



M2K Advisors



Basics of Trust – Part I

SUCCESSION PLANNING SERIES #21

Introduction to Trust

A trust is an **arrangement where the owner** of the asset / property (generally known as the settlor / author of the trust) **entrusts** such asset / property **in the Trust for the benefit of another person(s)** (known as the beneficiary).



There are 2 types of trust based on the quantum of beneficiaries involved and they are:

- Public trust (this is typically used for charitable or religious purposes) and
- Private trust (trust created for the benefit of small group of people such as family members, employees of business etc.,).

Private trust is a widely used tool for succession planning for the family members and hence our discussion in the upcoming alerts in the series would be with respect to Private Trusts.

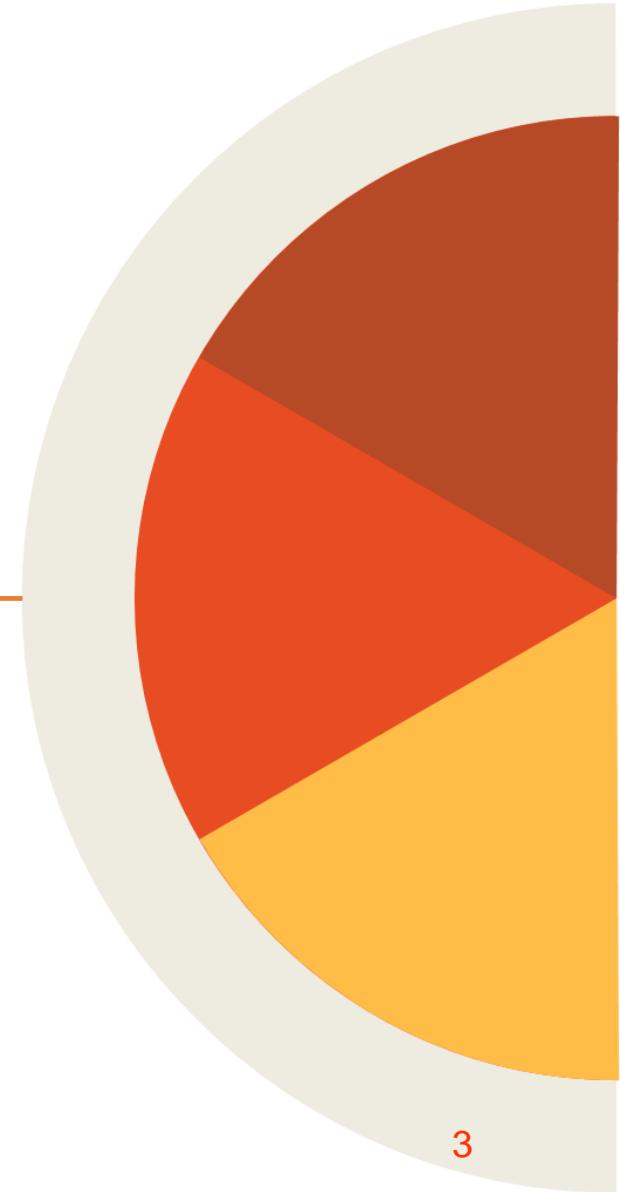
Why is Succession preferred through Trust over Will? (1/2)

The benefits of planning the succession through Trust as compared to Will are as follows:


In a Trust, the assets can be passed on to the beneficiaries either during the lifetime or after death of the settlor whereas in Will, there is no such flexibility and the assets can be passed only after the death of the testator.

A Trust comes into effect as soon as it is created thereby allowing the settlor / author to identify the issues with respect to management and administration of the assets whereas a Will comes into effect only after the death of the testator thereby leaving no scope of modification.

Trust allows the settlor / author to express his / her intentions when disputed whereas in a Will, the testator shall not be present to justify his / her intentions. Hence, the probability of dispute is lower in a Trust.



