

Sample of Mauritius Foundation Charter – Contact to Offshore Company Corp for more detail at: www.offshorecompanycorp.com

CHARTER

OF

**ABCDE Foundation
(THE “FOUNDATION”)**

**THE CHARTER
of ABCDE Foundation**

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THE CHARTER of ABCDE Foundation

The undersigned, whose name(s) is (are) mentioned in Item “A” of the Schedule, with domicile as mentioned in Item “B” of the Schedule, acting as Founder hereby establish a Foundation constituted as a legal person in accordance with the Laws.

THIS CHARTER WITNESSETH AS FOLLOWS:

1. DEFINITION

1.1. In this Charter, except where the context otherwise requires:

1.1.1. **“Articles”** means the articles made by the Council in accordance with the Laws.

1.1.2. **“Accounting Period”** means such time period mentioned in Item “H” of the Schedule.

1.1.3. **“Beneficiary”** means such person or class of persons entitled to rights, interests and/or benefits under the Foundation or in whose favour a power to distribute any Foundation Assets may be exercised.

1.1.4. **“Business Day”** means any day on which banks in Mauritius are open for normal banking business, excluding Saturdays and Sundays, and any other day as may be determined by the Council.

1.1.5. **“Council”** is as defined in Clause 6.

1.1.6. **“Foundation”** means this foundation known as The ABCDE Foundation.

1.1.7. **“Foundation Assets”** means the assets owned by the Foundation and includes any movable and immovable assets, wherever situated, and rights and interests in the assets, whether vested, contingent, defeasible or future.

1.1.8. **“Founder”** means the person who shall endow the initial assets to the Foundation as explained in Clause 3.1 and whose name is mentioned in Item “A” of the Schedule.

1.1.9. **“Financial Statement”** means a statement approved by a Council, which presents fairly the financial position, financial performance and cash flow of the Foundation for an Accounting Period and contains such other information as may be required by any Regulatory Authority.

1.1.10. **“Laws”** means any Act, Regulation, Rule, Proclamation, Order or Code of Practice for the time being in force relating to and affecting foundations registered in Mauritius, whether directly or indirectly, including the Foundations Act 2012, the Financial Services Act 2007, Securities Act 2005 and the Income Tax Act 1995.

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- 1.1.11. **“Protector”** means the person or persons constituted as a committee of protectors, appointed as per this Charter and having such powers and duties as may be provided in this Charter or in the Articles.
- 1.1.12. **“Regulatory Authority”** means such authority in Mauritius or elsewhere with which the Foundation may deal, interact or liaise with, including the Registrar of Companies, Financial Services Commission and Mauritius Revenue Authority.
- 1.1.13. **“Secretary”** means the secretary appointed as per Clause 5.
- 1.1.14. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- 1.1.15. The singular includes the plural and vice versa.
- 1.1.16. A reference to a person includes a corporation, foundation, partnership, joint venture, association, authority, state or government and vice versa.
- 1.1.17. A reference to any gender includes all genders.
- 1.1.18. A reference to a clause, recital, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this Charter.
- 1.1.19. Headings are inserted for convenience only and do not affect the interpretation of this Charter where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- 1.1.20. Where an expression is defined, anywhere in this Charter, it has the same meaning throughout.
- 1.1.21. A reference to ‘US dollars’ or ‘US\$’ is to an amount in the official currency issued by the United States of America Federal Reserve unless otherwise stated.
- 1.1.22. The words “include” and “including” are to be construed without limitation.
- 1.1.23. The sentences “absolute discretion” shall imply that any decision taken under such condition needs no explanation.

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2. THE FOUNDATION

- 2.1. The name of the Foundation is ABCDE Foundation and is set up as per the Laws.
- 2.2. The Foundation shall be irrevocable for its Founder.
- 2.3. The registered office of the Foundation is as mentioned in Item “C” of the Schedule or at such address in Mauritius, as the Council shall determine from time to time.
- 2.4. The Foundation may establish and maintain such other offices and places of business and agencies in Mauritius or elsewhere as the Council may determine from time to time.
- 2.5. Subject to the Laws, the duration of this Foundation shall be for perpetuity unless a specific period is mentioned in Item “D” of the Schedule 1 or until it is wound up in accordance with the Laws.

