



## **The Mauritius Trust**

*...yet another efficient business solution brought to you by GWMS*

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*This Information Pack, IP 13, has been prepared for international investors and businesses who are seeking a cost and tax efficient jurisdiction for the structuring of their international business activities. IP 13 should be considered as a general guide only. IP 13 contains information, which, to the best of our knowledge and belief, is correct at the time of writing. You are however, strongly recommended to seek specific advice before acting on any information contained in IP13.*

## **Introduction**

GWMS is a licenced trust and financial services provider. Our services are tailored to suit the needs of High Net Worth Individuals, foreign corporates and institutional investors and include Global Business company formation, the settlement of trusts, the provision of on-going professional and administration services in the field of international and Mauritius taxation, accounting services in terms of IFRS, general company and trust administration services, company secretarial services, corporate trusteeship, qualified trusteeship and registered agent services (as applicable) to Category 1 Global Business Licence entities ("GBL1") - the tax treaty entities and Category 2 Global Business Licence companies ("GBL2") - the 100% tax exempt companies.

### **1. The Mauritius Trust**

The Trust Act 2001 provides, inter alia, for the settlement of several types of trusts including fixed, discretionary, protective or spendthrift trust, charitable purpose, non-charitable purpose, commercial purpose and sharia compliant trusts amongst others. A charitable trust may be settled for several reasons including, for example, to cater for the education of a client's children which are not resident in Mauritius.

The Trust Act provides for the protection of the assets of a trust against attacks on the basis of succession rights (i.e guards against forced heirship rules) marriage or divorce and insolvency of a settlor or beneficiary. The trust can avail of the legitimate confidentiality provisions enshrined in the legislation itself.

Discretionary trusts afford the most opportunities for tax planning.

A Private Trust Company (PTC) may be set-up to act as trustee for a particular trust or group of related (underlying) trusts. A PTC does not need to be licensed as a trustee.

### **Tax residence status**

A trust can be either resident or non-resident for Mauritian tax purposes. A Mauritius tax resident trust which holds a Category 1 Global Business Licence (GBL1 licence) is subject to an effective rate of tax of 3% on its taxable income, if any, and can access Mauritius' network of tax treaties. A trust which wishes to be non-resident in Mauritius for tax purposes must specifically declares its non residency status to the MRA. This declaration must be renewed every year.

A non-resident trust and its non-resident beneficiaries are not liable to Mauritian tax.



## Formation

A trust is generally formed by an instrument in writing. No registration of the trust is required with any authority in Mauritius. However, if a trust holds a GBL1 licence, full disclosure of the settler, trustee and beneficiaries must be made to the regulator in Mauritius, the Financial Services Commission.

## Typical trust features for maximum tax efficiency

- ✓ Non-resident settlor;
- ✓ Qualified trustee (as defined under trust Act 2001-*GWMS qualifies*) required;
- ✓ Minimum of one resident trustee which would normally be GWMS & max of 4 trustees;
- ✓ Min of two individual or one corporate trustee (i.e *GWMS qualifies*);
- ✓ No Mauritian based trust property;
- ✓ Freedom to choose proper law of the trust (i.e may not be Mauritius law)

## Typical uses of the Mauritius trust

- ✓ Tax planning (for efficiency in respect of inheritance, capital gains, CFC Rules )
- ✓ Avoidance of forced inheritance laws or probate formalities
- ✓ Succession & Business Planning
- ✓ Preservation of family property and protection against risk
- ✓ Asset Protection

## Private trust Companies (PTC)

The PTC is highly attractive to HNWI individuals and families who wish to structure their assets in one or more trusts **without losing control altogether** as is usually the case with discretionary trusts.

Under the PTC structure, the PTC becomes the corporate trustee of connected trusts for the benefit of a sole family, extended family or related individuals. Such individuals, families or family groups should be able to evaluate and assume the financial risks and economic consequences of their investments through the structure.

