

MAURITIUS

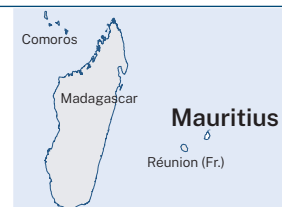
Law and Practice

Contributed by:

Johanne Hague, Ashwin Mudhoo, Zuleikha

Abbasakoor and Medina Torabally

Prism Chambers see p.19



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1. TAX

1.1 Tax Regimes

Taxation of Individuals

Individuals resident in Mauritius are taxed on their worldwide chargeable income. However, foreign-sourced income is only taxed once it is remitted to Mauritius.

The headline tax rate is 15% although reduced tax rates of 10% and 12.5% apply to individuals earning less than MUR 700,000 and MUR 975,000 annually, respectively. In addition, a solidarity levy of 25% is applicable on leviable income exceeding MUR3 million, subject to an overall cap of 10% on chargeable income.

No tax is levied on capital gains in Mauritius.

There is no donation or gift tax in Mauritius, therefore assets (other than immoveable property) can be freely donated without incurring any taxes.

There is also no inheritance, estate or succession tax in Mauritius.

Transfer Taxes on Immoveable Property

Land transfer taxes and registration duty apply to the transfer of immovable property in Mauritius. However, there is an exemption for immovable property transferred to the heirs of a deceased individual for inheritance purposes or in certain cases, the settlement of immovable property into a trust.

Taxation of Trusts and Foundations

Applicable tax

Under current legislation, trusts and foundations are treated as companies for tax purposes in Mauritius. This means that a trust or a foundation would typically be subject to tax at the headline rate of 15% on its worldwide chargeable income. A partial exemption regime is

applicable on specific types of income such as foreign dividends or interest income (subject to substance requirements being met).

Tax Residency

Whether a trust or a foundation falls within the Mauritius tax net ultimately depends on whether it is tax resident in Mauritius.

A trust is resident where it is administered in Mauritius and a majority of the trustees are resident in Mauritius, or the settlor of the trust was resident at the time the instrument creating the trust was executed. A foundation is considered to be resident where it is registered in Mauritius or has its central management and control in Mauritius.

However, under published Mauritius Revenue Authority Statement of Practice, a trust or foundation set up in Mauritius is treated as non-resident if it is centrally managed and controlled (CMC) outside Mauritius.

Trusts

Under the Statement of Practice, a trust would be treated as having its CMC in Mauritius when:

- the trust is administered in Mauritius and a majority of the trustees are resident in Mauritius;
- the settlor of the trust was resident in Mauritius at the time the instrument creating the trust was executed or at such time as the settlor adds new property to the trust; and
- a majority of the beneficiaries or class of beneficiaries appointed under the terms of the trust are resident in Mauritius.

Foundations

Similarly, a foundation would be treated as having its CMC in Mauritius where:

- the founder is resident in Mauritius; and

- a majority of the beneficiaries appointed under the terms of a charter are resident in Mauritius.

Therefore, a trust or a foundation will be deemed to be non-resident if it does not meet the criteria for CMC in Mauritius. A non-resident trust or foundation will be subject to source-based taxation only, ie, only on income derived from Mauritius.

A Mauritius resident beneficiary of a resident trust or a foundation is exempt from income tax on any distributions (which are treated as dividends). However, they would still be subject to a solidarity levy (as explained above), if applicable.

1.2 Exemptions

There is no inheritance, succession, estate, donation or gift tax in Mauritius.

Property transferred to the heirs of an individual is exempt from any land transfer tax and registration duty.

1.3 Income Tax Planning

There is scope for using vehicles for efficient income tax planning in Mauritius. Trusts and foundations can be used as vehicles for investment purposes; beneficiaries are not subject to any Mauritius income tax on any distributions (however, they may still be subject to a solidarity levy).

Alternatively, assets and wealth can be reinvested (no distribution) without any tax arising in the hands of the beneficiaries. There are no close company rules in Mauritius.

In addition, Mauritius resident trusts and foundations may be eligible to treaty benefits. Mauritius has a wide double tax treaty network, which makes it an attractive jurisdiction for wealth planning.

1.4 Taxation of Real Estate Owned by Non-residents

Rental Income

Rental income on Mauritius real estate is treated as Mauritius source income. Therefore, rental income is typically subject to income tax in Mauritius, regardless of whether it is received by residents or non-residents.

A withholding tax (also known as tax deduction at source) is applicable on rental payments made by any person other than an individual.

Tax on Disposal of Real Estate

There should be no tax on the disposal of real estate (by resident or non-residents) so long as the real estate is not held for trading purposes (ie, the disposal is in connection with the disposal of a capital asset).

Purchase and sale of immovable property located in Mauritius (held by residents or non-residents) may trigger registration duty or land transfer tax, respectively. Land transfer tax is payable by the transferor at the rate of 5% on the value of the immovable property. Registration duty is payable by the transferee at the rate of 5% on the value of the immovable property.

Real estate can be bought through vehicles such as trusts, foundations and companies. Since foreigners cannot typically purchase land in Mauritius (save with the approval of the Prime Minister's Office), the purchase of real estate by foreigners in Mauritius is normally effected through special schemes. Residency permits are usually obtained on the purchase of real estate in such schemes. However, land transfer tax and registration duty are still applicable.

