

Essentials of a Drafting of a Public Trust Deed

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Trust or institutions can be formed by executing a Trust Deed. Trust deed is to be executed on non-judicial stamp paper, vary from state to state in any language sufficient to show the intention and no technical words are necessary.

The instrument by which the trust is declared is called the 'instrument of trust' or more popularly as the 'trust-deed'.

Charitable, Religious institutions can be formed by executing a Trust Deed. Trust deed is executed between the settlor and the trustees. A settlor is a person who creates the trust for some charitable or religious or hospitality & rehabilitation purposes. Whereas the trustees are the people who manage the trust. The settlor generally appoints the trustees who can effectively run and work according to the objects of the trust.

Under trust deed, the settlor transfers the identifiable property to the trustees and makes it obligatory for the trustees to work and manage the trust as per the terms and conditions specified in the trust deed.

Advantages of a Trust-Deed

Though a trust may be created orally in certain cases, however, a written trust-deed is always desirable, even if not required statutorily due to following reasons:

- (a) a written trust-deed is *a prima facie* evidence to existence of a trust;
- (b) it facilitates devolution of trust property to the trust;
- (c) it clearly specifies the trust-objectives which enables to ascertain whether the trust is charitable or otherwise;
- (d) a written trust-deed is essential for registration of conveyance of immovable property in the trust name;
- (e) a written trust-deed is essential for obtaining registration under the Income-tax Act and claiming exemption from tax;
- (f) a written trust-deed helps control, regulate and manage the working and operations of the trust;
- (g) it lays down the procedure for appointment and removal of the trustee(s), his/their powers, rights and duties; and
- (h) it prescribes the course of action to be followed under any eventuality including determination of the trust.

It is particularly necessary for the person drafting the deed to bear in mind the three certainties of a valid trust which are —

- (i) certainty of declaration, i.e. imperative nature,
- (ii) certainty of subject matter, i.e. property in which it acts,
- (iii) certainty of object or beneficiary.

Any one drafting the deed of a public charitable trust has to bear in his mind several enactments, particularly, the Indian Trusts Act, 1882, any local / state enactment relating to trusts, like the Bombay Public Trusts Act, 1950 for the State of Maharashtra and the Income Tax Act, 1961. He should also keep in mind the ratios of the various judicial pronouncements dealing

with the scope of “charitable purpose” and deciding whether a particular purpose is charitable, interpretation of the particular objects clauses of the trust deed to decide whether the same is charitable or not.

Some Do’s and Donots of Drafting of deed

- (a) Use familiar words rather than farfetched words.
- (b) Use short words rather than a long word.
- (c) Use Active voice instead of passive voice.
- (d) No unnecessary repetition of words.
- (e) Write shorter sentences.
- (f) Express the ideas in fewer words.
- (g) Choose the right word.
- (h) Know exactly the meaning of the words and sentences you are writing, and
- (i) Put yourself in the place of reader, read the document from his point of view and satisfy yourself regarding the content, interpretation and the sense it carries.

Contents of a Trust Deed

A trust may be created by any language sufficient to show the intention and no technical words are necessary. A trust may even be created by the use of words which are primarily words of condition, but such words will constitute a trust only where the requisites of a trust are present. Though the use of the word ‘trust’ is not needed to create a valid trust, the terms of the grant or will make it clear that an obligation is actually annexed to the ownership of the trust property.

Irrevocable clause in the Trust Deed

Trust could either be revocable trust or irrevocable trust.

Revocable trust is a trust which can be altered, modified or cancelled at any time during the lifetime of the author or settlor of the trust. It serves 2 purposes

- (a) Author or settlor will remain the owner of the asset transferred and exercise control over it.
- (b) Property will be handed over to the intended and mentioned beneficiary, after the death of the author/grantor/settlor. On the event of the demise of the grantor, the revocable trust becomes an irrevocable trust.

Primary objective of the revocable trust is to avoid the legal procedure of obtaining the probate as it ensures easy transfer of the asset to the intended beneficiaries and at the same time ensuring dominance over the assets during the lifetime of the author.

