue risk, the property to be the initial assets of the proposed foundation in accordance with the terms of the will and conserve and improve such property until such time as it is vested in the foundation; and
- take such steps as are, in his opinion, necessary to ensure that title in the property is properly vested in the foundation.

The court shall terminate the appointment of the administrator when an application for registration has been made and the following is available:

- a list containing the names and addresses of the first officers of the foundation;
- a declaration in writing by a law practitioner, legal consultant or law firm regarding compliance with all the relevant requirements of the Act; and
- a declaration made by the applicant that the information provided in the application is true and correct.

The cost of the administrator (including his remuneration) shall be approved by the court and shall be met by the executor out of the property specified in the will as being the initial assets of the foundation or out of the property of the estate of the founder (where the foundation is not registered).

The registration of a foundation established by will may be contested on the death of the testator only on the ground that the will purporting to establish it was not duly executed within a period of three years from the date when probate of the will was granted.

2.3 Charitable Foundation

A foundation shall be a charitable foundation where it has the following exclusive purpose or object:

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- the protection of the environment;
- the advancement of human rights and fundamental freedoms; or
- any other purpose beneficial to the public in general.

It is to be noted that a foundation shall be a charitable foundation, notwithstanding the following:

- the object or purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or members of the public, or that it may also benefit privately one or more persons or objects within a class of persons not resident in Mauritius;
- the foundation is liable to be modified or terminated, whether by the exercise of a power of appointment or disposition of assets;
- its council has the power to defer the distribution of the benefits to any charity or other beneficiary of the foundation for a period not exceeding the duration of the foundation; or
- the charitable objects are pursued in Mauritius or elsewhere and are beneficial to the community in Mauritius or elsewhere.

2.4 Charter

Every foundation must have a charter which must specify the following:

- the name of the foundation;
- the particulars of the founder, including:
 - his name and address;
 - where the founder is a body corporate, its name and registered address and particulars of its directors and controlling members; and
 - an address for the founder in Mauritius for service of documents;
- the purposes and objects of the foundation;
- the endowment of the property which shall be the initial assets of the foundation;

- the beneficiary of the foundation or the manner in which he may be appointed and, if applicable, the manner in which he may be removed;
- the period, if any, for which the foundation is established;
- the name and address of the secretary;
- the address of the registered office of the foundation; and
- the procedure for the appointment of the council or of a protector or committee of protectors and its or his powers and duties.

In addition to the above the charter of a foundation may provide for any other matter in respect of the foundation, including the following provisions:

- for the reservation of rights or powers of the founder;
- for the appointment, removal, period of office and representative authority of officers of the foundation, including the number and description of such persons;
- for the appointment, removal and period of office of the auditor, if any, of the foundation;
- for the appointment and removal of a protector or committee of protectors of the foundation, as well as:
 - the duties, functions, powers and remuneration of the protector or committee of protectors; and
 - their relationship with the council whilst in office;
- for the appointment, removal and period of office of the members of the council and the holding of its meetings;
- for the circumstances in which amendments to the charter may be made and the procedure to be complied with for such amendments;
- requiring or permitting the drafting of articles;
- providing for the endowment of property to the foundation in addition to the initial assets;
- for the appointment of additional beneficiaries; and
- for the circumstances, if any, in which the foundation may be redomiciled and the conditions to be satisfied in respect of such redomiciliation.

The charter of a foundation shall be in writing and signed by the founder where the latter is a natural person, or be signed by an authorised person on behalf of the founder where the latter is a body corporate.

The charter may be amended in line with the charter or articles (if any) and the Registrar shall be notified of any amendment that the foundation proposes to make to its charter.

There is no obligation on a foundation to have articles. However, where the charter provides that articles shall or may be made by the council, the articles may include the following provisions:

- relating to the distribution of assets to be made by the council;
- for the identification of any initial or additional beneficiary of the foundation;
- for the identification of the remaining beneficiary on a winding up of the foundation and the distribution of assets to the remaining beneficiary;
- for the regulation of the affairs of the council.

Where articles have been made, same must be signed by each member of the council.

2.5 Property

From the time of establishment, the foundation shall hold all property effectively transferred to it for the purposes and objects, and that property shall constitute the initial assets of the foundation. Upon transfer the property shall cease to be the property of the founder and the foundation shall hold the good title in such property. Any property transferred to the foundation shall become the property of the beneficiary only after any distribution has been made.

