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PROVINCIAL ASSEMBLY OF THE PUNJAB

NOTIFICATION

September 10, 2020

No. PAP /Legis-2(67)/2020/2359. The Punjab Trusts Bill 2020, having been passed by the Provincial Assembly of the Punjab on September 02, 2020, and assented to by the Governor of the Punjab on September 08, 2020, is hereby published as an Act of the Provincial Assembly of the Punjab.

THE PUNJAB TRUSTS ACT 2020

ACT XXI OF 2020

[First published, after having received the assent of the Governor of the Punjab, in the Gazette of the Punjab (Extraordinary) dated September 10, 2020.]

An
Act

to revise and modify the law relating to trusts.

It is necessary to revise and modify the law relating to trusts, and to make provisions for the ancillary matters.

Be it enacted by Provincial Assembly of the Punjab as follows:

CHAPTER I PRELIMINARY

1. **Short title, extent and commencement.**— (1) This Act may be cited as the Punjab Trusts Act 2020.

- (2) It extends to whole of the Punjab.
- (3) It shall come into force at once.

2. **Application.**— Nothing contained in this Act shall affect the 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 apply to public or private religious or charitable endowments.

3. Definitions. – In this Act:

- (a) "Assistant Commissioner" means an Assistant Commissioner appointed under the Punjab Civil Administration Act 2017 (*III of 2017*);
- (b) "author" means a natural person who reposes or declares his confidence in a trustee, and assigns a property to a trustee for the benefit of a beneficiary;
- (c) "authorities" means an 'investigating or prosecuting agency' and the 'Financial Monitoring Unit' as defined in the Anti-Money Laundering Act, 2010 (*VII of 2010*);
- (d) "beneficiary" means a natural person for whose benefit the confidence is accepted;
- (e) "breach of trust" means a breach of any duty imposed on a trustee by any law for the time being in force;
- (f) "Department" means Revenue Department of the Board of Revenue of the Government;
- (g) "Director" means Director of Land Records, Punjab;
- (h) "Committee" means the District Intelligence Committee notified by Home Department of the Government for each district;
- (i) "Financial Monitoring Unit" means the Financial Monitoring Unit as defined in the Anti-Money Laundering Act, 2010 (*VII of 2010*);
- (j) "Government" means Government of the Punjab;
- (k) "instrument" means an instrument of trust through which a trust is declared;
- (l) "interest" means right of a beneficiary against a trustee;
- (m) "investigating or prosecuting agency" means the investigating or prosecuting agency as defined in the Anti-Money Laundering Act, 2010 (*VII of 2010*);
- (n) "notice": a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for willful 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 section 229 of the Contract Act, 1872 (*IX of 1872*);
- (o) "prescribed" means prescribe by the rules made under this Act;
- (p) "reporting entity" means an entity specified under the Anti-Money Laundering Act, 2010 (*VII of 2010*);
- (q) "trust property" means the subject matter of a trust whether movable or immovable property;
- (r) "trust" means an obligation annexed to the ownership of a property, and arising out of a confidence reposed in and accepted by a trustee, or declared and accepted by him, for the benefit of another and the owner; and
- (s) "trustee" means a person who accepts the confidence of an author for the benefit of a beneficiary.

CHAPTER II

CREATION OF TRUSTS

4. Lawful purpose. – (1) A trust may be created for any lawful purpose, and the purpose of a trust is lawful unless:

- (a) it is forbidden by law; or
- (b) it is of such a nature that it defeats the provisions of any law for the time being in force; or
- (c) it is fraudulent; or
- (d) it involves or implies injury to the person or property of another; or
- (e) the court regards it as immoral or opposed to public policy.

(2) Every trust which has an unlawful purpose shall be void, and where a trust is created for more than one purposes and one of the purposes is unlawful, the whole trust shall be void.

