

# GUIDE TO TRUSTS IN MAURITIUS

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## PREFACE

The Appleby Guide to Trusts in Mauritius addresses the unique nature of the trust relationship and its most common uses. The Guide demonstrates the flexibility and security that a trust offers as a vehicle for holding assets.

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

Despite its French colonial and civil law heritage, trusts established in Mauritius subject to Mauritius law have benefited from the strong influence of English common law and the judicial decisions of the English Courts. The other source of Mauritius trust laws is Mauritius legislation, in particular the Trusts Act 2001 (the **Act**), which replaced the previous Trusts Act 1989, Trust Companies Act 1989 and Offshore Trusts Act 1992.

In this Guide we discuss the key features of the Act.

## 2. WHAT IS A TRUST?

Trusts are a well-established concept in common law, having originated in England during the times of the Great Crusades. Fundamental trust law is the **dual ownership** created by having the legal title to the property vested in one person, while the beneficial ownership of the same property vested in another, allowing for the beneficial owner to effectively divest himself of direct or indirect ownership of those assets while still influencing the future administration of the assets through the terms of the trust deed. Because of this basic difference in ownership, and the flexibility and protection afforded by trust structures, a trust is a useful financial and tax planning instrument and an important part in long term wealth management.

A trust is not a separate legal entity, but instead a legal relationship created by the beneficial owner creating the trust (the **settlor**) and the persons willing to undertake the office of trustee (the **trustees**). As part of this relationship, property (the **trust fund**) is declared to be held by the trustees for the benefit of certain parties (the **beneficiaries**) or for certain purposes, creating a binding obligation on the part of the trustees to act in accordance with the terms of the trust.

The title to the trust fund stands either (i) in the name of the trustee; or (ii) in the name of another person on the trustee's behalf, and as such only the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets of the trust fund in accordance with the terms of the trust and the special duties imposed upon him by the Act. The assets of the trust fund are separate from and do not form any part of the trustee's own estate.

It is important to understand that once the trust assets are transferred to the trustee, the settlor loses all ownership rights to those assets. The trustee is not the agent of the settlor and cannot be compelled to act in accordance with his wishes (except as provided by the terms of the trust). Indeed, although the trustee will usually attach much importance to the settlor's wishes (which may be recorded in a written letter or memorandum of wishes), the trustee of a Mauritius trust is under an obligation to exercise independent judgment in deciding what is in the best interests of the beneficiaries when administering the trust. The trustee must of course act in accordance with the terms of the trust deed and under the Act is obliged to act with the utmost good faith and to preserve and enhance the value of the trust assets so far as is reasonable.

Many prospective settlors find it difficult to accept the fact that they will lose control of their assets on establishment of the trust, but it is the very fact that the trust assets no longer belong to the settlor which gives rise to the advantages outlined in this Guide. As the trust assets cease to be the property of the settlor, he may not be liable to pay tax on them and they may not be available to his creditors. Furthermore on his death they will not form part of his estate and so will not be governed by his Will nor subject to probate.

## 3. SETTLORS

Any person who has the legal capacity to enter into a contract, i.e. any adult who is 18 years or older, may create a trust. Corporate entities (companies, *sociétés* or associations, wherever incorporated) can also act as a settlor. As such a settlor can be either resident or non-resident in Mauritius.

For non-resident settlors transferring or disposing of property on trust under the Act, that transfer or disposition will not be set aside, avoided or otherwise declared invalid or ineffective by virtue of any rule or law relating to inheritance or succession in a settlor's domicile or nationality, or by virtue of any rule of law of similar nature. The Act also states that such a transfer or disposition will not be set aside by virtue of any rule or law restricting the right of a person to dispose of his property during his lifetime so as to preserve such property for distribution at his death (i.e. forced heirship rules).

It should be noted that in Mauritius non-resident settlors cannot include any movable or immovable property in Mauritius or any Mauritian rupee denominated accounts in a domestic bank as part of the trust fund.

Although the Act allows for the settlor to also be a trustee and a beneficiary of the same trust (as well as a protector or enforcer), it prohibits the settlor from being the sole beneficiary of that trust.