Unless otherwise provided in the charter or articles, a person who endows assets to a foundation after its registration shall not acquire the powers of a founder. The foundation may enforce an undertaking against a founder where the latter has given an undertaking to endow assets to a foundation. This power may be exercised by the foundation if at the expiry of a period of 12 months from the date of registration or from such date as may be specified in the charter as the date on which endowment shall take place, those assets have not been transferred to the foundation. It must be noted that this power may be exercised where nothing to the contrary has been provided by the charter or articles.

2.6 Redomiciliation

(a) Redomiciliation in Mauritius

A foundation established under the law of another State may make an application to redomicile in Mauritius as a foundation established and registered under the Act. The application shall be made to the Registrar and shall be signed by the members of the governing body of the foundation and accompanied by the following:

- a statement containing the particulars of the foundation as specified in section 1 of Part C of this guide;
- satisfactory evidence that the foundation is in current standing; and
- the required fee.

On satisfaction that all requirements have been fulfilled, the Registrar may issue a certificate of registration.

It is important to note that the redomiciliation and registration of a foundation under this Act shall not affect any of the following:

- assets vested in the foundation;
- right, privilege, obligation or liability acquired, accrued or incurred by the foundation;
- penalty, forfeiture or conviction incurred by the foundation or any member of its governing body; or
- proceedings, whether civil or criminal, which may be pending by or against the foundation or against any member of the governing body, and such proceedings may be enforced, prosecuted, settled or compromised by or against the foundation or against that member.

(b) Redomiciliation outside Mauritius

Subject to any limitations in its charter or articles, if any, a foundation registered under this Act may redomicile and register under the law of another State. Such a foundation shall not cease to be a foundation registered under the Act except where, on redomiciliation and registration under the law of another State, the foundation:

- submits to the Registrar a certified copy of the certificate of registration issued by the competent authority of that State; and

- the Registrar, on receipt of the certified copy of the certificate, strikes the name of the foundation off the register and certifies that the foundation has ceased to be a foundation registered under the Act.

The fact that a foundation has ceased to be a foundation registered under the Act, due to redomiciliation outside Mauritius, shall not affect any:

- right, privilege, obligation or liability acquired, accrued or incurred by the foundation;
- penalty, forfeiture or conviction incurred by the foundation or any member of the council; or
- proceedings, whether civil or criminal, which may be pending by or against the foundation or against any member of the council, and such proceedings may be enforced, prosecuted, settled or compromised by or against the foundation or against that member.

3. REGISTRATION

3.1 Application of Registration

An application for registration of a foundation shall be made to the Registrar and shall:

- be in the approved form;
- contain the following particulars extracted from its charter:
 - the name of the foundation;
 - the date of:
 - the charter; and
 - any amendment made to the charter before its submission to the Registrar;
 - the purpose or purposes and objects of the foundation;
 - the date of the articles, if any, of the foundation and of any amendment made to them before its submission to the Registrar;
 - the name and address, in Mauritius, of the founder for the purpose of service of documents;
 - details of the beneficiary of the foundation or the manner in which the beneficiary may be appointed and the manner in which he may be removed;
 - the name and address of the secretary;
 - the name and address of members of the council;
 - the address of the registered office of the foundation;
 - the period, if any, for which the foundation is established; and
 - such other particulars as the Registrar may require;
- be accompanied by a list containing the names and addresses of the first officers of the foundation;
- be accompanied by a declaration in writing by a law practitioner, legal consultant or law firm regarding compliance with all the relevant requirements of this Act and on which the Registrar shall be entitled to rely as sufficient evidence of that compliance; and
- be accompanied by a declaration made by the applicant that the information provided in the application is true and correct.

The application shall be accompanied by the prescribed fee.

Where the Registrar is satisfied that the application for registration complies with the Act, the Registrar shall enter the particulars of the foundation in the register, assign a unique number to the foundation, which shall be its foundation number and issue a certificate of registration in the approved form. The certificate of registration shall be conclusive evidence that the requirements of registration have been complied with and the date of registration shall be the date specified in the certificate of registration. The foundation shall have a separate legal personality as from the date a certificate of registration has been issued.

Any action carried out in the name of the foundation before its registration (where same is not precluded in its charter or articles, if any), may be ratified by a resolution of the council following the registration of the foundation. Where any such action is ratified, it shall be considered to be an action properly executed by the foundation and the foundation shall be entitled to benefit from that action, be liable in respect of such action and be liable for any failure to take such steps as may be necessary to give effect to that ratification.

3.2 Register

The Registrar shall establish and maintain a register of foundations and the Registrar shall maintain a record of every foundation registered under the Act and all documents filed in relation to the foundation. The register shall contain a record of the name of the foundation, the address of the registered office of the foundation, the name and address of the founder, the date of registration, the period, if any, for which the foundation is established; the name and address of the secretary; the name and address of members of the council; and such other matter as may be prescribed or otherwise considered appropriate by the Registrar.

