

THE KHYBER PAKHTUNKHWA TRUST ACT, 2020.
(KHYBER PAKHTUNKHWA ACT NO. XXXIII OF 2020)

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¹ Inserted vide Khyber Pakhtunkhwa Act No. 2021.

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¹ Inserted vide Khyber Pakhtunkhwa Act No. 2021.

THE KHYBER PAKHTUNKHWA TRUST ACT, 2020.
(KHYBER PAKHTUNKHWA ACT NO. XXXIII OF 2020)

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Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa,
(Extraordinary), dated the 25th August, 2020).

AN
ACT

*to regulate trusts in the Province of
Khyber Pakhtunkhwa.*

WHEREAS the Trust Act, 1882 (Act No. II of 1882) being obsolete and does not cater for the monitoring and evaluation purposes of the trusts;

AND WHEREAS it is expedient to ensure the regulation, monitoring and evaluations of the trusts, their registrations process and affairs run by them within the Province of Khyber Pakhtunkhwa in a befitting manner and for matters connected therewith and ancillary thereto:

It is hereby enacted by the Provincial Assembly of the Khyber Pakhtunkhwa as follows:

CHAPTER-I
PRELIMINARY

1. Short title extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Trust Act, 2020.

(2) It shall extend to the whole of the Province of Khyber Pakhtunkhwa.

(3) It shall come into force with immediate effect.

(4) Nothing herein contained affects 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 applies 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 to the subject or context,-

(a) “**Assistant Director**” means the Assistant Director of the Directorate;

- (b) **“author of the trust”** means ¹[any person] who reposes or declares the confidence and assigns the property to the trustee for the benefit of beneficiary;
- (c) **“beneficiary”** means ²[any person] who benefits the confidence of the trust;
- (d) **“breach of trust”** means a breach of any duty imposed on a trustee, as such, by any law for the time being in force;
- (e) **“competent authorities”** means the investigating or prosecuting agencies and the Financial Monitoring Unit as defined in the Anti-Money Laundering Act 2010 regulators, oversight bodies under any other law for the time being in force;
- (f) **“Department”** means the Industries, Commerce and Technical Education Department of Government;
- (g) **“Director”** means the Director of the Directorate;
- (h) **“Directorate”** means the Directorate of Industries and Commerce;
- (i) **“District Intelligence Coordination Committee”** means the Committee constituted under section 23 of this Act;
- (j) **“Government”** means the Government of Khyber Pakhtunkhwa;
- (k) **“Financial Monitoring Unit”** means the Financial Monitoring Unit as defined under the Anti-Money Laundering Act, 2010 (Act No. VII of 2010);
- (l) **“Home Department”** means the Home and Tribal Affairs Department of Government;
- (m) **“instrument of the trust”** means the instrument by which the trust is declared;
- (n) **“interest”** means the beneficiary’s right against the trust property;
- (o) **“investigating or prosecuting agency”** mean an investigating or prosecuting agency as defined in the Anti-Money Laundering Act, 2010 (Act No. VII of 2010);
- (p) **“notice”** means a person is said to have known 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 the Contract Act,1872, and all expressions used herein and defined in the Contract Act,1872, shall be deemed to have the meanings respectively attributed to them by that Act;
- (q) **“prescribed”** means prescribed by rules made under this Act;

¹ Substituted vide Khyber Pakhtunkhwa Act No. VII of 2021.

² Substituted vide Khyber Pakhtunkhwa Act No. VII of 2021.

