Trust Law of the People’s Republic of China

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Creation of a Trust 2

Chapter III — Trust Property 3

Chapter IV — Parties to a Trust 3

Section 1 — The Settlor 3

Section 2 — The Trustee 4

Section 3 — The Beneficiary 5

Chapter V — Modification and Termination of a Trust 6

Chapter VI — Charitable Trusts 7

Chapter VII — Supplementary Provisions 7

Adopted at the 21st Session of the Standing Committee of the Ninth National People's Congress on April 28, 2001
Effective: October 1, 2001

Table of Contents

- Chapter I — General Provisions
- Chapter II — Creation of a Trust
- Chapter III — Trust Property
- Chapter IV — Parties to a Trust
- Chapter V — Modification and Termination of a Trust
- Chapter VI — Charitable Trusts
- Chapter VII — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating trust relationships, specifying the rights and obligations of parties to a trust, promoting the healthy development of the trust industry, and protecting the lawful rights and interests of trust parties.

Article 2 — For the purposes of this Law, the term "trust" means an act whereby the settlor, based on his trust in the trustee, entrusts his property rights to the trustee, and the trustee manages or disposes of such

property rights in his own name in accordance with the wishes of the settlor for the benefit of the beneficiary or for a specific purpose.

Article 3 — This Law shall apply to trust activities conducted within the territory of the People's Republic of China by trustors, trustees, and beneficiaries.

Article 4 — Where trustees conduct trust business in the form of trust institutions, the State Council shall formulate specific measures for the organization and administration of such trust institutions.

Article 5 — Trust parties shall conduct trust activities in compliance with laws and administrative regulations, abide by the principle of voluntariness, fairness, and good faith, and shall not harm the interests of the State and the public.

Chapter II — Creation of a Trust

Article 6 — A trust shall be created for a lawful purpose.

Article 7 — To create a trust, there must be definite trust property, and such trust property must be property legally owned by the settlor. The term "trust property" as used in this Law includes lawful property rights.

Article 8 — A trust shall be created in writing. The written form of a trust shall include a trust contract, a will, or other written documents prescribed by laws and administrative regulations. Where a trust is created by means of a trust contract, the trust shall be created when the trust contract is concluded. Where a trust is created by other written means, the trust shall be created when the trustee undertakes the trust.

Article 9 — The written document creating a trust shall specify the following: the purpose of the trust; the name and domicile of the settlor and the trustee; the beneficiary or the scope of beneficiaries; the scope, type, and status of the trust property; and the form and method for the beneficiary to obtain the trust benefits. In addition, the trust period, the method of management of the trust property, the remuneration of the trustee, the appointment of a new trustee, the termination of the trust, and other matters may be specified.

Article 10 — Where laws or administrative regulations require the registration of trust property, the trust property shall be registered. Where the trust property that should be registered in accordance with law is not registered, the trust registration shall be supplemented; where it is not supplemented, the trust shall have no effect. Where a trust property right is created or transferred by means of a trust, the relevant laws and administrative regulations shall apply to the registration.

Article 11 — A trust shall be void under any of the following circumstances: the purpose of the trust violates the provisions of laws or administrative regulations or harms the public interest; the trust property cannot be determined; the settlor creates the trust with illegal property or property that this Law prohibits from being used to create a trust; the trust is created exclusively for the purpose of litigation or debt collection; the beneficiary or the scope of beneficiaries cannot be determined; or other circumstances prescribed by laws or administrative regulations.

Article 12 — Where a settlor creates a trust that prejudices the interests of his creditors, the creditors shall have the right to apply to the people's court for revocation of the trust. Where the people's court revokes a trust in accordance with the provisions of the preceding paragraph, the lawful rights and interests of a bona fide beneficiary shall not be affected. The right of revocation as specified in the first paragraph of this Article shall be extinguished if not exercised within one year from the date on which the creditor knows or should have known the reason for revocation.

Article 13 — For the creation of a testamentary trust, the provisions of the Succession Law on testamentary succession shall apply. Where a testamentary trust designates a person to refuse or is unable to serve as trustee, the beneficiary may appoint another person as trustee. Where there is no guardian or a guardian is designated for a beneficiary who is a person without civil capacity or a person with limited civil capacity, other persons jointly designated by the testator may serve as trustees.

