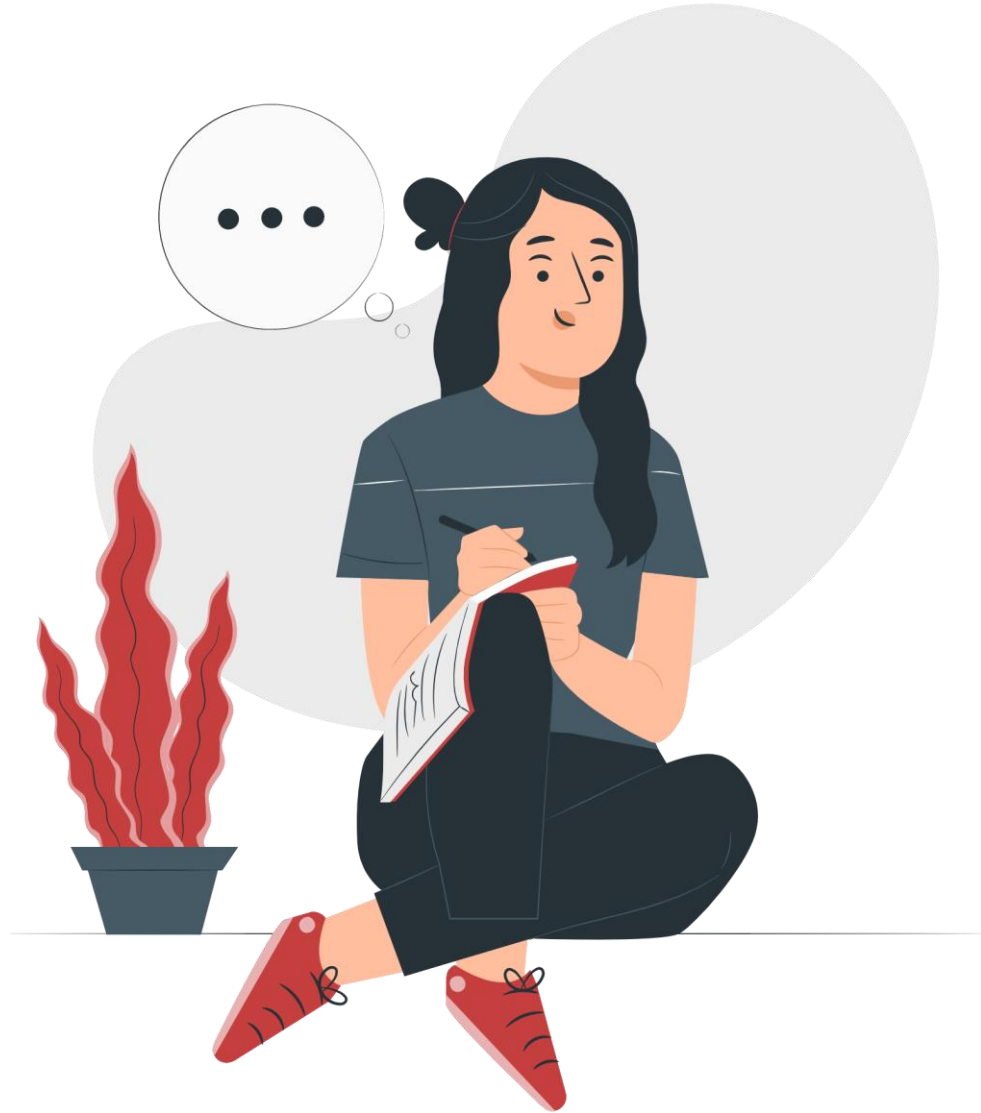




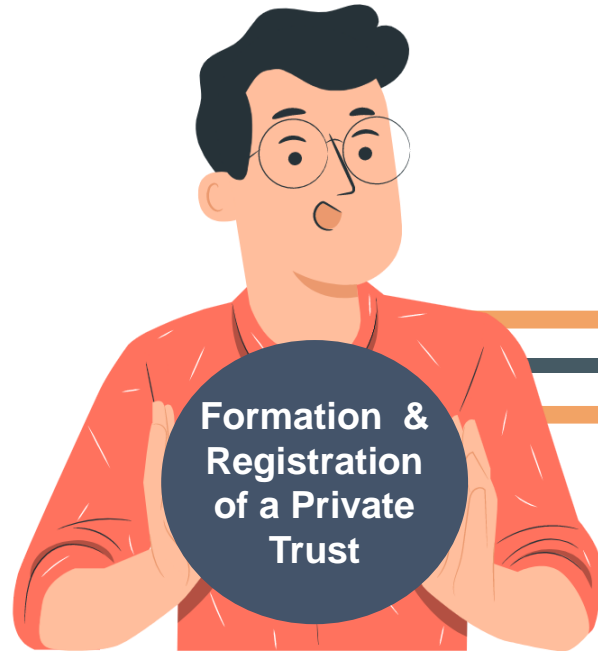
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# Basics of Trust – Part IV

SUCCESSION PLANNING SERIES #24

# Formation and registration of a Private Trust



1

A Private Trust can be created by a person in respect of any property which he / she owns and has full rights over the said property.

