

## **The Trusts Act 2001: some appealing features**

- It allows for Fixed Interest, Protective, Charitable, Private Purpose and Discretionary Trusts
- The Settlor can be an individual or corporate. The Settlor can also be a Trustee, a Beneficiary, a Protector or an Enforcer (in case of a Private Purpose Trust) but shall not be the sole beneficiary of the trust of which he is a Settlor. In case where the Settlor is a corporate entity, there is no requirement for the Beneficiaries of the trust to be the corporate entity's shareholders or connected persons
- The Settlor can choose the proper law of the trust
- Possibility for the Settlor to leave, inter vivo or on his death, letters of wishes setting out how he would wish the Trustees to exercise their dispositive and administrative functions
- Protector can be appointed who can be individual or anybody corporate, partnership or group of persons, whether incorporate or unincorporated. The Protector can be a Settlor, a Trustee or a Beneficiary of the trust
- The number of Trustees shall not exceed 4 of whom one at least should be a qualified trustee (licensed by the Financial Services Commission). The terms of the trust can also provide for the appointment of a Custodian Trustee and a Managing Trustee. The Custodian Trustee shall have the sole function of holding the trust assets and these assets shall be managed by the Managing Trustee
- Beneficiaries are identifiable by name or ascertainable by reference to a class of persons or relationship to another person (dead or alive)
- Beneficiaries can also give letters of wishes to the Trustees
- There are no anti-forced heirship rules applicable to non-residents
- Duration of the trust is limited to 99 years or less (except for a non-charitable purpose trust which shall limit its duration to a term not exceeding 25 years). A Charitable Trust may be of perpetual duration
- Possibility to accumulate income for any period up to the maximum duration of the trust
- There is no disclosure of the trustees' deliberations, the name of the Settlor/s and the Beneficiaries unless if they are Mauritian residents or body corporates resident in Mauritius
- Trust is not void or voidable due to the insolvency of the Settlor or proceedings against him or the latter being declared bankrupt. However, such trust may be void if the creditors of the Settlor (existing when the Settlor vested the property

in the Trustee) prove beyond reasonable doubt that the intention of the Settlor at the time of creating the trust was to defraud them. The onus of proof rests on the creditor and no request for setting aside the trust will be accepted after more than 2 years from the date of the transfer or disposal to the trust.

- Trust can apply for a Global Business License –Category 1 (tax resident) and benefit from Double Taxation Treaties which Mauritius has ratified. This can be beneficial when undertaking investment in treaty countries or when making distributions to residents of these treaty countries
- Foreign trusts (proper law being non-Mauritian) are enforceable in Mauritius
- Beneficiaries can terminate the trust under the *Saunders v Vautier* rule