

PRIVATE FOUNDATIONS MAURITIUS

The Mauritius Foundations Act 2012 offers one of the most versatile and dynamic Foundations available from any jurisdiction and further promote the jurisdiction as a platform for wealth management services, succession and estate planning.

A foundation is created when either one or more natural persons or legal entities, referred to as the 'Founder(s)' formalise a document known as the 'Foundation Charter', whereby they undertake to make a donation to be used for the benefit of people (i.e. 'the beneficiaries') for a specific purpose. The foundation acts through its council, which is a body charged with the administration of the foundation's assets and the attainment of its objects. The foundation can only acquire legal personality when it is registered with the Registrar of Foundations (the "Registrar") and has obtained a certificate of registration.

Practical Uses of Foundations

- To protect family business providing continuity to second and third generations.
- To protect defenceless persons such as minors, disabled and persons incapable of managing their assets.
- To own family businesses thus avoid inheritance taxes.
- To act as a sophisticated and efficient substitute of the testament or will thus avoiding complicated inheritance procedures.
- To avoid forced-heirship rules.
- To act as a vehicle for owning shares, interests and stocks of private companies while maintaining confidentiality of ownership.
- To act as a vehicle for owning real estate and other assets of considerable value such as art works.
- For asset protection and tax efficient tax planning.
- To carry out scientific, philanthropic, religious, humanitarian purposes, or to manage funds or assets for the benefit of these activities.
- To hold bank deposits.

Salient features of the Mauritius Foundation

- Where the founder and all the beneficiaries are non-resident (or if set-up for a purpose, that purpose being carried out of Mauritius) it would be exempt from tax in Mauritius.
- It could be set-up to benefit persons, class of persons or to carry out a purpose which may be charitable, non-charitable or both;
- It would not be subject to being set aside by a Mauritius Court and a Mauritius Court would not recognise the validity of any claim against the property of the Foundation pursuant to the law of another jurisdiction or the order of a court of another jurisdiction;
- Strict confidentiality provisions enshrined in the laws;
- Only extracts of the charter is provided to the Registrar of Foundations for the registration of the foundation;
- There is no limitation or restriction on the value of initial assets or additional endowments.
- There is no minimum or maximum stated capital;
- The foundation can engage in any business or civil transactions (only in exceptional circumstances) in any part of the world and in any currency;
- The members of the foundation council need not be founders;
- The founders, the protectors and members of the foundation council may be beneficiaries to the foundation;
- There is no limitation on the maximum number of permitted number of founders, members of the foundation council, beneficiaries or protectors;

- It would have to be managed by a Council which should comprise of at least one member ordinarily resident in Mauritius;
- It would require a secretary in Mauritius which would need to be licensed by the Financial Services Commission;
- It would need to have a registered office in Mauritius;
- When registered it would have a separate legal personality;
- It would need to keep proper books of accounts and keep its records in Mauritius at its registered office;

Registration of a Foundation

As part of the incorporation process, an extract of the foundation charter must be submitted to the Registrar which shall contain the following information:

- The name, purpose and objects of the Foundation;
- Name and address of the founder, in Mauritius, for the 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 the members of the council;
- The address of the registered office of the foundation;
- The period, if any, for which the foundation is established;
- A list of the names and addresses of the first officers of the foundation;
- A declaration in writing by a law practitioner regarding compliance with all relevant requirements of The Foundations Act 2012;
- A declaration made by the applicant that the information provided in the application is true and correct.

The Registrar is required to maintain a record of every foundation registered under The Foundations Act 2012 and all documents filed in relation to the Foundation. It is important to note that only an extract of the charter and not the charter itself, needs to be provided to the Registrar and therefore the charter itself remains confidential. Furthermore, the records maintained by the Registrar are not available for public inspection. There are strict confidentiality provisions in the Act in this respect.

The Act provides for the records and copy of documents required to be kept by a foundation at its registered office can be inspected by any founder, officer, supervisory person, the Registrar or the Financial Services Commission.