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Settlement of Immoveable Property into a Trust

Exemptions from registration duty and land transfer tax may apply if real estate located in Mauritius is settled into a trust.

1.5 Stability of the Estate and Transfer Tax Laws

Amendments by Legislation

Generally, amendments are brought to the tax laws every year by way of the Finance (Miscellaneous Provisions) Act (“FA”). The FA gives effect to the measures announced in the yearly budget speech delivered by the Minister of Finance, Economic Planning and Development. Further, secondary tax legislation may also be amended by way of regulations throughout the year.

High Net Worth Individuals

In the context of the COVID-19 pandemic, the solidarity levy was increased in 2020 from 5% to 25% in respect of leviable income exceeding MUR3 million (subject to a cap of 10% of total chargeable income). This resulted in a significant increase in the tax bill of high net worth individuals who are tax resident in Mauritius. This change in legislation has had an impact on the reputation of Mauritius as a fairly low tax jurisdiction for individuals (15% flat rate).

Although there have been rumours for a number of years of a wealth tax being introduced, this has never materialised.

Trusts and Foundations

In addition, the regime for the taxation of trusts and foundations was amended in 2021 to tackle concerns raised by the OECD regarding some potential harmful tax features in the previous regime. Certificates of non-residents can no longer be filed by trusts or foundations set up in Mauritius (subject to a temporary grandfathering provision).

The Mauritius Revenue Authority, through a Statement of Practice, clarified that a trust or a foundation can still be considered non-resident if certain criteria are met. It is expected that the law will be amended to provide a clear position on the tax treatment of trusts and foundations. There is ongoing dialogue between the industry and the regulators to ensure that any future amendments do not jeopardise Mauritius as a jurisdiction of choice for estate and wealth planning.

1.6 Transparency and Increased Global Reporting

Base Erosion and Profit Shifting (BEPS) Minimum Standards

Mauritius has been a member of the Inclusive Framework since November 2017 and has committed to implement the BEPS minimum standards. The tax legislation in Mauritius was overhauled in 2018 to achieve compliance with recommendations on BEPS Action 5 (Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance). The revamped fiscal legislation is now aligned with the recommendations of the Forum on Harmful Tax Practices.

Certain regimes, such as the deemed foreign tax credit and the freeport regimes, were considered to have potentially harmful tax features and were, thus, abolished. Substance requirements have also been introduced for entities which intend to benefit from the partial tax exemption.

The change in the tax regime of trusts and foundations were also made to meet the country’s commitment to the OECD initiative to eliminate harmful tax regimes (as explained above).

Mauritius is “white-listed” by both the OECD and the EU in respect of compliance with BEPS minimum standards.

Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA)

Mauritius is a signatory to the CRS and has been exchanging information under the CRS framework since 2018.

Mauritius and the USA have signed and implemented a Model 1 Inter-Governmental Agreement for the exchange of information under FATCA legislation.

Country-by-Country Reporting

In addition, Mauritius exchanges information under the Country-by-Country reporting framework.

Other Exchange of Information

It also has a wide tax treaty network which allows for exchange of information on request.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

Traditionally, very few families make succession plans. In the absence of a will, the law of succession as regulated under the Code Civil (“Code”) would then be applicable to the distribution of the estates. This includes the application of forced heirship rules (meaning that a fixed portion of a parent’s estate is reserved for their children on their death). As a result, the number of inheritance disputes before Mauritian courts are not negligible and this is mainly due to lack of succession planning and the impact of the forced heirship rules. Forced heirship is dealt with in more detail in **2.3 Forced Heirship Laws**.

In the recent years, however, there has been increasing awareness around the subject (partly driven by the rise of the middle and upper classes) and more families have begun to acknowledge the importance of planning their succes-

sion. It is expected that the number of such disputes will decrease as a result of the current trend toward succession planning.

As the size of families grow, the tools used for succession planning need to become more sophisticated. Given that there is a higher potential for dispute in larger families, it is more appropriate to make use of flexible tools which decrease, albeit not eliminate, the potential for disputes.

2.2 International Planning

There are several factors which are taken into account when planning a succession. Some of these factors include:

- the expenses associated with the setting up and maintenance of succession tools;
- the enforcement requirements;
- different taxes which are applicable when passing on property;
- the likelihood for future dispute; and
- compliance with succession laws of relevant jurisdictions.

Conflict of Laws

For example, if a non-citizen wishes to relocate to Mauritius and possesses assets in a different jurisdiction, the individual will have to ensure that the succession planning complies with Mauritian succession laws and does not encroach upon forced heirship rules (see 2.3 Forced Heirship Laws).

Enforcement

Another factor is enforcement procedures that need to be observed when a person has foreign succession planning tools. One example is a foreign will. It may be more suitable for an individual to have a Mauritian will to regulate the succession of Mauritius-based assets instead of a foreign one due to cumbersome process asso-

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ciated with legalisation, registration and enforcement of foreign wills.

Using a Succession Planning Vehicle

Further, more sophisticated planning tools such as trusts and foundations may be more flexible than other planning tools. That said, there may be high maintenance costs which may dissuade certain families to make use of such tools.

