



Guide to
International Trusts
in Seychelles

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PREFACE

The Appleby Guide to Trusts in Seychelles addresses the unique nature of the trust relationship and its most common uses. The Guide demonstrates the flexibility and security that a trust offers as a vehicle for holding assets.

The information contained in this Guide is for informational purposes only and should not be considered as constituting legal advice. Readers are encouraged to consult their professional advisers before making decisions or taking actions on the numerous and complex issues involved in the establishment of trusts.

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1. INTRODUCTION

Seychelles' principal statute governing trusts and their administration is the International Trusts Act, 1994 (the "Act") The Act deals primarily with Seychelles' international trusts ("International Trusts"). In this Guide we discuss the key features of the Act.

2. WHAT IS A TRUST?

Fundamental trust law is the 'dual ownership' created by having the legal title to the property vested in one person, while the beneficial ownership of the same property is vested in another, allowing for the original owner to effectively divest himself of direct or indirect ownership of those assets while still influencing the future administration of the assets through the terms of the trust deed. Because of this basic difference in ownership, and the flexibility and protection afforded by trust structures, a trust is a useful financial and tax planning instrument and plays an important part in long-term wealth management.

A trust is not a separate legal entity, but instead a legal relationship created by the owner of assets or other property (usually the "settlor") and the persons willing to undertake the office of trustee (the "trustees") and take legal ownership of those assets to hold for the benefit of other parties (the "beneficiaries") under the terms of a trust deed, creating a binding obligation on the part of the trustees to act in accordance with the terms of the trust.

It is important to understand that once the trust assets are transferred to the trustee, the settlor loses all ownership rights to those assets. The trustee is not the agent of the settlor and cannot be compelled to act in accordance with his wishes (except as provided by the terms of the trust). Indeed, although the trustee will usually attach much importance to the settlor's wishes (which may be recorded in a written letter or memorandum of wishes), the trustee of a Mauritius trust is under an obligation to exercise independent judgment in deciding what is in the best interest of the beneficiaries when administering the trust. The trustee must of course act in accordance with the terms of the trust deed and under the Act is obliged to act with the utmost good faith and to preserve and enhance the value of the trust assets so far as is reasonable.

Many prospective settlors find it difficult to accept the fact that they will lose control of their assets on establishment of the trust, but it is the very fact that the trust assets no longer belong to the settlor which gives rise to the advantages outlined in this Guide. As the trust assets cease to be the property of the settlor, he may not be liable to pay tax on them and they may not be available to his creditors. Furthermore on his death they will not form part of his estate and so will not be governed by his Will nor subject to probate.

An International Trust has the following characteristics:

- a. The assets constitute a separate fund and are not a part of the trustee's own estate.
- b. Title to the trust fund stands in the name of the trustee or in the name of another person on behalf of the trustee.
- c. The trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

3. SETTLORS

A Settlor of a International Trust, under the definition of an International Trust in the Act, can only be a person who is not, at any time during the duration of the International Trust, a resident of Seychelles (§4(1)(a)).

For a person creating an International Trust or transferring or disposing of property to an International Trust, under the Act, neither that transfer or disposition, nor the International Trust will be invalidated by virtue of any rule or law relating to forced heirship, or by reason of the fact that the concept of trust is unknown to or not admitted by the law of a jurisdiction other than Seychelles (§10(2)).

Further, where a person creating an International Trust or transferring or disposing of property to an International Trust, under the Act, the settlor will be deemed to have had the capacity to create the International Trust or to make the transfer or disposition, provided the settlor had capacity to do so under the laws of Seychelles, the laws of the country or jurisdiction in which the settlor is domiciled or a national or under the proper law of the transfer or disposition (§10(2)(b)).

It should be noted that in relation to International Trusts, the trust property cannot include any property in Seychelles or any shares, debentures or any interests in any body corporate (other than a corporate body incorporated outside Seychelles, an International Business Company or another International Trust (§4(1)(c))).

Although the Act allows for the settlor to also be a trustee and a beneficiary of the same International Trust, it prohibits the settlor from being the sole beneficiary (§17(3)) except in extenuating circumstances outlined in the Act.

