

Trust Law of the People's Republic of China (Order of the President No.50)

Order of the President of the People's Republic of China No.50

The Trust Law of the People's Republic of China, adopted at the 21st Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on April 28, 2001, is hereby promulgated and shall go into effect as of October 1, 2001.

Jiang Zemin
President of the People's Republic of China
April 28, 2001

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Chapter I

General Provisions

Article 1 This Law is enacted in order to regulate trust relationship, to standardize trust acts, to protect the lawful rights and interests of the parties involved in a trust, and to promote the healthy development of trust undertakings.

Article 2 For purposes of this Law, trust refers to that the settler, based on his faith in trustee, entrusts his property rights to the trustee and allows the trustee to,

according to the will of the settler and in the name of the trustee, administer or dispose of such property in the interest of a beneficiary or for any intended purposes.

Article 3 This Law shall be applicable to the settlers, trustees, and beneficiaries (hereinafter collectively referred to as the "parties concerned") that engage in civil, business or public welfare trust activities within the People's Republic of China.

Article 4 With regard to trustees that engage in trust activities in the form of trust institutions, the State Council shall formulate specific measures for the organization and administration of such institutions.

Article 5 When carrying out trust activities, the parties concerned must obey laws and administrative regulations and observe the principles of voluntariness, fairness and good faith, and they may not impair the interests of the State and the public.

Chapter II

Creation of a Trust

Article 6 A trust shall be created for lawful trust purposes.

Article 7 To create a trust, there must be definite property under the trust, and such property must be the property lawfully owned by the settler.

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

Article 8 The creation of a trust shall take the form of writing.

The form of writing shall consist of trust contracts, testament, or other documents specified by laws and administrative regulations.

Where a trust is created in the form of trust contract, the trust shall be deemed created when the said contract is signed. Where a trust is created in any other form of writing, the trust is deemed created when the trustee accepts the trust.

Article 9 The following items shall be stated clearly in the written documents required for the creation of a trust:

- (1) purposes of the trust;
- (2) the names and addresses of the settler and trustee;
- (3) the beneficiary or beneficiaries;
- (4) the scope, types and status of the assets under trust; and
- (5) the form and means through which the beneficiary gains benefits from the trust.

In addition to the items mentioned above, the period of the trust, the methods for the administration of the property under trust, remuneration payable to the trustee, manner for appointing another trustee, the cause for termination of the trust, etc. may be stated clearly.

Article 10 Where laws or administrative regulations stipulate that registration formalities shall be gone through for the creation of a trust, such formalities shall be gone through accordingly.

Anyone who fails to go through the registration formalities prescribed in the preceding paragraph shall go through the formalities as required; otherwise, the trust shall have no effect.

Article 11 Under any one of the following circumstances the trust shall be invalid:

(1) The purposes of the trust constitute a violation of laws or administrative regulations, or impair public interest.

(2) The property under trust cannot be fixed;

(3) The settler creates the trust with unlawful property or with property which, according to this law, may not be used for creating a trust;

(4) The trust is created specially for the purpose of taking legal actions or for recovering debts;

(5) The beneficiary or beneficiaries cannot be determined; and

(6) Other circumstances stipulated in laws or administrative regulations.

Article 12 Where a settler creates a trust to the detriment of the interest his creditors, the creditors shall have the right to apply to the People's Court for revoking the trust.

Where the People's Court revokes the trust according to the provisions of the preceding paragraph, the benefits already derived from the trust by the bona fide trustee shall not be affected.

The right of application prescribed in the first paragraph of this Article shall be terminated if it is not exercised within one year beginning from the date the creditor knows of or should know of the reasons for the revocation of the trust.

Article 13 For the creation of a testamentary trust, the provisions in the Law of Succession concerning testamentary succession shall be observed.

Where the person designated in a testament refuses or is unable to act as a trustee, the beneficiary shall appoint another person as the trustee; where the beneficiary is a person who has no civil capacity or limited capacity for civil conduct, his guardian shall appoint the trustee on his behalf. If there are other provisions in the testamentary instrument for governing the appointment of a trustee such provisions shall prevail.

Chapter III

Trust Property

Article 14 The property obtained by the trustee due to a trust accepted is trust property.

The property obtained by the trustee through administering, using or disposing of the trust property or by other means falls within trust assets.

No property the circulation of which is prohibited by laws and administrative regulations may be deemed trust property.

The property the circulation of which is restricted by laws and administrative regulations may be deemed trust property upon approval given, in accordance with law, by the competent department concerned.

Article 15 The trust shall be differentiated from other property that is not put under trust by the settler. Where, after a trust is created, the settler dies or is dissolved or cancelled according to law, or is declared bankrupt, and the settler is the sole beneficiary, the trust shall be terminated, and the trust property shall be his legacy liquidation property; where the settler is not the sole beneficiary, the trust shall subsist, and the trust property shall not be his legacy or liquidation property; but if the settler is one of the co-beneficiaries and dies or is dissolved, or cancelled according to law, or is declared bankrupt, his right to benefit from the trust shall be deemed his legacy or liquidation property.