3. ENDOWMENT

- 3.1. The initial endowment of the Foundation shall be the amount of money mentioned in Item “E” of the Schedule.
- 3.2. Other assets may be added to the Foundation Assets from time to time by the Founder, the Council or such other third parties by way of endowment.
- 3.3. For the avoidance of doubt, the endowment of an asset to the Foundation shall be free from any lien and be a transfer of title of the asset to the Foundation, with or without consideration, so that the Foundation becomes the owner.
- 3.4. The Foundation's Assets are exclusively reserved for the purposes and objects mentioned in this Charter.
- 3.5. The Council cannot dispose any of the Foundation Assets, except as authorised by this Charter and the Articles.

4. PURPOSES AND OBJECTS OF THE FOUNDATION

- 4.1. The purposes and objects of the foundation is to hold any asset for wealth management

5. SECRETARY

- 5.1. The Secretary shall be initially appointed by the Founder and subsequently as per this Charter or the Articles, may be replaced by the Council.

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- 5.2. The initial Secretary of the Foundation shall be as mentioned in Item “F” of the Schedule.
- 5.3. Subject to the Laws, the obligations and duties of the Secretary shall include the following:
- 5.3.1 To inform the Council of all the Laws relevant to their duties, responsibilities and powers which may be in relation to the conduct of meetings, filing of any documents with the Regulatory Authority and any consequences when failing to comply with such Laws.
 - 5.3.2 To ensure that the minutes of all meetings of the Council are properly conducted and recorded in accordance with the Laws.
 - 5.3.3 To ensure that all necessary filings have been done with the relevant Regulatory Authority.
 - 5.3.4 To assist the Foundation to keep proper records and documents of the Foundation.
 - 5.3.5 To undertake all such other tasks that the Council may delegate to it from time to time.
- 5.4 The Secretary may cease to act as the secretary of the Foundation as per the Laws, including upon giving a written notice of its intention to the Council at least seven (7) Business Days before the date it intends to cease to act as such and at the same time do the necessary filing with the relevant Regulatory Authority.
- 5.5 On the date the Secretary shall cease to act as secretary, the Council shall appoint another person as the Secretary of the Foundation within seven (7) Business Days or such other reasonable time period as may be determine by the Council.
- 5.6 During the period the Foundation will have no Secretary, no meeting of the Council shall be conducted.

6 COUNCIL

- 6.3 The Council shall be the governing body of the Foundation.
- 6.4 The Council shall be constituted of members who can be natural persons and/or body corporate and subject to the Laws at least one of them shall at times be ordinarily resident in Mauritius.
- 6.5 The details of the members of the Council are kept in a register maintained by the Secretary.

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- 6.6 The tenure of office of the members of the Council is not limited to a set period of time.
- 6.7 A member of the Council may be removed from office with or without cause.
- 6.8 Any fees of the members of the Council may be determined by the founder initially and subsequently by the Protector.

7 RESPONSIBILITIES AND POWERS OF THE COUNCIL

- 7.3 The Council shall have the responsibility to manage, administer and represent the Foundation, and may bind the Foundation without restrictions and with power of disposition, with respect to third parties.
- 7.4 Without prejudice to Clause 7.3, the Council shall have the following responsibilities and powers:
- 7.4.1 To manage the Foundation Assets in accordance with this Charter and the Articles.
 - 7.4.2 To invest in securities, open bank accounts, borrow and grant loans, receive and make payments, keep accounting records, keep the custody of Foundation Assets, establish and control subsidiary companies, engage agents, seek consultancy and advisory services.
 - 7.4.3 To enter into any such contracts or agreements as may prove to be expedient or necessary in order to comply with the object or purpose of the Foundation.
 - 7.4.4 To preserve, acquire, invest, sell or dispose of securities and other movable or immovable property of any nature, whether tangible or intangible.
 - 7.4.5 To place money on deposit for any terms and in any currency, with banking or financial institutions or brokerage firms, in any country.
 - 7.4.6 To borrow and grant loans, with or without surety and with or without interest, under any terms and from or to any person, including to any Beneficiary or any company whose shares are held as part of the Foundation Assets.
 - 7.4.7 To place as guarantee or pledge the Foundation Assets in line with the object and purpose of the Foundation.
 - 7.4.8 To apply the Foundation Assets in favor of any Beneficiary as may be provided in the Articles or instructed by the Protector in such letter or documents.

