



# Effective estate planning through creation of trusts

Estate planning through trusts will ensure that the estate passes to intended beneficiaries and minimise court proceedings in succession

**Y**ou work hard to build your assets—your investments, home, personal property—and to provide a level of financial security for loved ones. Then, doesn't it make sense to work just as hard to protect them in the event something should happen to you?

That's the primary goal of estate planning—to protect, preserve and manage your estate/assets during and post your life.

## What is Estate Planning?

Estate Planning is a process of arranging

and planning a person's succession and financial affairs. An Estate Plan which incorporates a person's wishes about his estate, could be regarding Estate Management, Estate Preservation and Estate Legacy during and post life. The primary goal of estate planning is ensuring that the estate of the individual passes to the estate owner's intended beneficiaries, often including efficient tax and succession planning and avoiding or minimizing court proceedings in succession matters and obtaining probates (i.e. a "Will" certified under the seal of the court with the grant of

administration to the estate of person who has made the Will).

Though earlier India had estate tax, today we have no estate tax or estate duty unlike many advanced market economies. First introduced here in 1953, Estate Duty was abolished in 1985. Estate Planning by Trust Structures was primarily done to minimize Estate Duty/ Tax which is imposed on all property transferred at death.

Some people may see no need for estate planning until they reach a certain age, or they might believe that it's only



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for the wealthy. But it is wise for everyone to begin the estate planning process as early as possible. In fact looking at the various disputes in families in the public domain, Estate Planning is becoming increasingly necessary for every individual to ensure a planned succession, avoid family feuds leading to disintegration of businesses and lengthy court battles. Also if Estate Duty is reinstated in India today or in the near future, Estate Planning may turn out to be the best tool to minimise the Estate Duty.

Why is estate planning so important? Because it allows you to accomplish a number of crucial objectives like:

- Harmonious and planned succession and disposition of the estate which helps ensure that your money and other assets go to the people you choose.
- Efficient management and accumulation during and after life.

**BY ADOPTING A TRUST ROUTE a person can avoid the issues which arise in a will and make a ring fenced structure to ensure that his future generations are well protected through a vehicle created by him and according to his directions.**

- To take care of unforeseen eventualities by providing for who will care for your minor children if you become unable to.
- Defusing potential conflicts over the distribution of your assets.

### Modes of Planning One's Estate

One can plan his estate in two ways i.e. either by writing a Will or by creating a Trust. Writing a Will as we all know has been a traditional way of passing on all what a person has earned and what he has inherited from his

ancestors to his future generations. Trust has been used as a vehicle by many people in the past to pass on the wealth in a planned manner and over a period of time.

- A Will is a legal declaration of a person's intention with respect to his property which he desires to be carried into effect after his death. Thus a Will operates only after the death of the person.
- A Trust involves transferring of one's estate to a Trustee for the benefit of certain beneficiaries which may include the person creating the Trust who is called the Settlor. A Trust provides for management of the estate during one's lifetime and also provides for distribution and management of one's wealth post demise in a planned manner over a period of time.

Traditionally, Wills have been the primary tool people use to distribute assets according to their wishes. But with

families going to courts on disputes arising out of Wills either on the authenticity thereof, mental soundness of the person making the Will or alleged forgery, the Trust route created during the lifetime of the individual is emerging as a more viable solution to estate planning. The grounds on which a Will may be challenged are numerous, the time taken in India to get a probate of the Will in case the Will is contested could be several years and it could be a very expensive affair, exactly what any family doesn't need.

Further the necessity to obtain a probate of the Wills in most of the cases

entails the Will being made public and going to courts for obtaining a Probate. A public document, a will is subject to scrutiny by anyone who wishes to know its contents. If someone feels they've been treated unfairly, they can contest the will. Such challenges can tie up assets for months or even years, and cost your estate a huge amount of money.

### Trusts

In a Trust, a person transfers his property to another person i.e. the Trustee to hold it for the benefit of certain beneficiaries or it can be for the benefit of beneficiaries and himself. By adopting a Trust Route a person can avoid the issues which arise in a Will and make a ring fenced structure to ensure that the person's future generations are well protected through a vehicle created by him and according to his directions. The Trust has the following components:

**Author of the Trust/ Settlor-** A person who settles the Trust or the author of the Trust.

**Trustee-** The person who is appointed by the Settlor to administer the Trust and who accepts the responsibility of acting as a Trustee.

**Beneficiary-** the person for whose benefit the Trust is created is called the Beneficiary.

**Trust-property or Trust money-** the subject matter of the trust is called the Trust property or trust money. Trust property can be in the form movable or immovable property viz. cash, jewellery, land, investment instruments etc.