4. BENEFICIARIES

Any person, either natural or corporate and entitled to benefit under an International Trust, or in whose favour a power to distribute trust property may be exercised will be a beneficiary under an International Trust (§2).

A beneficiary of an International Trust shall be identifiable by name or ascertainable by reference to a class or a relationship to another person, whether or not living at the time of the creation of the International Trust, or at the time by reference to which, under the terms of the International Trust, members of a class are to be determined (§17(1)).

5. WHY A SEYCHELLES TRUST?

- Exempt from taxation on income, assets, capital gains or any stamp duties;
- Not subject to exchange controls and obligations to file public financial statements;
- Confidentiality and secrecy of identities of settlor and beneficiaries (as trust deed is not publicly filed);
- Disclosure of information in relation to International Trust is prohibited by the Act;
- Unenforceability of civil law forced heir-ship rules on transfers to the trust;
- Choice of law to govern the International Trust;
- Assets can be anything, except property situated in Seychelles, but may hold Seychelles government securities and shares in International Business Companies, other International Trusts or interest in foreign corporations;
- May open a bank account in Seychelles;
- May be revocable or irrevocable;
- Settlers or Trustees may be beneficiaries;
- Organization is straightforward and is inexpensive;
- Recognition of purpose trusts with no perpetuity rules;
- Possibility for migration of the trust;
- Possibility to accumulate income for any period during the duration of the International Trust;

6. CREATING A TRUST

Under the Act, an International Trust may be created by an oral declaration or by an instrument in writing, a will or codicil, but shall not be enforceable unless a declaration of trust has been registered (§15(1)) in accordance with the Act.

A declaration of trust must include a declaration by a resident trustee of an International Trust that the settlor is not a resident of Seychelles, the trust property does not include any immovable property in Seychelles and that the trust, which the trustee holds, qualifies as an International Trust and this must be submitted to the Seychelles International Business Authority (the “Authority”), upon the resident trustee’s appointment (§75(1)). The declaration shall not contain any mention of the name of the settlor or the name of any beneficiary, unless it is a Seychelles person or a body corporate resident in Seychelles (§76). A resident trustee who falsifies information or provides misleading information in a declaration of trust, who fails to submit a declaration of trust or knowingly declares that a trust qualifies as an International Trust when it does not (on the basis of the domicile of the settlor or the location of the trust property) is guilty of an offence and on conviction liable to a fine of R200,000 and to imprisonment for 10 years (§77).

7. TRUST DURATION

International Trusts may continue until the one hundredth anniversary of the date on which it came into existence and will then terminate unless terminated sooner pursuant to a relevant direction in the instrument creating it or for some other reason (§11(1)) with the exception of charitable international trusts and purpose international trusts, both of which may be of perpetual duration (§11(2)).

The terms of an International Trust may direct or authorise the accumulation of all or part of the income for any period within the duration of the trust.

8. TRUSTEES

The trust property is vested in trustees chosen by the settlor and appointed to hold and manage the assets of the beneficiaries. A trustee can be any adult individual who has the legal capacity to enter into contracts, or a corporate trustee, that the settlor thinks is appropriate to assume the responsibilities that accompany this equitable obligation. A corporate trustee is a body corporate acting as trustee (§2) and unless the International Trust is administered by a corporate trustee, the number of trustees shall not be less than two (§22(1)). Settlers typically avoid appointing trustees whose interests may be different than that of any beneficiary.

A corporate trustee may only act in connection with an International Trust by way of a resolution of its board of directors or other governing body or, alternatively, by appointing an officer or employee to act on its behalf, again by way of resolution (§41).

Appointment

At any point where the number of trustees is less than the number required, the necessary number of additional trustees shall be appointed in accordance with the Act, subject to the terms of the International Trust (§22(3)). The provision for the appointment of additional trustees if not found in the terms of the International Trust is found in the Act, which stipulates that an additional trustee may be appointed by the persons in the following order: the remaining trustee, the last remaining trustee, the personal representative of liquidator of the last remaining trustee or in the absence of any of the aforementioned persons, by the court on application by the person so interested (§23(1)). This newly appointed trustee may act in all respects, as if the appointment had been an original appointment

(§23(2)) and that anything that is required to be done to vest the property in the new or additional trustees jointly with a co-trustee may be done(§23(4)).