Finally, the tax treatment of the succession planning entity and the taxation of its beneficiaries is also an important factor which ought to be taken into account when determining the right structure. Different considerations would be applicable to residents and non-residents.

2.3 Forced Heirship Laws

Mauritius is a forced heirship jurisdiction and reserves a portion of the estate for the children of the deceased. The forced heirship rules in Mauritius are applicable where the deceased was domiciled in Mauritius or to Mauritius-situs assets. Pursuant to the Code (“CCM”), no testamentary provision may encroach upon the reserved portion of those entitled under the law. The unreserved or “available portion” of the estate may be freely willed to any other person or any entity whether Mauritian or foreign.

Where the forced heirship rules are applicable, a portion of the estate of the deceased will be reserved for the children of the deceased. According to the CCM, the reserved portion consists of one half of the estate if the deceased leaves one child; two-third of the estate if the deceased leaves two children; and three quarters of the estate if the deceased leaves three or more children.

Forced heirship is treated as a rule d’ordre public (public order) and cannot therefore be circumvented by the use of other vehicles (such as trusts or foundations).

In the event that an arrangement, such as a trust or a will, violates the forced heirship rules, the protected heirs are entitled to request that the bequeathed or donated assets be pooled back into the estate for calculation of the reserved and available portions.

In order to avoid future disputes with regard to forced heirship, the tool of “donation-partage” (inter vivos donation) has been used in the past whereby the assets are donated while the parents are still alive and with the approval of the children. This substantially reduces (but does not totally eliminate) the distribution being challenged posthumously. Other vehicles such as a société have also been used whereby the assets are pooled into a société with the nu-propriété (bare title) being vested in the shares of the children and the usufruct vested in the shares of the parents.

2.4 Marital Property

There are three regimes of marriage in Mauritius: legal community of goods, the regime of separation of goods and a marriage settlement embodied in a notarial deed (most commonly known as a prenup contract or marriage contract).

Legal Community of Goods Regime

Any asset that has been acquired during the marriage will form part of the legal community of goods, irrespective of whether a spouse has contributed solely or jointly with the other spouse, towards the acquisition of such goods and property.

One exception is that property which has been acquired by either spouse prior to the marriage will constitute separate property and will not form part of the community of goods. The “common pool” of assets belongs to both spouses in a state of indivision; on the other hand, all assets that were owned by each spouse are considered as their personal property. The per-

son who wants to sell any assets forming part of the community of goods would be required to obtain consent from their spouse prior to selling the asset.

Regime of Separation of Goods

The spouses should expressly ask the civil status officer to have them married under this regime of separation of goods. The most important feature of this regime is that each asset owned by the spouses remains their personal property regardless of whether it was acquired before or during the marriage. There is no need to obtain consent from the other spouse when transferring assets under this matrimonial regime.

Marriage Settlement under Notarial Deed

This regime is most frequently used for spouses who wish to have specific clauses that will govern their marriage in the form of a contract. The most simplistic of these contracts will list an inventory of all the premarital assets that, in the event of a divorce, will remain the property of their original owner. Whether consent is required prior to transfer of any assets will depend on the clauses set out in the contract.

2.5 Transfer of Property

Given that there is no inheritance, succession or capital gains tax in Mauritius, the question of cost basis (if ever) arises.

Registration duty or land transfer tax (where applicable, although an exemption is typically applicable on transfers to heirs) is applicable on the value of immovable property, so the question of cost basis does not arise.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

There are essentially four planning vehicles which are available for succession. These tools are described below.

Wills

A person may decide how their assets will be distributed upon death by way of a will. The assets will only be vested upon the death of the person, not prior to their death. The procedure for drawing up and executing the will is fairly straightforward.

In Mauritius, there are three types of will commonly used, namely:

- the holographic will (private deed);
- the authentic will that is drawn up before a notary in presence of witnesses; and
- the secret will whereby a sealed envelope is handed to a notary in presence of witnesses.

The will is deposited with a notary who becomes the executor of the will upon death of the testator. At the stage of the opening of the will, all interested parties will be made aware of its contents. The heirs will be required to sign that they accept the will and its contents. Transfer of property by way of a will is tax free.

Donation

Assets can be distributed to heirs or any other person prior to death by way of donation. The donation is akin to a gift and has to be made before a notary by way of a deed of donation. The title to the assets vest in the donee during the lifetime of the donor. Transfer of assets by way of donation is tax free.

Trusts

Trusts are commonly used for estate planning purposes. For a trust to be created, assets can be transferred into the trust by way of a deed of settlement or by way of testament. The assets will cease to form part of the person's estate after such a transfer. A trustee will be appointed to hold the assets on behalf of the beneficiaries. There is no tax (including (generally) on real estate) upon transfer of assets in the trust. Any

distribution of income from a Mauritian trust to its beneficiaries will be exempt from income tax in Mauritius (subject to solidarity levy which may be applicable to income distributions to non-residents).

Société Civile

A “société civile” (SC) is another succession planning tool which is often used. In this option, the assets are transferred into a SC which will hold the assets. The shares of the SC are then dismembered between usufruct rights and bare ownership. The donor may hold the usufruct rights over the properties during their lifetime and the bare ownership of the properties will be donated to the heirs. The SC is a corporate body with separate legal personality, if registered with the Registrar in Mauritius. There is usually no tax (including on real estate) upon transfer of assets to the SC.

