

# *kcm* Heirloom

Succession Planning

**Guide on Private Trusts**

**"What & Why" of Family Trusts**

**January 2026**

In our legacy & estate planning practice, almost invariably all the clients are curious regarding the concept, utility and benefits of a private family trust. And there is also a valid reason for this curiosity. You see private trusts feature, quite frequently, in the news where every other day a big/popular industrialist transfers their assets into or out of a private trust<sup>1</sup>. This rising awareness and popularity also reflect in the statistics, which indicate that nearly 1/3<sup>rd</sup> of the companies listed on the National Stock Exchange (NSE) in India have their promoter shareholdings housed in trusts<sup>2</sup>. So naturally, a lot has been written, said and discussed regarding private trusts and their utility in recent times.

In this edition of **kcmHeirloom**, we have answered two (2) simple questions pertaining to a private trust – (i) What are private trusts and (ii) Why use private trusts? (or when should you use private trusts). We also put in some frequently asked questions (FAQ) about private trusts which we generally see people asking us.

### What is a Private Trust?

First things first – unlike companies, private trusts are not separate legal people<sup>3</sup>. A private trust would be better described as an arrangement between two people.

A person (let's say Mr. Rajesh) transfers some of his property to another person (Mr. Manan) on condition that Manan would hold, manage and deal with the property only for the benefit of say Mr. Suraj (son) & Mrs.

Sheela (Raj's wife). Manan cannot take, use or enjoy the property or any returns from that property for himself. He must use it or apply it for Suraj or Sheela.

In technical lingo you would say that –

Manan holds the property in trust for Suraj & Sheela; that – Raj is the Settlor, Manan is the Trustee, and Suraj & Sheela are the Beneficiaries. This entire arrangement is called a trust. That's it.

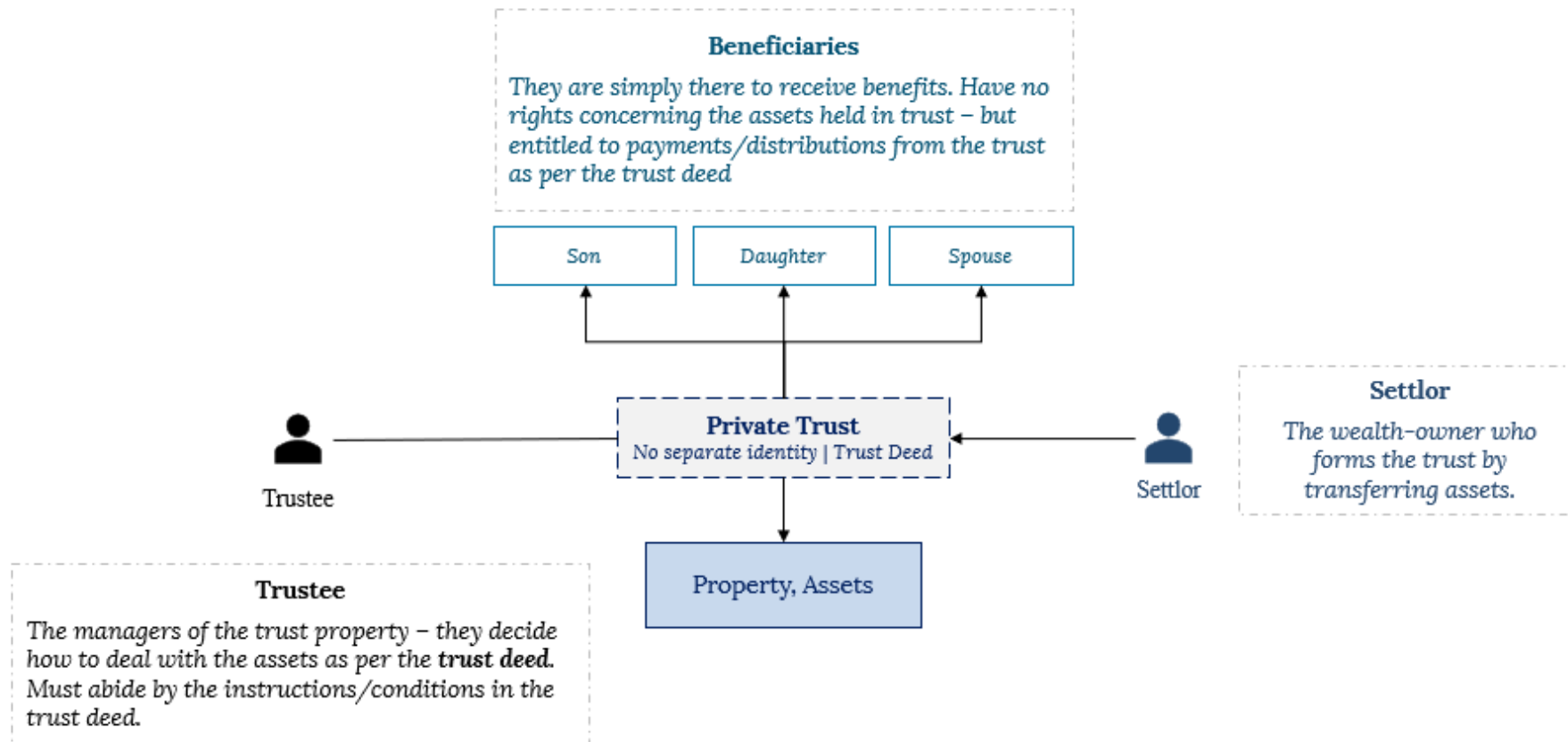
Another technical thing – formation of private trusts, rights/duties/liabilities of a trustee and a beneficiary are governed by the Indian Trusts Act, 1882.