On the other side, irrevocable trust is a trust which cannot be extensively amended/ modified/ altered/terminated by the grantor after the trust deed is signed and implemented. More importantly, once the asset & property is transferred to the trust, it can never revert back. In short, once the asset is vested with the trust, the author or settlor loses all control over the assets. No control whatsoever is there with the grantor after it is transferred to the trust.

Revocable vs Irrevocable Trust

S. No.	Revocable Trust	Irrevocable Trust
(i)	A revocable trust can be canceled at any time till the	whereas an irrevocable trust cannot be cancelled.

	survival of the author	
(ii)	In revocable trust, author can exercise his rights & control over the property transferred	whereas in an irrevocable trust, the settlor cannot exercise his rights & control over the property.
(iii)	Major existence of revocable trust is for private trust	whereas irrevocable trust is for public / general trust.
(iv)	One of the key logic for revocable trust to avoid the legal process of obtaining probate	whereas it is to protect the assets against creditors and estate duty in case of irrevocable trust.
(v)	Revocable trust offers full flexibility for amendment of trust deed	whereas is is restrictive in case of irrevocable trust.
(vi)	In case of revocable trust, income is normally taxed in the hands of the trustee/ author/ transferor only.	Irrevocable trusts do offer some tax benefits whereas it is not available in case of revocable trusts.

Investment Clause

The Board of Trustees shall be empowered to invest the funds of the Trust in movable or immovable properties, in such manner as they deem fit for the purpose of the objects of the trust provided that such investments shall be in accordance with the provision of Section 13(1) read with Section 11(5) of the Income Tax Act, 1961 as well as of any other law for the time being in force as are applicable to charitable trusts.

Utilization Clause

The Income and funds of the Trust will be solely utilized towards the objects and no portion of it will be utilized for payment of Trustees by way profits.

Benefit of the trust (i.e. Beneficiary Clause)

Beneficiary means – to whom the Trust income/corpus is intended for;

A public trust is created for the benefit of an uncertain and fluctuating body of persons who cannot be ascertained any point of time, for instance; the public at large or a section of the public following a particular religion, profession or faith. A public trust is normally permanent or at least indefinite in duration.

A family trust set up to benefit members of a family is the most common purpose for a private trust. The purpose of the family trust is for the settlor to progressively transfer his assets to the trust, so that legally the settlor owns no assets himself, but through the trust, beneficiaries get the benefit of these assets. A family trust can be set up either while one is still alive (by a declaration of trust contained in a trust deed) or post death, in terms of a will.

Dissolution clause

On dissolution of the Trust, the net assets of the Trust shall be transferred to an association of persons or trust or society having similar objects of this Trust.

Express words for creation of trust are needed

Intention to create a trust should be clearly spelt out. In order to find out whether the relevant clauses of a trust deed create a public charitable trust or not one has to go by the express words employed by the trust deed. For finding out the real intention of the settlor, the words used in the deed would be the real vehicle of thought of the settlor expressing his intention in cold print. – [CIT v. Kamla Town Trust (1996) 217 ITR 699 (SC)]

For construction of deed it must be read as a whole

It is a well settled rule of interpretation that the intention of the settlor must be gathered from the settlement as a whole and no particular clause should be construed in isolation for the intention of the author of the settlement. It is to be found not in one part of the settlement or in the other but in the entire deed and that intention can best be gathered by viewing a particular part of the settlement, not detached from its context in the settlement, but in connection with its whole context. – [Satya Vijay Patel Hindu Dharamshala Trust v. CIT (1972) 86 ITR 683 (Guj)]

Major clauses of Trust Deed

A trust-deed, generally, incorporates the following clauses:

THIS DEED OF TRUST executed on this _____ day of _____ year 20____,
_____ BETWEEN _____ (Party of the first part)
hereinafter called "SETTLOR OF THE TRUST" _____
_____ AND _____ .

1. SHRI.	S/O. SHRI	, of _____ &
2. SHRI.	S/O. SHRI.	, of _____ &
3. SMT.	W/O SHRI.	, of _____

(Hereinafter called "The Trustees" which expression shall unless repugnant to the context or meaning thereof be deemed to include the survivors or survivor of them and the trustees or trustee for the time being of these presents and their heirs, executors and administrators of the last surviving trustee, their or his assignees) of the other part;

WHEREAS the party hereto of the first part is possessed of the sum of Rs. _____/- (Rs. _____ Only) as his absolute property and he is desirous of creating a Religious/ Charitable/ Educational Trust for the benefit of the humanity at large.

