

Introduction to an Israeli trust

1. INTRODUCTION

Israel's Legal system

The history of Israeli law reflects the history of the country in modern times. Under Ottoman rule from 1516-1917, the law applied was a mixture of Muslim and Continental law. During the years 1917-1948, the country was ruled by the British under a League of Nations Mandate. The British were reluctant to make sweeping changes to the legal system of a territory that was not a true British colony. However, through the King's Order in Council of 1922, the English legal system was made available to the country.

Since 1948, Israel has enacted its own laws. The influence of English law can still be felt. Most of Ottoman law has been abandoned. While legal developments in England and the United States are followed and regarded with deference, Israeli courts are not bound by them and have begun creating their own precedents and doctrines, constituting an independent Israeli 'common law'. Today, the bulk of Israeli law is legislation passed by the Knesset (Parliament). Noteworthy, however, is that personal status is governed according to religious law. All Jews are subject to the personal law of the Jewish religion, while Muslims and Christians are subject to the laws of their religions respectively.

The highest judicial body is the Supreme Court. While Israel does not have a formal written constitution, eleven Basic Laws serve this purpose.

2. SOURCES OF LAW

Trust creation and administration

The trust institution has been recognized under the Israeli legal system since the 1920s. The enactment in 1923 of the Charitable Trusts Ordinance set out the rules for a public trust. The private trust, on the other hand, was not regulated by statute until 1979, when the Trust Law was enacted. However,

the court has held that the concept of trust existed in Israel prior to 1979. After the enactment of the Trust Law, the courts no longer needed to rely on foreign laws, which had formed the basis for the recognition of the trust before 1979.

3. TRUSTS

a. Introduction

The Trust Law, which regulates various forms of trusts, resembles the Anglo-American model, although the general applicability of this law is wider. A trust has no necessary form and no particular procedure is necessary to form a trust that falls within the law. A trust purports to cover any situation in which someone is empowered to deal with property for the benefit of another.

Whether a trust arises within a certain legal relationship is not subject to the will of the parties. It is the contents of the relationship that reveal whether a trust arises.

An Israeli trust has several specific features. The trustee is endowed with control over the assets, although there are no particular conditions as to the manner of control. A common means of control is acquired through title to the trust assets passing to the trustee. The trustee may, however, be vested with control over the assets by being empowered to deal with them. A trustee is deemed to have control if the trustee can act to affect the way the trust assets will be dealt with, including whether these are distributed, invested, or exchanged for other assets. The trustee must exercise control over assets to fulfil the purpose of the trust. A trust will be valid and enforceable where there is a definite beneficiary or where there is no definite beneficiary but there is some purpose to the trust.

Any legally binding relationship, whatever its legal source, that imposes these duties on the trustee serves to create a trust.

A settlor, as creator, is necessary for a voluntary trust. However, the Israeli concept of trustee also includes relationships where there is no settlor. Thus, under the definition of trust fall all statutory fiduciaries, many of them

appointed by the court, such as a guardian, administrator of the estate of the deceased or liquidator of a company.

b. Most frequently used trusts

Trusts may be used for a variety of estate planning purposes in the manners set out below:

i. *Trusts created by law*

Trusts may be created by legislation. Under this category fall all statutory fiduciaries, many of them appointed by the court, such as guardians, liquidators and receivers of companies, executors and administrators of estates.

ii. *Public endowments*

A public endowment is one with an objective to further a public purpose. The beneficiary is neither a particular person nor a certain institution. It may be a specific group of persons with a particular shared characteristic, for example, a group of children, or a group of disabled persons. The law provides the following examples of “public benefit”: education, culture, religion, scholarship, science, art, social welfare, health, sports or some other public purpose. The trustee of a public endowment must inform the Registrar of Endowments of the existence of the endowment within three months of becoming trustee and must disclose the objectives which further the public interest. A public endowment does not receive the status of a legal entity.

iii. *Foreign trusts*

The concept of private trust under the Trust Law is widely known and used by professionals in Israel. However, its main application is in the capacity of nominee agreements and trust relationships created by law.

Israeli professionals tend to use foreign law trust structures for organizing private and business affairs where a common law of trust is required. Sometimes the continental foundation entity is also used.

The main reason for the above usage is that the legal structures available under the Trust Law 1979 are insufficient. The establishment of a trust, which would “skip” generations, often available under foreign trust structures, is not available in Israel. Therefore there is a need for probate of the will in order to achieve the settlor’s goal of creating a trust that will exist for a number of generations.

This situation leads professionals to advocate the establishment of trusts in foreign jurisdictions to be managed by non-Israeli trustees.

c. Governing law

The Israeli legal system contains elaborate provisions of private international law that enable the courts to recognize foreign legal structures, including the use of trusts established under foreign law jurisdictions.

