

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

**A
BILL**

to define and amend the law relating to trusts

WHEREAS it expedient to enact a law relating to registration, administration and monitoring of trusts registered within the territorial limits of Islamabad Capital Territory;

AND WHEREAS the Trust Act, 1882 (11 of 1882) does not cater effective administration and financial monitoring and evaluation of the trusts;

It is hereby enacted as follows:

CHAPTER I

PRELIMINARY

1. **Short title extent, commencement and application.** - (1) This Act shall be called ~~the The Islamabad Capital Territory Trust Act, 2020.~~

(2) It shall extend to the whole of the Islamabad Capital Territory.

(3) It shall come into force at once.

(4) Nothing herein contained shall affect the rules of Muslim law as to *waqf* or the mutual relations of the members of an undivided family as determined by any customary or personal law or to public or private religious or charitable endowments or to trusts to distribute prizes taken in war among the captors.

2. **Definitions.** - In this Act, unless there is anything repugnant in the subject or context;

(a) "director" means the director of directorate of labour and industries, Islamabad Capital Territory;

(b) "author of the trust" means the natural person who reposes or declares the confidence and assigns the property to the trustee for the benefit of beneficiary;

(c) "beneficiary" means the natural person who benefits the confidence of the trust;

(d) "breach of trust" means breach of any duty imposed on trustee as such by any law for the time being in force;

- (e) "competent authorities" means the 'regulators', "the oversight bodies for SRBs as specified in the Anti-Money Laundering Act 2010 (VII of 2010)", the "investigating or prosecuting agency" and "the Financial Monitoring Unit";
- (f) "department" means the directorate of labour and industries, Islamabad Capital Territory;
- (g) "district intelligence coordination committee" means the intelligence committee headed by the deputy commissioner or district magistrate, Islamabad Capital Territory, Islamabad and comprising the representatives of police and intelligence agencies;
- (h) "financial monitoring unit" means the financial monitoring unit specified under the Anti-Money Laundering Act, 2010 (VII of 2010);
- (i) "home department" means the office of the Chief Commissioner, Islamabad Capital Territory;
- (j) "instrument of the trust" means the instrument by which the trust is declared.
- (k) "interest" means the beneficiary's right against the trust property;
- (l) "investigating or prosecuting agency" mean an investigating or prosecuting agency as specified in the Anti-Money Laundering Act, 2010 (VII of 2010);
- (m) "law department" means directorate of law, Chief Commissioners' office, Islamabad Capital Territory;
- (n) "notice" means a person is said to have known of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872 (IX of 1872), and all expressions used herein and defined in the Contract Act, 1872 (IX of 1872), shall be deemed to have the meanings respectively attributed to them by that Act;
- (o) "prescribed" means prescribed by rules made under this Act;
- (p) "purpose" means any lawful purpose unless it is -
- (i) forbidden by law; or
 - (ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or
 - (iii) is fraudulent; or
 - (iv) involves or implies injury to the person or property of another; or
 - (v) the court regards it as immoral or opposed to public policy;

- (q) "registered" means registered with the director;
- (r) "reporting entity" means an entity specified under the Anti-Money Laundering Act 2010;
- (s) "revenue department" means office of the district collector, Islamabad Capital Territory;
- (t) "trust property" means the subject matter of the trust; it may be movable or immovable property;
- (u) "trust" means an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of beneficiary; and
- (v) "trustee" means any person who accepts the confidence of the author of the trust to the benefit of the beneficiary.

CHAPTER II

OF THE CREATION OF THE TRUSTS

3. **Validity of trust.** - (1) No trust in relation to any 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 and its ownership is transferred to the trust.

(2) No trust in relation to movable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trust.

4. **Creation of trust.** - (1) Subject to the provisions of section 3, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts-

- (a) an intention on his part to create thereby a trust;
- (b) the purpose of the trust;
- (c) the beneficiary;
- (d) the trust-property; and
- (e) transfers the trust-property to the trustee unless the trust is declared by will or the author of the trust is himself to be the trustee.

(2) Every trust for which the purpose of the trust is unlawful is void and where it is created for more than one purpose and one of the purposes is unlawful then whole of the trust is void.

