



Mauritius Foundations Act: Laying the foundation

The long-awaited Foundations Act 2012 (the “Act”) was enacted by the Mauritius National Assembly in June 2012 and came into force on 1 July 2012. This new piece of legislation sets out the legal framework for the registration of foundations in Mauritius, adding to the existing suite of global financial service laws, including trusts. It is expected to attract substantial business opportunities from global investors, high-net-worth individuals and philanthropic organisations operating from civil law (including Islamic law) countries where the common law trust concept may not be that familiar or palatable.

In essence, a foundation is a legal entity with hybrid features of a company and a trust.

A founder – or in the case of a foundation established by will, the executor – may apply for the registration of a foundation. Legal personality is breathed into a foundation (“Foundation”) when the Registrar of Foundations (the “Registrar”) issues a certificate of registration in respect thereof. Foundations established outside of Mauritius may also make an application to be re-domiciled to Mauritius.

Similar to a company incorporated under the Companies Act 2001, a foundation has – both in and outside Mauritius – full capacity to carry on or undertake any business or activity, whether charitable or non-charitable.

The Founder, the Beneficiary & the Protector

The “founder” is defined as a person who endows a Foundation (i.e., who passes the title in property absolutely to a Foundation) with its initial assets. The endowment may be made by way of a covenant (or otherwise) with or without consideration.

A founder who is a non-citizen and endows property to a Foundation is 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 (a) the laws of Mauritius, (b) the laws of his domicile or nationality, or (c) the proper law of the transfer.

Where a non-citizen endows property to a Foundation, the transfer may not be set aside, avoided or otherwise declared invalid by virtue of any rule or law (a) of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature, (b) 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.

“Beneficiary” is defined as a person who is entitled to benefit under a Foundation, or in whose favour a power to distribute any Foundation property may be exercised. However, a beneficiary does not have any beneficial interest in the Foundation.

A founder may be a beneficiary of a Foundation of which he is the founder.

A Foundation may have a protector or committee of protectors who are appointed in accordance with the Charter and having such powers and duties as may be specified therein.

Registration

An application for registration of a Foundation is made to the Registrar of Foundations and is accompanied, *inter alia*, by a declaration from a law practitioner confirming that the application has been made in accordance with all the relevant requirements of the Act. The name of a Foundation ends with the word “Foundation” or a word in a foreign language which has the same meaning as the word “Foundation”.

The Council

The Council of a Foundation administers the property and carries out the objects of the Foundation. A Council has at least one member who is ordinarily resident in Mauritius. To avert conflict issues, any officer or his spouse or a person in a direct or collateral line of relationship with such a person, may not be appointed as member of a Council. The appointment of a person as member of a Council is not valid unless that person, prior to his appointment, has signed and delivered to the person making the appointment his written consent to be a member.

The Council must conduct the affairs of the Foundation in accordance with the Act, its Charter and Articles (if any), supervise the management and conduct of the Foundation, act honestly and in good faith with a view to promoting the best interests of the Foundation, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The Charter, or Articles, if any, may specify the duties and powers of a Council and provide for additional duties and powers.

The Charter

The Charter of a Foundation must be in writing and will specify, *inter alia*, the name of the Foundation; the particulars of the founder; the purposes and objects of the Foundation; the endowment of the property which will 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 or she may be removed; the period, if any, for which the Foundation is established; the name and address of the secretary; and the address of the registered office of the Foundation.

The Charter of a Foundation may also provide for any other matter in respect of the Foundation, including provisions for the reservation of rights or powers of the founder.

Where the Charter provides that Articles shall or may be made by the Council, the Articles may include provisions (a) relating to the distribution of assets to be made by the Council, (b) for the identification of any initial or additional beneficiary of the Foundation, (c) for the identification of the remaining beneficiary on a winding-up of the Foundation and the distribution of assets to the remaining beneficiary, and (d) for the regulation of the affairs of the Council.

The Article is signed by each member of the Council.

Every Foundation must have a registered office in Mauritius to which all communications and notices are addressed and which constitutes the address for service of legal proceedings on the Foundation. Moreover, every Foundation is required to have a secretary which must either be a management company licensed by the Mauritius Financial Services Commission (the "Commission") or be such other person resident in Mauritius as may be authorised by the Commission.

Uses of Foundations

Foundations may be used in cross-border structures that fall under two categories: charitable and non-charitable.

Charitable Foundations

A charitable Foundation has as its exclusive purpose or object: (a) the relief of poverty, (b) the advancement of education, (c) the advancement of religion, (d) the protection of the environment, (e) the advancement of human rights and fundamental freedoms, or (f) any other purpose beneficial to the public in general.

Non-Charitable Foundations

A Foundation may engage in any lawful business, including asset or investment holding and trading. Foundations are commonly used by onshore clients and intermediaries based in civil law (including Islamic law) jurisdictions in the following structures:

(1) *Asset Protection*: An asset protection Foundation will allow the founder to protect and preserve his assets from future creditors by placing the property and/or into a foundation so that the founder no longer has ownership of the endowed property and such property is therefore not available for creditors.

(2) *Shari'a Compliance*: Since Foundations (as compared to trusts) are better understood by investors from civil law jurisdictions, foundations can be very useful in Shari'a compliant structures. A Shari'a qualified investment advisor is appointed as a member of the Council, the decision-making body of the Foundation.

(3) *Asset Holding and Succession Planning*: A Foundation holds a number of underlying companies which, in turn, own diverse assets. Ownership of these assets is no longer with the founder, and the foundation can last in perpetuity.

(4) *Investment Structure*: The ownership of the assets passes to the Foundation but the founder, as a member of the Council, retains a degree of control. An investment committee which reviews the investment policy of the structure may be set up and is supervised by the Council.

Confidentiality

Any person who has acquired information in his capacity as an officer, a protector or a member of a Council must treat the information as confidential and not make use of or disclose the information except (a) for the purposes of the Foundation, (b) as required by law, (c) where authorised by the Charter or Articles, if any, (d) with the express approval of the Council and on such terms and conditions as the Council may determine, or (e) where he is required to do so by the Supreme Court of Mauritius.

Fees & Taxation

A fee of MUR 9,000 (approximately US\$300) is payable to the Registrar at the time of registration or re-domiciliation of the Foundation, and a similar amount is payable in respect of every subsequent year.

Mauritius runs a uniform income tax rate and as such a Foundation is liable to income tax on its chargeable income at the rate of 15%. A Foundation:

- (a) may hold a Category 1 Global Business Licence and be therefore subject to an effective income tax rate in the range of 0% to 3%;
- (b) whose founder is a non-resident or holds a Category 1 Global Business Licence, and all the beneficiaries appointed under the terms of a Charter or a will are, throughout an income year, non-resident or hold a Category 1 Global Business Licence, is exempt from income tax in respect of that year. Such exemption is obtained by depositing a declaration of non-residence for any income year with the Director-General of the Mauritius Revenue Authority within three months from the expiry of the income year.

Any distribution to a beneficiary of a Foundation is considered to be a dividend to the beneficiary.



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