Trust Law of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purpose of regulating trust relationships, standardizing trust conduct, protecting the lawful rights and interests of the parties to a trust, and promoting the sound development of the trust industry.

Article 2 — For the purposes of this Law, a trust means an act whereby the settlor, based on trust in the trustee, entrusts his property rights to the trustee, and the trustee, in his own name and in accordance with

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the wishes of the settlor, administers or disposes of such property for the benefit of the beneficiary or for a specific purpose.

Article 3 — The settlor, the trustee, and the beneficiary (hereinafter collectively referred to as the parties to a trust) shall apply this Law in conducting civil, commercial, and charitable trust activities within the territory of the People's Republic of China.

Article 4 — Where a trustee conducts trust activities in the form of a trust institution, the organization and administration of the trust institution shall be prescribed by the State Council.

Article 5 — In conducting trust activities, the parties to a trust shall abide by laws and administrative regulations, observe the principles of voluntariness, fairness, and good faith, and shall not harm the interests of the State or the public interest of society.

Chapter II — Establishment of Trusts

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

Article 7 — A trust shall be established with definite trust property, and such trust property must be property lawfully owned by the settlor.

For the purposes of this Law, property includes lawful property rights.

Article 8 — A trust shall be established in written form.

Written form includes a trust contract, a will, or other written documents prescribed by laws or administrative regulations.

Where a trust is established in the form of a trust contract, the trust is established upon execution of the trust contract. Where a trust is established in any other written form, the trust is established upon acceptance of the trust by the trustee.

Article 9 — In establishing a trust, the written document shall specify the following particulars:

(1) the purpose of the trust;

(2) the names and domiciles of the settlor and the trustee;

(3) the beneficiary or the scope of beneficiaries;

(4) the scope, type, and condition of the trust property; and

(5) the form and manner in which the beneficiary obtains trust benefits.

In addition to the particulars listed in the preceding paragraph, the duration of the trust, the method of administering the trust property, the remuneration of the trustee, the manner of selecting a new trustee, the causes for termination of the trust, and other matters may also be specified.

Article 10 — Where laws or administrative regulations provide that registration formalities shall be completed for trust property in establishing a trust, the trust registration shall be completed in accordance with the law.

Where trust registration has not been completed in accordance with the provisions of the preceding paragraph, the registration shall be supplemented; if it is not supplemented, the trust shall be void.

Article 11 — A trust shall be invalid under any of the following circumstances:

(1) the purpose of the trust violates laws or administrative regulations or harms the public interest of society;

(2) the trust property cannot be determined;

(3) the settlor establishes the trust with illegal property or with property that this Law provides may not be used to establish a trust;

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(4) the trust is established exclusively for the purpose of litigation or debt collection;

(5) the beneficiary or the scope of beneficiaries cannot be determined; or

(6) other circumstances provided for by laws or administrative regulations.

Article 12 — Where the settlor establishes a trust to the detriment of 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 the trust in accordance with the provisions of the preceding paragraph, the trust benefits already obtained by a bona fide beneficiary shall not be affected.

The right of application provided for in the first paragraph of this Article shall be extinguished if it is not exercised within one year from the date on which the creditor knows or should know the cause for revocation.

Article 13 — In establishing a testamentary trust, the provisions of the Succession Law governing wills shall be observed.

Where the person designated in the will refuses or is unable to act as trustee, the beneficiary shall select another trustee; where the beneficiary is a person without capacity for civil conduct or a person with limited capacity for civil conduct, his guardian shall make the selection on his behalf in accordance with the law. Where the will provides otherwise for the selection of a trustee, such provisions shall prevail.

Chapter III — Trust Property

Article 14 — Property obtained by the trustee upon acceptance of the trust is trust property.

Property obtained by the trustee through the administration, use, or disposal of the trust property, or through other circumstances, shall also be included in the trust property.

Property the circulation of which is prohibited by laws or administrative regulations shall not be used as trust property.

Property the circulation of which is restricted by laws or administrative regulations may be used as trust property upon approval by the relevant competent department in accordance with the law.