- (r) **“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;
- (s) **“registration”** means registration of trust under this Act;
- ¹[(s-i) **“Regulator”** means such authority as provided in section 1 of Schedule-IV of the Anti-Money laundering Act, 2010 (Act No.VII of 2010);]
- (t) **“reporting entity”** means an entity specified under the Anti-Money Laundering Act, 2010 (Act No. VII of 2010);
- (u) **“Revenue Department”** means the Revenue and Estate Department;
- (v) **“rules”** means rules made under this Act;
- (w) **“Secretary”** means Secretary to Government of the Department;
- ²[(w-i) **“specialized trusts”** means trusts created for establishment of collective investments schemes, collective investment vehicles, private funds, pensions funds, real estate investment trusts, exchange traded funds, private equity and venture capital funds, debt securities trusts, trusts in relation to any security issued by the Federal or any Provincial Government(s) through capital markets, provident funds, gratuity funds, superannuation funds, employee benefit trusts or any other trust administered by the Regulator as notified by the Government in the Gazette;]
- (x) **“trust property”** means the subject matter of the trust; it may be movable or immovable property;
- (y) **“trust”** means an obligation annexed to the ownership of property, and arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of beneficiary; and
- (z) **“trustee”** means any person who accepts the confidence of the author of the trust to the benefit of the beneficiary.

¹ Inserted vide Khyber Pakhtunkhwa Act No. 2021.

² Inserted vide Khyber Pakhtunkhwa Act No. 2021.

CHAPTER-II
OF THE CREATION OF THE TRUSTS

3. Validity of the trust.---(1) No trust in relation to 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 is unlawful is void and where a trust is created for more than one purpose and one of the purposes is unlawful, the whole trust is void.

5. Who may create trusts.---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, a trust may be created-

- (a) by every ¹[***] person competent to contract under the Contract Act, 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. It must not be merely beneficial interest under a subsisting trust.

7. Who may be beneficiary.---Every ²[***] person capable of holding property may be a beneficiary.

³[***]

¹ Word “natural” was omitted vide Khyber Pakhtunkhwa Act No. VII of 2021.

² Deleted vide Khyber Pakhtunkhwa Act No. VII of 2021.

³ Explanation omitted vide Khyber Pakhtunkhwa Act No. VII of 2021.

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 ¹[***] person capable of holding property may be a trustee but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract under the Contract Act, 1872.

²[***]

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 trustees 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 the Chapter-IV of this Act.

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 the 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 in such a case 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.--- ³[(1)] No trust shall be functional unless it is registered under this Act with the Director.

⁴[(2) All trusts created under Trust Act, 1882 (Act No. II of 1882) repealed under sub-section (1) of section 118 of this Act or registered under the Registration Act, 1908 (Act No. XVI of 1908) or any other law, shall be required to be registered in accordance with sub-section (1) within such time as may be notified by Government.

(3) Any trust, which fails to register as required under sub-sections (1) and (2) shall cease to function or operate in any manner whatsoever and necessary action shall be initiated by the Director in terms of section 95 of this Act.]

¹ Omitted vide Khyber Pakhtunkhwa Act No. VII of 2021

² Explanation omitted vide Khyber Pakhtunkhwa Act No. VII of 2021.

³ Renumbered vide Khyber Pakhtunkhwa Act No. VII of 2021.

⁴ Inserted vide Khyber Pakhtunkhwa Act No. VII of 2021

¹**[12A. Registration of specialized trusts.---** (1) For registration of specialized trust under this Act, the trustee shall provide to the Director a No Objection Certification (NOC) from the relevant Regulator which shall contain such information as may be prescribed.

(2) Where the trustee provides the NOC to the Director in accordance with sub-section (1), the Director shall ensure that the requirements in sections 13 to 15 have been fulfilled and shall register the specialized trust in accordance with section 16.

(3) All specialized trusts created prior to the commencement of this Act shall be deemed to have been registered in accordance with section 12.

(4) As specialized trust that is deemed to have been registered under sub-section (3), shall be issued a Certificate of Registration under section 16:

Provided that the requirements of sections 13 to 15 shall be fulfilled by the trustee within such time as may be notified by Government.

(5) Any specialized trust which fails to comply with any of the requirements under sub-sections (1), (2) and (4) shall cease to function or operate in any manner whatsoever and necessary action shall be initiated by the Director in terms of section 95 of this Act.]

13. Application for registration.---(1) For every trust required to be registered under this Act, the trustee shall apply to the Director through the Assistant Director and shall provide to the Assistant Director, along with the application, information regarding the purpose, author of the trust, details of the trustees, beneficiaries of the trust and any other natural persons exercising ultimate effective control over the trust as may be prescribed.

(2) The application under sub-section (1) shall be made on such form and shall be accompanied by such fee as may be prescribed.