For creating a Trust, legally there needs to be a i) Certainty of an intention to create a Trust, ii) Certainty of the purpose of the Trust iii) Certainty of the beneficiaries of the Trust i.e. the persons for the benefit of whom the Trust is created; and iv) Certainty of Trust Property and transfer of the Trust Property to the trustee of the Trust.

### Characteristics of Trust Structures are as follows:

- a) Title to the Trust property gets

transferred to the name of the Trustee.

b) The Trust property constitutes a separate fund and is not a part of Trustee's own estate.

c) The Trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the Trust property in accordance with the terms of the trust and the special duties imposed upon him by law. There exist a fiduciary relationship between Trustee and the beneficiaries and thus the Trustee exercises a higher duty of care than a mere agent.

d) The Trustee shall hold the ownership of Trust properties for the benefit of another or for another & the owner but never for the benefit of the owner alone. The owner who settles the Trust can be

under a Will may be revoked at the pleasure of the person writing the Will or if the power to revoke is retained in the Trust by the Settlor. Further if the person creating the Trust retains control directly or indirectly over the income or the assets of the Trust then also that Trust would be deemed to be a revocable Trust. A Trust which is not revocable is irrevocable.

### Taxation of Revocable/ Irrevocable Trust

When a person looks at options of creating a revocable or an irrevocable Trust it is important to understand how income generated by these Trusts would be taxed. In case of a revocable Trust, the income of the Trust is taxed in the

and charitable trusts in the state of Maharashtra.

### Estate Planning by a Trust Structure

Creating a private trust can be an efficient mode of planning one's Estate. Estate Planning by a Trust structure can be explained by the diagram 1

### Who should be a Trustee of your Trust?

Traditionally people from the family or confidants were appointed as Trustees of their Trust by the creator of the trust. However, that entails appointment of two to three Trustees to take care of the trust in the eventuality of death or bankruptcy of the appointed Trustees.

Appointment of a Corporate Trustee vis-à-vis individual trustees bring many benefits like

- Continuity of administration, as a corporate will have perpetual succession.
- Professional advice, as the Corporate Trustee can achieve efficient financial management of the Trust property by appointing experts for the same.
- Avoidance of changes in the trusteeship and cost of such changes.
- A large measure of security.
- Keeping of proper accounts of the Trust, audits of the same and review of the investments made by the Trust at regular intervals by competent persons familiar with business.
- Impartiality whilst dealing with the beneficiaries.

**STRATEGIES ARE DESIGNED to suit individual goals and comfort level as well as to take advantage of tax saving opportunities. For any plan to be effective, it is necessary to implement these strategies and to review you're the goals periodically.**

one of the beneficiaries.

e) A Trustee's ownership is not an absolute ownership as known to law (i.e. trustee's ownership is the legal ownership not the beneficial ownership)

### Types of Trusts

The Indian Law classifies trusts only on the basis of their purpose, namely private purpose (Private Trust) or public purpose (Public Trust) and religious/charitable (Religious / Charitable Trust).

A Public Trust is for the benefit of the public and the beneficiaries are incapable of ascertainment and a private trust is created for benefit of certain specified individuals who are ascertained or are capable of being ascertained.

Besides the classification on the basis of purpose of trusts, trusts can also be classified as either revocable or irrevocable in nature. A Trust created

hands of the creator of the Trust i.e. the Settlor. The tax imposed would be at the rates applicable to the Settlor. In case of an irrevocable Trust, the income of the Trust is taxed in the hands of the beneficiaries. The tax imposed would be at the rates applicable to the Beneficiaries. However, if the beneficiaries are not determined at the time of executing the Trust Deed then the Trust would become a discretionary trust and any income of such a Trust would be taxed at maximum marginal rate.