<sup>1</sup> Just in 2025 you have – [Dr. Reddy's case](#), [Rattan India](#), [Indoco Remedies](#) and many more

<sup>2</sup> [Reported that](#) "As per Prime Database, as on October 2025, among the 2,757 companies listed on the NSE, promoters of ~880 of these companies hold their shares through different trust structures- private or public trust."

<sup>3</sup> Note that though not a separate entity, a private trust will have a separate PAN, Bank Account and DEMAT Account for the purpose of holding and dealing with the assets.

Here, if Raj transfers the property to Manan under a written document with the same conditions then the document itself is called a Trust Deed. Apart from this key condition of holding the property for someone else's benefit, Raj can also mention additional instructions/conditions/restrictions and also powers for Manan (look at Q4 & Q6 of FAQs at the end). Maybe this diagram can help. Have a look.



A trust can be set up either during the wealth-owners lifetime preferably through a written trust deed, or under a will by providing the terms of the trust in the will itself.

## Why Private Trust?

### Separation of Control & Benefits

Trustee controls the trust property as per the trust deed, whereas the beneficiaries are simply there to receive the benefits from the trust. This makes trusts very useful in cases where there is a family member with special needs or a minor or someone who is not used to handling a big amount of money/property or even a pet<sup>5</sup>. Here, a reliable trustee (from the family or outside) can manage the wealth, whereas the dependent beneficiary's needs would be met as soon as possible. The deeds, however, must always be very carefully drafted, and the trustees (if not from the family) should also be chosen with extreme caution<sup>6</sup>.

Trusts are not just for beneficiaries who lack the ability to manage wealth. For example, in Raj's case, say he has two children: Anjali, who is involved in his business, and Suraj, who isn't. Raj might want to split his shareholding between Suraj, Anjali, and his wife, Sheela, to ensure they all benefit from dividends and sale proceeds. However, Raj wouldn't want non-business participants controlling business decisions. Through a trust, Anjali could control the business, while Suraj and Sheela receive the benefits. The trustee would hold the power to vote, hire/fire directors, and make major decisions.

<sup>5</sup> This should be done via trusts. Operational issues (e.g., PAN, Bank Account etc.) arise if you try doing it in the pet's name directly.

<sup>6</sup> For parameters & thoughts on how to choose a non-family person as a trustee – consider looking at [KCMHeirloom #2](#)

### Governing a Lasting Legacy

A trust is particularly well-suited for preserving a family legacy, particularly for family businesses and ultra-high-net-worth individuals. A trust deed serves as a rulebook for trustees regarding asset management and decision-making, ensuring long-term governance across generations. With professional support, families can develop governance frameworks that guide how wealth and businesses should be managed for future generations.

### When compared to wills

Unlike a will, which takes effect upon death, a trust is effective immediately, allowing the Settlor to monitor its implementation. When properly structured, private trusts offer strong security for estate planning and preserving a legacy.

Starting December 2025, wills in India no longer require mandatory probate, but obtaining voluntary probate for a significant estate is still advisable. Probate validates the authenticity of a will through court approval and can be time-consuming (the estate is stuck during such time the probate is granted). Trusts, however, do not require probate, and they continue according to the trust deed even after the Settlor's demise.

**Note:** Remember a will forms an indispensable part of your estate plan. The above is not to say that trusts are better than wills – but to highlight 2 key differences. Both are very useful depending on the objectives of the wealth-owner.

### Ring-Fencing from Personal Liabilities

Private trust assets are considered separate from the Settlor's personal property<sup>7</sup>. For example, if Raj had personally guaranteed a business loan and later transferred assets like his house or investments into a private trust, creditors could not claim trust assets in case of bankruptcy. Similarly, in a matrimonial dispute, the trust assets would remain protected from any claims, such as alimony. This protection extends to beneficiaries as well – if Suraj incurs debt, creditors cannot access trust property.

### Effective Planning for Incapacity

A good succession plan should not only consider death but also incapacity<sup>8</sup>. At times of mental incapacity (e.g., coma), there are not many avenues available in India<sup>9</sup> to ensure continued access of a person's funds and wealth to his near and dear ones. If some poor soul were to succumb to mental incapacity without having planned for it, then most of their assets remain frozen and out of reach for his family! A private trust can address problems of incapacity by including a trustee succession clause, specifying that if the current trustee becomes incapacitated, another trustee will take over, ensuring continued management of the trust.

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<sup>7</sup> To avail this benefit, the trust should be legitimate and not set up to defraud creditors or fool the courts.