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

(3) The details of the information required to be provided under the sub-section (1) of section 13 shall be in the prescribed manner.

(4) The Assistant Director shall transmit the application alongwith the information submitted under sub-section (1), to the Director for necessary verification and registration.

14. Verification of the application.---The Director shall verify the contents and particulars of the application received under section 13 from the Assistant Director, before registration through the investigating or prosecuting agencies, as the case may be, who shall submit the verification report to the Director within fourteen days of receiving the request from the Director.

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.

¹ Inserted vide Khyber Pakhtunkhwa Act No. VII of 2021.

(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 sections 13, 14 and 15 both inclusive of this Act, shall register the trust 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 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 inform the Director under section 14 of this Act and the Director may refer back the application to the law enforcement agencies for legal action; or
- (b) any of the members of the trust including author, trustees, beneficiary or any other person exercising ultimate effective control over the trust are declared proscribed by the Home Department 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 the Assistant Director shall share the details of individuals with the Ministry of Interior and Ministry of Foreign Affairs through the Home Department; or
- (c) the District Intelligence Coordination Committee considers the trust a threat to national security; or
- (d) 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 of this Act for the registration and functioning of the trust; or
- (e) any other reason as may be prescribed.

17. Renewal of registration.---(1) The registration in respect of a trust shall be renewed every year by the trustee in the manner and on payment of such fee as may be prescribed.

(2) The trustee shall apply for renewal of registration thirty days prior to the expiry of registration of the trust.

18. Power to inspect record and compliance.---(1) The Assistant Director, the Director, the Department may require for any information relating to the Trust from the trustee for any purpose and shall have the power to inspect such record of a trust at any time.

(2) The Assistant Director summoning the record under sub-section (1) may share with the competent authorities upon written request, through the Home Department, information about the trust, trust assets, trust proceeds, author of the trust, trustees, beneficiary or any other person exercising ultimate effective control over the trust.

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

(4) The Director, upon intimation by the Assistant Director, may impose financial penalty up to rupees one (01) million, if a trustee or co-trustee, if any, as the case may be, is found violating of 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 file a complaint in the court of Magistrate First Class against the trustees held responsible for non-compliance under this Act, and the court may on conviction, award imprisonment which may extend to six months but which shall not be less than one month. 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 by the Director.

(6) The Director upon intimation of the Assistant Director may impose financial penalty up to rupees one (01) million, if a trustee fails to provide the information required under sections 21 and 25, or fails to obtain and hold the information required under section 26 of this Act.

(7) In addition, the trustee shall also be liable for imprisonment of minimum three months to a maximum of six months by the court of Magistrate First Class on the complaint of Director, if he fails to make information available to competent authorities as required under sub-section (2) of section 21 or to the Department and Director through Assistant Director for the purposes of sharing information under sub-section (3) of section 21.

(8) 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 civil 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.

(9) No order under sub-sections (2), (3), (4), (5), (6) and (7) shall be passed unless the trustee is given an opportunity of being heard.

(10) An appeal against the order passed under sub-sections (2), (3), (4), (5), (6) and (7) shall be made in the following manner, namely:

- (a) If the order is passed by the Director, appeal shall lie to the Secretary; and
- (b) If the order is passed by the Magistrate First Class, appeal shall lie to the Sessions Judge of the District concerned.

19. Power to obtain the registration record.---The Department shall obtain the record of registration of trusts from the Revenue and Estate Department of Government, which was held by Revenue and Estate Department of Government before the commencement of this Act, within a period of sixty (60) days from the date of commencement of this Act, and the Department shall make the trusts record in conformity with the provisions of this Act.

20. Register of trusts.---(1) Both the Director at the Provincial level and the Assistant Director at the District level shall jointly 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, trustees, beneficiaries, any person exercising ultimate effective control over the trust and other information as required by the Department.

(3) The details must also include information, if any, of the persons associated with the trust whether 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 the manner as may be prescribed.

21. Access to the information.---(1) The Department and the Director through the Assistant Director may any time require any information relating to the trust from the trustee and the trustee shall be bound to provide the information in the manner and in a timely as may be prescribed.