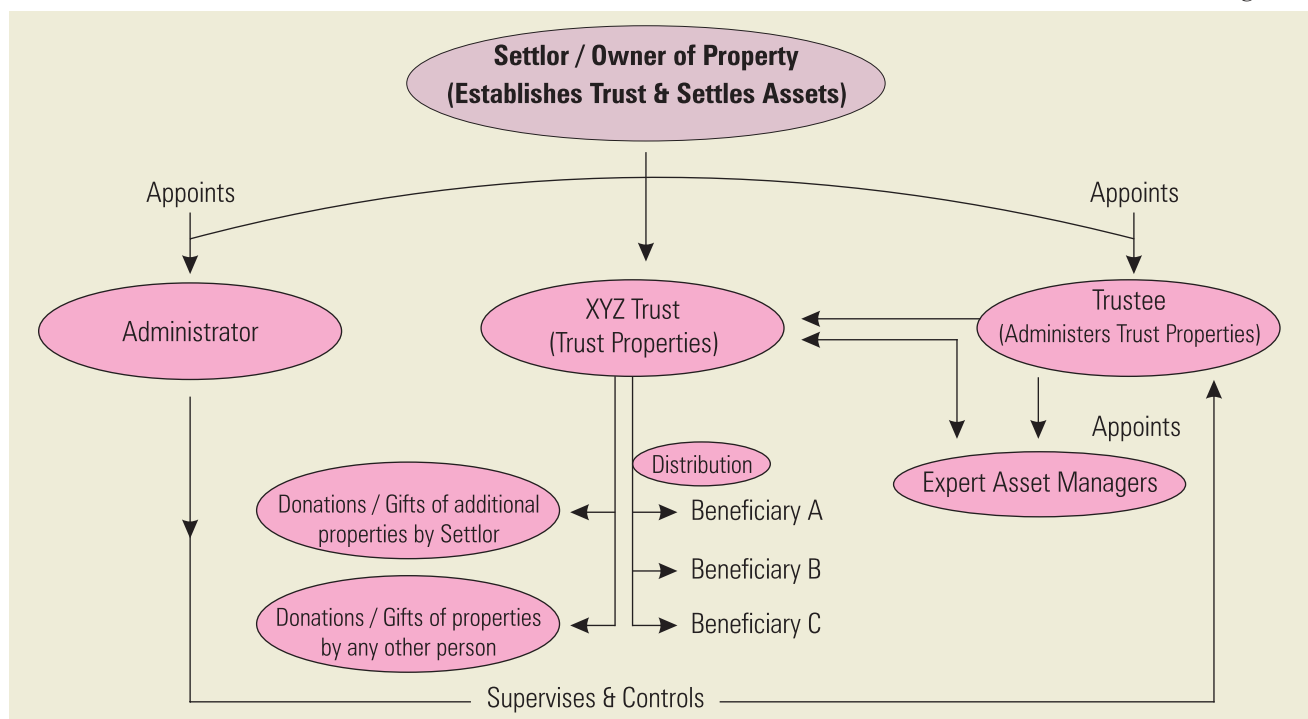
### Trust Acts in India

The Indian Trust Act relates to Private Trusts and Trustees. Public Trust primarily mean trust created for either a public, religious or charitable purpose.

The Bombay Public Trust Act provides for the administration of public, religious

### Protector/ Administrator of the Trust

While appointing a Corporate Trustee a person creating a Trust may also appoint certain family persons as Administrators/ Protectors of the Trust settled by them to retain control indirectly over the Trust. By appointing Administrators/ Protectors the person creating the Trust can ensure that the activities of the Trust are conducted by the Trustee under the supervision and guidance of the Administrator/ Protector



and as instructed by the person creating the Trust in the Trust deed.

## Benefits of Estate Planning by Creation of Trust Structures

By adopting the Trust Structure for planning one's estate the following objectives can be achieved:

- Estate Protection because a Trust is a bankruptcy remote structure.
- Self Beneficiary -The person who creates the Trust can himself be one of the beneficiaries and enjoy the benefit of his own estate during his lifetime.
- Efficient Succession Planning by providing for children, grand children and great grand children.
- Management of all types of assets through expert advisors.
- Accumulation of the Estate during the lifetime and post death through the hands of Trustees.
- Avoidance of family disputes leading to disintegration of family businesses.
- Retaining confidentiality, as obtaining a Probate is not necessary.
- Causing efficient management of the Estate as a trust can be made operational

during the lifetime and post death of the Client.

- Providing for future administration of assets to protect against future incapacity and for incapable beneficiaries.
- Making provisions for religious or charitable purposes.
- Lower Contestability as compared to a Will.

## Conclusion

Though planning one's estate may feel uncomfortable, the cost of procrastination can be high. Though some people are put off by the belief that estate planning will be complicated, time consuming and costly, setting up an estate plan doesn't have to be a complex process. It is not as complicated as it sounds.

- You execute a Trust Deed where you appoint a Trustee, name your beneficiaries and specify how and when the properties of the Trust would be distributed to the beneficiaries.
- In a Trust, you transfer ownership of some or all of your assets (which can include investments, real estate, bank accounts etc.) and even personal property (jewellery, antiques or furniture) from

your name to that of the Trust.

- Transfer of ownership of assets to the Trust can be done at anytime after the creation of the Trust either by the Settlor or any other person.
- After you transfer the assets, you maintain the same access and control as you did before you put them in the trust in case of a revocable Trust.
- In case you create an irrevocable Trust then you can retain some control over the assets in the Trust by either having the Trustee consult you or by appointing an Administrator/ Protector who will be consulted by the Trustee.
- You lose nothing, but gain the assurance that your wishes will be carried out if something happens to you, without the time or hassles of probate through the hands of competent and professional Trustees.

Hence Estate planning is the foremost judicious step in securing your family's future and fulfilling your desires during your life and after you depart from the world.