5. Validity of Trusts. – (1) No trust in relation to an immovable property shall be valid unless declared by a non-testamentary instrument in writing signed by the author

of the trust and the trustee, and duly registered, or by the will of the author of the trust or of the trustee and ownership of the property is transferred to the trust.

(2) No trust in relation to movable property shall be valid unless declared in the manner as given under subsection (1), or unless the ownership of the property is transferred to the trust.

6. Creation of trusts.— Subject to the provisions of sections 4 and 5, a trust is created when the author of the trust indicates with reasonable certainty in writing:

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

7. Who may create a trust.— A trust may be created by a natural person competent to contract under the Contract Act, 1872 (*IX of 1872*), or, with the permission of a Civil Court of original jurisdiction, on behalf of a minor.

8. Subject matter of trusts.— The subject matter of a trust shall be a property transferable to the trust.

9. Who may be a beneficiary.— Every natural person capable of holding a property may be a beneficiary.

Explanation: A legal person shall not be a beneficiary under this Act.

10. Disclaimer by a beneficiary.— A proposed beneficiary may renounce his interest in the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

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

Explanation: A legal person shall not be a trustee under this Act.

12. Acceptance of trusts.— A trust shall be accepted by the trustee indicating with reasonable certainty in writing, and the trustee accepting the trust shall provide an affidavit that the trustee has read and understood the duties and liabilities of the trustee as mentioned in Chapter-IV of this Act.

13. Disclaimer of trusts.— (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 the trustees disclaims to be a trustee, it shall not automatically confer the disclaiming trustee's rights on the other trustees.

(3) The author 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.

14. Registration of properties.— All movable and immovable properties shall be registered in the name of the trust under the Registration Act, 1908 (*XVI of 1908*).

CHAPTER III ADMINISTRATION OF TRUSTS

15. Trusts to be registered.— No trust shall be functional unless it is registered with the Director under this Act in such manner as may be prescribed.

16. Registration of Trusts.— (1) For registration of a trust under this Act, a trustee shall file an application before the Assistant Commissioner concerned containing the following information:

- (a) details of the author;
- (b) details of the trustees;
- (c) details of the beneficiaries;
- (d) details of any other natural person exercising ultimate effective control over the trust to the satisfaction of the Department; and
- (e) any other information as may be prescribed.

Explanation: In case of more than one trustees, all the trustees may nominate one trustee who shall be responsible for the provision of information under this section.

(2) The Assistant Commissioner concerned shall forward the application received under subsection (1) to the Director.

(3) The Director shall request to verify the contents and particulars of the application before the registration through the investigating or prosecuting agencies which shall submit the verified report to the Director within fourteen days of receiving the request from the Director.

(4) After receipt of the verified report mentioned in subsection (3), the Director shall register the trust and issue a Certificate of Registration to the trustee.

17. Refusal of application for registration.— The Director, for the reasons to be recorded in writing, may refuse an application for registration of a trust 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 may report to the Director under section 16, and the Director shall refer the application to law enforcement agencies for legal action; or
- (b) any of the members of the trust including the author, the trustee, the beneficiary or any other person exercising ultimate effective control over the trust are declared proscribed by Home Department of the Government, or associated with the proscribed organizations under the Anti-Terrorism Act, 1997 (XXVII of 1997) or under the United Nations Security Council Act, 1948, and in such cases as mentioned in section 18, the Assistant Commissioner concerned shall share the details of such individuals with Ministry of Interior and Ministry of Foreign Affairs, Government of Pakistan through Home Department of the Government; or
- (c) the District Intelligence Coordination Committee concerned considers that the trust is a threat to national security; or
- (d) the author, the trustee, the beneficiary, or any person acting on their behalf fails to provide the complete personal details required for the registration and functioning of the trust under this Act; or
- (e) any other reason as may be prescribed.

18. Inspection of records and punishments.— (1) The Assistant Commissioner concerned or the Director or the Department may require any information relating to a trust from the trustee for any purpose, and shall have the power to inspect such record at any time.