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7.4.9 To preserve the Foundation Assets or deposit same in any institution, with no liability for any losses which may result there from.

7.4.10 To pay any taxes, if any, assessments and other expenses from the Foundation Assets.

7.4.11 To establish, acquire, operate, represent the Foundation in shareholders meetings, or control one or more companies in any country and provide or engage the required person to undertake the managerial services, and to transfer assets from the Foundation Assets to such companies whenever needed.

7.4.12 To engage managers, advisers or any such persons whenever it is required for the fulfillment of the objects and purposes of the Foundation.

7.4.13 To seek financial and legal advice with regard to the Foundation whenever it is required for the fulfillment of the objects and purposes of the Foundation.

7.4.14 To inform the Beneficiaries and the Protector regarding the Foundation Assets as provided for by the Charter and the Articles.

7.4.15 To hand over to the Beneficiaries the Foundation Assets that have been settled in their favor as mentioned in the Charter, Articles or any such letter or documents instructed by the Protector.

7.4.16 To carry out all such other act permitted by the Laws.

7.5 Subject to the Laws, the Council may delegate its authority to:

7.5.1 administer the Foundation;

7.5.2 represent the Foundation for specific or general acts; and/or

7.5.3 do such other acts to one or several of its members, the Secretary or to a third party.

8 PROCEEDING OF THE MEETING OF THE COUNCIL

8.1 The meetings of the Council shall be conducted at the registered office of the Foundation or at such other place as may be determined by the Council.

8.2 At least seven (7) Business Days' notice, specifying the place, the date and the time of the meeting and general nature of the matters to be transacted, shall be given to every member of the Council.

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- 8.3 A quorum for a meeting of the Council shall be fixed by the Council and if not so fixed, shall be a majority of the members of the Council, among which, pursuant to Clause 6.4, the member ordinarily resident in Mauritius shall form part.
- 8.4 Voting at a meeting of the Council shall be by voice, show of hands or poll.
- 8.5 Every member of the Council present in person or an alternate member shall have one (1) vote.
- 8.6 A resolution of the Council is passed if it is agreed to by all members present or if a majority of the votes cast on it are in favor of it in accordance with Clauses 8.8 and 8.9.
- 8.7 Pursuant to Clauses 8.8 and 8.9, a resolution in writing, signed or assented to by all members or a majority of the members then entitled to receive notice of the Council meeting, is as valid and effective as if it had been passed at a meeting of the Council duly convened and held. The signatures of the members may be received in counterparts by facsimile or other similar means of communication.
- 8.8 Subject to Clause 8.9, the resolutions of the Council, whether at a meeting or in writing, shall be approved by a simple majority of the members of the Council.
- 8.9 The resolutions of the Council concerning the matters mentioned in Item "I" of the Schedule and where explicitly mentioned in this Charter, shall be approved by unanimous resolution of the members of the Council.
- 8.10 Where a member is a corporate body, it shall be represented by an authorized representative who shall vote at the Council meeting or signed or assent to any written resolution of the Council as the case may be on behalf of the corporate body.

9 APPOINTMENT, RESIGNATION AND REMOVAL OF MEMBERS OF THE COUNCIL

- 9.1 The members of the Council shall initially be appointed by the Founder.
- 9.2 Subject to the Laws, there shall always have at least one member of the Council who is ordinarily resident in Mauritius.
- 9.3 In the event of resignation, incapacity or demise of any member of the Council, whether a titleholder or an alternate, a simple majority of the remaining members may elect a substitute with the approval of the Protector.
- 9.4 If there are no further members in the Council, or if the remaining members are incapable of acting, the right to appoint new members shall vest in the Protector.
- 9.5 The members of the Council may be removed by the Protector.