AND WHEREAS each of the parties hereto of the "Other Part" has individually and jointly has agreed to act as Trustees of the Trust, proposed by the party of the first part.

AND WHEREAS nothing contained in this deed shall be deemed to authorize the trustees to do any act which may in any way be construed statutory modifications thereof and all activities of the trust shall be carried out with a view to benefit the public at large, without any profit motive and in accordance with the provisions of the Income-tax Act, 1961 or any statutory modification thereof.

AND WHEREAS the trust is hereby expressly declared to be a public charitable trust and all the provisions of this deed are to be constituted accordingly.

NOW THIS DEED OF DECLARATION OF TRUST WITNESSETH AS FOLLOWS;

(1) Settlement :

The party of the first part, the settlor, does hereby settle the sum of Rs. _____ /- (Rs. _____ only) in Trust, with the name and for the objects hereinafter stated, by delivering the said amount in cash which the party of the other part, the Trustees, have accepted the receipt of which they do hereby acknowledge, to hold the same in and

to the Trustees with the powers and obligations as provided hereinafter.

- (i) the name (s) of the author(s)/settler(s) of the trust;
- (i) the name (s) of the trustee(s);
- (ii) the name(s) if any, of the beneficiaries (it shall be the public at large);

(2) Name (i.e. the name by which the trust shall be known) :

The name of the Trust shall be "_____".

(3) Place :

The principal office of the Trust shall be situated at _____ or such other place as the Trustees may from time to time decide. The Trust may also carry on its work at any other place or places, as decided by the Trustees

(4) Objects of the trust:

The object for which the trust is created is specified in this clause. This is very important clause as all the activities are undertaken for the fulfillment of these objectives only.

(5) Activities of the Trust:

The activities of the Trust shall be only within India and its Union territories and shall not be extended anywhere outside India.

(6) Acceptance of Funds:

The trust can accept donations, grants, subscriptions, aids or contributions from any person, Government or any other charitable institutions, in cash or in kind including immovable property without any charge on it. But it shall not accept any such funds received with the condition which is inconsistent with the objectives of the trust.

(7) Administration of the Trust :

The administration of the TRUST shall vest with the Board of Trustees, which consist of.-

- (a) One Managing Trustee;
- (b) One Joint Managing Trustee;
- (c) One Deputy Managing Trustee and three trustees

(8) Resolutions:

- (a) The Trustees may exercise all the powers vested in them in clause 9 under these presents by resolution passed at a simple majority of the trustees attended such meetings of the Board of Trustees.
- (b) Any resolution in writing signed by all Trustees holding office for the time being shall be valid and binding.

(9) Power of the Trustees:

The Board of Trustees shall have the control and management of the Trust and exercise the following powers:

- (a) To determine from time to time to commence and to take up the object and purposes for which the funds of the trust shall be used and allot and allocate to each of the objects such portion of the funds as they deem fit;
- (b) To purchase and acquire any immovable property of any kind for this object of the Trust or as a source of income for the Trust;
- (c) To sell, mortgage, or dispose of any immovable property/properties belonging to the Trust; (d) To incur all expenditure necessary as in their own opinion useful for carrying out the objects and administration of the trust;
- (e) To sell, lease, mortgage or dispose of any property, immovable property/properties belonging to the Trust;
- (f) To open one or more bank accounts of the trust with any bank or banks as the Trustees may deem fit and deposit monies of the Trust in the Bank accounts.

- (g) To borrow for and on behalf of the Trust with or without security from banks, Governments, Universities or any other government Body/bodies both central and state;
- (h) To employ staff of all kinds necessary and useful for carrying out the objects of the trust.
- (i) To incur such other items of expenditure as is necessary and incidental for carrying out the objects of the Trust;
- (j) To institute, conduct, defend, compound, withdraw, compromise, adjust, refer to arbitration or to do such things as are incidental and necessary, concerning the affairs of the Trust and to sign and verify vakalats, pleadings, affidavits and other powers'
- (k) To delegate all or any of the powers vested in the Trustees to any body' to frame rules, bylaws and other codes for the conduct of the affairs of the Trust and its transactions and establishing any Committee;
- (l) To accept contributions in cash or in kind either by way of addition to the trust funds generally or for any one or more of the specified objects of the Trust.
- (m) To establish as many adhoc committees for any purpose.

