



BRIEFING ON MAURITIUS TRUSTS

The purpose of this briefing is to provide some introductory information on the setting up of trusts and their administration in Mauritius as well as the features of this vehicle.

Introduction

A trust is a legal arrangement between a settlor and a trustee. In forming a trust, the settlor issues a letter of wishes setting out the manner in which he wishes the beneficiaries he has appointed to benefit from a trust. The settlor settles property or assets in the trust and the appointed trustee administers the trust assets for the benefit of the beneficiaries pursuant to a trust deed or trust instrument. The trust deed or trust instrument is a document in writing and it sets out the manner in which the trustee is to administer the trust, the powers and duties of the trustee and the manner in which the beneficiaries can benefit from the trust. The governing legislation in relation to trusts in Mauritius is the Trusts Act 2001.

When considering the formation of a trust, it is crucial to understand and to note that a settlor parts with the legal ownership of the assets and that the legal ownership of the assets shifts to the trustee who administers the assets for the benefit of the beneficiaries. Thus, the control of the assets lies with the trustee and the settlor cannot interfere with the assets or encroach upon the duties of the trustee in line with the principle "donner et retenir ne vaut rien". An interference into the trustees administration can result into the trust being a sham and as a result being unenforceable.

Reasons for establishing trusts

A trust is a very useful tool used by high net worth individuals and family offices for the following purposes:

SUCCESSION PLANNING

A settlor having achieved a successful family business may wish to ensure that his assets and business continues for several generations. He may wish to provide for the financial security and opportunities to family members and to manage family wealth through future generations. A trust, therefore, provides an efficient vehicle for the transfer of beneficial ownership interests on the death of a settlor. Further, because the interests of a beneficiary under a discretionary trust will not constitute a separate asset under a trust structure, this arrangement may assist in the avoidance of stamp duty or inheritance tax which may be payable on the death of a settlor or beneficiary. A trust can be used to hold shares in a company owning immovable property situated outside Mauritius, rather than directly in the real property itself, with the effect of transforming characterisation of an interest from immovable to movable, which can present attractive opportunities for tax and financial planning.

ESTATE PLANNING

Trusts can be used to preserve the continuity of ownership of assets, such as a business, within a family. By vesting legal ownership of assets in a trustee, the appointed beneficiaries under a trust may be able to continue to benefit from the assets, whilst avoiding fragmentation of ownership among a future generation of beneficiaries. The use of a trust avoids, on the death of a beneficiary, the risk of a share of assets becoming owned outside the family, and thus enables settled assets to be preserved intact for the benefit of future generations.

PROTECTIVE TRUSTS

A settlor can provide for protection of vulnerable members of a family or certain beneficiaries who may be extravagant and spendthrift.

ASSET PROTECTION

Trusts have often been used for the purpose of protecting assets from risk. Thus, in today's context, trusts may be used to hold assets in a safe and stable political environment. Trusts can be used as a shield to help protect assets against the potential future liabilities of a settlor or beneficiary, such as punitive financial claims including those arising from matrimonial issues.

Trusts can also safeguard assets against strategic risks, such as confiscation or expropriation by the State in the country of the Settlor's domicile, residence or nationality.

FORCED HEIRSHIP

Where a settlor disposes of assets during his lifetime by settling them on trust, the trust assets will not form any part of the settlor's estate upon his death. This may enable a settlor to avoid forced heirship rules which may be mandatory under the laws of his domicile, residence or nationality and which would otherwise dictate the persons to whom and proportions in which a settlor's estate will devolve.

CHARITABLE AND PHILANTHROPIC PURPOSES

Some successful settlors in their lifetime may have a personal interest in philanthropy. Private charitable or philanthropic structures using either exclusively charitable trusts or non-charitable purpose trusts for a wide variety of philanthropic purposes can be achieved through trusts.

CONFIDENTIALITY

Trusts are generally created by a private document to which the settlor and the trustees are the only parties. The trust instrument does not have to be filed with any public body or authority in Mauritius. Thus all information relating to a trust are not accessible to the general public.

Why set up a trust in Mauritius?

- Mauritius has successfully established itself as a reliable financial services centre since its launch 25 years ago;
- The country is politically stable and reputed for its ease of doing business by international agencies such as the World Bank;
- The jurisdiction has talented professionals and service providers to provide quality service at a cost effective rate;
- The jurisdiction is OECD white listed and has adopted the Financial Action Task Force recommendations in its legislations to combat money laundering and terrorism;
- Mauritius is a signatory to the Hague Convention;
- The applicable tax rate to residents in Mauritius is 15 %;
- The Trusts Act 2001 provides for the proper law of a trust to be moved to another jurisdiction and this is a flexibility which is available to a settlor;
- Under the Trusts Act 2001, a trust can have a Managing trustee in Mauritius and a custodian trustee in another jurisdiction;
- Our legislation also provides for the appointment of a protector who can exercise a supervisory role over the activities of the trustee and with powers to appoint or remove the trustee, withholding consent from specified actions of the trustee amongst others.

Forms of trusts available in Mauritius

DISCRETIONARY TRUST

Under the terms of a discretionary trust, the trustee is given wide discretionary powers as to when, how much and to which beneficiaries he should distribute the income and capital of the trust. Such a form of trust is useful where at the time of creation of the trust, the future needs of the beneficiaries cannot be accurately determined. The beneficiaries only have a right to be considered to benefit when the trustee exercises his discretion. Whilst the beneficiaries are the persons who can enforce the trust, they cannot be regarded as having any direct legal rights over any particular portion of the trust fund.

FIXED INTEREST TRUST

Under a fixed interest trust, the principal beneficiary will normally be granted a vested interest in the income of the trust fund throughout his lifetime and the discretion of the trustee regarding the disposition of the trust fund is fairly limited. For example, the trust deed of a fixed interest trust may specify that the trustee is required to distribute all of the income of the trust fund to a particular individual during that person's lifetime and subsequently to distribute the capital of the trust fund in fixed proportions to named beneficiaries (such as the settlor's children).

PURPOSE TRUST

A purpose trust is a form of trust which exists for advancing some non-charitable purpose, as for example holding an asset such as an aircraft. Such a trust would not have beneficiaries but are under the requirement to have an enforcer in Mauritius. A purpose trust under Mauritius law can have an unlimited life.

CHARITABLE TRUST

A charitable trust can be formed for the following purposes:

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

The charitable objects may be pursued in Mauritius or elsewhere and can be beneficial to the community in Mauritius or elsewhere.

THE TRUSTEE

A trust established under Mauritius law must at all times have a qualified trustee resident in Mauritius. A qualified trustee under our Trusts Act is generally a management company specifically licensed by the Financial Services Commission of Mauritius to provide such service.

YKJ Legal

YKJ Legal is a law firm authorised by the Attorney General's office. We are a team of experienced lawyers and have acted as legal counsels to a wide variety of corporate law and trust matters to high net worth individuals and international corporates and banks .

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