THE LEGAL CIRCLE
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FAQ on Trusts

1. What is the relevant law in Bangladesh?

The Trusts Act, 1882

2. What is a Trust?

A 'Trust' is an obligation imposed on one or more persons (Trustees) with regard to the property (Trust Property) that has been transferred to the Trustees by the creator of the Trust.

Legal Definition (Section 3 of the Trusts Act 1882): A Trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

3. Key terms under Trust.

a. The person who reposes or declares the confidence is called the “Author”;
b. The person who accepts the confidence is called the “Trustee”,
c. The person for whose benefit the confidence is accepted is called “Beneficiary”;
d. The subject matter of the Trust is called “Trust Property”;
e. The instrument, if any, by which the Trust is declared is called the “Instrument of Trust”;
f. A breach of any duty imposed on a Trustee by any law for the time being in force, is called a “Breach of Trust”.

4. Types of Trust.

Object wise a Trust can be divided into two types:

a. Private Trust, and
b. Public or Charitable Trust.

Private Trust: A Private Trust primarily confers the benefit of the Trust on certain person or a class of them. It is possible that in doing so it may incidentally confer some benefit on the public at large, e.g., there may be a Trust for the benefit of x individually or for his sons or descendants.

Public or Charitable Trust: A Public Trust, as the very name connotes, confers a benefit on the public at large. Trusts to promote public welfare or education are public Trusts and they may incidentally confer a benefit on an individual, or a class of them. The division of Trusts into private and public are related to the end or purpose or object which they are supposed to serve.

5. Purpose of Trust.

There must be a clear and certain purpose or purposes of creating a Trust. It cannot be made for uncertain or undefined purpose(s) and such purpose(s) of the Trust have to be lawful. For example, a Trust may be created for:

a. the education of poor children of an area;
b. certain medical purposes;
c. charitable purposes;
d. maintenance of someone;
e. establishing a scholarship or a school or even for the benefit of a single person or a specified group of individuals.

6. Who can be Trustees?

Every person capable of holding property and competent to execute contracts may be a Trustee. No one is bound to accept a Trust. Trustees are not entitled to receive any charge/remuneration for their services rendered to the Trust, unless the Author makes provisions for the same in the instrument creating the Trust.

7. What are the duties of Trustees?

Trustee’s first duty to properly execute the purpose of the Trust:

1. According to the author’s direction (as set out in the Deed of Trust at the time of creation)
2. According to the beneficiaries’ consent/ under their direction, if:
a. all the beneficiaries, who are competent to contract, can modify the purpose of the Trust which can be different from author’s direction.
b. the beneficiaries are incompetent to contract (consent can be given by a principal civil court of original jurisdiction)

However, a Trustee is not required to obey any direction when doing so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Other duties of Trustees include:

1. Acquainting himself/ herself with the state of the Trust property
2. Protecting the title of Trust Property
3. Not setting up title adverse to the interest of beneficiary
4. Take reasonable care of the Trust Property as if it is his/ her own property
5.Trustee is bound, unless an intention to the contrary may be inferred from the instrument of Trust, to convert the perishable Trust Property into a property of a permanent and immediately profitable character
6.Where there are more beneficiaries than one, the Trustee is bound to be impartial, and must not execute the Trust for the advantage of one at the expense of another
7.Trustee to prevent any act which is destructive or permanently injurious to the Trust Property
8.Maintain clear and accurate accounts of the Trust Property
9.Where the Trust Property consists of money, the Trustee is bound to invest the money on specified securities
10.Sell the Trust Property when directed to sell within specified time

8. Who are Beneficiaries?

The person or group of persons who will be benefited from the Trust are Beneficiaries. Anyone capable of holding property can be a Beneficiary. Whoever the Beneficiaries are, they need to be specified by the Author in such a manner that the Trustees can ascertain the Beneficiaries with reasonable certainty. If the Trust mentions such person(s) as Beneficiaries, who cannot be ascertained, then the Trust will fail for uncertainty.

9. How can a Trust be created?

a. The Author must draw up and execute a Trust Deed which must, amongst others:

i. indicate with reasonable certainty about his/ her intension to create the Trust;
ii. the purpose of the Trust;
iii. the beneficiary(ies);
iv. specification of the Trust property ;
v. particulars of the Trustees and the beneficiaries.

Also, the Trustee(s) have to give their consents to act as Trustees, and the Trust deed must transfer the Trust Property to the Trustee(s).

b. Register the Trust Deed at the sub-registry office in the area where the Trust Property is situated.

c.Irrespective of the nature of the Trust Property, the property has to be transferred to the Trustees by the Author following the appropriate legal formalities for the transfer of that type of property.

d.There is no requirement to take any permission from any authority for creating a Trust.

10. Who may create Trusts?

A Trust may be created by any person competent to contract with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor.

11. Extinction of Trust.

A Trust is extinguished:

a.When its purpose is completely fulfilled. For example, a Trust created for A, where educational expenses were provided from the Trust and according to Trust instrument after A attaining majority the Trust property will be vested on him. Here, after attaining majority the purpose is fulfilled.

b.When its purpose becomes unlawful.

c.When the fulfillment of its purpose becomes impossible by destruction of the Trust Property or otherwise. For example, if a Trust is created for A and A dies.

d.When the Trust, being revocable, is expressly, revoked.

12. What are the advantages of Trust?

a. A Trustee can be remunerated if it is clearly mentioned in the Trust deed.
b. It affords relatively greater flexibility in terms of status, registration and management.
c. If there exists any legal clear purpose, then any person (natural/legal) can form Trust through incorporating a Trust Deed- so Trust may be created for charity or social business.
d.There are no requirements for permission from any authority for creating a Trust, except registering the Trust Deed with the relevant Sub-registry office.

13. What are the disadvantages of Trust?

a.Profit cannot be distributed among the board members as dividends. Trust income must be spent on the fulfilment of objectives.
b.For fundraising from international sources and foreign donations, the Trust must obtain approval, known as FD Registration, from the NGO Affairs Bureau (NGOAB).
c.The trustee is the legal owner of property and personally liable for breach of Trust. Thus, a trustee is bound to maintain clear accounts of the Trust Property.

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