(2) For purposes of domestic and international cooperation, the 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 competent authorities and response of trustee shall be routed through the Home and Tribal Affairs Department of Government, in a timely manner as may be prescribed.

(3) The reporting entity may, in the manner and 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.

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

23. The District Intelligence Coordination Committee.---(1) There shall be a District Intelligence Coordination Committee in each district headed by the Deputy Commissioner concerned and comprising representatives of police and intelligence agencies.

(2) The District Intelligence Coordination Committee shall perform such functions as may be prescribed in rules.

CHAPTER-IV

OF THE DUTIES AND LIABILITIES OF TRUSTEES

24. Trustee to execute trust.---(1)The trustee shall 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.

25. Trustee to disclose status.---A trustee, or all of the trustees, as the case may be, shall be 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.

26. 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, the trustees, 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 24 of this Act.

(2) The trustee must provide the updated information under this Act to the Assistant Director, in a 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 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 Director even after the registration of the trust, in the prescribed circumstances and manner. In case of more than one trustee, only one trustee shall be nominated by other co-trustees for the purpose of provision of information.

(4) The details of the information required to be collected and held under sub-sections (1), (2), and (3) shall be prescribed.

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

27. Trustee to inform himself to state of trust-property.---A trustee shall be bound to acquaint himself, as soon as possible-

- (a) with the nature and circumstances of the trust property;

- (b) to obtain, where necessary, a transfer of the trust property to himself; and
- (c) subject to the provisions of the instrument of trust to get in trust moneys invested or insufficient or hazardous security.

Illustrations

(1) 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.

(2) 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.

28. 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 of 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.

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

30. 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 not shall be responsible for the loss, destruction or deterioration of the trust-property.

31. 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 shall be 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.

32. 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 reasonably and in good faith of such discretion.

33. 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.

34. 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 its 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) shall update the information in a timely manner about the author of the trust, beneficiaries, trustees or any other natural person exercising ultimate control over the trust, trust assets and its incomes;

Explanation:- The details of the information shall be prescribed in the rules made under this Act.

- (d) get accounts audited by a third party at least once in a year;
- (e) submit financial reports to the Assistant Director in every financial year; and
- (f) shall maintain the information collected under this section and section 26 of this Act for a period not less than the five years after their involvement with the trust ceases, or, the trust is extinguished.

35. 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; and

- (b) on any other security expressly authorized by the instrument of trust or by any rule as may be prescribed in this behalf.

36. Power to purchase redeemable stock at a premium.---A trustee may invest in any of the securities mentioned or referred to in section 35, notwithstanding that the same may be redeemable and that the price exceeds the redemption value, and a trustee may retain until redemption of any redeemable stock, fund or security which may have been purchased in accordance with this section.

37. 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.

38. Liability for breach to trust.---(1) Where the trustee commits a breach of trust, he shall be 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:

- (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; or
- (d) where he may be fairly presumed to have received interest;
- (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.

(3) The trustee shall be liable, in case of clause (a) of sub-section (2), to account for the interest actually received, and, in cases of clauses (b), (c) and (d) of sub-section (2), to account for simple interest at the rate of six per cent per annum, unless the Court otherwise directs.

39. 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.

40. 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.

41. Non-liability for co-trustee's default.---(1) Subject to the provisions of sections 27 and 30 of this Act, 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; and
- (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.

42. 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.

43. 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.

44. Liability of trustees where beneficiary's interest is forfeited to the 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.

45. Indemnity of trustees.---Subject to the provisions of the instrument of trust and of sections 38 and 41 of this Act, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they actually receive respectively, and shall not be answerable to 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
OF RIGHTS AND POWERS OF TRUSTEE

46. Right to title-deed.---A trustee is entitled to have in his possession the instrument of trust and all the documents of title, if any, relating solely to the trust-property.

47. Right to reimbursement of expenses.---(1) Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses of property 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 personally the amount of such over-payment.

48. Right to indemnity from gainer by breach of trust.---A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach and where he is beneficiary, the trustee shall have 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.