Article 15 — Trust property shall be distinguished from other property of the settlor that is not placed in the trust. After the establishment of the trust, where the settlor dies or is dissolved in accordance with the law, revoked in accordance with the law, or adjudicated bankrupt, if the settlor is the sole beneficiary, the trust shall terminate and the trust property shall become part of his estate or liquidation property; if the settlor is not the sole beneficiary, the trust shall continue and the trust property shall not become part of his estate or liquidation property; however, where the settlor, as a co-beneficiary, dies or is dissolved in accordance with the law, revoked in accordance with the law, or adjudicated bankrupt, his right to trust benefits shall become part of his estate or liquidation property.

Article 16 — Trust property shall be distinguished from the property owned by the trustee (hereinafter referred to as own property) and shall not be incorporated into the trustee's own property or become part of his own property.

Where the trustee dies or is dissolved in accordance with the law, revoked in accordance with the law, or adjudicated bankrupt and thereby terminated, the trust property shall not belong to his estate or liquidation property.

Article 17 — Trust property shall not be subject to compulsory execution except under any of the following circumstances:

(1) a creditor of the settlor obtained a priority right of satisfaction over the trust property before the establishment of the trust and exercises such right in accordance with the law;

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(2) debts are incurred by the trustee in handling trust affairs, and a creditor claims satisfaction of such debts;

(3) taxes payable on the trust property itself; or

(4) other circumstances provided for by law.

Where trust property is compulsorily executed in violation of the provisions of the preceding paragraph, the settlor, the trustee, or the beneficiary shall have the right to raise an objection with the people's court.

Article 18 — Claims arising from the trustee's administration, use, or disposal of the trust property shall not be set off against debts arising from his own property.

Claims and debts arising from the trustee's administration, use, or disposal of the trust property of different settlors shall not be set off against each other.

Chapter IV — Parties to a Trust

Section 1 — The Settlor

Article 19 — The settlor shall be a natural person, legal person, or other organization established in accordance with the law, with full capacity for civil conduct.

Article 20 — The settlor shall have the right to know the administration, use, and disposal of his trust property, as well as the income and expenditure thereof, and shall have the right to require the trustee to give explanations.

The settlor shall have the right to consult, copy, or duplicate the trust accounts related to his trust property and other documents relating to the handling of trust affairs.

Article 21 — Where, owing to special circumstances unforeseen at the time of the establishment of the trust, the method of administering the trust property becomes unfavorable to the realization of the trust purpose or inconsistent with the interests of the beneficiary, the settlor shall have the right to require the trustee to adjust the method of administering the trust property.

Article 22 — Where the trustee disposes of the trust property in violation of the trust purpose or causes losses to the trust property owing to breach of his management duties or improper handling of trust affairs, the settlor shall have the right to apply to the people's court for revocation of such act of disposal, and shall have the right to require the trustee to restore the trust property to its original state or to make compensation; where the transferee of such trust property knowingly accepted the property in violation of the trust purpose, he shall return the property or make compensation.

The right of application provided for in the preceding paragraph shall be extinguished if it is not exercised within one year from the date on which the settlor knows or should know the cause for revocation.

Article 23 — Where the trustee disposes of the trust property in violation of the trust purpose or has committed gross negligence in the administration, use, or disposal of the trust property, the settlor shall have the right to remove the trustee in accordance with the provisions of the trust instrument, or to apply to the people's court for removal of the trustee.

Section 2 — The Trustee

Article 24 — The trustee shall be a natural person or legal person with full capacity for civil conduct.

Where laws or administrative regulations provide otherwise for the qualifications of a trustee, such provisions shall prevail.

Article 25 — The trustee shall comply with the provisions of the trust instrument and handle trust affairs for the maximum benefit of the beneficiary.

In administering the trust property, the trustee shall perform his duties with the utmost diligence and fulfill his obligations of honesty, good faith, prudence, and effective administration.

Article 26 — Except for remuneration obtained in accordance with the provisions of this Law, the trustee shall not seek benefits for himself by making use of the trust property.

Where the trustee, in violation of the provisions of the preceding paragraph, seeks benefits for himself by making use of the trust property, the benefits so obtained shall be included in the trust property.

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

Article 28 — The trustee shall not engage in transactions between his own property and the trust property, or engage in transactions between the trust property of different settlors, except where the trust instrument provides otherwise or where such transaction is conducted at a fair market price with the consent of the settlor or the beneficiary.