Absent the PTC, an independent qualified corporate or individual trustee will need to be appointed and control is relinquished. Benefits are:

- ✓ Control without compromising the structure
- ✓ Decision making faster while adherence to wish of family
- ✓ Enables orderly generation planning
- ✓ Risk profile of family respected in respect of investments in assets

GWMS is able and qualified to advise you on the PTC. This is often viewed as a first step for a client to start his own Family Office.



## **The enabling framework**

There is no specific legislation in Mauritius relating to the PTC. In 2004, the Mauritius Financial Services Commission of Mauritius (FSC) introduced a new policy whereby a private company may act as trustee for a limited number of trusts for the benefit of a family or related family groups, rather than offering its services to the public in general. Under such circumstances, the company will not be regarded as carrying on trust business in Mauritius.

Subject to compliance with the prescribed FSC conditions, the company is not required to be licensed under the Financial Services Act 2007 as a 'Corporate trustee'.

## **The Mauritius PTC regime**

1. A PTC can be set up as a private company holding either a Category 1 Global Business Licence (tax-resident company) ("GBL1") or a Category 2 Global Business Licence (non-resident company for tax purposes) ("GBL2") Global Business Company (GBC).
  - 1.1. Based on individual circumstances, in the event that the PTC does not have tax considerations, it would be sufficient to set up the PTC as a GBC2 due to the flexibility that it provides and the much low cost of maintenance.
2. The PTC must be set up by a licensed Management Company (MC)
3. The PTC must adhere to conditions set out by the FSC
4. The PTC does NOT need to be licensed as a Corporate / Qualified trustee by the FSC
5. The PTC is required to:
  - 5.1. restrict its activities to that of private trust business services;
  - 5.2. at all times maintain a minimum paid up capital of US\$5,000;
  - 5.3. provide its private trust business services solely to connected persons;
  - 5.4. not solicit trust business from, or provide trust business services to, the public;
  - 5.5. appoint a duly licensed Management Company (like GWMS) to carry out its trust administration services in relation to any trust to which it is a trustee;
  - 5.6. appoint the Management Company (as per point 5.5) as Company Secretary;
  - 5.7. adhere to the AML/CFT Framework of Mauritius;
  - 5.8. forthwith notify the FSC of any change in the nature and scope of private trust business;
  - 5.9. provide the FSC on a yearly basis or upon request a list of trusts for which it acts as private trustee;
  - 5.10. comply with any law(s) that may be enacted, at any time, in relation to the PTC;
  - 5.11. comply with any new dispensation relating to the PTC, including a cancellation of the Global Business licence of the PTC, in line with such new dispensation or regime that may be become effective in the future in Mauritius.

The FSC also requires that the trust administration function, any investment management services or investment advice required in connection with the family trust(s) should be outsourced by the PTC under a service agreement to licenced institutions or service providers i.e NOT performed by the PTC itself. Effectively, the PTC is an investment holding company as opposed to being a service provider or fiduciary.



## **Trust administration**

The trust administration which needs to be provided by the MC (like GWMS) includes:

1. Keeping of accounting records relating to the entire structure
2. Preparation of the trust financial accounts
3. Preparation of trust instruments/other documents relating to the trust(s)
4. Acting as custodian without also acting as a trustee
5. General administration of the trust & trust assets

## **Justifications for a PTC structure**

HNWI and HNW families often wish to hold in a trust their risky (or exotic) assets art, boats, aircraft, jewellery or hold shares in underlying trading companies. However, professional trustees are often unwilling to assume responsibility for such assets.

HNWI generally do understand that a trust is a fiscally and otherwise efficient manner to pass wealth to successive generation but the loss of control over such assets is often viewed as being too overwhelming and daunting!

Professional trustees generally would proceed cautiously, given the risks and liability that may attach to his actions, with respect to managing the assets of a trust while the settlor and /or beneficiaries of a trust may wish to act quickly, thereby engendering frustration.

A PTC may enable a settlor, given his self involvement on the board of the PTC, to mentor and gradually, over time, pass control over family wealth to his children. In contrast, devolving full control over assets to a third party trustee prevents the settlor from having any personal role in such orderly passing of control the next generation.

