



The Mauritius Foundation



ESTONE

MANAGEMENT SERVICES

ESTONE LIMITED, Level 7, ICONEBENE
Lot B441, Rue de L'Institut, Ebene, Mauritius

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THE MAURITIUS FOUNDATION

WHAT IS A FOUNDATION?

A Foundation is a legal entity separate from its founder, its officer and any beneficiaries. A Foundation is a legal entity that combines the features of a Trust and a Company. Its structure and functions are similar to those of a Trust but has the administrative flexibility of a Company. It may be used to conduct business in or outside Mauritius, entering into any transactions and holding assets.

Foundations are also widely used for private wealth management, estate planning and asset protection. 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 specific purpose. It acts through its council, which is the body in charge for the administration of the Foundation's assets and the attainment of its objects.

The types of assets that can be held by a Foundation include investment portfolios, insurance policies, real estate, intellectual property, bank deposits and most other types of assets.

KEY FEATURES OF THE MAURITIUS FOUNDATION

The salient features of the Mauritius Foundation are as follows:

- It can be set up *intervivos* (by charter) or by Will;
- It can also be set up to benefit persons, class of persons or to carry out a purpose which may be charitable, non-charitable or both;
- It must be managed by a Council, which should comprise of at least one member ordinarily resident in Mauritius;
- It is required to have a secretary in Mauritius, which would need to be licensed by the Financial Services Commission;
- It requires a registered office in Mauritius, at which its statutory and financial records must be maintained;
- The name of a Foundation must end with the word "Foundation". Application for the name reservation should be made with the Registrar;
- It may engage actively in trade and commerce.



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THE STRUCTURE OF A MAURITIUS FOUNDATION

The Mauritius Foundation is set up under the Foundations Act 2012 and is governed by its Charter and Article(s). All these documents are private.

Once the founder endowed assets in the Foundation, the assets are no longer his. Since he has no longer ownership on the properties, they are protected and preserved against situations such as creditors, bankruptcy, marriage, divorce or insolvency of the founder.

A Mauritius Foundation has no time limitation. It can be set up as a dynastic private wealth structure as it can hold and pass on the family wealth for many generations. The Foundation Act also contains firewall provisions aimed at preventing a foundation from being attacked on the basis of succession rights or forced heirship.

Upon the constitution of a Foundation, a certificate of registration will be issued specifying the date on which it has been registered and has obtained a legal personality. Disclosure of information on the beneficiaries of the Foundation is relatively new in Mauritius. The records maintained by the Registrar are not publicly available.

The Foundation is governed by a Council which is quite similar to the board of a company. The council comprises of at least one member ordinarily resident in Mauritius. The council members have the power to control and manage the Foundation as determined in its Charter. One of their main duties shall be to ensure proper execution of the objects of the Foundation. The founder can also be appointed as a council member. By being on the council, the founder can be involved in the way the Foundation is being managed.

TAX FEATURES

A Foundation is taxed at the rate of 15% if:

1. The founder is resident in Mauritius; and
2. A majority of the beneficiaries appointed under the terms of a charter of will are resident in Mauritius.

If any one of the conditions mentioned above are not met, the Foundation will be tax exempt in Mauritius. However, it will still be taxed on income derived from Mauritius.

A Foundation holding a Global Business licence may elect to be tax resident in Mauritius to benefit from the double taxation avoidance agreements (DTAAs) that Mauritius has with numerous countries.

A charitable Foundation is exempted from income tax in Mauritius.



COMPARISON TABLE

Some features of the Mauritius Trust and Foundation compared.

