

Trust Law in Singapore (Trustees Act)

Legal and equitable interest

Singapore operates with a common law legal system. What's unique about such a system is the bifurcation of property rights. Property ownership can be separated into a legal interest and an equitable interest.

Having a legal interest, or legal title, means that a person owns the particular property in law. It usually also means that the legal owner's name is registered on a certificate of ownership, or a register of that particular property. In contrast, an equitable interest entitles the equitable owner to a mere beneficiary interest in that particular property, in addition to other rights.

Generally, a legal interest is enforceable against the whole world while an equitable interest is enforceable against the whole world except for the bona fide purchaser for value without notice – but this is not without exceptions.

Property interest may also reside in a person or entity as a whole, without separation. For most homeowners, owning real estate is one such example – the owner has his name on the registry and on the title certificates, but also owns the beneficial interest of that property. Hence, he is both the legal and equitable owner simultaneously.

What is a trust?

Where the property is held on trust, a trustee holds the legal title of the trust property, whereas the beneficiary has the equitable interest in the trust property. Using this structure, the trustee is responsible for managing the trust property (for instance, investing a trust fund in stocks or real estate, as well as paying the relevant taxes and duties) for the benefit of the beneficiary.

Who is the settlor

The settlor is the person or entity who creates the trust.

Who is a trustee

The trustee is the person or entity appointed by the settlor to hold the legal title of the trust property and perform the duties of the trustee. The trustee can be the settlor himself – in which case, the settlor declares himself to be holding trust property on trust for the beneficiary.

Who is the beneficiary

The beneficiary is the person or entity named by the settlor to benefit from the trust. The beneficiary holds the equitable interest in the trust property. The trustee manages the trust property for the benefit of the beneficiary.

What is the purpose of creating a trust?

1. **Estate planning:** Trusts are often used in conjunction with wills by a testator as a means to transfer and divide property amongst his relatives after his death.
2. **Spendthrift protection:** The use of a trustee enables trust property to be conserved and managed by a responsible adult or a professional trustee company for the benefit of young children.
3. **Asset protection:** In some situations it is possible to make certain property bankruptcy-remote by creating a trust. In this manner, the assets are safe from claims made by the creditors of the settlor.
4. **Charities:** Trusts are devices frequently utilised to ensure that assets are properly used for the benefit of a charitable organisation.
5. **Investment:** In Singapore, unit trusts are one example of the use of trusts as investment vehicles. A unit trust is similar to a mutual fund, except that a trust vehicle is used to hold the investment portfolio. The beneficiaries of a unit trust are the unitholders.
6. **Retirement planning:** **Pension plans** may be structured in the form of a trust, with the employer as settlor, and the employees and their dependents as beneficiaries.
7. **Employee benefits:** Some corporations settle trust property to be held for the benefit of its employees and their dependents.
8. **Corporate usage:** In complex commercial transactions, trusts are often used to give security to a party in the form of the equitable interest of a property. Such property can include real assets or intangibles, like receivables.
9. **Tax savings:** In some jurisdictions, a trust structure may confer tax savings.

Powers of the trustee

In Singapore, the **Trustees Act**, in addition to common law principles, provide a wide regulatory framework overseeing the operation of trusts and trustees.

The trustee derives his power from the terms of the trust instrument. For instance, a trust deed may specify that the trustee is to have the power to invest the trust fund in a myriad of low risk unit trust and investment-linked policies.

The Trustees Act specifically confers certain powers on the trustee, but these powers only apply if they are not contrary to the terms of the trust instrument. They include (non-exhaustively) the power to invest, insure, maintain minors, and advance the benefit of beneficiaries.

Duties of the trustee

Together, the Act and common law stipulate a minimum standard trustees must adhere to. This includes the statutory duty to exercise reasonable care and skill in the discharge of his powers, to exercise his discretion properly, and to abide by the directions of the trust instrument.

In relation to investment of trust property, a wide range of duties are imposed on the trustee. They include (non-exhaustively) the duty to

1. Invest only in authorised investments;
2. Consider the standard investment criteria, such as suitability of investment and the need for diversification;
3. Seek advice where it would be prudent to do so; and
4. Take proper care and skill reasonably.

How to create a trust

Trusts may be created by contract, will, or deed, collectively known as the trust instrument. Deeds are usually used when no consideration is given for an agreement. Due to their complexity, it is advisable to engage the services of a lawyer, who will be able to offer specific legal advice as to trust law, estate planning, and intergenerational wealth transfer.

Generally, to create a trust, certain requirements must be complied with. They include:

1. **Certainty of intention** – The settlor must possess the requisite intention to create the trust obligation;
2. **Certainty of subject matter** – Trusts must be created over specific specified property;
3. **Certainty of object** – A trust usually may only be created in favour of legal persons (except purpose trusts);
4. **Constitution** – A trust is created when trust property is transferred, or via a declaration of trust whereby the settlor himself is the trustee holding property for the beneficiary, in which case transfer is unnecessary;
5. **Formalities** – Statutory provisions regulating the creation of a trust or will must be complied with;
6. **Capacity** – Settlor must have legal and mental capacity to create the trust.

What is a breach of trust

1. A breach of trust may be deliberate or inadvertent;
2. It may consist of an actual misappropriation or misapplication of the trust property or merely of an investment or other dealing which is outside the trustees' powers;
3. It may consist of a failure to carry out a positive obligation of the trustees or merely of a want of skill and care on their part in the management of the trust property;
4. It may be injurious to the interests of the beneficiaries or be actually to their benefit