(10) Appointment of trustees:

Any vacancy in the Board of Trustees shall be filled up by the remaining members of the Trust selecting a suitable person.

(11) Accounts and Audit:

The Trustee shall keep proper books of account of all the assets, liabilities and income and expenditure of the Trust and shall prepare an Income and Expenditure Account and Balance Sheet for every year as on the last day of March.

The accounts of every year shall be audited by a Chartered Accountant or a firm of Chartered Accountants who shall be appointed for that purpose by the Trustees and the audited accounts shall be placed at a meeting of the Trustees, which shall be held before the end of the succeeding year.

(12) Bank account:

All income, subscription and pecuniary donations for the general purposes of the Trust and the income, investments and all other moneys from time to time forming part of the general revenue of the Trust shall on the same being received be paid into a banking account with any scheduled bank for the purpose of the Trust. The bank accounts shall be operated by the Managing Trustee along with any one of the remaining Trustees.

(13) Remuneration to the trustees:

The Trustees are not entitled for any remuneration. But they shall however be entitled to receive out of pocket expenses incurred by them in the course of discharging the functions of the Trust.

(14) Power to alter rules and regulations:

The Board of Trustees shall have full power and authority to make, alter and rescind rules and regulations for the management and administration of the Trust. Any amendment to the Trust Deed will be carried out only with the approval of the competent authority of the Income Tax Department (i.e. Commissioner of Income Tax (Exemption).

(15) Beneficiaries :

The Benefits of the Trust are open to all irrespective of Caste, religion, race, sex etc. That the Trust will not carry on any activities with an intention of earning profit.

(16) Trust Fund Investment (i.e. Investment clause) :

The Board of Trustees shall be empowered to invest the funds of the Trust in movable or immovable properties, in such manner as they deem fit for the purpose of the objects of the trust provided that such investments shall be in accordance with the provision of Section 13(1) read with Section 11(5) of the Income Tax Act, 1961 as well as of any other law for the time being in force as are applicable to charitable trusts.

(17) Utilization :

The Income and funds of the Trust will be solely utilized towards the objects and no portion of it will be utilized for payment of Trustees by way profits, interest, dividend or otherwise.

(18) Irrevocable :

The Trust shall be irrevocable and no part of the Trust Fund in any circumstances whatsoever

shall be paid or applied for the benefit of the Settlor. If the Trust fails or is held to be invalid for any reasons whatsoever, it shall not result in any trust or benefit in favour of the Settlor and no part of the assets or property shall be transferred to the settlor or trustee.

(19) Suits:

The Managing Trustee of the Trust is authorized to sue or to be sued on behalf of the Trust.

(20) Indemnity:

Every Trustee shall be indemnified out of the fund in respect of any loss arising from or contingent upon any investment made out of the monies of the Trust unless such loss shall have been occasioned by own negligence and also every Trustee shall be indemnified out of the Trust against all proceedings, suits, claims, costs, damages and expenses occasioned by any claim in connection with the matters or affairs relating to the Trust created by these presents or in the exercise of powers or discretion vested in them by virtue of these presents.

(21) Amalgamation :

The trustees may amalgamate the trust with another Charitable Trust or Institution having similar objects with prior permission of the Charity Commissioner/Court/any other law as may be applicable for the time being.

(22) Winding up:

In the event of winding up of the company, the assets of the trust shall not be transferred to the trustees. They shall be transferred to some other similar trust or organization whose objects are similar to those of this trust with the permission of the charity commissioner/Court/any other law as may be applicable for the time being.

(23) Dissolution:

On dissolution of the Trust, the net assets of the Trust shall be transferred to an association of persons or trust or society having similar objects of this Trust.

IN WITNESS WHEREOF THE AUTHOIR OF THE TRUST HAS SET HIS HAND AND SIGNATURE ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN IN THE PRESENCE OF

WITNESSES:

SETTLOR/ AUTHOR OF THE TRUST

WITNESS

1.

1. TRUSTEE _____

2.

2. TRUSTEE _____

TEE

3. TRUS
