

Private Trust Law of Ethiopia

Description

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A trust is defined in the 1960 Civil Code of Ethiopia Article 516 as ‘an institution by virtue of which specific property is constituted in an autonomous entity to be administered by a person, the trustee, in accordance with the instructions given by the person constituting the trust.’ Thus there will arise the relationship of a trustee and beneficiary. The relationship between a trustee and beneficiary is like an arranged marriage. The grantor chooses the trustee with the aim that successful working relationships will evolve in maintaining and growing the trust for the use and benefit of the beneficiaries and remaindermen. Private trust is created for private interests. Private trust is different from charitable trust in that charitable trust is a trust created for charitable endeavors of public nature. Charitable trust is governed under the Organization of Civil Society Proclamation 1113/2019. Whereas private trust is governed under the Civil Code Articles 516-544. When family wealth is created and the wealth has to evolve through successive generations, trust is one instrument that enables to achieve this purpose. A look at the distinction of trust law from others, trust administration, trust investment, trust distribution and termination of trust will be discussed in brief.

Difference between Trust, Agency, Bailment, Third Party in Contracts

A trustee is a kind of fiduciary who has been given something to hold by one party called the grantor for a stated period of time for the benefit of another party called the beneficiary. As a fiduciary, the trustee is bound to care for that thing with the highest duty of trust. This is different from the agency-principal relationship. Agency is a contract whereby a person, the agent, agrees with another person, the principal, to represent him and to perform on his behalf one or several legally binding acts. Whereas, trust is an independent entity that administers something for the benefit of the beneficiary. The parties involved are the grantor, trustee and beneficiary. Similarly, private trust is different from bailment. A contract of bailment is a contract whereby one person, the bailee, undertakes to receive a chattel from another, the bailor, and to keep it on the latter's behalf. Trust is also different from Promises and Stipulations of Third Parties in a contract. The beneficiaries in a promise or stipulation in a contract have the right to accept or reject the promise or stipulation. Beneficiaries have no such right other than accepting the grantor's wish in the constitution of the trust document.

Formation

A trust can be formed by two types of instruments: donations 'inter vivos' or by a will. Donation 'inter vivos' is a donation carried out while alive or between living individuals as opposed to donation 'mortis causa' that comes into effect on the death of the donor. The donation 'inter vivos' or will should contain clear wording and intention of forming a trust. The constituting documents should have clear wording of the trustees and beneficiaries and the trusted property, action or idea. A trust is formed not only for the benefit of a person called a beneficiary, but also to initiate or advance an action or idea. Trustees are appointed by the person constituting the trust or by the person designated by the person constituting the trust or in default of such person, by the court.

The number of trustees in charitable trust for example has to either be three or five. For a private trust under the Civil Code, the trustees can be one or more but the maximum number may not exceed four. Among trustees whose number is more than one, decision or administration of the trust will be taken by an agreement between them. In case of failure to agree, the decision of the majority prevails. A trustee proves his appointment as a trustee by requesting a court document showing his capacity and powers. In case of a charitable trust, a certificate of registration will be issued for the trustees to prove their appointment by a government body.

Administration of Trust

A trustee is an owner-in-trust of the trust property. The Civil Code on Article 527 provides that the power of the trustee on the property which forms the object of the trust are those of the owner. However, being owner-in-trust does not include disposal of an immovable property or donation of a trusted property. For disposal of immovable property, the court has to grant the greenlight without prejudice to any contrary provision in the grantor's wish. With this in mind, administration of a trust property means keeping the assets safe and sound. Administration might involve collecting income, keeping proper books and accounts, filing tax and reporting the financial conditions to the beneficiaries. The Civil Code on Article 525 also states that the trustee shall administer the trust like a prudent and cautious businessman. The trustee is obliged not to mix the trust with his personal property. The trustee shall represent the trust in court proceedings. Beneficiaries have no say in the administration of the trust property. The remuneration for the administration of the trust is the payment that is promised in the constituting document of the trust by the grantor.

Investment of Trust

Each trust has a specific goal that it is created to achieve. The grantor states the purpose through the terms he puts into the trust constituting document. A trustee is responsible to administer the trust like prudent and cautious businessmen. The trust's aim might be to guarantee a steady and growing flow of income for the beneficiaries over a long period of time. Then passing of sufficient funds for the next generation. The trustee's decision on how to invest the trust are the defining criteria in which he is selected as a trustee in the first place. The trustee's investment has rewards as well as risks. The risks however have to be acceptable risks. The trustee has the responsibility to turn over the property in the trust to the remaindermen (future generation) in as good or better condition than when he acquired it.

Distribution of the Trust

The trustee has the responsibility to distribute the income earned by the trust in accordance with the trust constituting document. Similarly, the beneficiaries may claim from the trustee profits which

according to the terms of the trust agreement, accrue in the beneficiaries favor. The trust constitution document may mention when and how the trustee makes income distribution. This is a contentious area between the trustee and beneficiary. Based on the contention in distribution of trust, there are two types of trusts: simple trusts and complex or discretionary trust. Those trusts that order the trustee to give all of the income received by the trust each year to beneficiaries are called simple trust. Whereas if the trustee is granted with discretionary power to decide whether to pay to beneficiaries all, some or none of the income received by the trust each year is known as complex or discretionary trust. The trustee therefore has to be fully aware of the grantor's original purpose in creating the trust and the current purposes of the trust, if these have changed over time.

Termination of the Trust

A trust shall terminate on the expiry period fixed by the grantor of the trust. In addition to this, termination of trust may be requested by the beneficiaries to court. Given the circumstances of the case satisfies the court, the court may order termination of a trust. Upon termination of the trust, the property which formed the trust together with documents shall be handed over by the trustee to the persons who are entitled to it in terms of the act of the constitution of the trust.

Conclusion

Private trust law of Ethiopia provides clear rules on how the complex relationship between the grantor of the trust, the trustee and beneficiary are handled. The goal is to create a smooth functioning team between trustee and beneficiary for a common goal of long term family wealth preservation. The development in the private trust law will lead up to private trust company formations which are established to provide fiduciary services to single or multiple families.

For more inquiries and advices on the subject you may contact us at info@dmethiolawyers.com

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