Inspection of Register

A person duly authorised by the secretary of a foundation or the Financial Services Commission (the **Commission**) may, on payment of the prescribed fee and during such time as may be determined by the Registrar, inspect the register, the particulars of any registered document, or any registered document.

Any person duly authorised by the secretary of a foundation or the Commission may apply to the Registrar for any of the following:

- a certificate of registration of a foundation;
- a copy of, or extract from, a document in a register kept by the Registrar;
- the particulars of any registered document; or
- a copy of, or extract from, a registered document.

On receipt of the application and on payment by the applicant of the prescribed fee, the Registrar shall issue the document, the particulars or copy, or certified copy, applied for.

4. MANAGEMENT, BUSINESS AND ADMINISTRATION

4.1 Secretary

Every foundation shall have a secretary who shall be a management company or who shall be such other person resident in Mauritius as may be authorised by the Commission.

4.2 Registered Office

Every foundation shall have a registered office in Mauritius to which all communications and notices shall be addressed and which shall constitute the address for service of legal proceedings on the foundation. The registered office shall be the place described as such in its charter. A foundation may at any time change its registered office in line with the procedures (if any) stated in the charter or

articles. A notice of the change shall be filed with the Registrar. The change shall take effect on the date stated in the notice, not being a date earlier than seven days from the date the notice is registered.

4.3 Council

Every foundation shall have a council which shall administer the property of the foundation and carry out the objects of the foundation. The council shall be set up in accordance with the charter or articles, if any, and in line with the Act. The council must have at least one member ordinarily resident in Mauritius. All the members must be appointed in line with the terms of the charter and the Act. If the members are being appointed before registration, then they may be appointed by the founder or by the administrator or executor (where the charter is a will). The founder may empower any other person to make the appointment.

The Act also provides some restrictions as to who may be appointed or may remain as a member of a council. In the case of a natural person, a minor, a bankrupt, a person with any mental impairment or a person who has been convicted of an offence involving fraud or dishonesty by a court of law in Mauritius or elsewhere cannot serve as a member of the council. In the case of a body corporate, if it is subject to any proceedings in Mauritius or elsewhere, which may result in it being wound up or otherwise dissolved, it would not be able to serve as member of the council.

The appointment of a person as member of a council shall only be valid where prior to his appointment, he has signed and delivered to the person making the appointment his written consent to be a member. Where a member of a council ceases to satisfy any requirement stated above, he is required to give notice in writing of that event to the council within seven days from the occurrence of that event.

A member of a council who intends to cease acting as a member shall give notice in writing of his intention to the council not less than seven days before the day on which he intends to cease to act as such. A person shall cease to be a member of a council on:

- his discharge as a member of the council, in accordance with the charter or the articles, if any;
- the foundation ceasing to be registered under the Act;
- the liquidation or winding up, as the case may be, of the foundation; or
- the occurrence of any other event which disqualifies him from being a member of the council.

A council shall, in writing, within seven days from the date of any change in its membership, notify the Registrar of the change. However, any liability incurred by the person who has ceased to be a member of a council in his capacity as such, shall continue to be a liability enforceable against him by the foundation.

The responsibilities and powers of a council shall be to conduct the affairs of the foundation in accordance with its charter and articles (if any) and the Act; to supervise the management and conduct of the foundation; to act honestly and in good faith with a view to promoting the best interests of the foundation; and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A council may appoint such officers as may be necessary for the effective discharge of its duties and obligations. Any officer appointed shall be under the supervision of the council and shall act in accordance with the instructions of the council. A charter, or articles, if any, may specify the duties and powers of a council and provide for other duties and powers.

Every officer of a foundation and member of a council shall be liable for any liability arising from fraud, wilful misconduct or gross negligence committed by such person. It should be noted that nothing in the charter, articles (if any) or in a contract between a foundation and a person to whom this section applies shall relieve, release or excuse that person from any such liability.

4.4 Records and Documents

Every foundation shall keep proper record of the following:

- all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;
- all sales and purchases made by the foundation; and
- the assets and liabilities of the foundation.

A foundation shall keep accounting records which shall be sufficient to show and explain the transactions of the foundation, disclose with reasonable accuracy the financial position of the foundation and to allow financial statements to be prepared.

A foundation shall keep at its registered office a file containing accurate records and a copy of all documents filed with the Registrar including accurate copies of its charter and articles (if any), the minutes of proceedings of any meeting of the council and a register showing the names and addresses of the members of its council, any founder and any person who may have endowed assets to the foundation. These documents shall be available for inspection by any founder, officer, and supervisory person, the Registrar or the Commission during business hours.