The reason for dismemberment of different interests attached to the SC shares allow the donor, who in most cases is the parent, to continue to benefit from the “fruits” of the assets such as dividends or rental income, although the ownership of the assets has already been donated to the heirs prior to death.

2.7 Transfer of Assets: Digital Assets

There is no specific law regarding the transfer of digital assets. Digital assets should be regarded as movable assets and, therefore, be subjected to the same succession rules. Mauritian law stipulates that the law of the domicile of the deceased (*lex domicilii*) shall apply to moveable assets. This means that Mauritian succession law will apply to moveable assets of any person domiciled in Mauritius at the time of death. If a person is domiciled elsewhere, the law of the jurisdiction where they are domiciled at the time of death will apply to any moveable assets owned by the person.

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Trusts

There are different types of trusts in Mauritius which are described below.

Charitable trust

A charitable trust is formed for purposes beneficial to the public in general (in Mauritius or another country). These include the relief of poverty, the advancement of education, the protection of environment, or the advancement of human rights and fundamental freedoms.

Protective trust

A protective trust provides for the protection of vulnerable members of a family or certain beneficiaries.

Purpose trust

A purpose trust is formed for advancing charitable or non-charitable purpose, such as holding an asset.

Discretionary trust

The discretionary trust gives the trustee the power to determine (subject to the terms of the trust deed) who are the beneficiaries and the allocation of income and capital amongst them.

A discretionary trust is the most common and flexible type of trust mainly used in wealth protection and tax planning.

The settlor settles assets into the trust and decides how the assets in a trust should be used in the trust deed or letter of wishes. The settlor can also be a beneficiary but cannot be the sole beneficiary. Once a trust is created additional assets can be transferred on the trust to the trustee.

The trust property is vested in the trustee chosen by the settlor. The trustee is appointed to hold and manage the assets of the beneficiaries (although in more sophisticated structures, the trustee can appoint one or more investment advisers with a discretionary mandate to manage the assets of the trust). The terms of the trust deed may also provide for the appointment of a protector.

Foundations

Foundations can be used for charitable and non-charitable purposes. It is a hybrid between a trust and a company. Its legal structure and functions are similar to those of a trust, but it is administered as a company. Foundations are interesting to persons who may be unfamiliar with the concept of trusts, particularly in civil law countries.

The most recent development concerns the tax regime of trusts and foundation as explained above.

3.2 Recognition of Trusts

A trust set up and administered in Mauritius is recognised and regulated by the Trusts Act 2001.

The Trusts Act 2001 also recognises trusts settled and administered abroad.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

Under Mauritian law, a settlor may also be a beneficiary and a trustee of a trust (but they cannot be the only settlor, beneficiary and trustee). Similarly, a founder may be a council member or the beneficiary of a foundation.

If a Mauritius resident is a trustee of a foreign trust or foundation, there should be no adverse tax consequences in Mauritius (assuming the Mauritius resident is not also a beneficiary). Since Mauritius taxes on the basis of residency

(as opposed to citizenship), the citizenship status (generally) does not have any impact on the taxability of an individual.

If a Mauritius resident beneficiary receives a distribution from a foreign trust or a foundation, the tax treatment of the distribution will (partly) depend on the treatment of the foreign trust/foundation. Any income distributions from a trust/foundation which is opaque under its law of establishment will typically be treated as a foreign-sourced dividend and be taxable in the hands of the resident beneficiary at the rate of 15% (plus solidarity, if applicable).

If the trust/foundation is transparent under its law of establishment, the underlying character of the distribution will usually be respected in Mauritius, ie, income distributions would be taxable and capital distributions normally be treated as exempt in the hands of the resident beneficiary.

3.4 Exercising Control Over Irrevocable Planning Vehicles

Mauritian trusts are considered to be irrevocable by the settlor unless the trust instrument contains provision allowing for revocability. A trust may be declared void where it is established with the intent to defraud persons who are creditors of the settlor at the time when the trust property was vested in the trustee. Mauritian courts will not recognise the validity of any judgement to any claim against trust property made by another jurisdiction in respect of personal propriety consequences of their desires through a letter of wishes addressed to the trustees. The letter of wishes is not binding, although the trustees would typically respect it so long as the letter is in line with the trust deed and does not have any adverse impact on the trustees' fiduciary duties or any of the beneficiaries' rights. Alternatively, the settlor may also be a protector (thereby retaining some powers over the trust) although in practice, this is less common.

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4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

The most popular method for asset protection planning in Mauritius is through the establishment of trusts or foundations. For a trust to be created, the parties will be required to transfer their assets into the trust by way of a deed of settlement and the assets will cease to form part of their estate after such transfer. A trustee will be appointed to hold the assets on behalf of the beneficiaries, the heirs of the parents. Once the property is settled into a trust, the property no longer forms part of the estate of the settlor.

However, a trust may be declared void where it is established with the intent to defraud persons who are creditors of the settlor at the time when the trust property was vested in the trustee.

In recent years, foundations have also become popular tools of asset protection planning.