The board of a PTC that comprises of experienced family members and/or their professionals is most likely to be better able to run the business of a settlor that has been settled in a trust than a professional trustee.

Where a PTC and the underlying trusts are properly structured & set up for valid reasons like succession planning and there is substance in the operations of the structure, the mere fact that a settlor (or his family) may exercise management & control over the assets of the trust through the PTC will not compromise the validity of the trust structure i.e it will not be viewed as a sham trust structure and set aside.



## **PTC structuring considerations**

One of the greatest dangers of a trust is that the arrangement may be held to be a sham and set aside by a court of law. In such a case, the accumulated and current benefits of the trust will be lost and a huge tax liability may result.

The sham risk may be mitigated by separating the ownership of a PTC from its governance. The shares of the PTC are thus often held in a Purpose trust i.e a trust whose sole purpose is to hold the shares of the PTC.

Generally, at least the settlor/ settlor's family representative is appointed to the board of the PTC.

Where the shareholder(s) of the PTC is tax resident in a country with Controlled Foreign Company Rules (CFC), structuring becomes a vital consideration. In such a case, it is highly recommended that the shareholder settles his share in the PTC in a Purpose trust. CFC does not apply to trusts. CFC is an attribution rule which attributes the income of a company to its shareholder, whether such income is distributed or not to the shareholder and where such shareholder holds generally 50% or more of the company, directly or indirectly. Further CFC conditions may apply depending on the country which has such CFC rules. Examples of such countries are USA, several European countries, South Africa etc

The trustee(s) of a Purpose trust which holds the shares of a PTC would hold the right to appoint directors to the board of a PTC. However, the settlor of the structure may ensure his appointment to the board of the PTC through appropriate drafting of the trust deed of the Purpose trust.

A Mauritius Purpose trust may be of perpetual duration, may be created for a purpose, even if it has no beneficiary, must have an enforcer, must have at least one qualified trustee (GWMS qualifies), trustee and enforcer must be separated.

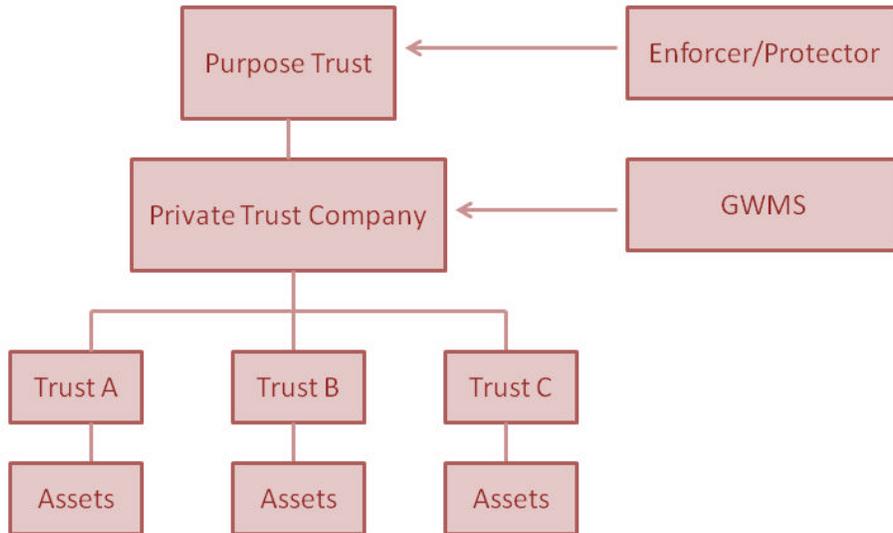
A trust is tax resident in Mauritius where the trust is administered at all times in Mauritius and a majority of the trustees are resident in Mauritius. Similar considerations apply generally to other jurisdictions. A PTC which has a GBL2 licence is not, by law, tax resident in Mauritius. Accordingly, such trustee PTC does run the risk of being deemed to be tax resident in another jurisdiction because the majority of the directors of the PTC are in that jurisdiction.

