Mauritius foundations

The Foundations Act 2012 (the "Act") has been proclaimed and is effective as from 1 July 2012. This new legislation allows for the incorporation of foundations in Mauritius. Foundations are appealing to clients who are in civil law countries and who may not be familiar with the concept of trusts. A Mauritius foundation is an incorporated body, able to transact, and to sue and be sued in its own name. It acts through its council, which is the body charged with the administration of the foundation’s assets and the attainment of its objects.

A foundation can be formed in Mauritius for such purposes as may be provided in its charter and can be established by means of a will. It may be set up to achieve both charitable and non-charitable objects and can be either to benefit a person or class of persons or to carry out a specified purpose. A Mauritius foundation can only acquire legal personality when it is registered with the registrar of foundations (the "Registrar") and has obtained a certificate of registration. Once registered, it can exercise all the functions of an incorporated body: it has the capacity of carrying on or undertaking any business or activity in or outside Mauritius, entering into any transactions and holding assets. It may also upon application to the Financial Services Commission of Mauritius (the "FSC") hold a global business licence.

Key features of the Act

Registration of a foundation

The incorporation of a Mauritius foundation which will hold a global business licence is an activity regulated under the Financial Services Act 2007 and therefore an application for the incorporation of such a vehicle can only be submitted through a licensed management company.

As part of the incorporation process, an extract of the charter of the foundation must be submitted to the Registrar. The extract must 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 any beneficiaries;
- name and address of the secretary and the members of the council;
- list of names and addresses of the first officers of the foundation.

The Registrar is required to maintain a record of every foundation registered under the Act 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. However, a person authorised by the secretary of a foundation or by the FSC can have access to the file of that foundation at the Registrar’s office and inspect such records.

Also, 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 FSC.

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 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.

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.

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.

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 FSC, 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 in 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.
For further information, please contact:

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