Israel is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition, July 1, 1985.

d. Creation of a trust

i. *Trust created by contract*

In a contractual trust, the rights of the parties, the trustee and the beneficiaries are determined in an agreement which may or may not be written.

ii. *Trust created by deed*

A trust created by deed must be in writing. The deed must express the intent of the creator to found a trust and must outline the purposes, properties and conditions. It can either be signed before a notary or constitute a will that is not oral. The trust is initiated when the trustee gains control of the trust assets. Where trust property exists but no deed is found, the court may declare the existence of a trust and define its purposes, properties and conditions.

iii. *Comparison of trusts by contract and by deed*

A trust created by deed must be in writing and must comply with certain formal requirements. If it is intended to be executed during the life of the settlor, it must be signed before a notary. If it is intended to be executed after the death of the settlor, it must be set out as a testament. A contract usually needs no formality but is limited to creating a trust *inter vivos*.

A trust created by contract may be amended at any time by the parties. A trust created under a deed may be amended only if explicitly provided for in the original deed or by agreement of both the settlor and all of the beneficiaries. A court may amend the trust, taking into consideration the purposes of the trust.

A breach of the contract is generally a reason for the court to intervene to redress the injury suffered by a party. A trust created by contract may begin when the trustee gains control of the assets, even where the property is not yet in the trustee's possession.

iv. *Testamentary trust*

A trust, effective upon the death of the settlor, must be in writing. Usually, it will have to be executed by making a testament. The testament, in order to be valid, must comply with the formal and other requirements under the Succession Law. The formal requirements prescribe how a testament should be executed. Other requirements purport to safeguard the free will of the testator, being of clear mind and being at liberty to change the testament whenever and however the testator wishes.

Where testaments would have been declared void for uncertainty under the Succession Law, trust law will give effect to them provided that the wishes of the testator, as expressed in the testament, can be fulfilled by constituting a trust. The courts consider fulfilment of the wishes of the testator as the prime object of the law relating to wills. The courts have

wide powers, under the Trusts Law, to sanction schemes of organization and the manner of management of the trust. A testament, which includes instructions, that amount to a trust, or which may be executed as a trust, constitutes a trust deed, and the rules relating to a trust deed apply.

v. *Duration and termination*

Israeli trust law does not permit generation skipping. For example, one cannot create a trust that will survive the life beneficiary and extend on for the benefit, in turn, of that life beneficiary's successor.

vi. *Beneficiaries*

Beneficiaries have no proprietary right in the trust assets themselves. The right of a beneficiary under a deed is not assignable. It may not be pledged or attached unless so permitted in the deed or ordered by the court. It may then be alienated only for claims of alimony or taxes due from the beneficiary. In specific circumstances, such as for the incapacitated or for those who are limited in the ability to exercise proper discretion in the running of their affairs, the court may also order that the right of the beneficiary will serve to satisfy other debts of the beneficiary.

vii. *Trustees*

Any natural or legal person, capable of undertaking binding obligations and performing legal acts, can act as a trustee. Natural persons must usually be at least 18 years old, and capable of running their own affairs. A corporation may serve as trustee. A trust may have several trustees.

The duties of trustees include safekeeping the trust assets, managing and developing them for the purposes of the trust and doing all that is necessary to fulfill their duties. They must act diligently and faithfully, as would a reasonable person in the same circumstances.

Trustees are not entitled to remuneration for the performance of their function unless such performance is part of their business, although the court may award remuneration if it finds that the extent of the functions calls for it. Trustees are entitled to indemnification for reasonable expenses incurred by them in their position as trustees. Trustees must hold trust property separately from any other property or in a way that makes it possible to distinguish between them. Trust funds that are not needed for day-to-day requirements of the trust must be held or invested by the trustee in a manner conducive to preservation and to production of income. Trust investment regulations are prescribed by the Minister of Justice. Trustees also bear duties of account keeping and reporting to government authorities in the case of public trusts.

Breach of duty entitles both the beneficiaries and the trust to compensation from the trustee.

Trustees may apply to court to confirm that their acts properly conform to the law. Self-dealings are void, and trustees, or any of their relatives who benefit from any deal, may have to account for the value of the benefit.

viii. *Protectors*

Although Israeli law does not recognize the institution of a protector, the structure of a trust may be such as to include a de facto protector, possessing such powers as the appointment or removal of another trustee.

ix. *Role of Public Trustee or Guardian*

The Guardian General, Public Trustee or Guardian, is appointed by the Minister of Justice and can act as guardian of any kind of trust with rights and obligations of any other trustee. Other roles include preserving the assets of beneficiaries and trustees until an official

trustee is appointed and representing beneficiaries who cannot represent themselves.

e. Trust administration

Statutory trustees appointed by the court have reporting and management requirements addressing general management, distributions from the trust, change of administrators, passing of accounts and variation of trust.

4. CONCLUSION

Israeli Trust Law resembles the Anglo-American model; nevertheless an Israeli trust has several specific features. An Israeli trust has no necessary form and no particular procedure is required in order to form a trust that falls within the law. A Trust can be created by contract or by deed. A trust, effective upon the death of the settlor, must be in writing usually by making a testament. Israeli trust law does not permit a trust which would skip generations. .

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Written by:

Leon Harris, Ernst & Young Israel, Tel Aviv, Israel

Alon Kaplan, Alon Kaplan Law Firm, Tel Aviv, Israel

Meir Linzen, Herzog, Fox, Neeman, Tel Aviv, Israel

Dr. Zvi Tamir, Zvi Tamir & Co., Tel Aviv Israel