49. 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 principal 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 such petition 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 application under this section shall be in the discretion of the Court to which it is made.

50. 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.

51. 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 32 of this Act, 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 principal 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.

52. Power to sell in lots, or 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.

53. Power to sell under special conditions Power to buy-in-and resell.---(1) The trustee making any such 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.

54. 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.

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

56. 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 35 of this Act, and from time to time vary any such investments for others of the same nature.

57. Power to apply property of minors, etc., for their maintenance etc.---(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 35 of this Act, 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 principal 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 persons and property of minors.

58. 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.

59. 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 claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any 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 applies 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.

60. 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.

61. Suspension of trustee's powers by decree.---Where a decree has been made in a suit for the execution of a trust, the trustee must 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 made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER-VI
OF THE DISABILITIES OF TRUSTEES

62. Trustees cannot renounce after acceptance.---A trustee who has accepted the trust cannot afterwards renounce it except-

- (a) with the permission of a principal civil court of original jurisdiction, or
- (b) if the beneficiary is competent to contract, with his consent, or
- (c) by virtue of a special power in the instrument of trust.

63. Trustee cannot delegate.---A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless-

- (a) the instrument of trust so provides; or
- (b) the delegation is in the regular course of business; or
- (c) the delegation is necessary; or
- (d) the 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.

64. Co-trustees cannot act singly.---When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

65. 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 principal civil court of original jurisdiction.

66. Trustee may not charge for services.---(1) 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.

(2) Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

67. Trustee may 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.

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

69. Trustee may not buy beneficiary's interest without permission.---(1) No trustee and no person who has recently ceased to be a trustee, may, without the permission of a principal 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.

(2) No trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

70. Co-trustee may not lend to one of themselves.---A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself, or one of his co-trustees.

CHAPTER-VII

OF RIGHTS AND LIABILITIES OF BENEFICIARY

71. 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.

72. Right to specific execution.---(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.

(2) 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 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.

(3) 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 sub-section (2) applies to such property during her marriage.

73. 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.

74. 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.

75. Right to sue for execution of trust.---Where no trustees are 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.

76. Right to proper trustees.---The beneficiary has a right subject to the provisions of the instrument of trust 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, namely:

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

77. 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.

78. 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 must 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 must-

- (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-
- (a) Impairs 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) Entitles 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.

79. Following trust-property into the hands of third persons; into that into which it has been converted.---(1) Where 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 therefrom 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.

80. Saving of rights of certain transferees.---(1) Nothing in section 79 of this Act 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. A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

(2) Nothing in section 79 of this Act applies to money, currency notes and 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, section 115 of this Act or the liability of a person to whom a debt or charge is transferred.

81. 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.

82. Right in case of blended property.---Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a change on the whole fund for the amount due to him.

83. Wrongful employment by partner-trustee of trust-property for partnership purposes.---(1) If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership on other partner shall be liable therefore in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

(2) The partners having such notice are jointly and severally liable for the breach of trust.

84. Liability of beneficiary joining in breach of trust.---(1) Liability of 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 shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

85. 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

OF VACATING THE OFFICE OF TRUSTEE

86. Office how vacated.---The office of a trustee is vacated by his death or by his discharge from his office.

87. Discharge of trustee.---The trustee may be discharged from his office only as follows:-

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract;
- (f) by the executive order of the Director, if any, of the trustee;
- (g) is convicted by a court in criminal case;
- (h) fails to fulfill any of the duty or obligation required under this Act; or
- (i) has been penalized under sub-sections (4) and (5) of sections 18 of this Act; or

- (j) by the court to which a petition for his discharge is presented under this Act.

88. Petition to be discharged from trust.--- Notwithstanding the provisions of section 24 of this Act, every trustee may apply by petition to a principal 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.

89. 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 principal 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 of trust, if any; or
- (b) if there be no such person, or no such person able and willing to act-
 - (i) the author of the trust, if he be alive and competent to contract; or
 - (ii) the surviving or continuing trustee or trustee for the time being; or
 - (iii) legal representative of the last surviving and continuing trustee; or
 - (iv) with the consent of the court; or
 - (v) the retiring trustee, if they all retire simultaneously; or
 - (vi) with the like consent the last retiring trustee.