GWMS strongly recommends that enhanced substance be built in the operations and decision making forum of the PTC. Substance really means that:

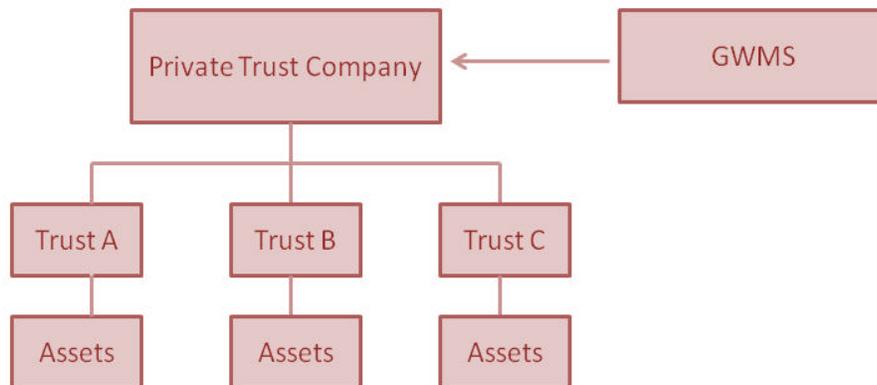
1. effective management and control is exercised (and seen to be so) in Mauritius;
2. a majority of directors of the PTC are resident in Mauritius;
3. The board meeting of the PTC is held in Mauritius;
4. The business operations of the PTC are effectively carried out from Mauritius.

## Typical PTC structures

Scenario 1: where the shareholder(s) of the PTC is tax resident in a country with CFC Rules.



Scenario 2: where the shareholder(s) of the PTC is tax resident in a country with no CFC. Examples of such countries are UAE, India, Mauritius etc





## About us...

GWMS is an experienced Management Company incorporated in Mauritius and licensed by the Financial Services Commission to Global Business services to businesses worldwide. One of the core competencies and activity of GWMS is the provision of a full range of Fund Administration services to offshore funds set up in Mauritius or elsewhere.

The board of GWMS comprises mainly of Chartered Accountants of calibre and experience in diverse sectors encompassing accounting, audit, management, global business, international and local taxation among others. GWMS is able to handle back office work as well. Our staff comprises a mix of fully qualified accountants, near qualified accountants, law graduates and administrative clerks.

GWMS is the sole member for Mauritius of the Association of International Tax Consultants (AITC, [www.aic-pro.com](http://www.aic-pro.com)). AITC is an international association of independent professional firms represented throughout Europe and beyond. AITC currently has 48 member firms throughout Europe, in the United States and Canada, South America, Australia, Asia, Africa and is continuing to broaden its coverage worldwide. Members include lawyers and tax advisers. As a truly multi-disciplinary group, AITC is well able to advise clients on a wide range of issues, across most major business environments. GWMS's clients can thus benefit from cutting edge international tax advice through our AITC network.

GWMS is also associated with Nexia SAB&T, Chartered Accountants (SA) ("SAB&T"), [www.sab-t.co.za](http://www.sab-t.co.za). Nexia SAB&T is a leading black-owned accounting, auditing, consulting and professional services firm has nearly 40 directors/partners and approximately 500 staff and has offices located in the major centres of South Africa. Mr Bashier Adam, the CEO of SAB&T is also a director of GWMS and he has a seat on the management board of Nexia International' EMEA region.

GWMS is also proud to be the Preferred Partner in Mauritius, of Corporate Catalyst (India) Pvt Ltd , [www.ccindia.com](http://www.ccindia.com), a Business Advisory, Corporate Finance and Tax Advisory firm based in Delhi with offices in Mumbai and associate offices in major centres in India.

GWMS has formally concluded yet another Preferred Partner agreement with **Corporate Management Services** (CMS), [www.cmshk.com](http://www.cmshk.com), of Hong Kong to provide our clients with more quality international business solutions. CMS provides incorporation and management services including China market entry solutions, China company credit reports and accounting/audit services, among others, in over 20 jurisdictions

**GWMS...the smart way to do business**

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