The Registrar has the power to remove the name of a foundation from the register of foundations if the foundation fails to comply with certain statutory requirements.

The Act also allows for pre-registration actions. Where before the registration of a foundation, any action has been carried out in the name of the foundation, and purportedly by or on behalf of that foundation, and the foundation is not precluded from doing so by its charter or articles, the foundation may, following its registration, ratify such action by a resolution of the Council.

The Founder

The founder is defined in the Act as a person who endows a foundation with its initial assets. It is important to note that a person who endows assets in a foundation after its registration does not make that person a founder or confer founder's rights upon that person, unless otherwise provided in the charter or articles of the foundation. One aspect of the Mauritius foundation which differentiates it from

foundations formed in other jurisdictions is that a Mauritius foundation cannot come into existence without endowment of the initial assets. There is no limitation or restriction on the value of such initial assets.

The charter may include provisions in relation to the rights to be given to the founder.

A founder may also be a beneficiary of the foundation and does not need to be resident in Mauritius. Under the Act, where the founder is not a citizen of Mauritius and endows property to a foundation, the transfer of such property 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 of any rule or law 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.

The Foundation Council

A Mauritius foundation must have a council which must be constituted in accordance with its charter or articles. The duties of the members of the council are to conduct the affairs of the foundation in accordance with its charter and articles and with the Act, supervise the management and conduct of the foundation and promote the best interests of the foundation.

The appointment of members of a foundation council shall be subject to the charter and articles of the foundation. However, a council must have at least one member who is ordinarily resident in Mauritius. The members can be any person but such a person should not be a minor, a bankrupt, under any physical or mental impairment, or have been convicted of an offence involving fraud or dishonesty by a court of Mauritius or elsewhere. In addition, in the case of a corporate body, it must not be subject to proceedings in Mauritius or elsewhere which could result in that body corporate being wound up or dissolved.

Furthermore, if the charter or articles provide that the appointment of the members of the council is to be made by a person who has been empowered by the founder, such person shall not appoint any officer or his spouse or a person in a direct or collateral line of relationship with him.

The members of the council are required 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.

An officer of the foundation or a member of the council shall not be relieved, released or excused from any liability arising from any fraud, wilful misconduct or gross negligence committed by such person.

The Beneficiaries

A foundation may have one or more persons or classes of persons as beneficiaries and there are no restrictions on the identity of the beneficiaries. The Act provides that the beneficiary of a foundation is entitled to obtain information as regards the fulfilment of the objects of the foundation. A beneficiary is also entitled to inspect and have a copy of the charter and articles of the foundation, audit reports or report on the financial position of the foundation and the annual accounts and the minutes of proceedings of any meeting of the council.

Upon winding up, any remaining assets of the foundation must be transferred to the beneficiaries as provided for in its charter and articles.

The Secretary

Every foundation shall have as secretary a FSC licensed Management Company or such other person resident in Mauritius as may be authorised by the FSC.

The Protector

A Mauritius foundation may elect to have a protector or a committee of protectors and unlike most foundations in other jurisdictions, there is no restriction on the appointment of such a protector who can fulfil this role. If it is considered that a protector is required for such a foundation, then the role, duty and powers of the protector or the committee of protectors will have to be set out in the charter of the foundation.

The Charter

The Act prescribes the information which must appear in the charter. The charter of a Mauritius foundation is the constitutional document of the foundation and must specify the name of the foundation, its registered office, details in respect of the founder and beneficiaries (if any), the purposes, objects and duration (if any) of the foundation, the endowment of the property which shall be the initial assets of the foundation and the procedure for the appointment of the council or of a protector or committee of protectors and his or its powers and duties.

The charter of a foundation may also provide for any other matter in respect of the foundation, including provisions in respect of the rights and powers of the founder, the appointment, removal, period of office of officers of the foundation, auditors, protector or committee of protectors, members of the council, additional beneficiaries, and the circumstances, if any, in which the foundation may be redomiciled and the conditions to be satisfied in this respect.