4.2 Succession Planning

Trusts are also commonly used for estate planning purposes.

Although the distributions through a trust may still be challenged on the basis of the forced heirship rules, the risk is fairly low as opposed to other options, given that the trustee may be instructed to make the distributions by ensuring that each child receives their reserved portion upon death. In the case of families where one parent is deceased, the trustee may be instructed not to distribute the properties of the deceased spouse immediately upon death. Instead, the instructions may require the trustee to pay each child their corresponding reserved portions in cash and subsequently distribute all properties according to the rules of succession at the time of death of the second spouse.

In the case of a trust, the reserved portion of each child may be calculated at the time of death (instead of prior to death) so as to ensure a more precise calculation. The distributions can also be made free of any dispute as the protected heirs would have little to no reason and motivation to challenge it. Further, the determination of the reserved portion and compensation to each heir will be made by an independent and objective party (ie, the trustee). Having an independent party who is not linked to the family to make the distribution is always better than letting the heirs do this among themselves.

The clear advantage of this option is that instructions given to the trustee will not include a reference to specific amounts, which will grant the trustee flexibility to make distributions based on the reserved portions determined at the time of death of a spouse.

The only disadvantage of this option is that it is more costly as there are expenses involved in the creation and maintenance of the trust.

4.3 Transfer of Partial Interest

There are no taxes on capital gains in Mauritius.

Transfer taxes are normally levied on the fair value of the real estate which is being transferred. This fair value is not adjusted to take into account lack of marketability and control.

Further, transfer taxes do not apply for transfer of property as part of a succession.

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

The majority of the wealth disputes relate to forced heirship disputes and the reserved portion of heirs. Many citizens are not aware of how the forced heirship rules apply.

Traditionally, Mauritian families tend to invest in immovable property and pass it on to their heirs, rather than structure their wealth through trusts or foundations. As such, the majority of disputes are related to the division of these immovable properties or the division of the estate of the parents between siblings. Disputes of division of estates also relate to interpretation and/or application of wills, often not drafted before a notary and not taking into account forced heirship rules. These disputes almost inevitably come before the Supreme Court of Mauritius by way of plaint with summons. These proceedings are in general lengthy.

On the other hand, to date, there are very few disputes in Mauritius in relation to trusts or foundations established in Mauritius. This may be because the legislation relating to trusts and foundations are still fairly recent and because families setting up trusts and foundations are typically of high net worth/ultra-high net worth and have taken specialist advice prior to setting up their structures, thereby minimising the risk of future disputes.

5.2 Mechanism for Compensation

In view of the nature of the types of disputes (which tend to be around the application of the forced heirship rules), the damages usually awarded to the parties are compensatory. The assets are usually sold and its proceeds divided according to the provisions of the forced heirship rules. There is usually no compensation in kind but rather economic compensation in Mauritius.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries Trusts

It is mandatory under the Trusts Act 2001 to have a qualified trustee, which can be a licensed individual or a management company as corporate trustee.

Management companies and private trustees are regulated and licensed by the Financial Services Commission and are subject to a number of rules and regulations.

Under the Trusts Act 2001, a trustee has the positive duty, in the exercise of their functions, to observe utmost good faith and to act with due diligence; with care and prudence and to the best of his ability and skill. Trustees must also administer the trust and exercise their functions strictly in accordance with the terms of the trust and only in the interest of the beneficiaries or in fulfilment of the purpose of the trust. Under the Trusts Act 2001, a trustee has the duty to act impartially. In cases where there is more than one trustee, trustees have to work together in accordance with the terms of the trust.

Foundations

Furthermore, individuals may also make use of foundations as an alternative to the use of a will or a trust for succession planning and wealth management. A foundation is an amalgam of a trust and a company and is governed by the provisions of the Foundations Act 2012.

As per the Foundations Act 2012, every foundation shall have a council to administer the property of the foundation and carry out the objects of the foundation. In so doing, the council must conduct the affairs of its foundation in accordance with its charter and articles as well as the

Foundations Act 2012. The council has also the duty to supervise the management and conduct of its foundations and act honestly and in good faith with a view to promoting the best interests of the foundation. The council must also exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

6.2 Fiduciary Liabilities

Foundations

The Foundations Act 2012 caters for personal liability of officers and members of the council. The Foundations Act 2012 states that (i) nothing in the charter or articles of a foundation, if any; or (ii) in a contract between a foundation and a person to whom this section applies, shall relieve, release or excuse that person from any liability arising from any fraud, wilful misconduct or gross negligence committed by such person.

Trusts

Similarly, the role of trustee is an onerous one. The duties of a trustee range from the fundamental fiduciary duties to act in good faith to obligations to act in accordance with the terms of the trust instrument. The Trusts Act 2001 provides that a trustee who commits or concurs in a breach of trust shall be liable for (i) any loss or depreciation in value of the trust property resulting from the breach; and (ii) any profit which would have accrued to the trust had there been no breach if the trustee is found to have acted in breach of the Act and contrary to the terms of the trust. A trustee may not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another. Where trustees commit a breach of trust, they shall be liable jointly and severally.

Furthermore, the Trusts Act 2001 stipulates that nothing in the terms of a trust shall relieve a trustee of liability for a breach of trust arising

from his own fraud, wilful misconduct, or gross negligence.