Chapter III — Trust Property

Article 14 — Trust property acquired by the trustee by accepting the trust shall be trust property. Trust property acquired by the trustee through management, use, disposal, or other circumstances of the trust property shall also be part of the trust property. Property prohibited by laws or administrative regulations from being circulated shall not serve as trust property. Property restricted by laws or administrative regulations from being circulated may serve as trust property upon approval by the relevant competent departments in accordance with law.

Article 15 — Trust property shall be distinguished from property owned by the settlor that has not been placed in trust. After a trust is created, where the settlor dies, or is dissolved or declared bankrupt in accordance with law, and the settlor is the sole beneficiary, the trust shall terminate and the trust property shall become part of the settlor's estate or liquidation property. Where the settlor is not the sole beneficiary, the trust shall continue to exist and the trust property shall not become part of the settlor's estate or liquidation property. However, the trust beneficial rights obtained by the settlor as a co-beneficiary shall become part of the settlor's estate or liquidation property.

Article 16 — Trust property shall be distinguished from the trustee's own property. Where the trustee dies, or is dissolved, revoked, or declared bankrupt in accordance with law, the trust property shall not become part of the trustee's estate or liquidation property.

Article 17 — Compulsory enforcement shall not be carried out against trust property except under any of the following circumstances: where the trust property was subject to a creditor's pre-existing right before the creation of the trust and such creditor exercises the right in accordance with law; where a creditor has a claim arising from the handling of trust affairs by the trustee and requests repayment of the debt; where the taxes payable in respect of the trust property itself are requested to be paid; or other circumstances prescribed by law. Where compulsory enforcement is carried out against trust property in violation of the provisions of the preceding paragraph, the settlor, trustee, or beneficiary shall have the right to raise an objection to the people's court.

Article 18 — Set-off shall not be allowed between the debts arising from the management and disposal of trust property by the trustee and the debts arising from the trustee's own property. Set-off shall not be allowed between the debts arising from the trustee's management and disposal of different settlors' trust property.

Chapter IV — Parties to a Trust

Section 1 — The Settlor

Article 19 — A settlor shall be a natural person, legal person, or other organization established in accordance with law that has full civil capacity.

Article 20 — The settlor shall have the right to know the management, use, and disposal of the trust property as well as the income and expenditure, and shall have the right to request the trustee to provide explanations on the same. The settlor shall have the right to consult, transcribe, or copy trust account books and other documents relating to the handling of trust affairs by the trustee.

Article 21 — Where special circumstances arise that were unforeseeable at the time of creation of the trust and the method of management of the trust property is not conducive to the realization of the purpose of the trust or does not conform to the interests of the beneficiary, the settlor shall have the right to request the trustee to adjust the management method of the trust property.

Article 22 — Where the trustee, in disposing of the trust property, breaches the purpose of the trust or causes losses to the trust property due to mismanagement, the settlor shall have the right to apply to the people's court for revocation of such disposal and shall have the right to request the trustee to restore the

trust property to its original state or make compensation. Where a transferee of the trust property accepts the property knowing that it was transferred in violation of the purpose of the trust, the transferee shall return the property or make compensation. The right of revocation as provided in the preceding paragraph shall be extinguished if not exercised within one year from the date on which the settlor knows or should have known the reason for revocation.

Article 23 — Where the trustee, in disposing of the trust property, commits a material breach of trust or falls under any circumstance prescribed in the trust documents, the settlor shall have the right to dismiss the trustee or apply to the people's court for dismissal of the trustee in accordance with the provisions of the trust documents.

Section 2 — The Trustee

Article 24 — A trustee shall be a natural person or legal person with full civil capacity. Where laws or administrative regulations require the trustee to meet certain qualifications, such qualifications shall apply.

Article 25 — The trustee shall manage the trust property in compliance with the provisions of the trust documents, and shall perform the obligations of good faith, prudence, and effective management.