	FOUNDATION	TRUSTS
Applicable law	Foundation Act 2012 applies	Trust Act 2001 applies
Registration	The Foundation is registered with the Registrar of Foundations and a certificate of registration is issued.	There is no requirement to register a Trust in Mauritius. No registration fees are payable on establishment or annually to the authority in Mauritius.
Similarities	A Foundation is founded by the Founder. A Foundation is managed by a Council. A Foundation is governed by its Charter.	A Trust is settled by a Settlor. A Trust is managed by the Trustee. A Trust is governed by the provisions of the trust deed.
Conceptual Difference	A Foundation is a registered legal entity, which has legal personality, thereby owning the assets it holds outright without any split of legal and beneficial ownership.	A Trust is not a legal entity but a relationship between the Settlor, the Trustee and beneficiaries of the Trust. The Trustee has legal ownership of the trust fund and the beneficiaries enjoy beneficial ownership.
Beneficiary rights	The council members of a foundation owe their duty to the Foundation itself and not directly to the Beneficiaries. Beneficiaries, however, have rights against the Foundation and may petition the court in the event of a breach of duties of the Foundation council. The council is liable to the Foundation with all of its private assets if it causes damages due to an error for which it is culpable.	Beneficiaries of a Trust have equitable proprietary rights in the trust fund. This means that they have both personal rights against the Trustee to compel the latter to comply with their duties and obligations and also rights "in rem" which enable beneficiaries to trace property into the hands of third parties (if trust property is given away in breach of trust) and also giving them first priority of trust assets, before unsecured creditors. In trust law, Beneficiaries also have rights to be informed of their interest in the trust fund.
Redomiciliation	A Foundation established under the laws of another country other than Mauritius may apply to the Registrar of Foundations to be registered as, and continue as, a Foundation in Mauritius as if it has been set up in Mauritius.	A Trust can be transferred to Mauritius by way of a change of Trustee and the Proper Law of the Trust.
Duration	Perpetual	99-year duration, although a Purpose Trust may have a perpetual duration.



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KEY DEFINITIONS WITHIN A FOUNDATION

Council - Every Foundation require a Council. The Council allocates the assets of the Foundation and performs the tasks required. The Council has the power to delegate functions to officers it assigns, based on the Charter. The Council needs to have a minimum of one member who resides in Mauritius.

Charter - The Charter of a Mauritius Foundation is a set of rules and regulations that it has to abide by. It must contain information such as the name of the Foundation, its registered office, information relating to the Founder, Beneficiaries (if any), amongst others.

Founder - A Founder is a person who empowers a Foundation with its initial assets. However, an individual who endows assets in a Foundation after the latter's registration does not declare that specific individual as the Founder unless otherwise stated by the Charter or Articles of the Foundation. A Founder can also be a Beneficiary and has no obligation to reside in Mauritius.

Beneficiary - A Foundation can have one or more individuals as Beneficiary, who is subjected to benefit from a Foundation. As such, the right to distribute any Foundation property may be effected on behalf of a Beneficiary.

Secretary - Every Foundation is required to have a Secretary. A Secretary can be a Management Company like ESTONE LIMITED or an individual resident in Mauritius as per the rules of the Financial Services Commission.

Articles - According to the provisions of the Charter, the Council can in a case-to-case basis have Articles relating to distribution of assets, identification of any initial or additional Beneficiaries, and how the Council provisions needs to be coordinated.

Protector - A Protector or a Committee of Protectors can be appointed by a Foundation conforming to the responsibilities, rights, functions and remuneration as may be declared in the Charter. The Charter should also highlight the relationship of Protector or Committee of Protectors with the Council whilst in office.



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HOW WE CAN HELP – OUR SERVICES

When you establish a Foundation, it needs to meet your requirements. You need to feel confident that it's the right type of entity, in the right jurisdiction. We provide on-going administration support throughout the lifecycle of the Foundation.

We provide the following services:

- Set up of Foundations and drafting of Foundation Charter and other related documents
- Provision of functionaries such as registered agent, council members, company secretary
- Advice on the most appropriate corporate structure and transaction support
- Provision of corporate secretarial and administration services
- Provision of accounting and tax services
- Providing guidance on corporate, risk and compliance matters