#### 4. **BENEFICIARIES**

Any legal person, either natural or corporate, can be a beneficiary under a trust, so long as they are identifiable by name or ascertainable by reference to either a (i) class or (ii) relationship with another person either living at the time of the creation of the trust or not or at any other specific time as specified by the trust instrument itself for determining the members of a class, the noted exception being that a settlor is prohibited from being the sole beneficiary of the same trust at any time.

#### 5. **WHY A MAURITIUS TRUST?**

- Confidentiality of trustees' deliberations, and of the identities of the settlor and beneficiaries;
- Unenforceability of civil law forced heir-ship rules on transfers to the trust;
- Concept of managing and custodian trustees;
- Recognition of purpose trusts with no perpetuity rules;
- Possibility for migration of the trust;
- Possibility to establish letters and memorandum of wishes;
- Possibility to appoint a protector;
- Possibility to accumulate income for any period during the duration of the trust;
- Possibility of resident trusts to benefit from the network of Double Tax Treaties;
- Exemption of non-resident beneficiaries from income tax on income from the trust; and
- Exemption of charitable trusts from tax.

#### 6. **CREATING A TRUST**

Under the Act, trusts can only be created by an instrument in writing, stating the trust's objects, subjects and intentions, as well as the duties and powers of the trustees. These written documents (the **trust deed**) generally take one of the following forms:

**Settlement:** which is entered into and signed by both the settlor and the trustee, and provides evidence of both parties' intentions as well as the agreed obligations to be assumed by the trustee; or

**Declaration of Trust:** which is entered into and executed solely by the trustee, and records that the trustee has received certain property as specified in the document, and to hold that property under the terms as set out in the document.

The proper law of the trust is either: (i) chosen by the settlor; or (ii) implied in the trust deed. If no law is chosen or readily implied, then the law most closely connected with the trust at the time it was created will be treated as the proper law.

## 7. TRUST DURATION

All trusts other than a purpose trust shall be limited to a perpetuity period of 99 years from the date of their creation, unless terminated earlier. A purpose trust, whether charitable or not may be of perpetual duration.

The terms of a trust may direct or authorise the accumulation of all or part of the income of the trust for a period not exceeding the maximum duration of the trust. However where the trust property includes an immovable property situated in Mauritius, the accumulation period shall not exceed 25 years. The Act allows for income which is not accumulated to be distributed, subject to any power of maintenance or advancement or other terms of the trust.

## 8. TRUSTEES

The trust property is vested in trustees chosen by the settlor and appointed to hold and manage the assets of the beneficiaries. A trustee can be any adult individual who has the legal capacity to enter into contracts that the settlor thinks is appropriate to assume the responsibilities that accompany this equitable obligation. Trustees are prohibited from having a beneficial interest under a trust to which he is trustee if that trustee is either the: (i) sole trustee; or (ii) sole beneficiary of that trust. Settlers typically avoid appointing trustees whose interests may be different than that of any beneficiary.

A body corporate may also act as trustee provided that it is permitted under its statute to act as trustee. A corporate trustee may only act in connection with a trust by way of a resolution of its board of directors or other governing body or, alternatively, by appointing an officer or employee to act on its behalf, again by way of resolution.

The total number of trustees is limited to a maximum of four, with at least one being a qualified trustee as defined by the Act as a management company or other such person resident in Mauritius and authorised by the Financial Services Commission (the Commission) to provide trusteeship service. Trustees must disclose to their co-trustees any interest which they may have as a trustee of another trust in those instances of any transactions that may be entered into by the respective trusts.

### 8.1 Duties

The Act expressly imposes certain key duties upon any trustee:

**Fiduciary Duties:** where the trustees must observe the utmost good faith and act, with care and prudence, and to the best of their ability when exercising any of their functions as trustees. They must execute and administer the trust and exercise their functions (i) in accordance with the terms of the trust, and (ii) only in the interest of the beneficiaries or in fulfilment of the purpose of a trust. Trustees are expressly prohibited from using or dealing with trust property for any purpose not connected with the trust or for their own profit.