5. **Who may create trusts.** - A trust may subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property be created -

a) by every natural person competent to contract under the Contract Act, 1872 (IX of 1872); or

b) with the permission of a principal civil court of original jurisdiction by or on behalf of a minor.

6. **Subject of trust.** - The subject matter of a trust must be property transferable to the beneficiary and it must not be merely beneficial interest under a subsisting trust.

7. **Who may be beneficiary.** - Every natural person capable of holding property may be a beneficiary and no legal person shall be a beneficiary under this Act.

8. **Disclaimer by beneficiary.** - A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee or by setting up with notice of the trust a claim inconsistent therewith.

9. **Who may be trustee.** - Every natural person capable of holding property and not a legal person may be a trustee but, where the trust involves the exercise of discretion, he shall not execute it unless he is competent to contract under the Contract Act, 1872 (IX of 1872).

10. **Acceptance to trust.** - (1) A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

(2) Each of the trustee accepting the trust in this section shall provide an affidavit that the trustee has read and understood the duties and liabilities of the trustee as mentioned in Chapter-IV;

11. **Disclaimer of trust.** – (1) Instead of accepting a trust, the intended trustee may, within a period of sixty days, disclaim it and such disclaimer shall prevent the trust-property from vesting in him.

(2) In case of more than one trustees, if one of trustees, disclaims to be a trustee, it shall not automatically confer the disclaiming trustee's rights on the other trustees. The author of the trust shall either (a) explicitly allow the co-trustees to proceed in case of any of the member's disclaimer, or (b) write a new trust-deed.

CHAPTER III
OF THE ADMINISTRATION OF THE TRUSTS



12. **Trusts to be registered-** No Trust shall be functional unless it is registered under this Act with the Directorate of Labor and Industries, Islamabad Capital Territory, Islamabad.

13. **Application for registration-** (1) For every trust required to be registered under this Act, the trustee shall provide to the director at or before the time of registration, the information regarding the purpose, author of the trust, details of the trustees, Beneficiaries of the trust, and any other natural person exercising ultimate effective control over the trust as prescribed, to the satisfaction of the department.

~~Explanation:—In case of more than one trustees, all the trustees will nominate one~~
Trustee who shall be responsible for the provision of information

(2) The details of the information required to be provided under sub-section (1) above shall be prescribed

14. **Verification of the application-** The director shall verify the contents and particulars of the application before the registration through the investigating or prosecuting agencies who shall submit the verified report to the Director within 14 days of receiving the request from him.

15. **Registration of the properties-** (1) All movable and immovable properties must be registered in the name of the Trust under the Registration Act, 1908.

(2) Without prejudice to the Registration Act 1908, the registration of the properties must include the details of authors of the trust, beneficiaries, trustee, co-trustee, if any, and any other natural person exercising ultimate effective control over the trust.

16. Certificate of registration- (1) The director, after fulfillment of legal requirements, as mentioned in the sections 13 to 15, shall register the trust under this Act and issue a certificate of registration to the trustee.

(2) The director, for the reasons to be recorded in writing, may refuse the registration of the application, if-

(a). the purpose of the trust is unlawful or the trust proceeds are suspected to be proceeds of crime, as the investigating or prosecuting agencies inform the director under section 14 and the director may refer back the application to the law enforcement agencies for legal action or any of the members of the trust including author, trustees or any other person exercising ultimate effective control over the trust are declared proscribed by the office of the Chief Commissioner, Islamabad Capital Territory, or associated with the proscribed organizations under the Anti-Terrorism Act, 1997 or under the United Nations Security Council Act, 1948, and in such cases as mentioned in clause (b), the director shall share the details of individuals with the Ministry of Interior and Ministry of Foreign Affairs through the home department; or

(b). the district intelligence coordination committee considers the trust a threat to national security; or

(c) the author of the trust, trustee, beneficiary, or any person acting on their behalf fail to provide the complete personal details required under section 13 for the registration and functioning of the trust; or

(d) any other reason as may be prescribed.

17. Power to inspect record and compliance- (1) The director, or the district magistrate, ICT or the provincial government may summon any information relating to

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the trust from the trustee for any purpose, and shall have the power to inspect such record at any time.