The Trust Act 2001 states nonetheless that a beneficiary may relieve a trustee of liability for a breach of trust and also indemnify the trustee against liability for breach of trust provided that:

- the beneficiary is not a minor or a person under legal disability;
- does not have full knowledge of all material facts; or
- is improperly induced by the trustee.

The competent court may also relieve a trustee wholly or partly of liability for a breach of trust, where it appears to such court that the trustee has acted honestly and reasonably and ought fairly to be excused (i) for the breach of trust and (ii) for omitting to obtain the directions of such court in the matter in which the breach arose.

In the circumstances where a trustee commits a breach of trust at the instigation, at the request or with the concurrence of a beneficiary, the Court may, whether or not the beneficiary is a minor or a person under legal disability, (i) order the defaulting beneficiary to indemnify the trustee in respect of the consequences of the breach of trust; and (ii) order the trustee to appropriate any part of the interest accruing to the beneficiary for that purpose.

Additionally, trustees may limit their liability through exclusion clauses in the trust deed, save for breach of trust and the exclusions set out above. Trustee exemption clauses are designed to give trustees protection against actions for breach of trust.

6.3 Fiduciary Regulation

Fiduciaries have the discretion as to how they invest the funds they control. As long as the powers of investment conferred by the terms of

a trust do not derogate from the duties imposed on trustees under the Trusts Act 2001, trustees may invest trust property in securities and investments with or without conditions or restrictions as per the terms of the trust.

The administration of assets under the Foundations Act 2012 is undertaken by the foundation council. Assets transferred to a foundation become the assets of the foundation and they cease to be the assets of the founder and are not the assets of the beneficiary unless and until distribution to the beneficiary.

6.4 Fiduciary Investment

There is no particular investment approach that trustees or a foundation council are required to take in the investment of assets.

Both trusts and foundations may be used as commercial vehicles and there are no legal limitations on such use.

7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

Domicile

By virtue of the Code, the domicile of every Mauritian citizen lies where they have their principal establishment. Caselaw has expanded on the definition of “domicile”, in particular in the context of succession laws.

Tax Residency

In terms of tax residence, an individual is resident in an income year where:

- they have their domicile in Mauritius unless their permanent place of abode is outside Mauritius;

- have been present in Mauritius in that income year, for a period of, or an aggregate period of, 183 days or more; or
- they have been present in Mauritius in that income year and the two preceding income years, for an aggregate period of 270 days or more.

Application for Residency

The following paragraphs deal with residency for immigration law purposes (as opposed to tax purposes).

In Mauritius, residency applications are governed by the Immigration Act 1970 and the Economic Development Board Act 2017 and citizenship applications are governed by the Mauritius Citizenship Act, the Code and the Civil Status Act 1981. No provision is made for applications for domicile.

Permits

Under the Immigration Act 1970, a person may make an application for (i) an occupation permit; (ii) residence permit and (iii) residence permit as a retired non-citizen.

Occupation permit

The occupation permit is a combined work and residence permit which allows foreign nationals to work and reside in Mauritius under 5 specific categories namely:

- investor, including investor for innovative start-ups;
- professional;
- young professional;
- self-employed; and
- family.

The above-mentioned permits shall be valid for the following durations:

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An occupation permit under the following categories shall be valid for the following durations:

investor and self-employed categories – a maximum period of ten years, renewable thereafter as per established criteria;

- professional – a maximum period of ten years, depending on the duration of the contract of employment, renewable thereafter as per established criteria;
- young professional – a maximum period of three years, depending on the duration of the contract of employment, renewable thereafter as per established criteria; and
- family – a maximum period of ten years, renewable thereafter as per established criteria.

Residence permit

Foreign nationals may also make an application for a residence permit in order to seek employment in Mauritius.

Residence permit as a retired non-citizen

Foreign nationals, above the age of 50 years, may also choose to retire in Mauritius. Such nationals shall be issued with a residence permit as retired non-citizens.

Acquisition of Mauritian citizenship

Mauritian citizenship is acquired in the following ways:

- by birth;
- by descent;
- marriage;
- registration of a commonwealth citizen as a Mauritian citizen;
- child born on ship or aircraft;
- adoption of minor children;
- registration of minor children;
- registration of foreign spouses of Mauritian citizens;

- naturalisation; and
- by incorporation of territory.

7.2 Expeditious Citizenship

Presently there is no provision for expeditious citizenship under Mauritius law.

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms

There are no specific or special planning mechanisms for minors or for adults with disabilities in Mauritius.

8.2 Appointment of a Guardian

The appointment of a guardian is governed by the provisions of the Code.

As a general rule, applications for guardians for minors, adults and elders are made to the Judge sitting in chambers of the Supreme Court of Mauritius.

Application for Appointment of Guardian for Adults, Adults with Disabilities and Elders

The application for appointment of guardians for adults, adults with disabilities and elders is made under article 496 of the Code. The application is made by way of praecipe and affidavit which is supported by documentary evidence in the form of medical examination reports. In order to decide whether the person should be represented by a guardian, a very detailed account of the person's health is called for and not simply the opinion of the doctor. The application is then referred to the Ministère Public for its views.