The charter of a Mauritius foundation must be in writing and shall where the founder is a natural person, be signed by him or where the founder is a body corporate, be signed on behalf of the founder, by a person or persons authorised for that purpose.

Any amendments to the charter have to be notified to the Registrar.

The Articles

Where the charter of a Mauritius foundation so provides, the council may have articles which may include provisions in respect of distribution of assets, identification of any initial or additional beneficiaries, identification of the remaining beneficiaries on a winding-up and the distribution of assets to the remaining beneficiaries and provisions as to how the affairs of the council should be regulated. Any other areas requiring to be regulated may also be provided for in the Articles.

These Articles constitute a private and confidential document that complements the foundation charter. It does not require registration with the Registrar or authority. As such it will not be available for inspection through the Registry or other means.

Termination of a foundation

A Mauritius foundation can be either terminated by a winding up order of the court or by voluntary winding up.

A petition made to the court to wind up a foundation may be presented by the foundation itself, a beneficiary, a creditor, a liquidator, the Registrar or the Financial Services Commission, in the following circumstances:

- 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 licenced by the FSC and has carried on business in Mauritius in contravention of the Financial Services Act 2007, the Securities Act 2005 or the Insurance Act 2005 of Mauritius.

Voluntary winding up will occur at the expiry of the period fixed for the duration of the foundation, on the occurrence of any event provided for in the charter of the foundation or upon a unanimous resolution of the Council to that effect or where the foundation is unable to pay its debts.

Migration

In addition to establishing new foundations in Mauritius, it is also possible to migrate existing foreign law foundations to Mauritius and which will thereafter continue as Mauritius foundations.

Taxation of Foundations

A foundation or which:

- a) the founder is a non-resident or holds a Category 1 Global Business Licence under the Financial Services Act; and
- b) all the beneficiaries appointed under the terms of a charter or a will are,
 - i. throughout an income year, non-resident or
 - ii. hold a Category 1 Global Business Licence under the Financial Services Act,
- c) shall be exempt from income tax in respect of that year.

For the purpose of exemption, any foundation which qualifies as per above requirements, shall deposit a declaration of non-residence for any income year with the Commissioner of Income Tax within 3 months from the expiry of the income year.

Any distribution to a beneficiary of the foundation shall be considered to be a dividend to the beneficiary. There are no dividend withholding taxes in Mauritius.

Category 1 Global Business Licence (“GBL1”)

A foundation may apply for a GBL1 with the Financial Services Commission should it wish to be tax resident in Mauritius for the purposes of accessing the network of Double Taxation Agreements.

Tax Situation

- Provided that the foundation holding a Category 1 Global Business License owns at least 5% of an underlying company, credit will be available on foreign tax paid on the income out of which the dividend was paid (“underlying foreign tax credit”).
- When a company not resident in Mauritius, which pays a dividend has itself received a dividend from another company not resident in Mauritius (a “secondary dividend”) of which it owns either directly or indirectly at least 5% of the share capital, such dividend will be allowable as a foreign tax credit and an underlying foreign tax credit will also be available.
- Interest and royalty payments paid by a GBL1 are fully tax deductible in Mauritius.
- Tax sparing credits are available – Under this regime the effective rate of taxation in Mauritius can be reduced as a long stop provision exists whereby the GBL1 may elect not to provide written evidence to the Commissioner showing the amount of foreign tax charged and enjoy deemed taxation at 80% of the normal rate of 15%, i.e. 12%. Thus, use of this long stop provision in isolation would reduce the effective rate of taxation in Mauritius from 15% to 3%.

FEES**FEE SCHEDULE- Mauritius Private Foundation**

(GBP)	1st Year	Subsequent years
Formation, Charter, Articles, Resident council Member, Secretary, Registered Agent/Office and Government Fees.	£4500	£3500
TOTAL	£4500	£3500