(2) The Assistant Commissioner shall share, through Home Department of the Government, with the authorities, upon written request, the information obtained under subsection (1).

(3) The Assistant Commissioner shall share the information obtained under subsection (1) relating to assets of a trust and beneficiaries with the reporting entity upon written request.

(4) The Director upon intimation by the Assistant Commissioner concerned may impose fine up to rupees one million upon a trustee who fails to provide information required under this section or section 21 or 24 of this Act.

(5) For the contravention of section 21, a trustee, in addition to the fine mentioned under subsection (4), shall also be liable to imprisonment for a term which may extend to six months but shall not be less than three months.

(6) The Court of Magistrate first class shall take cognizance of the offences mentioned in subsection (5) upon a complaint in writing by the Director, and shall try the offences in a summary manner as provided in the Code of Criminal Procedure, 1898 (V of 1898).

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

19. Power to obtain the registration record.— The Department shall obtain the certified copies of registration of trusts record from Sub-Registrar or the Registrar, as the case may be, appointed under the Registration Act, 1908 (XVI of 1908), held by them before the commencement of this Act, within a period of sixty days from the date of commencement of this Act, and, the Department shall make the record of trusts in conformity with the provisions of this Act.

20. Register of Trusts.— (1) The Director and the Assistant Commissioner concerned shall maintain a register of 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, trustees, beneficiaries, any person exercising ultimate effective control over the trust and such other information as may be required by the Department.

(3) The information under subsection (1) shall also include the details if any of the persons associated with the trust is living in Pakistan or outside Pakistan along with their residential addresses.

(4) The Department shall determine the extent of the details mentioned in subsections (1), (2) and (3) to be made public in such manner as may be prescribed.

21. Access to the information.— (1) The Department or the Director through the Assistant Commissioner concerned may at any time require any information relating to a trusts from the trustee, and the trustee shall be bound to provide such information.

(2) For purposes of domestic and international cooperation, the authorities may at any time, through Home Department of the Government, require any information relating to a trust from the trustee, and the trustee shall provide the information in such manner and within such period of time as may be prescribed.

(3) The reporting entity may, through the Department, in such manner and within such period of time as may be prescribed, obtain any information from a trustee about the details of assets of the trust, residential addresses of the trustees and details of the beneficiaries.

22. Legal arrangement for holding the property.— A trust may hold immovable and movable property in its name, or may dispose of such property through a trustee.

CHAPTER IV

DUTIES AND LIABILITIES OF TRUSTEES

23. Trustee to execute trust.— (1) The trustee shall be bound to fulfill the purpose of the trust, and to obey the directions of the author 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 Civil Court of original jurisdiction.

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

(4) 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.

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

24. Trustee to collect and hold information.— (1) A trustee or each of the trustees, as the case may be, shall collect and hold information about the author, the trustees, the beneficiaries, 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 under this Act.

(2) The trustee shall provide the updated information under this Act to the Assistant Commissioner, in such manner and within such period of time as may be prescribed and in case of more than one trustees, only one trustee will be nominated by other co-trustees for the purpose of provision of information.

(3) The trustee shall collect and hold basic information about the other service providers to the trust including, but not limited to, investment advisors or managers, accountants or tax advisors, and, provide this information to the Assistant Commissioner even after the registration of the trust, in such manner as may be prescribed and in case of more than one trustee, only one trustee will be nominated by other co-trustees for the purpose of provision of information.

(4) A trustee shall further inform the Department and law enforcement agencies if it comes to his knowledge any illegal utilization of the trust money by the beneficiaries, after and during the execution of the trust.

25. Trustee to inform himself of state of trust-property.— A trustee shall be 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-moneys invested on 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 shall not allow the former to retain the money for a longer period than the circumstances of the case required.

26. Trustee to protect title to trust-property.— A trustee shall be 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.