(2) The officer summoning the record under sub-section (1) may share it with the competent authorities upon written request through the office of Chief Commissioner, Islamabad Capital Territory any information about the trust, trust assets, trust proceeds, author of the trust, trustee, beneficiary or any other person exercising ultimate effective control over the trust.

(3) The director may also share the information under this section relating to the trust assets and beneficiaries with the reporting entity upon request.

(4) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee is found in violation to the purpose of the trust or fails to provide the information under sub-section (1).

(5) In case of failure to pay the penalty under sub-section (4), the director may seek a legal action through the court of original jurisdiction against the trustees held responsible for non-compliance under this Act, and such legal action may result in imprisonment ranging from one month to six months.

The imprisonment granted under this section shall be for the non-compliance of the provisions of this Act and shall be in addition to the financial penalty already imposed under sub-section (4).

(6) The director may after conviction by the competent court of law impose financial penalty up to Rupees one million, if a trustee fails to provide the information required under sections 20 and 22, or fails to obtain and hold the information required under section 23. In addition, the trustee shall also be liable for imprisonment of minimum three months to a maximum of six months if he fails to make information available to the competent authorities as required under section 20 or to the department or director for the purposes of sharing information under section 20. This punishment shall be awarded by a court of the original jurisdiction.

(7) The director may further take over the properties of the trust or freeze its assets or remove a trustee or a beneficiary from the trust and assign new trustees or beneficiary through a legal order from a court of original jurisdiction in case the trust or trustee or beneficiary is convicted of a criminal offence, including terror financing, financing, money laundering or a threat to national security.

(8) Nothing in sub-sections (2), (3), (4), (5) and (6) shall limit the person's basic right of being given fair trial opportunity and appeal to the secretary of the Division concerned or the appellat court, as the case may be.

18. Power to obtain the registration record- The department shall obtain the registration of trust record from the revenue department i.e. district collector, ICT, which was held by it before the enactment of this Act within a period of sixty days from the date of enactment of this Act, and, the department shall make efforts to make the trust record in conformity with the provisions of this Act.

19. Register of trusts- (1) The director shall maintain a register of the trusts in such manner as may be prescribed.

(2) The register shall contain information, including but not limited to the name and details of every trust, its purpose, author, trustee, beneficiaries, any person exercising ultimate effective control over the trust and other information as required by the department.

(3) The details must also include, if any of the person associated with the trust is living in Pakistan or outside Pakistan along with their residential addresses.

(4) The department shall explain the extent of the details of individuals as included in the sub-sections (1), (2) and (3) to be made public in a manner and circumstances as may be prescribed.

20. Access to the information- (1) The director may at any time require any information relating to the trust from the trustee, and the trustee is bound to provide the information in a timely manner as may be prescribed.

(2). For purposes of domestic and international cooperation, competent authorities may at any time require any information relating to the trust from the trustee, and the trustee shall provide the information in a timely manner as may be prescribed. Both the request of the competent authorities and response of the trustee shall be routed through the provincial government in a timely manner as may be prescribed-

(3) The reporting entity may, in a timely manner as may be prescribed, also obtain the information from the trustee about the details of trust assets, residential addresses of trustees and details of beneficiaries, however such request and response shall be routed through the department.

21. Legal arrangement for holding the property- A trust may hold immovable and movable property under its name, or may sell or dispose of the property being held by it. Such sale and purchase shall be the responsibility of the trustee.

CHAPTER IV
OF THE DUTIES AND LIABILITIES OF TRUSTEES

22. Trustee to execute trust - (1) The trustee is bound to fulfill the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

(2). Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal civil court of original jurisdiction.

(3) Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation - Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be

(a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death; and

(b) in the case of debts not bearing interest, to make such payment without interest.

(4) A trustee, or all of the trustees, as the case may be, are bound to disclose the fact that they are trustees when entering into a business relationship or carrying out an occasional transaction with a reporting entity.

23. Trustee to collect and hold information - (1) A trustee or each of the trustees, as the case may be, must collect and hold information about the author of the trust, co-trustee, if any, beneficiaries of the trust, and any other natural person exercising ultimate effective control over the trust to his satisfaction and requirement of the department, before the execution of the trust as mentioned in section 22.