Article 26 — The trustee shall not, unless otherwise provided in this Law or agreed in the trust documents, take advantage of the trust property for his own benefit. Where the trustee violates the provisions of the preceding paragraph and takes advantage of the trust property for his own benefit, the benefits obtained shall be included in the trust property.

Article 27 — The trustee shall not convert the trust property into his own property. Where the trustee violates the provisions of the preceding paragraph and converts the trust property into his own property, he shall restore the trust property to its original state; where losses are caused to the trust property, the trustee shall bear the liability for compensation.

Article 28 — The trustee shall not conduct transactions between his own property and the trust property, or between the trust properties of different settlors, except as otherwise provided in the trust documents or with the consent of the settlor or the beneficiary, and such transactions shall be conducted at fair market prices. Where the trustee violates the provisions of the preceding paragraph and causes losses to the trust property, the trustee shall bear the liability for compensation.

Article 29 — The trustee shall manage trust property separately from his own property and shall keep separate accounts for the trust property. The trustee shall also keep separate accounts for the trust property of different settlors.

Article 30 — The trustee shall personally handle trust affairs, but may entrust another person to handle such affairs on his behalf where the trust documents provide otherwise or there are compelling reasons. Where the trustee entrusts another person to handle trust affairs on his behalf in accordance with law, the trustee shall bear liability to the settlor and the beneficiary for the acts of such other person in handling the trust affairs.

Article 31 — Where there are two or more co-trustees in the same trust, the co-trustees shall jointly handle the trust affairs. However, if the trust documents provide that the trustees shall separately handle specific affairs, such provisions shall prevail. Where co-trustees have a disagreement in handling trust affairs in common, it shall be handled in accordance with the provisions of the trust documents; where the trust documents contain no such provisions, the settlor, beneficiary, or the person with a direct interest in the trust shall decide. Co-trustees shall bear joint and several liability for the debts incurred by a co-trustee in handling trust affairs and for the damage caused to the trust property as a result of a co-trustee's breach of duty.

Article 32 — The trustee shall be obligated to keep records of the handling of trust affairs, keep complete records of the handling of trust affairs, and report on the management, use, and disposal of the trust property

and the income and expenditure to the settlor and the beneficiary on a regular basis. The trustee shall be obligated to keep confidential the trust affairs, the trust property, and other information in handling trust affairs, except where disclosure is required by law.

Article 33 — The trustee shall be obligated to pay trust benefits to the beneficiary with the trust property. The trustee shall, within the limits of the trust property, pay the debts incurred in handling trust affairs with the trust property. Where the trustee handles trust affairs with his own property and there is a priority claim, the priority claim may be satisfied from the trust property.

Article 34 — The trustee shall have the right to receive remuneration in accordance with the provisions of the trust documents. Where the trust documents do not provide for remuneration in advance, but the parties agree subsequently upon consultation, such agreement shall prevail. Where no agreement is reached, the trustee shall not receive remuneration. The agreed remuneration may be increased or reduced with the consent of the settlor and the beneficiary upon consultation.

Article 35 — Where the trustee has made necessary expenses or paid necessary debts in handling trust affairs with his own property, the trustee shall have the right to priority satisfaction from the trust property. Where the trust property is insufficient to satisfy the priority right specified in the preceding paragraph, the trustee may request proper compensation from the beneficiary, unless the priority right is caused by the trustee's fault.

Article 36 — Where the trustee is unable to perform his duties due to death, dissolution, revocation, declaration of bankruptcy, resignation, or dismissal, his duties as trustee shall be terminated. Where the trustee's duties are terminated, a new trustee shall be appointed in accordance with the provisions of the trust documents. Where the trust documents contain no such provisions, the settlor shall appoint the new trustee. Where the settlor fails to appoint or is unable to appoint, the beneficiary shall appoint the new trustee. Where the beneficiary is a person without civil capacity or a person with limited civil capacity, the guardian of the beneficiary shall appoint the new trustee on his behalf. During the period between the trustee's term of office and the appointment of a new trustee, the original trustee shall continue to handle trust affairs, except where the trust documents provide otherwise.