27. Trustee not to set up title adverse to beneficiary.— The trustee shall not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

28. 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.

29. Conversion of perishable property.— Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting 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 immediately profitable character.

30. Trustee to be impartial.— (1) Where there are more beneficiaries than one, the trustee is bound to be impartial, and shall 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 such discretion reasonably and in good faith.

31. Trustee to prevent waste.— Where the trust is created for the benefit to 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.

32. Accounts and information.— A trustee or each of the trustees, as the case may be, shall be bound to:

- (a) keep clear and accurate accounts of the trust-property, and income;
- (b) furnish to the beneficiary at the request of the beneficiary at all reasonable times with full and accurate information as to the amount and state of the trust-property;
- (c) update such information as may be prescribed about the author, beneficiaries, trustees, any other natural person exercising ultimate control over the trust, trust assets and incomes.
- (d) get accounts audited by a third party at least once in a year;
- (e) submit financial reports to the Assistant Commissioner in every financial year; and
- (f) maintain the information collected under this section, and, section 24 above for a period not less than the five years after their involvement with the trust ceases, or, the trust is extinguished.

33. Investment of trust-money.— 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:

- (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 such Government, shall be deemed, for the purposes of this clause, to be securities of such Government; or
- (b) security expressly authorized by the instrument of trust, or any other security as may be prescribed.

34. Power to purchase redeemable stock at a premium.— A trustee may invest in any of the securities mentioned in section 33, 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.

35. 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 Civil Court of original jurisdiction.

36. Liability for breach to trust.— 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.

Provided that a trustee committing a breach of trust is not liable to pay interest except in the following cases:

- (i) where he has actually received interest;
- (ii) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;
- (iii) where the trustee ought to have received interest, but has not done so;
- (iv) where he may be fairly presumed to have received interest;

Explanation: The trustee shall be liable, in case (i), to account for the interest actually received, and, in cases (ii), (iii) and (iv), to account for simple interest at the rate of six per cent per annum, unless the Court otherwise directs;

- (v) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he shall be liable to account for compound interest (with half-yearly rests) at the same rate; or
- (vi) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he shall be 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.

37. 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 shall not set-off against his liability again which has accrued to another portion of the trust-property through another and distinct breach of trust.

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

39. Non-liability for co-trustee's default.— (1) Subject to the provisions of sections 26, and 28, one trustee shall 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 shall be 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; or
- (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 shall not be answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

40. 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 shall be liable to the beneficiary for the whole of the loss occasioned by such breach:

provided that as between the trustees themselves, if one is 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 are equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

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

41. 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 shall not be liable for the property so paid or delivered.

42. Liability of trustees where beneficiary's interest is forfeited to Government.— When the beneficiary's interest is forfeited or awarded by legal adjudication to the Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

43. Indemnity of trustees.— Subject to the provisions of the instrument of trust and of sections 36 and 39, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER V RIGHTS AND POWERS OF TRUSTEES

44. Right to title-deed.— A trustee shall be entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

45. Right to reimbursement of expenses.— (1) Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

(2) If the trust-property fails, the trustee shall be entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

(3) Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fails, the trustee shall be entitled to recover from the beneficiary the amount of such over-payment.

46. Right to indemnity from gainer by breach of trust.— (1) A person other than a trustee who has gained an advantage from a breach of trust shall indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is beneficiary the trustee has a charge on his interest for such amount.

(2) Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

47. Right to apply to Court for opinion in management of trust-property.— (1) Any trustee may, without instituting a suit, apply by petition to a Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

(2) A copy of petition under subsection (1) shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The costs of every petition under this section shall be in the discretion of the Court to which it is made.

48. Right to settlement of accounts.— When the duties of a trustee, as such, are completed, he shall be entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

49. General authority of trustee.— (1) In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any,

contained in such instrument, and to the provisions of section 30, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

(2) Except with the permission of a Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

50. Power to sell in lots, an either by public auction or private contract.— Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

51. Power to sell, buy-in and re-sell.— The trustee making any sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and resell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

52. Time allowed for selling trust-property.— Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

53. Power to convey.— For the purpose of completing any sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be prescribed.