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- 9.6 The Protector may designate or add new members to the Council, without prejudice to Clauses 9.1 and 9.2 of this Charter.
- 9.7 Any member of the Council may at any time by writing under his hand and deposited at the registered office, or delivered at a meeting of the Council, appoint any person to be an alternate member and may in like manner at any time terminate such appointment. Such appointment, unless previously approved by the Council, shall have effect only upon and subject to being so approved. A person may be appointed as an alternate member to more than one member of the Council; however, he/she may only act as the alternate to two members at any one time. In the case where the alternate member is also a member in his/her own right, he/she can only act as alternate to only one member.
- 9.8 The Foundation shall indemnify and hold harmless any member of the Council or its alternate for any loss and damage, from any and all liability and expense incurred by such member of the Council or its alternate against all actions, proceedings, claims and damages of whatsoever nature which may result directly or indirectly from services performed by the member of the Council or its alternate on behalf of the Foundation, save and except for any fraud, wilful misconduct or gross negligence on the part of member of the Council or its alternate.

10 BENEFICIARIES

- 10.1 The Founder, upon creation of the Foundation or afterwards by way of a letter of wishes or such other documents, or the Council, as per the Articles, if any, or by way of a resolution of the Council members with the approval of the Protector, may:
- 10.1.1 designate one or more Beneficiaries;
- 10.1.2 set down the procedures to appoint Beneficiaries; and
- 10.1.3 assign the rights ,interests and benefits attributed to the Beneficiaries.
- 10.2 For the avoidance of doubt, the Beneficiaries are neither the owners nor the creditors of the Foundation and cannot validly claim any rights except as provided in this Charter, the Articles, resolutions passed by the Council or such other documents validly created by the Founder or as per the Laws.

11 AMENDMENTS OF THE CHARTER

- 11.1.1 Subject to the approval of the Protector, the Council may by way of unanimous resolution:
- 11.1.2 change the object and purpose of the foundation; or

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11.1.3 amend, remove or declare inapplicable any one or more Clauses of the this Charter;

11.1.4 in any other way amend the Charter.

12 DISTRIBUTION OF THE FOUNDATION ASSETS

12.1 The Council may distribute the Foundation Assets in accordance with the Articles or as otherwise instructed by the Founder from time to time by way of a letter or such other documents.

13 ANNUAL FINANCIAL STATEMENT

13.1 The Foundation may prepare Financial Statement for each Accounting Period.

13.2 If the Foundation is to prepare Financial Statement, a copy of it shall be sent to any Beneficiary and the Protector upon request.

13.2.1 The Founder upon creation of the Foundation or subsequently, may appoint an auditor to audit the Financial Statement.

14 PROTECTOR

14.1 The Founder, upon creation of the Foundation or subsequently, may appoint, one or more Protectors as may be required with such powers and duties as mentioned in this Charter, the Articles or such other documents.

14.2 Upon the appointment of a Protector, the Founder or the Protector himself shall designate another person as the successor of the Protector.

14.3 Should there be no Protector or the latter cannot act, such powers conferred to him as per this Charter, the Articles or such other documents shall vest in the Founder and in case the Founder cannot act, the powers shall vest on the nominated Beneficiary and in case of the absence of nominated Beneficiary, such powers shall vest in the Secretary.

14.4 Without prejudice to the powers already conferred as per the different Clauses of this Charter, the Protector if appointed at the time of the creation of the Foundation shall also have the powers mentioned in Item “J” of the Schedule.