In the same way, the Ministère Public will investigate and provide the Court with its stand and any document received during the course of the investigation. Pursuant article 496 of the

Code, the Judge in Chambers is empowered, depending on the circumstances of the case, to order that the person be examined by a specialist medical practitioner. The Commissioner of Probation and Aftercare Service may also be ordered to submit a social enquiry report on the same person. After receiving all the documents, the Court will give its verdict.

Application for Appointment of Guardians for Minors

The application for guardianship of a minor is different from the guardianship of an adult. In the former case, guardianship and parental authority are closely linked but mutually exclusive. Article 373-1 and 373-3 of the Code provide that in the case of the demise of one parent, the other parent has the sole and exclusive exercise of parental authority and there is need for guardianship where both parents are no longer alive or where the exercise of parental authority of both parents has been removed by the Court.

Similarly, in the case of a natural child, article 374 of the Code Civil provides that parental authority is exercised only by the parent who has acknowledged the child as theirs and by both parents if the child is acknowledged by both the mother and father.

Therefore, guardianship in respect of a minor child, whether legitimate or natural, is to be pronounced only where both parents are deceased or there is no parent who can exercise parental authority as per article 395 of the Civil Code. Therefore, an application for guardianship in respect of a minor child is seldomly pronounced if the child has at least one parent who is alive and can exercise parental authority. It is only in some limited cases and in exceptional circumstances that such a drastic measure is taken.

8.3 Elder Law

The legislative framework in Mauritius has been amended to have a stronger focus on financial planning for life after retirement. In particular, the Mauritian legislation has been amended to (i) increase the basic retirement pension (provided by the Government) and (ii) implement a mandatory new system of a portable retirement gratuity fund. The latter applies in addition to the first increase to the basic retirement pension.

Increase in the Basic Retirement Pension

The basic retirement pension is payable to Mauritian citizens aged over 60 years old. The rate was recently increased in December 2019 by approximately MUR 3000. The basic widow's pension and basic invalidity pension were similar increased. Announcements were made in the Budget Speech 2022–23 that the basic retirement pension would be further increased.

Portable Retirement Gratuity Fund

Prior to the Portable Retirement Gratuity Fund (PRGF), an employer was required to pay a lump sum gratuity to an employee or their heirs upon the employee's retirement or death. This lump sum gratuity was computed based on the following formula:

- 15 days' final remuneration for every period of 12 months' employment; and
- a sum equal to one twelfth of the sum payable for 12 months' employment multiplied by the number of months during which the worker has remained in the employment of the employer, for every period of less than 12 months.

Previously, only the last employer was required to pay this lump sum gratuity. This meant that employees were not able to receive a gratuity which reflected their entire length of service if they changed employers throughout their professional career. Further, employers were finding

it burdensome to make a lump sum payment at the end of the employee's career.

In order to remedy these issues, the PRGF was established as from 1 January 2020, with the introduction of the Workers' Rights Act 2019. Under the PRGF, employers are required to make a monthly contribution to the PRGF instead of paying the lump sum mentioned above as gratuity upon retirement and/or death of an employee.

Every month, an employer is required to make contributions in respect of their employees and file a PRGF return with the Mauritius Revenue Authority (MRA) which is the administrator of the fund.

The rate of contribution makes up a cumulative figure of 4.5% of the monthly remuneration of the eligible employee.

PRGF contribution is based on an employee's remuneration which consists of basic salary, productivity bonuses, attendance bonuses and payment for overtime. It does not include any bonus or allowance which is not related to performance such as transport allowance, meal allowance and phone allowance.

When the employee retires at/after the age of 60 (or in case of earlier retirement in circumstances provided in the law) or the employee dies, the MRA pays the accumulated fund standing in the individual PRGF account to that employee or their heirs, as applicable.

In other words, all contributions made to the PRGF will be used to pay to an employee the lump sum retirement gratuity to which they are entitled upon retirement or death and which is computed according to the same formula mentioned above.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children

The rights of inheritance of children are governed by the provisions of the Code.

Children Born out of Wedlock

The Code does not distinguish between legitimate children, ie, children born conceived or born during the marriage of their parents and natural children ie, children born outside wedlock, for the purposes of inheritance. They have the same rights. However natural children will need to establish their "*filiation naturelle*" to their parents to benefit from the inheritance, unless they are otherwise recognised as a natural child by the parent.

Children born from incest can be recognised either by the father or the mother but cannot, under any circumstance be recognised by both parents.

Such children will have a *filiation naturelle* with the parent who recognises them and will have inheritance rights in relation to that parent only. Children born from incest do not have any inheritance rights in relation to the parent who has not recognised them.

Adopted Children

There are two regimes of adoption in Mauritius: (i) *adoption simple* (made by a single person over the age of 30 or a married couple) and (ii) *adoption plénière* (made by a married couple).

In an *adoption simple*, the adoptee retains a link with their biological parents, whereas in an *adoption plénière*, the links, rights and duties between the adoptee and the biological parents are severed and substituted by a new link with the adopters or adoptive parent(s).

A child adopted by *adoption simple*:

- in relation to the adoptive parents, has the right to inherit but is not entitled to the forced heirship rules in such succession; and
- in relation to the adoptee's biological parents, has the same inheritance rights as the legitimate children of such parents.