54. Power to vary investments.— A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 33, and from time to time vary any such investments for others of the same nature.

55. Power to apply property of minors for their maintenance.— (1) Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 33, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen.

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

(2) Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement of life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

(3) Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the person and property of minor.

56. Power to give receipts.— Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust of power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the

same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

57. Power to compound, etc.— (1) Two or more trustees acting together may, if and as they think fit:

- (a) accept any composition or any security for any debt or for any property;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle and debt, account, claim or thing whatever relating to the trust; and
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

(2) The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

(3) This section shall apply only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

58. Power to several trustees of whom one disclaims or dies.— When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

59. Suspension of trustee's powers by decree.— Where a decree has been passed in a suit for the execution of a trust, the trustee shall not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been passed, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER VI DISABILITIES OF TRUSTEES

60. Trustees cannot renounce after acceptance.— A trustee who has accepted the trust shall not afterwards renounce it except:

- (a) with the permission of a Civil Court of original jurisdiction; or
- (b) when the beneficiary is competent to contract with his consent; or
- (c) by virtue of a special power specified in the instrument of trust.

61. Trustee shall not delegate.— A trustee shall not delegate his office or any of his duties either to a co-trustee or to a stranger, unless:

- (a) instrument of trust so provides, or
- (b) delegation is in the regular course of business, or
- (c) delegation is necessary, or
- (d) beneficiary, being competent to contract, consents to the delegation.

Explanation: The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

62. Co-trustees shall not act singly.— When there are more than one trustees, all shall join in the execution of the trust, except where the instrument of trust otherwise provides.

63. Control of discretionary power.— Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a Civil Court of original jurisdiction.

64. Trustee may not charge for services.— In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Explanation: Nothing in this section shall apply to any Official Trustee, Administrator General, Public Curator, or person holding a certificate of administration.

65. Trustee shall not use trust-property for his own profit.— A trustee shall not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

66. Trustee or his agent shall not buy.— No trustee whose duty is to sell trust-property and no agent employed by such trustee for the purpose of the sale, shall, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

67. Trustee shall not buy beneficiary's interest without permission.— No trustee, and no person who has recently ceased to be a trustee, shall, without the permission of a Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

68. Trustee for purchase.— No trustee whose duty is to buy or to obtain a mortgage of lease of particular property for the beneficiary shall buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

69. Co-trustee shall not lend to one of themselves.— No trustee or co-trustee whose duty is to invest trust-money on mortgage or personal security, shall invest it on a mortgage by, or on the personal security of, himself, or one of his co-trustees.

CHAPTER VII RIGHTS AND LIABILITIES OF BENEFICIARIES

70. Rights to rents and profits.— The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

71. Right to specific execution and transfer of possession.— (1) The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest; and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all are of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

(2) When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall apply to such property during her marriage.

72. Right to inspect and take copies of instrument of trust accounts, etc.— The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers, if any, by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

73. Right to transfer beneficial interest.— The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial

interest, nothing in this section shall authorize her to transfer such interest during her marriage.

74. Right to sue for execution of trust.— Where no trustee is appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

75. Right to proper trustees.— Subject to the provisions of the instrument of trust, the beneficiary has a right that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation: The following are not proper persons within the meaning of this section:

- (a) a person domiciled abroad;
- (b) alien enemy;
- (c) a person having an interest inconsistent with that of the beneficiary;
- (d) a person in insolvent circumstances; and
- (e) unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

76. Right to compel to any act of duty.— The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrain from committing any contemplated or probable breach of trust.