Where the trustee, in violation of the provisions of the preceding paragraph, causes losses to the trust property, he shall bear liability for compensation.

Article 29 — The trustee shall administer the trust property separately from his own property and keep separate accounts therefor, and shall administer the trust property of different settlors separately and keep separate accounts therefor.

Article 30 — The trustee shall handle trust affairs in person, except where the trust instrument provides otherwise or where there are compelling reasons, in which case he may entrust others to handle them on his behalf.

Where the trustee, in accordance with the law, entrusts others to handle trust affairs on his behalf, he shall bear liability for the acts of such persons in handling trust affairs.

Article 31 — Where a trust has two or more trustees, they are co-trustees.

Co-trustees shall jointly handle trust affairs, except where the trust instrument provides that specific affairs shall be handled by the trustees separately, in which case such provisions shall prevail.

Where co-trustees jointly handle trust affairs and disagree, the matter shall be handled in accordance with the provisions of the trust instrument; where the trust instrument makes no provision, the matter shall be decided by the settlor, the beneficiary, or other interested persons.

Article 32 — Co-trustees shall bear joint and several liability for the satisfaction of debts owed to third parties in handling trust affairs. A declaration of intention made by a third party to one of the co-trustees shall be equally effective against the other trustees.

Where one of the co-trustees disposes of the trust property in violation of the trust purpose, or causes losses to the trust property owing to breach of his management duties or improper handling of trust affairs, the other trustees shall bear joint and several liability for compensation.

Article 33 — The trustee shall keep complete records of the handling of trust affairs.

The trustee shall report the administration, use, and disposal of the trust property, as well as the income and expenditure thereof, to the settlor and the beneficiary at regular intervals each year.

The trustee shall bear the obligation of confidentiality in accordance with the law with respect to the settlor, the beneficiary, and the circumstances of, and materials relating to, the handling of trust affairs.

Article 34 — The trustee shall bear the obligation to pay trust benefits to the beneficiary to the extent of the trust property.

Article 35 — The trustee shall have the right to obtain remuneration in accordance with the provisions of the trust instrument. Where the trust instrument makes no prior provision, a supplementary provision may be made with the consent of the parties to the trust after consultation; where neither a prior provision nor a supplementary provision has been made, no remuneration may be collected.

The amount of the agreed remuneration may be increased or decreased with the consent of the parties to the trust after consultation.

Article 36 — Where the trustee disposes of the trust property in violation of the trust purpose, or causes losses to the trust property owing to breach of his management duties or improper handling of trust affairs, he shall not request payment of remuneration before restoring the trust property to its original state or making compensation.

Article 37 — Expenses paid by the trustee in handling trust affairs and debts owed by him to third parties shall be borne by the trust property. Where the trustee advances payment from his own property, he shall have a priority right of satisfaction against the trust property.

Debts owed to third parties or losses suffered by the trustee himself owing to breach of his management duties or improper handling of trust affairs shall be borne by his own property.

Article 38 — After the establishment of the trust, the trustee may resign with the consent of the settlor and the beneficiary. Where this Law provides otherwise for the resignation of the trustee of a charitable trust, such provisions shall prevail.

Upon the resignation of the trustee, he shall continue to perform his duty of administering the trust affairs until a new trustee is selected.

Article 39 — The duties of the trustee shall terminate under any of the following circumstances:

(1) death or being declared dead in accordance with the law;

(2) being declared in accordance with the law to be a person without capacity for civil conduct or a person with limited capacity for civil conduct;

(3) being revoked in accordance with the law or adjudicated bankrupt;

(4) dissolution in accordance with the law or loss of statutory qualifications;

(5) resignation or removal; or

(6) other circumstances provided for by laws or administrative regulations.

Upon termination of the trustee's duties, his successor, estate administrator, guardian, or liquidator shall properly preserve the trust property and assist the new trustee in taking over the trust affairs.

Article 40 — Upon termination of the trustee's duties, a new trustee shall be selected in accordance with the provisions of the trust instrument; where the trust instrument makes no provision, the settlor shall select the new trustee; where the settlor fails to designate or is unable to designate, the beneficiary shall select the new trustee; where the beneficiary is a person without capacity for civil conduct or a person with limited capacity for civil conduct, his guardian shall make the selection on his behalf in accordance with the law.