Why is Succession preferred through Trust over Will? (2/2)



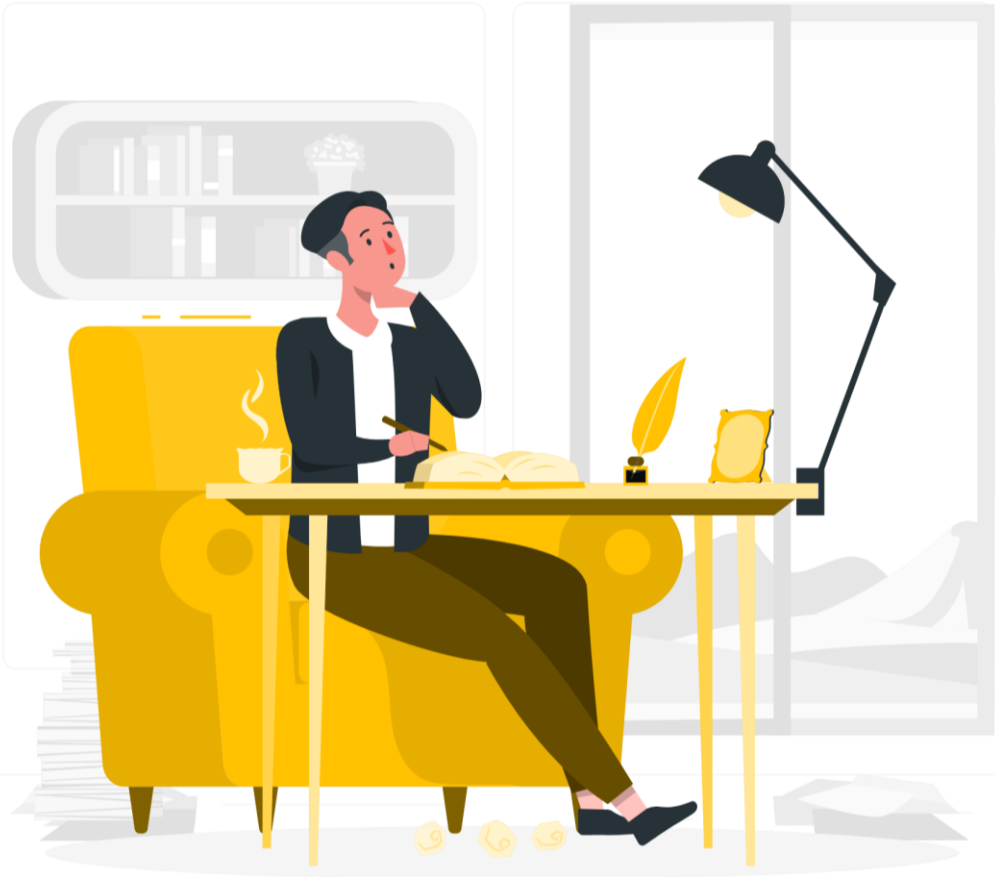
The trustees manage & control the assets as per the Trust Deed for the benefit of the beneficiary. Since the usage of Trust funds can be controlled / managed, the wealth can be protected even after the death of the Settlor. However, there is no such possibility in a Will.

A Will requires a Probate* from a Court whereas in a Trust, there is no such requirement.

The information on private trusts are not publicly available unless such trusts have been registered. This provides privacy to the settlor and the family members

** The certified copy of the Will bearing the seal of the court, which is handed over to the executor, is known as Probate. Obtaining a Probate from the Court is a time-consuming process.*

Governing Law and Applicability



- The law relating to private trusts was codified as **The Indian Trust Act, 1882** ('Trust Act') which was effective from **1st March 1882**.
- The Trust Act is applicable to the whole of India except Andaman and Nicobar Islands.
- The provisions of the Trust Act are also not applicable to the following:
 - Public or private religious or charitable trusts and endowments,
 - Muhamadan law or the relations of the members of an undivided family as determined by any customary or personal law.

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.

1. [An Introduction to Succession Planning](#)
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. [Rules of Intestate succession for Christians](#)
12. [Introduction to Will - Indian Succession Act](#)
13. [Drafting of a Will](#)
13. [Registration - Will, Probate & Letter of Administration](#)
14. [Attestation, Alteration & Revocation of Wills](#)
15. [Bequest under the Will](#)
16. [Legacy under the Will](#)
17. [Other laws relating to Wills – Part I](#)
18. [Other laws relating to Wills – Part II](#)
19. [Contesting a Will and Safeguard Measures](#)
20. [Landmark decisions on the Validity of the Will](#)
21. [Basics of Trust – Part I](#)

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