2

A Private Trust may be established either through an executed Trust Deed or by way of testamentary document (i.e., through a Will).

3

Further, a trust involving settlement of immovable property shall be valid only if the trust is declared in writing (i.e., trust deed) and the trust deed is registered. However, registration of trust is not mandatory if such trust is created under a Will.

Moreover, registration is **not mandatory for trusts involving settlement of moveable property only**. Once the property is settled into the Trust by the Settlor, the property would be **owned and controlled by the trustees on behalf of the beneficiaries**.

# Process of Registration of Trust Deed



The Settlor shall identify the relevant sub-registrar office based on the jurisdiction in which the trust is formed.

The Settlor shall get an appointment from the Registrar and shall be present at the sub-registrar office, along with the witnesses, on the scheduled date and time.

Certain supporting documents are required for registration. Refer the note below listing the same.\*

Upon completion of the registration process, it needs to be ensured that the original registered copy of the trust deed is obtained from the Registrar and the photocopy of the Trust Deed would be retained by the Registrar for his records.

\* (a) Trust deed, on stamp paper, with settlor's signature on all the pages (b) A photocopy of the Trust Deed with settlor's signature on all the pages. (c) Passport size photograph of settlor, trustees and witnesses (d) Photocopy of the proof of identity of settlor, trustees and witnesses (e) Photocopy of proof of the registered address of the trust (copy of property tax receipt or electricity bill) (f) Copy of the Will if the trust is created pursuant to a Will.

# Points to be considered while drafting trust deed (1/2)



- A** The objective of forming the trust should be drafted clearly and it shall be as exhaustive as possible.
- B** It should contain a preamble covering the detailed description of the settlor and trustees. In addition, it shall also include description of protector / trust advisor, appointed if any.
- C** Language of the deed should be clear, simple, and unambiguous.
- D** Full description should be mentioned with respect to the property being settled in the trust.
- E** An express declaration to be given by the settlor about his intention to settle the property along with a declaration to be given by the trustees that they accept the property settled by the settlor along with the obligation of holding such property for the benefit of the beneficiaries.
- F** The settlor should ensure that the instructions are correctly captured in the trust deed and is understood by the trustees in the same manner and intention as that of the settlor.

# Points to be considered while drafting trust deed (2/2)

G

Rights, duties, liabilities and disabilities of the trustees, including the powers and procedure for appointment, remuneration, maintenance of accounts, removal, resignation, replacement, minimum / maximum number of trustees, etc., to be expressly mentioned in the trust deed.

H

Similarly, rights, duties, liabilities and disabilities of the beneficiaries, including the procedure for addition and removal of the list of beneficiaries, to be expressly mentioned by the settlor in the trust deed so as to avoid disputes among the trustees.

I

The trust deed should also provide for obtaining registration under any law for the time being in force (for example – Obtaining Permanent Account Number under Income tax law, etc.) along with the persons authorized to obtain such registration on behalf of the trust.

J

The trust deed should also provide mechanism for dispute resolution (i.e., through arbitration or any other mode).

K

The trust deed should specifically contain a clause that it can be amended in future along with the person who can make such amendments (i.e., settlor or trustee or any other person).

L

The duration of the trust / provision for extinction of the trust should also be specifically mentioned in the trust deed.



# Succession Knowledge Series



Please find below the list of completed alerts from the series. In case you have missed the previous alerts, click on the hyperlink for the completed alerts to refer the same.

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2. [Types of Succession in India.](#)
3. [An Introduction to Hindu Succession Act](#)
4. [Rules of Intestate Succession Male - Part 1](#)
5. [Rules of Intestate Succession Male - Part 2](#)
6. [Illustrations on Intestate Succession for Male](#)
7. [Intestate Succession for Hindu Female](#)
8. [Key Aspects in Hindu Succession Act, 1956](#)
9. [Introduction to Indian Succession Act – Part 1](#)
10. [Rules of Intestate succession for Christians](#)
11. [Introduction to Will - Indian Succession Act](#)
12. [Drafting of a Will](#)
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