77. Wrongful purchase by trustee.— (1) Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary shall repay the purchase-money paid by the trustee, with interest, and such other expenses, if any, as he has properly incurred in the preservation of the property; and the trustee or purchaser shall; (a) account for the net profits of the property; (b) be charged with an occupation-rent, if he has been in actual possession of the property; and, (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

(2) Nothing in this section shall:

- (a) impair the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or
- (b) entitle the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

78. When trust-property is into the hands of third persons.— (1) Where a trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit or a declaration, that the property is comprised in the trust.

(2) Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as merely as may be the same as his rights in respect of the original trust-property.

79. Saving of rights of certain transferees.— Nothing in section 78 entitles the beneficiary to any right in respect of property in the hands of:

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

Explanation 1: A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Explanation 2: Nothing in section 78 applies to money, currency notes, negotiable instruments in the hands of a bona fide holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act, 1872 or the liability of a person to whom a debt or charge is transferred.

80. Acquisition by trustee of trust-property wrongfully converted.— Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

81. Right in case of blended property.— Where the trustee wrongfully mingles the trust-property with his own, the beneficiary shall be entitled to a charge on the whole fund for the amount due to him.

82. Wrongful employment by partner-trustee of trust-property for partnership purposes.— If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner shall be liable in his personal capacity to the beneficiaries unless he has notice of the breach of trust and the partners having such notice are jointly and severally liable for the breach of trust.

83. Liability of beneficiary joining in breach of trust.— (1) The liability of a beneficiary in committing breach of trust arises where one of several beneficiaries:

- (a) joins in committing breach of trust; or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries; or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries; or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

(2) When property has been transferred or bequeathed for the benefit of a married woman, so that she has no power to deprive herself of her beneficial interest, nothing in this section shall apply to such property during her marriage.

84. Rights and liabilities of beneficiary's transferee.— Every person to whom a beneficiary transfers his interest, has the rights and is subject to the liabilities of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VIII VACATING THE OFFICE OF TRUSTEE

85. Office how vacated.— The office of a trustee shall be vacated by his death or by his discharge from his office.

86. Discharge of trustee.— The trustee may be discharged from his office only as follows:

- (a) by the extinction of the trust; or
- (b) by the completion of his duties under the trust; or
- (c) by such means as may be prescribed by the instrument of trust; or
- (d) by appointment under this Act of a new trustee in his place; or
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract; or
- (f) by the executive order of the Director, if any of the trustee:

- (i) is convicted by a court in criminal case; or
- (ii) fails to fulfill any of the duty or obligation required under this Act; or
- (iii) has been punished under section 18; or
- (g) by the Court to which a petition for his discharge is presented under this Act.

87. Petition to be discharged from trust.— Notwithstanding the provisions of section 23, every trustee may apply by petition to a Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property, but, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

88. Appointment of new trustees on death, etc.— (1) Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from Pakistan, or leaves Pakistan for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by:

- (a) the person nominated for that purpose by the instrument or trust (if any); or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustee or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustee, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

(2) Every appointment under subsection (1) shall be in writing under the hand of the person making it.

(3) On an appointment of new trustee the number of trustees may be increased.

(4) The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be sole trustee.

(5) The provisions of this section relative to a trustee who is a dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee shall include refusing or retiring trustee if willing to act in the execution of the power.

89. Appointment by Court of new trustees.— (1) Whenever any vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 88, the beneficiary may, without instituting a suit, apply by petition to a Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

(2) In appointing new trustees, the Court shall have regard:

- (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust;
- (b) to the wishes of the person, if any, empowered to appoint new trustees;
- (c) to the question whether the appointment will promote or impede the execution of the trust; and
- (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

90. Vesting of trust-property in new trustees.— Whenever any new trustee is appointed under section 88 or section 89, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require and every trustee

appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

91. Survival of trust.— On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER IX EXTINCTION OF TRUSTS

92. Trust how extinguished.— A trust is extinguished:

- (a) when its purpose is completely fulfilled; or
- (b) when the Director considers and has sufficient reasons to believe that the activities of the trust are included in clause (b) of section 17 of this Act and records reasons in the order to extinct the trust; or
- (c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Provided that reasonable defense opportunity has been given to the trust in case of clause (c) above and the trust has the right of appeal to the Department.