Any record and copy of documents which a foundation is required to keep shall be:

- in the English language or French language;
- in writing, stored on a tangible medium, or stored in an electronic or other medium which is retrievable in perceivable form; and
- except for its Charter, preserved for a period of at least seven years from the date on which it was made.

Every foundation shall also have its name engraved in legible characters on its seal.

4.5 Taxation

The Act brought several changes to the Income Tax Act and as such every foundation shall be liable to income tax on its chargeable income.

A foundation of which the founder is a non-resident or holds a Category 1 Global Business Licence and all the beneficiaries are non-resident or hold a Category 1 Global Business Licence shall be exempt from income tax in respect of that year. However, any foundation shall deposit a declaration of non-residence for any income year with the Director –General within three months from the expiry of the income year.

Moreover, any distribution to a beneficiary of a foundation shall be considered to be a dividend to the beneficiary.

5. REMOVAL, RESTORATION AND WINDING UP

5.1 Removal from Register

Where the Registrar has reasonable cause to believe that a foundation no longer satisfies the requirements as regards to its purpose or object, the Registrar shall, by notice in writing, inform the foundation that:

- it no longer satisfies such requirements; and
- he proposes to remove the name of the foundation from the register.

The Registrar shall, unless the foundation makes satisfactory representations within 21 days from the date of issue of a notice, remove the name of the foundation from the register.

Where a foundation has failed to pay any fee due under the Act, the Registrar shall, by notice in writing, inform the foundation that its name shall be removed from the register if it fails to pay the fee within 30 days from the date of the notice. Where it fails to pay the fee within these 30 days, the Registrar shall remove the name of the foundation from the register.

A foundation whose name has been removed from the register under this section shall remain liable for all claims, debts, liabilities and obligations of the foundation. The removal of the name of the foundation from the register shall not affect the liability of a member of the council or an officer.

5.2 Restoration

Where the name of a foundation has been removed from the register, the foundation, a creditor or a liquidator may apply to the court to have the name of the foundation restored to the register. In circumstances where the foundation has been removed from the register due to non-payment of fees (that is where the foundation has failed to pay the fees and no payment has been done in the further extension of 30 days), the foundation, a creditor or a liquidator may, within five years following the date of the removal, apply to the Registrar to have the name of the foundation restored to the register.

5.3 Winding Up

A foundation may be wound up voluntary in the following event:

- on the occurrence of an event specified in its charter;
- on the expiry of the period for which it was established;
- on a unanimous resolution of its council to that effect; or
- where the foundation is unable to pay its debts.

A notice of liquidation will have to be signed by a member of the council and delivered to the Registrar and published in two daily newspapers and the Gazette.

A foundation may also be wound up by an order of the court. The petition may be presented by any of the following:

- the foundation;
- a beneficiary;
- a creditor, including a contingent or prospective creditor, of the foundation;
- a liquidator;
- the Registrar; or
- the Commission.

The petition may be presented in the following cases:

- the foundation has, by unanimous resolution of its council, resolved that it be wound up by the court;
- the foundation is unable to pay its debts;
- the members of the council have acted in the affairs of the foundation in their own interests, rather than in the interests of the beneficiaries as a whole, or in any other manner which is unfair or unjust to any beneficiary;
- the court is of opinion that it is just and equitable to do so; or

- the foundation is a licensee of the Commission and has carried on business in Mauritius in contravention of the Financial Services Act, the Securities Act or the Insurance Act.

Where an order for the winding up by court is made, the court may make such other order as it thinks fit, in relation to the winding up, including an order for the appointment of a liquidator to wind up the affairs of the foundation and distribute its assets.

The assets of a foundation remaining after completion of a winding up shall be the property of any remaining beneficiary, and that property shall be transferred to that any remaining beneficiary. Where there are more than one remaining beneficiary willing to accept the transfer of the remaining assets, the remaining assets shall be divided equally among those remaining beneficiaries unless the charter or the articles, if any, provides or provide otherwise.

However, in the following event the remaining assets shall be vested in the Curator of Vacant Estates;

- there is no remaining beneficiary; or
- the remaining beneficiary refuses to accept the transfer of the remaining assets; and
- provision is made in the charter for the distribution of assets on winding up.

The liquidator shall file with the Registrar within seven days of the completion of the winding up a notice stating that the winding up has been completed, and in the case of a winding up by court, an order to that effect.

For more specific advice on foundations in Mauritius, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).