A child adopted by *adoption plénière*:

- in relation to the adoptive parents, has the same inheritance rights as the legitimate children of such parents; but
- in relation to the adoptee's biological parents, 'such children do not have any inheritance rights since the biological link is severed.

Posthumously Conceived

The Code provides that a child who was not conceived at the time of the opening of a succession cannot inherit after such succession is open.

Children Born via Surrogacy

There is no legal framework governing childbirth by surrogacy in Mauritius. Surrogacy arrangements or donations of eggs or sperm are not yet recognised in Mauritius.

9.2 Same-Sex Marriage

Mauritius does not recognise same-sex marriages nor domestic partnerships (also known as "*concubinage*" in Mauritius).

Although there are no statistics to confirm the preferred planning method in these cases, the most efficient planning vehicle would be wills and/or secret trusts. However, these would always be subject to the forced heirship rules.

10. CHARITABLE PLANNING

10.1 Charitable Giving

There is no income tax payable on charitable purpose entities under the Income Tax Act, nor capital gains tax payable on disposal of assets (save as described in **1.4 Taxation of Real Estate Owned by Non-Residents**).

10.2 Common Charitable Structures

The most common structures used for charitable planning in Mauritius are charitable foundations and trusts. In order to qualify as "charitable" the foundation or trust must have, one of the following as its exclusive purpose or objective:

- 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.

Advantages of Charitable Foundations

The advantage of structuring a charity as a charitable foundation is that it is considered an independent legal entity; it is not bound to a trustee. This makes it less likely for foundations to be exposed to "sham" issues compared to trusts.

Council members of a foundation have duties similar to directors' duties offering a strong governance framework. It is registered with the Registrar of Companies of Mauritius and is administered like a company.

It is also flexible, ie, it may engage in both charitable and non-charitable activities and may enter into business transactions and hold assets.

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The charitable foundation also affords a high degree of privacy, especially relevant in wealth planning, as the founder and beneficiaries do not appear in any public records. There is also no maximum number of members that can be appointed to a foundation council which may allow donors to have representatives on the board.

Prism Chambers is a full-service business law firm regulated by the Attorney General's Office in Mauritius. The firm was founded in September 2019 by Johanne Hague, a practising English solicitor and a Mauritian barrister. The firm currently includes five lawyers with extensive experience in all practice areas relating to business law, with particular focus on cross-border transactions with the African continent. The firm routinely advises clients on succession planning, private wealth management and efficient

investment and tax structuring including advising on the benefits of structuring in and through Mauritius. The firm further specialises in all aspects of revenue law, including tax advisory, transactional tax and tax controversy matters, with a significant cross-border element. The firm's expertise is consistently sought for high profile tax litigation cases on complex cross border matters, including transfer pricing cases. The firm regularly acts for financial service providers and multinationals.

AUTHORS



Johanne Hague is the founder and managing director of Prism Chambers. She is a barrister-at-law practising at the Mauritius bar and a solicitor of England & Wales. She has worked in

London for many years, at magic circle law firm Linklaters LLP and US investment bank JPMorgan Chase Bank. She was a Senior Partner at DLA Piper Africa's member firm in Mauritius. Johanne's main area of expertise is tax law with specific focus on financial services. She specialises in domestic and international taxation and her expertise covers a broad range of transactional and advisory tax matters. Her practice also covers a wide range of corporate, finance and commercial matters.



Ashwin Mudhoo is a Managing Associate and heads the Transactions team. He has more than a decade's experience in top-tier law firms in Mauritius and was until recently corporate

legal adviser of Ciel Group, one of the biggest conglomerates in Mauritius. Ashwin's time as an in-house lawyer has given him considerable insight on the operational aspects of business. Ashwin's main area of expertise is transactional corporate and commercial law. He advises local and multinational clients on their routine queries in relation to corporate matters as well as their most complex transactions including cross-border transactions, M&A and structured financing.

MAURITIUS LAW AND PRACTICE

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Zuleikha Abbasakoor is a barrister-at-law at Prism Chambers. Her areas of expertise are international corporate, financial and commercial transactions. She is

well versed in drafting legal documents of varying complexities, including security agreements. Zuleikha spent a year in Turkey as a legal editor for one of the most reputable local law firms and had the opportunity to work on different types of commercial contracts, often with a cross-border element. She regularly delivers training to on various topics including security law and fintech in Mauritius. She also has experience in the fields of tax, employment and compliance.



Medina Torabally is an associate at Prism Chambers and a barrister-at-law practising at the Mauritius bar. Medina worked as an assistant legal counsel at the Permanent Court

of Arbitration (PCA) and as litigation associate at a Tier-1 Chambers. Medina's practice mainly focuses on tax advisory and tax controversy matters. She regularly advises multinational and domestic clients on their contentious and transactional tax issues and regularly assists clients in connection with audits, investigations and assessments by the Mauritius Revenue Authority. She regularly appears before the Assessment Review Committee and other tribunals. Medina also has experience in the fields of commercial disputes, construction contracts and data protection.

Prism Chambers

Level 5
Alexander House
Ebene
Mauritius

Tel: +230 403 0900
Email: jhague@prismchambers.com
Web: www.prismchambers.com

