TRUST

MEANING:

As per the Indian Trust 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.”

A trust is an arrangement where the owner (trustor) transfers the property to someone else (trustee) for the benefit of a third person (beneficiary). Such a property is transferred by the trustor to the trustee along with a proclamation that the trustee should hold the property for the beneficiaries of the Trust.

Property here not only refers to immovable property but it includes all the valuable assets such as jewellery, cash, movable assets like cars, etc as well.

Other important terms as per the Indian Trust Act 1882:

- “author of the trust” means the person who reposes or declares the confidence.
- The person who accepts the confidence is called the "trustee"
- The person for whose benefit the confidence is accepted is called the "beneficiary"
- The subject-matter of the trust is called "trust-property" or "trust-money"
- The "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property;
- The instrument, if any, by which the trust is declared is called the "instrument of trust" or Trust Deed.

TYPES OF TRUSTS:

Trusts can be classified into two categories:

1. **Public Trusts**
   It is a trust whose beneficiaries include the public at large. Further, a Public Trust can be further subdivided into Public Charitable Trust and Public Religious Trust. Public Trusts are governed by respective state governments in the state in which the trusts are registered.

2. **Private Trusts**
   A private Trust is the one whose beneficiaries include families or individuals. Further, a Private Trust can be subdivided into:

- Private Trusts whose beneficiaries and their requisite shares both can be determined
- The Private Trusts whose both or either the beneficiaries and their requisite shares cannot be determined.

Private trusts are governed by the Indian Trusts Act, 1882.

MAIN OBJECTIVES OF A TRUST:

As per provisions of Section 4 of the Indian Trusts Act, 1882, The main objective is that the trust should be created for a lawful purpose.
It cannot be created to fulfil an unlawful purpose. As per Section 4, all purposes are said to be lawful unless it:

-Is forbidden by law
-Defeats the provisions of law
-Is fraudulent
-Involves injury to another person or his property
-Immoral or against to public policy

Illustrations:

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.
(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.
(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

PERSONS WHO CAN CREATE TRUST:

As per provisions of Section 7, A trust may be created by:

-Every person who is competent to contracts: This includes an individual, AOP, HUF, company etc**and**
-If a trust is to be created on or behalf of a minor, then the permission of a Principal Civil Court of original jurisdiction is required.

Further, it also depends on the law in force that is prevailing at that particular point of time and the extent to which the author of the trust may intend to dispose of his property.

Further, as per provisions of Section 5, the following registrations are mandatory in case of;

Trust of immovable property-No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property-No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

However, these rules do not apply where they would operate so as to effectuate a fraud.

<u>PROCESS OF REGISTRATION OF TRUST:</u>

- **Choose an Appropriate Name for the Trust**
  This is the first step in registering the Trust. Additionally, the name so suggested should not come under the restricted list of names as per the provisions of the Emblems and Names Act, 1950.

- **Decide the Settlers or Authors and Trustees of the Trust**
  There is no defined provision with regards to the number of settlers/authors. However, in most of the cases there is typically one author.

  Further, there is no limit on the maximum number of trustees. But a minimum of two trustees are necessary to form a Trust. Also, the author generally cannot be the trustee. And he needs to be a resident of India.

- **Formulate Memorandum of Association (MOA) and Trust Deed of your Trust**
  A Trust Deed is legal evidence of your Trust's existence and it contains the rules and regulations of your Trust. This document also contains the bylaws regarding the changes, removal or addition of the Trustees.

  Memorandum Of Association (MOA)on the other hand represents the charter of the Trust. It defines the relationship of the Trustor with the Trustees and specifies the objectives for which such a Trust is formed. Such a document should contain the names, addresses and occupations of all the members along with their signatures.

Documents Required to be Submitted at the Time of Registration

- Trust Deed

- Self attested copy of the proof of identity of the settler (Aadhaar card, passport, voter ID, driving license or any such photo ID)
- Self attested copy of the proof of identity of each trustee (Aadhaar card, passport, voter ID, driving license or any such photo ID)
- PAN card of each trustee
- Proof of the registered office address of the Trust (electricity/water bill or registration certificate)
- Non Objection letter signed by the landowner
- <u>Prepare Trust Deed on a Stamp Paper</u>
  As a Trust, you need to prepare the Trust Deed on stamp paper. The value of this stamp paper is of a certain percentage of the total value of the Trust's property. Further, this percentage varies from state to state.

On submission of the papers, one can collect a certified copy of the Trust Deed within one week's time from the registrar's office.

- **Submit the Trust Deed with The Registrar**
  After receiving a certified copy of the Trust Deed, submit the same along with properly attested photocopies with the local registrar.

  Further, the settler must put his signatures on every page of the photocopy of the Trust Deed. Also, it is mandatory for the settlers as well as two other witnesses to be physically present along with their identity proof (original as well as self attested photocopy) at the time of registration. However, the physical presence of Trustees is debatable.

- **Obtain the Registration Certificate**
  After submitting the Trust Deed with the registrar, the registrar retains the photocopy and returns the original registered copy of the Trust Deed.

Then, after completing all the formalities registration certificate is issued within a minimum of seven working days.

- **Application of PAN and TAN of Trust**
  After registration of the trust, the next step is to apply for allotment of PAN Number and TAN and thereafter opening of a bank A/c.

<u>COMMON REGISTRATIONS/ LICENSES APPLICABLE FOR TRUST:</u>

1. SHOP AND ESTABLISHMENT LICENSE:

Every shop and the commercial establishment is required to obtain establishment registration with the Labour Department within 30 days of starting their business. It is mandatory for all states in India.

2. GOODS AND SERVICE TAX REGISTRATION:
   GST Registration is mandatory for every business engaged in providing services or supply of goods, where the turnover exceeds Rs. 20 Lac or does even a single transaction in an interstate trade.

3. PROFESSIONAL TAX REGISTRATION (only in Maharashtra):
   Majority of the state governments have passed specific legislation to impose a tax on profession, employment or calling of any nature, however, it can not be more than Rs. 2500 per annum.

4. IMPORT EXPORT CODE:
   Import Export Code (IEC) is a ten-digit pan based registration with the DGFT. IEC is a mandatory prerequisite to starting a business of Import or Export in India. Only one IEC code is issued against a PAN.