Article 37 — Where a trustee acts in accordance with this Law after his duties as trustee have been terminated, the trust property shall be handed over to the new trustee and a report on the handling of trust affairs shall be submitted to the new trustee. The new trustee shall have the right to request the former trustee to hand over the trust affairs and may take necessary measures to prevent loss of the trust property.

Article 38 — Where a trustee's duties are terminated, the new trustee shall succeed to the rights and obligations of the original trustee in handling trust affairs in accordance with law. The lawful acts performed by the original trustee in handling trust affairs shall be binding on the new trustee. The debts incurred by the original trustee in handling trust affairs shall be borne by the new trustee; however, the new trustee may claim compensation from the original trustee where the original trustee is at fault.

Section 3 — The Beneficiary

Article 39 — A beneficiary shall be a person who enjoys the trust beneficial rights at the time the trust is created. The beneficiary may be a natural person, legal person, or other organization established in accordance with law. The settlor may also be the beneficiary. The trustee may be a beneficiary, but shall not be the sole beneficiary of the same trust.

Article 40 — A beneficiary shall have the right to claim the trust benefits from the trustee in accordance with law. Where the beneficiary is a joint beneficiary, the trust benefits shall be claimed in accordance with the provisions of the trust documents. Where the trust documents contain no provisions on the claim of trust benefits, the trust benefits shall be claimed equally among the beneficiaries. Where the trust documents provide for joint beneficial rights, the joint beneficiaries shall claim the trust benefits jointly.

Article 41 — Where the beneficiary is a joint beneficiary, the trust benefits shall be claimed in accordance with the provisions of the trust documents. When the trust documents contain no such provisions, the benefits shall be shared equally.

Article 42 — Where a beneficiary is unable or unwilling to accept the trust benefits, or waives the trust beneficial rights in accordance with law, and the trust beneficial rights belong to other persons, the trust beneficial rights shall be disposed of in accordance with the provisions of the trust documents. Where the trust documents contain no provisions, the trust beneficial rights shall belong to the settlor or his successor.

Article 43 — The beneficiary may exercise the rights enjoyed by the settlor under Articles 20 to 23 of this Law. Where the beneficiary, in exercising the said rights, has a disagreement with the settlor, he may apply to the people's court for a ruling. Where the trust documents provide for restrictions on the settlor's rights, such provisions shall prevail.

Article 44 — A beneficiary's trust beneficial rights may be transferred and inherited in accordance with law, except where the trust documents provide otherwise.

Article 45 — A trust beneficial right may be used to pay off debts in accordance with law, except where restrictions are imposed by law, administrative regulations, or the trust documents.

Article 46 — A settlor shall be the sole beneficiary, and the settlor or his successor shall have the right to rescind the trust, except where the trust documents provide otherwise. Where the settlor rescinds the trust, thereby causing losses to the trustee and the settlor is at fault, the settlor shall bear liability for compensation.

Article 47 — A beneficiary's trust beneficial right may be used to satisfy debts. However, the trust documents may provide that the trust beneficial right shall not be used for this purpose. Where a creditor enforces a beneficiary's trust beneficial rights, the people's court may, based on the nature of the trust, order the transfer of the trust beneficial rights.

Chapter V — Modification and Termination of a Trust

Article 48 — The settlor may modify the beneficiary or dispose of the beneficiary's trust beneficial rights under any of the following circumstances: the beneficiary has committed a material tort against the settlor; the beneficiary has committed a material tort against other co-beneficiaries; the modification or disposal is agreed upon with the beneficiary's consent; or other circumstances specified in the trust documents. Where the trust documents provide for the modification of the beneficiary or the disposal of the beneficiary's trust beneficial rights under the circumstances specified in the preceding paragraph, such provisions shall prevail.

Article 49 — After a trust is created, the settlor shall not modify the trust without authorization, except where the trust documents provide otherwise. Where the settlor, the trustee, and the beneficiary agree to modify the trust, the modification shall be made in accordance with their agreement. However, where the law provides otherwise, such provisions shall prevail.