<sup>8</sup> Click [here](#) to listen Mr. Milin Mehta (CEO/Managing Partner, K C Mehta & Co LLP) on considering incapacity in your estate plan.

<sup>9</sup> Power of attorneys and nominations are not effective in mental incapacity. Guardianship laws in India cover select instances of incapacity and have a long-winding process to get through.

### Cross-border utility – Estate taxes & Forced heirship

For global families with members in countries that impose estate or inheritance taxes (such as the USA, UK, Canada, or Germany), private trusts can help minimize tax liabilities, which can sometimes reach 50% of the estate's value. Additionally, in countries with forced heirship laws (like France, Germany, or Switzerland), a trust<sup>10</sup> may help shield one against these laws and ensure that the estate is distributed according to the Settlor's wishes. Of course when cross-border elements are involved, it is important to also consider Indian foreign exchange laws when structuring the trust.

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<sup>10</sup> In certain countries private trusts are not recognized and hence, "family foundations" are used instead. These are the same thing as trusts with some minor differences.

## Frequently Asked Questions on Private Trusts

Once we explain this concept to our clients we (most understandably) get a barrage of questions. So instead of a conclusion paragraph – here are some FAQs (we will use references from the example in this document) –

### Q1. Can Raj himself be a Trustee?

Yes, he can. But the condition remains that he should hold the property for the benefit of Suraj & Sheela, and he cannot enjoy the trust property for himself.

### Q2. Can Raj add himself as one of the Beneficiaries?

Yes, again! But the rule is – Raj cannot be the settlor, the sole trustee and the sole beneficiary. He can be a settlor, a trustee and **one of the** multiple beneficiaries. Yes, you read it right – even a trustee can be a beneficiary in the same trust.

### Q3. What property can you settle in trust?

Any property can be settled in trust. Movable or immovable property – doesn't matter.

### Q4. What all can you provide in a Trust Deed?

The most interesting thing about trusts. Raj can provide, in the Trust Deed, virtually **any kind of rule/instruction** for the Trustee pertaining to the management of the property.

Raj can set detailed rules in the Trust Deed for property management, such as distributing income equally between Sheela and Suraj, prohibiting investments in crypto, or linking Suraj's share to his CA exam success. He can also include a trustee succession clause, naming alternate trustees (e.g., Santosh, then Meena) in case of resignation, death, or incapacity.

### Q5. Can the a beneficiary claim the trust property for themselves?

No, a beneficiary does not have a direct claim over the trust property<sup>11</sup>. Instead, they have legal rights to ensure the trustee manages the property according to the terms of the trust deed.

### Q6. What all can you provide in a trust deed? E.g., Can Raj provide this in his trust deed –

- a) **Trust property shall never be distributed to the beneficiaries but the income/proceeds from the trust property can be distributed.**
- b) **Whoever is the trustee can decide in what proportion the income/assets should be distributed between Suraj & Sheela.**
- c) **Trust property can be distributed only after Suraj turns 25. Whenever distributed between Sheela & Suraj in 50-50 ratio, but if Suraj fails to take care of Sheela, then Sheela gets everything.**

Yes, the trust deed can validly provide all the three above. You have a lot of flexibility when working with trusts.

<sup>11</sup> Note that where a trust has only one beneficiary, that beneficiary can claim the entire trust property for themselves. This is called a "bare trust".

### Q7. Are trusts relevant only for big shots like Tatas & Ambanis?

No. The quantum of your wealth is not very relevant to decide if you need a trust. The objective you have is more relevant – is it family governance or legacy planning? Is it incapacity planning? Is it ring-fencing? Is it a cross-border succession issue?

### Q8. Do private trusts help in saving or planning Indian income-tax?

No. There is no difference in income-tax whether you have a trust or not. If at all there will be very minor difference. But the trust needs to be structured appropriately, else you may end up paying a higher tax under trust than what you would have paid otherwise!

### Q9. In India, what are some special considerations in relation to forming private trusts for IPO-bound & listed entities?

Public offers have some peculiar aspects to them<sup>12</sup>. There are minimum holding period criteria for the promoter shares which need to be fulfilled in order for there to be an IPO – these are called minimum promoter contribution (MPC). Another minimum holding period criterion is there for shares which the promoter may want to offer for sale (OFS) under the IPO. If shares are transferred to a trust, the regulator is likely to consider that the holding period has reset to 'zero' – this would be very damaging to the IPO itself. For entities which are already listed on Indian stock exchanges, there are certain restrictions on how such trust can be structured without triggering very onerous obligations under securities law. All these need to be carefully considered in the exercise of drafting and forming the trust for holding such shares.

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<sup>12</sup> For a quick snapshot on the IPO aspects, you may refer to [this post](#) of Mr. Suril Mehta (Partner – Transactions, K C Mehta & Co. LLP)

## About **kcmHeirloom**

**kcmHeirloom** KCM Heirloom is a specialized publication by the Succession Planning team at K C Mehta & Co LLP, focused on inheritance planning, estate structuring, and family business governance. It explores key challenges, evolving regulations, and best practices in wealth succession, offering valuable insights for families, business owners, and trustees.

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