(2) The trustee must provide the updated information under this Act to the director in timely manner as may be prescribed. In case of more than one trustee, only one trustee shall be nominated by other co-trustees for the purpose of provision of information.

(3) The trustees or the trustee shall collect and hold basic information about the other service providers to the trust including, but not limited to, investment advisers or managers, accountants or tax advisors, and, provide this information to the director even after the registration of the trust, in the circumstances and manner as may be prescribed.

(4) The details of the information required to be collected and held under subsections (1), (2), and (3) shall be as may be prescribed.

(5) The trustees or the trustee shall further inform the provincial government or the director and law enforcement agencies if it comes to their knowledge of any illegal utilization of the trust money by the beneficiaries, after and during the execution of the trust.

24. Trustee to inform himself to state of trust-property - A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property to obtain, where necessary, a transfer of the trust property to himself and

subject to the provisions of the instrument of trust to get in trust-money invested or insufficient or hazardous security.

Illustrations. -

(a) The trust-property is a debt outstanding on personal security. The Instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

25. **Trustee to protect title to trust-property** - A trustee is bound to maintain and defend all such suits, and subject to the provisions of the instrument of trust to take such other steps, as regards being had to the nature and amount or value to the trust property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustrations. - The trust-property is immovable property, which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the law for the registration of the documents, the trustee's duty is to cause the instrument to be registered.

26. **Trustee not to set up title adverse to beneficiary** - The trustee must not for himself set up or aid any title to the trust-property adverse to the interest of the beneficiary.

27. **Care required from trustee** - A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

28. **Conversion of perishable property** - Where the trust is created for the benefit of several persons in succession, and the trust-property is of a perishable nature or a future or reversionary interest, the trustee is bound unless an intention to the

contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediate profitable character.

29. Trustee to be impartial - (1) 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.

(2) Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the court to control the exercise of same reasonably and in good faith.

30. Trustee to prevent waste - Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit any act, which is destructive, or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

31. Accounts and information - A trustee or each of the trustee, as the case may be, is bound to -

- a) keep clear and accurate accounts of the trust-property and income;
- b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property;
- c) update the information in a timely manner about the author of the trust, beneficiaries, trustees, any other natural person exercising ultimate control over the trust, trust assets and incomes;

Explanation - The details of the information shall be as may be prescribed this Act;

- d) get accounts audited by a third party at least once in a year;
- e) submit financial reports to the director in every financial year; and
- f) shall maintain the information collected under this section, and, section 23 for a period not less than the five years after their involvement with the trust ceases, or, the trust is extinguished.

32. Investment of trust-money - (1) Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the

trustee is bound subject to any direction contained in the instrument of trust to invest the money on the following securities, and on no other, namely:-

- a) in promissory notes, debentures, stock or other securities of a Provincial or Federal Government:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any government, shall be deemed, for the purposes of this clause, to be securities of such Government; and

- b) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may prescribe in this behalf.

33. **Power to purchase redeemable stock at a premium-** A trustee may invest in any of the securities mentioned or referred to in section 32, notwithstanding that the same may be redeemable and that the price exceeds the redemption value, and a trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.

34. **Sale by trustee directed to sell within specified time -** Where a trustee, directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal civil court of original jurisdiction.

35. **Liability for breach of trust - (1)** Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary, has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of facts of the case and of his rights as against the trustee.

(2) A trustee committing a breach of trust is not liable to pay interest except in the following cases, namely:-

- (a) where he has actually received interest;

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;

(c) where the trustee ought to have received interest, but has not done so;

(d) where he may be fairly presumed to have received interest. He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent per annum, unless the court otherwise directs;

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest with half-yearly rests at the same rate; and

(f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

36. No set-off allowed to trustee - A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set-off against his liability again which has accrued to another portion of the trust-property through another and distinct breach of trust.

37. Non-liability for predecessor's default - Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

38. Non-liability for co-trustee's default - (1) Subject to the provisions of sections 25 and 27, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable -

- (a). Where he has delivered trust-property to his co-trustee without seeing to its proper application;
- (b). where he allows his co-trustee to receive trust-property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;
- (c). where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

(2) A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

39. Several liabilities of co-trustee – (1) Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

(2) As between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

(3) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

40. Non-liability of trustee paying without notice of transfer by beneficiary- When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.