**Duty Relating to Trust Property:** where the trustees must preserve and enhance, so far as is reasonable, the value of the trust property, and must take any and all such steps as may be required, with due regard to the nature and amount or value of the property, for the possession of all outstanding trust property and for the preservation of the trust property and the assertion or protection of the title to it. Trustees must keep updated and accurate accounts and records of their trusteeship, and must keep trust property separate from their own property and separately identifiable from any other property of which they are the trustees.

**Duty to Act Together:** where there is more than one trustee, all the trustees must join in performing the trust, subject to the terms of the trust deed.

**Duty to Act Impartially:** where a trust either has more than one beneficiary or more than one purpose, the trustees must remain impartial and not execute that trust for the advantage of one at the expense of the other, again subject to the terms of the trust deed.

## 8.2 Custodian Trustee

The Act enables a trust deed to appoint a firm, partnership or body corporate as custodian trustee to hold the trust property and invest or dispose of the trust funds under the direction of a managing trustee. The custodian trustee will not be liable for any act or default committed by the managing trustee, although it would be liable for acting on any direction given by the managing trustee if the custodian trustee had reason to believe that direction contravened any law or rule, was contrary either to the terms of the trust deed or sound commercial practice, or is otherwise objectionable.

## 8.3 Managing Trustee

The trust deed may also appoint a managing trustee to manage the trust. The trust property will remain vested in the custodian trustee while the management of that trust property, as well as all powers and discretions exercisable by the trustee, shall remain vested in the managing trustee subject to the terms of the trust deed.

## 9. LETTER OF WISHES

The settlor, beneficiary or, where there is a class of persons, any member of that class, may give the trustees a letter of wishes regarding the exercise of any function conferred on the trustees by the terms of the trust. Alternatively, the trustees may prepare a memorandum of the wishes of the settlor, beneficiary or the member as the case may be. Although the trustees may have regard to that letter or memorandum of wishes, they are not accountable in any way for any failure or refusal to do so, even if it was prepared by them. The presentation of a letter or preparation of a memorandum of wishes does not impose any fiduciary duty or obligation on the trustees.

## 10. PROTECTORS

The Act permits the appointment of a Protector, who owes the beneficial owners a fiduciary duty to advise and supervise the trustees. Subject to the terms of the trust deed a protector has the power to: (i) remove and appoint new or additional trustees; (ii) determine which jurisdiction shall be the proper law of the trust; (iii) change the forum of administration of the trust; and (iv) conditionally or unconditionally withhold any prior consent required from the trustees for specified actions.

The protector can be any adult individual of sound mind, including the settlor, body corporate, firm, partnership or group of persons whether corporate or not. Subject to the terms of the trust deed, for those trusts with more than one protector, any functions conferred on the protectors must be exercised by the majority. The protector may also be a trustee or a beneficiary of that trust.

## 11. OFFSHORE TRUSTS

### 11.1 Discretionary Trusts

The most common and flexible type of offshore trust is the discretionary trust which typically allows the trustees to appoint additional beneficiaries or to remove existing beneficiaries, and will usually also allow the trustees to distribute the income and capital of the trust to the beneficiaries in varying amounts and at various times. Discretionary trusts are commonly used when no decision is taken at the time the trust is established as to what portion of the trust's income and capital should be reserved for each beneficiary. The settlor typically provides the trustees with a letter of wishes as guidance as to how the trustees should administer the trust and manage the assets.

## 11.2 Purpose Trusts

The objects of purpose trusts are for the fulfilment of express purposes rather than the benefit of specific beneficiaries or members of a class. The purpose of the purpose trusts must be: (i) specific, reasonable and capable of fulfilment; and (ii) not immoral, unlawful or contrary to public policy. The trust deeds must also provide for the disposition of any surplus assets upon the termination of the trust (either by expiration on a specified date, or on the occurrence of a specified event, or for any other cause).

The terms of a purpose trust must also provide for the appointment of an enforcer who is capable of enforcing the trust and for the appointment of a successor to an enforcer. The purpose trust must also have at least one trustee which is a qualified trustee.