Article 16 The trust property shall be segregated from the property owned by the trustee (hereinafter referred to as his "own property", in short), and may not included in, or made part of his own property of the trustee.

Where the trustee dies or the trustee as a body corporate is dissolved, removed or is declared bankrupt according to the law, and the trusteeship is thus terminated, the trust property shall not be deemed his legacy or liquidation property.

Article 17 No compulsory measures may be taken against the trust property unless one the following circumstances arises:

- (1) where, before the creation of the trust, the creditors enjoyed the priority right to be paid with the trust property and may exercise this right according to law;
- (2) where the creditors demand repayment of the debts incurred by the trustee in the course of handling trust business;
- (3) where taxes are levied on the trust property itself; and
- (4) other circumstances prescribed by law.

Where compulsory measures are taken against the trust property in violation of the provisions in the preceding paragraph, the settler, trustee and beneficiary shall have the right to raise their objections to the People's Court.

Article 18 The claims arising from the administration or disposition of trust assets by the trustee may not be used to offset the liabilities incurred by the trustee's own property

The claims arising from the administration and disposition of the trust assets of different settlors may not be used to offset the liabilities incurred by the trustee likewise.

Chapter IV

The Parties Concerned in a Trust

Section 1

The Settler

Article 19 The settler shall be a natural person, a legal person, or an organization established in accordance with law, that has full capability for civil conduct.

Article 20 The settler shall have the right to know the administration, use and disposition of, and the income and expenses relating to, his trust property, and the right to request the trustee to give explanations in this regard.

The settler shall have the right to check, transcribe or duplicate the trust accounts related to his trust property and other documents drawn up in the course of dealing with trust business.

Article 21 If, due to special reasons unexpected at the time the trust is created, the methods for administering the trust property are not favorable to the realization of trust purposes or do not conform to the interests of the beneficiary, the settler shall have the right to ask the trustee to modify such methods.

Article 22 Where the trustee disposes of the trust property in breach of the purposes of the trust, or causes losses to the trust property due to his departure from his administrative duties or improper handling of trust business, the settler shall have the right to apply to the People's Court for annulling such disposition and the right to ask the trustee to restore the property to its former state or make compensation. Where a transferee of the said trust property accepts the property while knowing the violation of the purposes of the trust, he shall return the property or make compensation.

Where the settler does not exercise the right of application prescribed in the preceding paragraph within one year beginning from the date he comes to know or should have known the reason for annulling the disposition, such right shall cease to exist.

Article 23 Where the trustee disposes of the trust property against the purposes of the trust or commits gross negligence in administering, using or disposing of the trust property, the settler shall have the right to dismiss the trustee according to the provisions in the trust documents or apply to the People's Court for dismissing him.

Section 2

The Trustee

Article 24 The trustee shall be a natural person or legal person who has full capability for civil conduct.

Where there are other provisions governing qualifications of a trustee laid down in laws or administrative regulations, those provisions shall prevail.

Article 25 The trustee shall abide by the provisions in the trust documents and handle trust business for the best interests of the beneficiary.

In administering the trust property, the trustee shall be careful in performing his duties and fulfill his obligations with honesty, good faith, prudence and efficiency.

Article 26 Except obtaining remuneration according to the provisions of this Law, the trustee may not seek interests for himself by using the trust property.

Where the trustee, in violation of the provisions of the preceding paragraph, seeks interests for himself by using the trust property, the interests gained therefrom shall be integrated into the trust property.

Article 27 The trustee may not convert the trust property into his own property. Where the trustee converts the trust property into his own property, he shall restore the trust property into its former state; where losses are caused to the trust property, he shall bear the responsibility to pay compensation.

Article 28 The trustee may not conduct inter transaction between his own property and trust assets or between the trust assets of different settlers, unless it is

otherwise stipulated in the trust documents or is consented by the settlers or beneficiary and the inter transaction is conducted at fair market price.

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

Article 29 The trustee shall administer the trust property separately from his own property and keep separate accounting books, and he shall do the same with regard to the trust property of different settlers.

Article 30 The trustee shall handle trust business himself, but may entrust another person to handle such affairs on his behalf where the trust documents provide otherwise or he has to do so for reasons beyond his control.

Where the trustee, in accordance with law, entrusts another person to handle trust business on his behalf, he shall bear the responsibility for the acts committed by that person in handling such affairs.

Article 31 Where there are two or more trustees in the same trust, they are co-trustees.

The co-trustees shall handle trust business jointly, but where the trust documents stipulate that the trustees may separately handle certain specified affairs, such stipulations shall prevail.

If the co-trustees disagree with each other when handling trust business jointly, the matter shall be dealt with in accordance with the provisions in the trust documents; where there are no provisions in this regard in the documents, the settler, beneficiary or the party interested shall make a decision.

Article 32 The co-trustees who incur debts to a third party in the course of handling trust business shall bear joint and several responsibilities for clearing the debts. The intention expressed by the third party to any one of the co-trustees shall be equally effective to the other co-trustees.

