

Axis Insights

The use of Mauritius Foundation in **asset protection** and **estate planning**



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Mauritius, conveniently located in the Indian Ocean, is known to be the gateway to Africa. For the past few years, Mauritius has been recognized as a premier international financial centre for corporate structuring, funds and wealth management due to its stable economic, social and political environment. Being a member of various inter-governmental organisations such as the SADC (Southern African Development Community) and the COMESA (Common Market for Eastern and Southern Africa), Mauritius has concluded 46 tax treaties with several countries worldwide.

There is a Chinese proverb that says, “Wealth never lasts for three generations.”. By way of explanation, the first generation works very hard to build the family wealth. The second generation reaps the benefits and grows the wealth. And the third generation squanders the wealth.

It is in fact tough enough to acquire fortune but protecting, preserving, and passing it over to the next generations is an even greater challenge. Some reasons for the depletion of wealth are death, incapacity, family disputes, creditors, taxation, bad investments, and prodigals. At the same time,

COVID-19 pandemic has brought unprecedented circumstances which have shed light on how important it is to plan for the future and to use succession instruments to keep the legacy.

Estate planning is the process of anticipating and handling of a person’s assets in the event that he is unable to handle them on his own. This practice is very popular among High Net Worth Individuals (HNWIs) and Ultra High Net Worth Individuals (UHNWIs) for the following reasons:

01

Elimination of uncertainties over administration of a probate;

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Maximising the value of the estate; and

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Ensuring that the wealth is adequately preserved, protected, utilised and passed over generations.

Another alternative to the use of a will or a trust for succession planning and wealth management, is the Foundation. It is relatively a new product having its origin in civil law countries. It was first created in 1926 in Liechtenstein and introduced in Mauritius in 2012.

The Foundation is commonly defined as an amalgam of a trust and a company. Like a company, the foundation has a legal personality and owns assets directly, albeit without a shareholder. Similar to a trust, it has a founder who endows property in the Foundation.

A Mauritius Foundation may be created inter vivo or by will. 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. The Foundation Charter set forth the purposes and objectives of the Foundation; the administration; the management; the powers vested in each party; and all other businesses. The Article of the Foundation may include details on the distribution of assets and identification of beneficiaries.

The objects and purposes of the Mauritius Foundation may be charitable, non-charitable or both and for the benefit of a person or/and a class of persons. It is important to bear in mind that these objects and purposes should not be contrary to the Laws of Mauritius.

As mentioned earlier, the Foundation is a legal entity and holds assets in its own name. In simple words, 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.

Besides, 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. On top of that, 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, its name should end with the word "Foundation" or the equivalent translation in other language and it should be registered with the Registrar of Foundation. A certificate of registration will be issued specifying the date on which it has been registered and has obtained a legal personality. The Foundation Charter need not be submitted to the Registrar. Only an extract of it will be required for registration purposes. Disclosure of information about beneficial owners of the Foundation is relatively new in Mauritius. The records maintained by the Registrar are not publicly available. Thus, confidentiality is maintained. However, it is worth bearing in mind that the concept of absolute confidentiality does not exist anymore due to bi-lateral and multi-lateral treaties that have been signed.

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 succession plan. The founder can also be appointed as a council member. Since the Foundation is a legal entity, it has separate legal personality and therefore it would not give rise to sham issues. By being on the council, the founder can be involved in the way the Foundation is being managed and takes part in the decision making.

Council members are not generally liable for loss caused to the Foundation unless in cases of gross negligence.

Additionally, every Foundation is required to appoint a secretary resident in Mauritius which could either be a management company or a person duly regulated by the Financial Services Commission. The Foundation Act does not outline the duties and powers of the secretary and it is therefore assumed that it will have duties and powers identical to that of a company secretary. Likewise, a trust, a protector may be appointed in the Foundation to advise the council members on its management and activities of and/or to consent to exercise by the council of any of their powers and discretion. Some of the key elements for successful governance of the structure will be objectivity, independence, and good faith.

“ The Mauritius Foundation shall have a registered office in Mauritius to which all communications must be addressed. Proper books of accounts and records of the Foundation should be kept at its registered office, as described in the Foundation Charter. It should also be pointed out, that Foundations established in other jurisdictions can be redomiciled to Mauritius as if it has been founded locally.

A non-resident Foundation is a Foundation of which the founder and appointed beneficiaries are non-resident in Mauritius. Both resident and non-resident Foundations shall be subject to taxation on its chargeable income at a rate of 15%

per annum. As per section 2 of the Income Tax Act, a Foundation is considered to be a company, the exemption applicable to a company, for example, on foreign dividend and interest, should be available to the Foundation, as the case may be. Moreover, a charitable Foundation is exempted from income tax in Mauritius.

Again, Mauritius Foundation is a perfect platform to those who wish to avoid lengthy probate issues as well as inheritance and estate tax as known of these are applicable here. Registration duty is payable by the buyer and land transfer is payable by the seller of immovable assets at a rate of 5% to 10%.

Whilst there are other succession tools such as the trust and the will, but with the Covid outbreak and the market volatility, many private individuals and families are looking for less problematic and more practical and effective instruments. The choice for a Mauritius Foundation could be an ideal solution. It offers continuous control and influence over the assets and can as well hold exotic assets.

Axis together with its legal partner BLC Robert & Associates, will advise and assist you to set up a personalised and tailored structure that will suits your needs, wishes, and goals in achieving a proper wealth management and estate planning for your future generations. Get in touch with us on info@axis.mu.



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