While the International Trust has less than the required number of trustees, the remaining trustee(s) shall act only for the purpose of preserving the trust property (§22(4)) and an International Trust will not be invalid simply because the number of trustees is less than that which is required, or because it does not have a Seychelles resident trustee (§22(2)).

Refusal/Resignation/Removal

A person that has been appointed as a trustee may refuse such appointment, but the Act states that the person shall be deemed to have accepted the appointment if the person knowingly intermeddles with the International Trust or its affairs (§24(1)). Further, any appointment may be disclaimed by the proposed appointee in writing to the settlor or to the other trustees, within three months of being informed of his appointment. If the settlor is dead (or cannot be found) and there are no other trustees, the appointee may apply to the court for relief from the appointment and the court may make such order as it thinks fit (§24(2)). If no disclaim has been made within three months, then the appointment is deemed to have been made (§24(3)).

A trustee, other than a sole trustee, may resign by delivering a written notice of resignation to his co-trustees (§25(1)) which will take effect upon delivery of the notice (§25(2)), subject to the terms of the International Trust. However, any resignation given to facilitate a breach of trust or which would result in there being no trustee or less than is required, the resignation will have no effect (§25(3)). Further, a person shall cease to be a trustee immediately upon the coming into effect of, or the exercise of a power under the terms of the International Trust under or by which the person is removed from, or otherwise ceases to hold office (§25(4)). The Act also provides that any trustee who has the power to appoint new or additional trustees, but fails to do so may be removed by the court (§23(3)).

Duties

The Act expressly imposes certain key duties upon any trustee and the Act stipulates that a trustee may sue and be sued as a trustee (§35):

Fiduciary duties: where a trustee must observe the utmost good faith and act, with due diligence, care and prudence, and to the best of his ability when exercising any of the functions of a trustee (§26(1)). A trustee must execute and administer the International Trust and exercise the functions of the office of trustee (i) in accordance with the terms of the International Trust, and (ii) only in the interest of the beneficiaries or in fulfillment of the purpose of the International Trust (§26(2)). Trustees are expressly prohibited from deriving any profit from the trusteeship or permit or cause any other person to derive such profit or (on the trustee's own account) enter into any transaction with a co-trustee which may result in such profit (unless with approval from the court, where permitted by the Act or as expressly provided in the terms of the International Trust) (§28). .

Duty relating to trust property: where the trustees must preserve and enhance, so far as is reasonable, the value of the trust property, and must ensure that the trust property is held by or vested in the trustee, or held by a nominee on the trustee's behalf or is otherwise under the control of the trustee (§27). Trustees must keep accurate accounts and records of their trusteeship (§29), and must keep trust property separate from their own property and separately identifiable from any other property of the International Trust (§30).

Duty to act together: Where there is more than one trustee, all the trustees must join in performing the trust, subject to the terms of the trust deed, which may provide for trustees to act by a majority (§32(2) & (3)). A trustee who dissents from a decision of the majority may his dissent to be recorded in writing (§32(4)).

Duty to act impartially: Where a International Trust either has more than one beneficiary, purpose or charity, the trustees must remain impartial and in the execution of the International Trust, maintain equality among beneficiaries, purposes or charities, as the case may be. This does not prejudice the exercise of a discretion conferred upon a trustee (§33).

Duty to provide information

Subject to the terms of the International Trust, a trustee shall at all reasonable times provide full and accurate information as to the state and amount of the trust property, upon written request of the settlor or of any beneficiary, including any charity named in the International Trust (§31).

General Powers

Subject to the Act and to the terms of the International Trust, a trustee has all the powers of a beneficial owner in relation to the trust property and may only exercise the functions of the office of trustee in the interest of the beneficiaries (or purpose) and in accordance with the terms of the International Trust (§34).

A professional person may be consulted by a trustee in relation to the affairs of the International Trust but that person being so consulted, will not be deemed to be a trustee. Further, the terms of the International Trust may require a trustee to consult, or obtain the consent of, another person, before exercising a function (§36).