The rights and obligations of the former trustee in handling trust affairs shall be inherited by the new trustee.

Article 41 — Where the duties of the trustee terminate under any of the circumstances listed in items (3) through (6) of the first paragraph of Article 39 of this Law, the trustee shall prepare a report on the handling of trust affairs and complete the formalities for the transfer of the trust property and trust affairs to the new trustee.

Where the report referred to in the preceding paragraph is acknowledged by the settlor or the beneficiary, the former trustee shall be released from liability for the matters stated in the report, except where the former

trustee has committed improper acts.

Article 42 — Where the duties of one of the co-trustees terminate, the trust property shall be administered and disposed of by the other trustees.

Section 3 — The Beneficiary

Article 43 — A beneficiary is a person who enjoys the right to trust benefits under a trust. The beneficiary may be a natural person, legal person, or other organization established in accordance with the law.

The settlor may be a beneficiary, and may be the sole beneficiary of the same trust.

The trustee may be a beneficiary, but shall not be the sole beneficiary of the same trust.

Article 44 — The beneficiary shall enjoy the right to trust benefits from the date on which the trust takes effect. Where the trust instrument provides otherwise, such provisions shall prevail.

Article 45 — Co-beneficiaries shall enjoy trust benefits in accordance with the provisions of the trust instrument. Where the trust instrument makes no provision for the proportion or method of distribution of trust benefits, each beneficiary shall enjoy the trust benefits in equal proportions.

Article 46 — A beneficiary may renounce his right to trust benefits.

Where all beneficiaries renounce their rights to trust benefits, the trust shall terminate.

Where some beneficiaries renounce their rights to trust benefits, the renounced rights shall be vested in the following order:

(1) the person specified in the trust instrument;

(2) the other beneficiaries; or

(3) the settlor or his successor.

Article 47 — Where a beneficiary is unable to pay off his due debts, his right to trust benefits may be used to satisfy such debts, except where restricted by laws, administrative regulations, or the trust instrument.

Article 48 — The beneficiary's right to trust benefits may be transferred and inherited in accordance with the law, except where restricted by the trust instrument.

Article 49 — The beneficiary may exercise the rights enjoyed by the settlor under Articles 20 through 23 of this Law. Where the beneficiary exercises the aforesaid rights and disagrees with the settlor, he may apply to the people's court for a ruling.

Where the trustee commits any of the acts listed in the first paragraph of Article 22 of this Law and one of the co-beneficiaries applies to the people's court for revocation of such act of disposal, the ruling of revocation made by the people's court shall be effective against all co-beneficiaries.

Chapter V — Modification and Termination of Trusts

Article 50 — Where the settlor is the sole beneficiary, the settlor or his successor may terminate the trust. Where the trust instrument provides otherwise, such provisions shall prevail.

Article 51 — After the establishment of the trust, the settlor may change the beneficiary or dispose of the beneficiary's right to trust benefits under any of the following circumstances:

(1) the beneficiary has committed a major tort against the settlor;

(2) the beneficiary has committed a major tort against other co-beneficiaries;

(3) with the consent of the beneficiary; or

(4) other circumstances provided for in the trust instrument.

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Where any of the circumstances listed in items (1), (3), and (4) of the preceding paragraph exists, the settlor may terminate the trust.

Article 52 — A trust shall not terminate owing to the death, loss of capacity for civil conduct, dissolution in accordance with the law, revocation in accordance with the law, or bankruptcy of the settlor or the trustee, nor shall it terminate owing to the resignation of the trustee, except where this Law or the trust instrument provides otherwise.

Article 53 — A trust shall terminate under any of the following circumstances:

(1) the cause for termination specified in the trust instrument arises;

(2) the continuation of the trust violates the trust purpose;

(3) the trust purpose has been realized or cannot be realized;

(4) the parties to the trust so agree after consultation;

(5) the trust is revoked; or

(6) the trust is terminated.

Article 54 — Upon termination of a trust, the trust property shall belong to the person specified in the trust instrument; where the trust instrument makes no provision, the ownership of the trust property shall be determined in the following order:

(1) the beneficiary or his successor; or

(2) the settlor or his successor.