(2) Every such appointment under this section 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 dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include refusing or retiring trustee if willing to act in the execution of the power.

90. Appointment by court.---(1) Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 85 of this Act, the beneficiary may, without instituting a suit, apply by petition to a principal 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.

91. Rule for selecting new trustees.---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.

92. Vesting of trust-property in new trustees - Whenever any new trustee is appointed under section 89 or section 90 of this Act, 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.

93. Power of new trustees.---Every new trustee so appointed, and every trustee appointed under section 89 by a court under section 90, either before or after the commencement 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.

94. Survival of trust.---On the death or discharge of one of several co-trustees, the trust shall survive and the trust-property shall pass to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER-IX **OF THE EXTINCTION OF TRUSTS**

95. Trust how extinguished.---(1) A trust is extinguished in the following manner, namely:

- (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 sub-section (2) of section 16 of this Act and records reasons in the order to extinguish the trust; or
- (c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

¹[(c-i) When it fails to comply with the requirements as provided in section 12 and 12A of this Act; 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).

(2) A trust extinguished under clause (c) of sub-section (1) shall have the right to prefer an appeal to the Department within thirty days of the order of extinguishment.

96. 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) where all the beneficiaries are competent to contract by their consents;
- (b) where the trust has been declared by non-testamentary instrument or by word of mouth- in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors at the pleasure of the author of the trust.

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.

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

CHAPTER-X
OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

98. Where obligation in nature of trust is created.---An obligation in the nature of a trust is created in the following cases.

99. 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 must hold such property for the benefit of the owner or his legal representative.

¹ Inserted vide Khyber Pakhtunkhwa Act No. VII of 2021.

100. Transfer to one for consideration paid by another.---(1) 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 must hold the property for the benefit of the person paying or providing the consideration.

(2) Nothing in this section shall be affect the provisions of the Code of Civil Procedure, 1908 (Act No. V of 1908).

101. 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, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

102. 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 must hold the property for the benefit of the transferor.

103. Bequest for illegal purpose.---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 must hold the property for the benefit of the testator's legal representative.

104. Bequest of which revocation is prevented by coercion.---Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

105. 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 must, 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.

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

107. 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 must hold for the benefit of such other person the advantage so gained.

108. 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, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

109. 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 must 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.

110. 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 must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

111. 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 must hold the property for their benefit to the extent necessary to give effect to the contract.

112. 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 must hold for the benefit of such creditors the advantage so gained.

113. 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 must 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.

114. Obligor's duties, liabilities and disabilities.---The person holding property in accordance with any of the preceding sections of this Chapter must, 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 is 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.

115. 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**

116. Power to make rules.---The Department shall make rules to functionalize this Act within a period not later than the Sixty (60) days from the date of enactment of this Act.

¹[**116A. Delegation of powers.**--- Notwithstanding anything contained in this Act, Government may, by notification in the Gazette, delegate any power provided in this Act to a Regulator, with respect to specialized trusts, to be exercised in such manner and the circumstances as may be specified in the said notification.]

117. Power to interpret.---(1) The Secretary of the Department can exercise arbitrary powers to clarify any confusion arising out of interpretation of the sections of this Act:

Provided that the Secretary shall-

- (a) refer to the illustrations or explanations mentioned in this Act; and
- (b) consult the Law, Parliamentary Affairs and Human Rights Department of Government.

(2) Nothing contained in this section may be interpreted contrary to the judgments of High Courts or Supreme Court of Pakistan, as the case may be.

118. Repeal and savings.---(1) The Trust Act, 1882 (Act No. II of 1882) is hereby repealed to the extent of Khyber Pakhtunkhwa.

(2) Notwithstanding the repeal of the aforesaid Act, anything done, action taken, rules made or notifications issued under the aforesaid Act, so far as it is 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:

Provided that all the trusts registered in the Province of Khyber Pakhtunkhwa under the repealed Act, shall be registered afresh under this Act within a period of six months.

¹ Inserted vide Khyber Pakhtunkhwa Act No. VII of 2021.