## 11.3 Enforcers

As stated above there shall be appointed under the terms of a purpose trust an enforcer whose 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 of no effect unless the appointment has been accepted by enforcer, and in the case of a purpose trust created by a Mauritian national, the appointment has been approved by the Commission.

The enforcer shall not place himself in a position which may conflict with his duties to enforce the purposes of the trust. Moreover, the enforcer shall not derive directly or indirectly any profit by reason of his appointment other than any reasonable fee for his service and for any reasonable expenses which he may have incurred in the discharge of his duties.

An enforcer may resign his office and his resignation shall take effect on the delivery of notice in writing to the trustee of the purpose trust.

## 11.4 Protective or Spendthrift Trusts

The Act provides for protective or spendthrift trusts whereby the terms of that trust may make the interest of a beneficiary subject to termination, restriction on alienation of or dealing in that interest or any part of that interest, or diminution, suspension or termination, in the event of the beneficiary becoming insolvent or any of his property becoming liable to seizure or sequestration for the benefit of his creditors. The Act therefore provides a degree of asset protection in the sense that even if a settlor is bankrupt, his property liquidated, or there are any actions or proceedings against the settlor by creditors, the trust shall not be void, voidable or invalidated.

The court may still declare a trust void where it is established that the trust was made with the intent to defraud persons who were creditors of the settlor at the time when the trust property was vested in the trustee. The creditor must prove beyond a reasonable doubt that the settlor's intent was to defraud. However, no action may be brought against the trust assets more than two years after settling the assets into that trust.

## 11.5 Charitable Trusts

Charitable trusts have as their exclusive purpose or object 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; or (vi) any other purpose beneficial to the public in general.

## 11.6 Private Trust Companies

A Private Trust Company (**PTC**) is expressly authorised by its objects to act as trustee of a special trust or class of trusts. In Mauritius, PTCs are permissible as an effective wealth management tool for high

net worth individuals, and typically hold either a Category 1 or Category 2 Global Business Licence from the Commission and may avail themselves accordingly of the appropriate taxation regimes.

## 12. TAXATION

### Income Tax

Trusts are normally liable to income tax on its chargeable income. Chargeable income is calculated as the difference between the net income derived by the trust and the aggregate income distributed to the beneficiaries under the terms of the trust.

However a trust:

- of which the settlor is a non-resident or holds a Category 1 Global Business Licence or a Category 2 Global Business Licence under the Financial Services Act 2007; and
- (i) of which all the beneficiaries appointed under the terms of the trust are, throughout an income year, non-residents or holds a Category 1 Global Business Licence under the Financial Services Act 2007; or
- (ii) which is a purpose trust under the Trusts Act 2001 and whose purpose is carried out outside Mauritius,

may deposit a declaration of non-residence for any income year with the Director-General within three months after the expiry of the income year, it shall be exempt from income tax in respect of that income year.

Note that a distribution to a beneficiary shall be deemed to be a dividend to the beneficiary.

## 13. REGULATION AND REGISTRATION

### 13.1 Disclosure

Trustees are not required to disclose any confidential information to any person not legally entitled to it. Nor can they be required to produce or divulge that confidential information to any court, tribunal, committee of enquiry or other authority in Mauritius or elsewhere except where ordered by the court or a Judge in Chambers in accordance with the Act. For the purposes of the Act, confidential information includes any information or document within a trustee's possession or control relating to:

- the state and amount or any other details of the trust property;
- the conduct of the trust administration;
- the trustee's deliberations as to the manner in which a power or a discretion was exercised, or a duty conferred or imposed by the law or by the terms of the trust was performed;
- the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason will be or might have been based; or
- the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty.

These confidentiality provisions are subject to the Financial Intelligence and Anti-Money Laundering Act 2002, and any obligations Mauritius may have under any international treaty, convention or agreement that Mauritius may be a party to, and such disclosure as may be necessary to comply with the Act and the Financial Services Act 2007.



## 13.2 Registration

There is no mandatory requirement to register the trust with the regulatory authorities in Mauritius, however, a trustee may register the trust to receive a *date certaine* of when the trust was created, for which only the trust deed is required and is registered with the Registrar General.

For more specific advice on trusts 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](#).