93. Revocation of trust.— (1) A trust created by will may be revoked at the pleasure of the testator.

- (2) A trust otherwise created can be revoked only:
 - (a) by the consent of all the beneficiaries competent to contract; or
 - (b) in exercise of a power of revocation expressly reserved to the author where the trust has been declared by non-testamentary instrument or by word of mouth; or
 - (c) at the pleasure of the author where the trust is for the payment of the debts of the author and has not been communicated to the creditors.

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

94. Revocation not to defeat what trustees have duly done.— No trust shall be revoked by the author so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER X CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

95. Where it does not appear that transferor intended to dispose of beneficial interest.— Where the owner of property transfers or bequeaths and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee shall hold such property for the benefit of the owner or his legal representative.

96. Transfer to one for consideration paid by another.— Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee shall hold the property for the benefit of the person paying or providing the consideration.

Explanation: Nothing in this section shall affect the provisions of the Code of Civil Procedure, 1908 (*V of 1908*).

97. Trust incapable of execution or executed without exhausting trust-property.— Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence

of a direction to the contrary, shall hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

98. Transfer for illegal purpose.— Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee shall hold the property for the benefit of the transferor.

99. Bequest for illegal purpose or of which revocation is prevented by coercion.— (1) Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's life-time the legatee agrees with him to apply the property for an unlawful purpose, the legatee shall hold the property for the benefit of the testator's legal representative.

(2) Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee shall hold the property for the benefit of the testator's legal representative.

100. Transfer pursuant to rescindable contract.— Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee shall, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

101. Debtor becoming creditor's representative.— Where a debtor becomes the executor or other legal representative of his creditor, he shall hold the debt for the benefit of the persons interested therein.

102. Advantage gained by fiduciary.— Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he shall hold for the benefit of such other person the advantage so gained.

103. Advantage gained by exercise of undue influence.— Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, shall hold the advantage for the benefit of the person whose interests have been so prejudiced.

104. Advantage gained by qualified owner.— Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he shall hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

105. Property acquired with notice of existing contract.— Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former shall hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

106. Purchase by person contracting to buy property to be held on trust.— Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he shall hold the property for their benefit to the extent necessary to give effect to the contract.

107. Advantage secretly gained by one of several compounding creditors.— Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he shall hold for the benefit of such creditors the advantage so gained.

108. Constructive trusts in cases not expressly provided for.— In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he shall hold the property for the benefit of the persons having such interest, or the residue thereof, as the case may be, to the extent necessary to satisfy their just demands.

109. Obligor's duties, liabilities and disabilities.— The person holding property in accordance with any of the preceding sections of this Chapter shall, so far as may be, perform the same duties, and is subject so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it;

provided that:

- (a) where he rightfully cultivates the property or employs it in trade or business, he shall be entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and
- (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

110. Saving of rights of bona fide purchasers.— Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

CHAPTER XI Miscellaneous

111. Power to make rules.— The Government may make rules for carrying out the purposes of this Act within sixty days from the date of commencement of this Act.

112. Repeal and saving.— (1) The Trusts Act, 1882 (II of 1882) is hereby repealed.

(2) Notwithstanding the repeal of the Trusts Act, 1882 (II of 1882), anything done, actions taken, rules made or notifications issued under the repealed Act, so far as they are not inconsistent with the provisions of this Act, shall be deemed to have been made, done or taken under this Act and shall have effect accordingly.

(3) Any document referring to the repealed Act shall be construed as referring to corresponding provisions of this Act.

(4) All the trusts registered in the Punjab under the repealed Act shall be freshly registered under this Act within a period of six months of the commencement of this Act.

**Muhammad Khan Bhatti
Secretary**