15 WINDING UP OF THE FOUNDATION

15.1 Subject to the Laws, the Foundation shall be wound up voluntarily on the occurrence of any of the following events:

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- 15.1.1 If the Foundation has a limited duration as per Clause 2.5, upon the expiry of such term;
- 15.1.2 A unanimous resolution of the Council to wind up the Foundation voluntarily;
- 15.1.3 the realization or termination of the purposes and objects of the Foundation;
- 15.1.4 such other events mentioned in Item “G” of the Schedule; and
- 15.1.5 any other reason as may be provided by the Laws.
- 15.2 For the avoidance of doubt, the Foundation may also be wound up in front of the Supreme Court of Mauritius and a liquidator shall be appointed thereby in accordance to the Laws.
- 15.3 Subject to the Laws and provided that the Foundation is wound up voluntarily, the Council shall be responsible to wind up the Foundation.
- 15.4 Nothing in this Clause is intended to waive, settle, release, limit or dispose of any rights or claims that:
 - 15.4.1 Creditors may have against the Foundation; and
 - 15.4.2 the Foundation may have against any debtors.
 - 15.4.3 Subject to the Laws, upon voluntary winding up of the Foundation, the Council shall carry out the following procedures: notify the relevant Regulatory Authority of the voluntary winding up of the Foundation within the prescribed period and undertake the necessary publication as per the Laws. Prepare a Financial Statement as at the commencement date of the winding up.
 - 15.4.4 Collect all debts due to the Foundation.
 - 15.4.5 Realise any Foundation Assets in whatever manner it deems fit, to the extent that it, in its sole and absolute discretion, deems necessary to:
 - 15.4.5.1 Pay the expenses that shall be incurred for the winding up; and
 - 15.4.5.2 discharge all the liabilities of the Foundation to its creditors;
 - 15.4.6 Effect distribution of the remaining Foundation Assets to the Beneficiaries in the manner it deems fit and as per the Articles and the Laws; and
 - 15.4.7 Make the necessary filing with the relevant Regulatory Authority to give effect to the voluntary winding up.

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16 ARTICLES

- 16.1 The Council shall have the authority to put in place the Articles.
- 16.2 The Council may, with the approval of the Protector, amend the Articles.

17 CONFIDENTIALITY

- 17.1 Any person who shall acquire information on the Foundation in his capacity as officer, Protector, member of the Council, counsel, attorney, auditor, representative or a functionary of the Foundation, shall at all times treat it as confidential and shall not disclose them to third parties, except as may be required by Laws or upon the prior written approval of the Council.

18 GOVERNING LAW

- 18.1 This Charter shall be governed by and construed in accordance with the laws of the Republic of Mauritius.
- 18.2 The Courts of the Republic of Mauritius shall have exclusive authority to settle any dispute which may arise out of or in connection with this Charter and that accordingly any suit, action or proceedings arising out of or in connection with this Charter shall be brought in front of such Court.

19 NOTICES

- 19.1 Notices which may or are required to be given to members of the Council shall be in writing and shall be deemed to have been properly given if:
 - 19.1.1 delivered in person, on the date of delivery;
 - 19.1.2 sent by express overnight courier service, on the opening of business on the first Business Day following the date on which such notice was couriered;
 - 19.1.3 by facsimile, during ordinary business hours on a Business Day, at the time stated on the facsimile transmission confirmation and if sent outside of such hours, at the opening of business on the first Business Day following such transmission; or
 - 19.1.4 sent by e-mail, upon the return receipt obtained by the sender or upon acknowledgement from the recipient of the e-mail, whichever is the earlier.

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20 REDOMICILIATION

- 20.1 Subject to the Laws, the Council may by way of unanimous resolution, with the approval of the Protector, transfer the Foundation to the jurisdiction of another country.

The present Charter has been executed by the Founder(s) at _____

_____ on the _____ 2019.

SIGNED BY Mr. XYZ
AS FOUNDER

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SCHEDULE

Item “A” – Name of Founder(s)

Mr. XYZ

Item “B” – Domicile of the Founder(s)

Item “C” –Registered Office of Foundation

Republic of Mauritius

Item “D” –Duration of Foundation

Unlimited Life

Item “E” –Initial Endowment

No Initial Endowment. Funds will be distributed to ABCDE Limited

Item “F” –Initial Secretary

Item “G” – Events for voluntary winding up

Item “H” – Accounting Period

Year ended 30th June

Item “I” – Matters where unanimous resolution of members of Council is required

Item “J” – Additional powers of the Protector