Under the Act, but subject to the terms of the International Trust, a trustee may appoint and delegate the management of the trust property to investment managers, appoint any professional person to act in relation to the affairs, or hold any trust property of, the International Trust or authorize any such manager or person to retain a commission for the services rendered (§37(2)).

Unless permitted to do so by the Act or by the terms of the International Trust, a trustee shall not delegate any function of his office (§37(1)) but will not be liable for any loss to the International Trust arising from the delegation or appointment of a manager or professional person under the Act, where the trustee made or permitted the continuation of a delegation or appointment, in good faith (§37(3)).

9. ALTERNATE TRUSTS

Charitable International Trusts (“CIT”)

An International Trust will deemed to be charitable where the trust has as its main purpose or object one or more of the following: (i) the relief of poverty; (ii) the advancement of education; (iii) the advancement of religion; or (vi) any other purpose beneficial to the public in general (§13(1)).

Such CIT will still deemed to be charitable notwithstanding that the object or purpose may not be of a public nature (or for benefit of the public generally) and may only benefit a section of the public, members of the public or benefit privately one or more persons or objects within a class of persons or

objects (§13(2)(b)). Further, the charitable objects may be pursued in Seychelles or elsewhere (§13(2)(e)). The trustee of an CIT may also defer the distribution of the benefits for a period not exceeding the duration of the trust and the CIT itself may be discretionary (§13(2)(c) & (d)).

Purpose International Trust (“PIT”)

An International Trust, which does not have beneficiaries who are particular natural persons or bodies corporate (whether or not immediately ascertainable) or who are an aggregate of natural persons or bodies corporate ascertained by reference to some personal relationship, will be a Purpose International Trust (§14(1)).

The terms of a PIT (not being a perpetual trust or which may be terminated) shall specify the events upon which the PIT terminates and provide for the disposition of the net assets upon such termination (§14(3)).

A PIT may be enforced by the settlor or the settlor’s personal representative or by any person specified in the instrument establishing the PIT as being the person appointed to enforce the PIT.

10. FAILURE, LAPSE AND TERMINATION

Where an International Trust terminates, where there is no beneficiary (and no person who can become a beneficiary under the terms of the International Trust) where property is vested in a person otherwise than for the sole benefit of the person, but the International Trust upon which the person is to hold the property is not declared or communicated to the person or where an interest lapses, the interest or property concerned shall be held by the trustees in trust for the settlor absolutely or, if the settlor is dead, for the settlor’s personal representative (§57).

After retaining sufficient assets to make provision for liabilities, the trustees, upon the termination of the International Trust, shall distribute the trust property to the person entitled to it within a reasonable time in accordance with the terms therein (§58(1) & (2)).

Where all the beneficiaries of an International Trust are known, in existence, not a minor and not under legal disability, they may unanimously require the trustee to terminate the International Trust and distribute the trust property among them, and the trustee shall comply with such request. However, on a request to the court by an interested person, the court may direct the trustees to not distribute (or distribute as the case may be) the trust property or make such other order in respect of the termination of the trust and the distribution of the property as it thinks fit (§58(3) & (4)).

11. REGULATION & REGISTRATION

Disclosure

Trustees are not required to and the Act states that a trustee shall not, disclose any confidential information to any person not legally entitled to it. Nor can they be required to produce or divulge that confidential information to any court, tribunal, committee of enquiry or other authority in Seychelles or elsewhere except where ordered by the court in accordance with an enquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney-General (on proof to the satisfaction of the court that the information or document is bona fide so required). For the purposes of the Act confidential information includes any information or document within a trustee’s possession or control relating to:

- the name of the settlor or any beneficiary;

- the accounts of the International Trust;
- the trustee's deliberations as to the manner in which a power or a discretion was exercised, or a duty conferred or imposed by the law or by the terms of the International Trust was performed;
- the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason will be or might have been based; or
- the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty (§8).

Registration

As discussed, a Seychelles resident trustee must submit the declaration of trust to the Authority, upon the resident trustee's appointment (§75(1))

For more specific advice on International Trusts in Seychelles, we invite you to contact one of the following:

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