Article 50 — Where the settlor is the sole beneficiary, the settlor or his successor may rescind the trust. Where the trust documents provide otherwise, such provisions shall prevail.

Article 51 — After a trust is created, the settlor shall not rescind the trust under any of the following circumstances: the trust documents contain provisions restricting the right of rescission; the settlor is no longer a beneficiary. However, the settlor may rescind the trust with the consent of the beneficiary, or where the trust documents provide for rescission.

Article 52 — A trust shall not terminate due to circumstances such as the death, dissolution, revocation, or declaration of bankruptcy of the settlor or the trustee, except where otherwise provided in this Law or the trust documents.

Article 53 — A trust shall terminate under any of the following circumstances: the trust purpose has been realized or cannot be realized; the term of the trust as specified in the trust documents has expired; the trust is rescinded by the settlor in accordance with this Law; the beneficiary rescinds the trust with the consent of the settlor; the trust is rescinded by the parties to the trust through consultation; the trustee breaches the trust contract and the settlor rescinds the trust in accordance with the trust contract; the trust is revoked; and other circumstances for termination as specified in the trust documents.

Article 54 — Upon termination of a trust, the trust property shall belong to the person specified in the trust documents. Where the trust documents contain no such provisions, the trust property shall belong to the settlor or his successor. The beneficiary shall have priority in the distribution of trust property.

Article 55 — After the termination of a trust, the rights of the trustee and the beneficiary in respect of the trust property and the settlement of trust affairs shall be exercised and settled in accordance with the provisions of the trust documents or the provisions of this Law.

Article 56 — After a trust is terminated, the trustee may request the settlor or the beneficiary to pay the necessary expenses for the handling of trust affairs.

Chapter VI — Charitable Trusts

Article 57 — A charitable trust is a trust created for the public interest. The provisions of this Law shall apply to a charitable trust; where the provisions of this Chapter provide otherwise, such provisions shall prevail.

Article 58 — A charitable trust shall have a supervisor for the trust. The trust supervisor shall be designated in the trust documents. Where the trust documents contain no such designation, the public interest undertaking administration institution shall designate the trust supervisor.

Article 59 — The trust supervisor shall have the right to bring a lawsuit or take other legal action in his own name for the benefit of the beneficiary. Trust supervisors shall be obligated to supervise the trustee's handling of trust affairs in accordance with the law and the provisions of the trust documents.

Article 60 — The trustee of a charitable trust shall not resign without the approval of the public interest undertaking administration institution.

Article 61 — A charitable trust shall be subject to the supervision of the public interest undertaking administration institution. The public interest undertaking administration institution may, based on the needs of its functions, inspect the handling of trust affairs by the trustee and the accounts and relevant documents of the charitable trust.

Article 62 — After a charitable trust is terminated, the trustee shall make a settlement report on the handling of trust affairs and, within fifteen days from the date of the settlement report, submit the same to the trust supervisor for approval, and then report the same to the public interest undertaking administration institution for verification and approval. The property remaining after the settlement of the trust affairs shall be applied to similar public interest undertakings, or transferred to other charitable trusts with similar purposes, upon approval by the public interest undertaking administration institution.

Article 63 — The public interest undertaking administration institution shall supervise the charitable trust in accordance with law. Where the trustee of a charitable trust violates the trust obligations or is unable to perform his duties, the public interest undertaking administration institution shall replace the trustee.

Chapter VII — Supplementary Provisions

Article 64 — This Law shall apply to the trust relationships of charitable trusts and other trust relationships created under this Law.

Article 65 — Where the specific measures for the management of trust companies are otherwise provided for by the State Council, those provisions shall prevail.

Article 66 — This Law shall take effect as of October 1, 2001.

Disclaimer: This English translation of the Trust Law of the People's Republic of China is provided for reference purposes only. While every effort has been made to ensure accuracy and completeness, this translation is not an official version and has no legal force. The original Chinese text adopted by the National People's Congress constitutes the sole authoritative version. Users should consult the official Chinese text and seek professional legal advice for matters involving the interpretation or application of this Law. Dan Young CPA and its affiliates assume no liability for errors, omissions, or reliance on this translation.