Article 55 — Where, in accordance with the provisions of the preceding Article, the ownership of the trust property has been determined, the trust shall be deemed to continue to exist during the process of transferring the trust property to the person entitled to the ownership thereof, and the person entitled to the ownership shall be deemed to be the beneficiary.

Article 56 — Where, after the termination of the trust, the people's court carries out compulsory execution against the former trust property in accordance with the provisions of Article 17 of this Law, the person entitled to the ownership of the trust property shall be the person against whom execution is carried out.

Article 57 — Where, after the termination of the trust, the trustee exercises his right under this Law to claim remuneration or to obtain compensation from the trust property, he may retain the trust property or make a claim against the person entitled to the ownership of the trust property.

Article 58 — Upon termination of the trust, the trustee shall prepare a liquidation report on the handling of trust affairs. Where the beneficiary or the person entitled to the ownership of the trust property raises no objection to the liquidation report, the trustee shall be released from liability for the matters stated in the liquidation report, except where the trustee has committed improper acts.

Chapter VI — Charitable Trusts

Article 59 — Charitable trusts shall be governed by the provisions of this Chapter. Where this Chapter makes no provision, the provisions of this Law and other relevant laws shall apply.

Article 60 — A trust established for any of the following public welfare purposes is a charitable trust:

(1) relief of poverty;

(2) relief of disaster victims;

(3) assistance to persons with disabilities;

(4) development of education, science and technology, culture, art, and sports;

(5) development of medical and health undertakings;

(6) development of environmental protection undertakings and protection of the ecological environment; or

(7) development of other public welfare undertakings.

Article 61 — The State encourages the development of charitable trusts.

Article 62 — The establishment of a charitable trust and the determination of its trustee shall be subject to the approval of the authority administering charitable undertakings (hereinafter referred to as the charitable trust authority).

Without the approval of the charitable trust authority, no one may carry out activities in the name of a charitable trust.

The charitable trust authority shall provide support for charitable trust activities.

Article 63 — The trust property of a charitable trust and the income derived therefrom shall not be used for non-charitable purposes.

Article 64 — A charitable trust shall have a trust supervisor.

The trust supervisor shall be specified in the trust instrument. Where the trust instrument makes no provision, the trust supervisor shall be designated by the charitable trust authority.

Article 65 — The trust supervisor shall have the right, in his own name, to bring a lawsuit or take other legal actions for the protection of the interests of the beneficiary.

Article 66 — The trustee of a charitable trust shall not resign without the approval of the charitable trust authority.

Article 67 — The charitable trust authority shall inspect the handling of charitable trust affairs and the state of the trust property by the trustee.

The trustee shall prepare a report on the handling of trust affairs and the state of the trust property at least once a year, and shall, upon acknowledgment by the trust supervisor, submit the report to the charitable trust authority for examination and approval, and make it public.

Article 68 — Where the trustee of a charitable trust violates his trust obligations or is unable to perform his duties, the charitable trust authority shall replace the trustee.

Article 69 — Where, after the establishment of a charitable trust, circumstances arise which could not have been foreseen at the time of the establishment of the trust, the charitable trust authority may, based on the trust purpose, modify the relevant clauses of the trust instrument.

Article 70 — Upon termination of a charitable trust, the trustee shall, within fifteen days from the date on which the cause for termination arises, report the cause for termination and the date of termination to the charitable trust authority.

Article 71 — Upon termination of a charitable trust, the liquidation report prepared by the trustee on the handling of trust affairs shall, upon acknowledgment by the trust supervisor, be submitted to the charitable trust authority for examination and approval, and shall be made public by the trustee.

Article 72 — Where a charitable trust terminates and there is no person entitled to the ownership of the trust property, or the persons entitled to the ownership of the trust property are unidentified members of the public, the trustee shall, upon approval by the charitable trust authority, use the trust property for purposes similar to the original charitable purpose, or transfer the trust property to a charitable organization or other charitable trust with similar purposes.

Article 73 — Where the charitable trust authority violates the provisions of this Law, the settlor, the trustee, or the beneficiary shall have the right to bring a lawsuit in the people's court.

Chapter VII — Supplementary Provisions

Article 74 — This Law shall come into force on October 1, 2001.

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