Where one of the co-trustees disposes of the trust property against the purposes of the trust or causes losses to the trust property due to his departure from his administrative duties or his improper handling of trust business, the other co-trustees shall bear joint and several responsibility for compensation.

Article 33 The trustee shall keep complete records of the trust business handled.

The trustee shall, at regular intervals every year, report to the settler and beneficiary on the administration and disposition of the trust property and the income and expenses relating to the property.

The trustee shall, in accordance with law, have the obligation to keep confidential minutes relating to the settler, the beneficiary and trust business handled.

Article 34 The trustee shall have the obligation to pay the beneficiary benefits from the trust with the limits of the trust property.

Article 35 The trustee shall have the right to obtain remuneration as agreed in the trust documents. Where there is no such agreement in the documents, a supplementary agreement may be made with the consent given by the parties concerned after consultation; in the absence of a prior or supplementary agreement, no remuneration may be asked for.

The agreed remuneration may, with the consent given by the parties concerned after consultation, be increased or decreased.

Article 36 Where the trustee disposes of the trust property against the purposes of the trust or causes losses to the trust property due to his departure from his administrative duties or his improper handling of trust business, he may not ask to be paid before he restores the property to its former state or makes compensation.

Article 37 The charges paid and the debts owed to a third party by the trustee in the course of handling trust business shall be borne by the trust property. Where the trustee effects such payment in advance with his own property, he shall have the priority right to be paid with the trust property.

The debts owed to a third party or the losses suffered by himself as a result of his departure from his administrative duties or his improper handling of trust business shall be borne by him with his own property.

Article 38 After the creation of a trust, with the consent of the settler and beneficiary, the trustee may resign. Where there are other provisions in this Law governing the resignation of the trustee of a public welfare trust, those provisions shall prevail.

Where the trustee resigns, he shall, before another trustee is appointed, continue to perform the duties of administering the trust business.

Article 39 Under one of the following circumstances, the trustee's appointment shall be terminated:

- (1) he dies or is declared dead according to law;
- (2) he is declared to be a person with no or restricted capability for civil conduct;
- (3) his trusteeship is removed or he is declared bankrupt;
- (4) his trusteeship is dissolved in accordance with law or he forfeits his legal qualifications;
- (5) he resigns or is dismissed; or
- (6) other circumstances stipulated in laws or administrative regulations.

When the trustee's appointment is terminated, his successor, or the supervisor of heritage, guardian or liquidator shall keep the trust property, and help the new trustee to take over the trust business.

Article 40 Where the trustee's appointment is terminated, a new trustee shall be appointed according to the provisions in the trust documents; where there are no such provisions in the documents, the settler shall make the appointment; where the settler does not make the appointment or is incapable of doing so, the beneficiary shall designate one; where the beneficiary is a person with no or restricted capacity for civil conduct, his guardian shall, in accordance with law, make the appointment on his behalf.

The new trustee shall take up the rights and obligations of the former trustee in the handling of trust business.

Article 41 Where the trustee is found to be under one of the circumstances listed in subparagraphs 3 to 6 of the first paragraph Article 39 of this law and his appointment is thus terminated, he shall produce a report on the trust business

handled and go through the formalities for the handing over of the trust property and affairs to the new trustee.

Upon acceptance of the report, mentioned in the preceding paragraph, by the settler or beneficiary, the original trustee shall be exempted from the liability for issues listed in the report, except for the illegitimate acts committed by him.

Article 42 Where the appointment of one of the co-trustees is terminated, the trust property shall be administered and disposed of by the rest of the trustees.

Section 3

The Beneficiary

Article 43 The beneficiary is the person that enjoys the right to benefit from a trust. He may be a natural person, legal person or an organization established according to law.

The settler may be a beneficiary and may also be the only beneficiary under the same trust.

The trustee may be a beneficiary but may not be the only beneficiary under the same trust.

Article 44 The beneficiary shall enjoy the right to benefit from a trust beginning from the date the trust becomes effective, unless otherwise stipulated in the trust documents.

Article 45 The co-beneficiaries shall enjoy the benefits from a trust according to the provisions in the trust documents. Where no percentage or methods for distribution of the benefits from the trust are specified in the documents, all the beneficiaries shall enjoy the benefits equally.

Article 46 The beneficiary may give up the right to benefit from a trust.

Where all the beneficiaries give up the right to benefit from a trust, the trust shall be terminated.

Where some of the beneficiaries give up the right to benefit from a trust, the right given up shall go to the person in following order of precedence:

- (1) the persons specified in the trust documents;
- (2) the other beneficiaries; and
- (3) the settler or his successor.

Article 47 Where the beneficiary cannot repay the matured debts, his right to benefit from a trust may be used to repay the debts, except this is restricted by provisions in laws, administrative regulations and trust documents.

Article 48 The beneficiary may, in accordance with law, transfer his right to benefit from a trust or have the right succeeded to, except this is restricted by provisions in the trust documents.

Article 49 The beneficiary may exercise the rights that the settler enjoys as stipulated in Article 20 through 23 of this Law. If the beneficiary, while exercising the said rights, holds views differing from those of the settler, he may apply to the People's Court for decision.

Where the trustee commits the act listed in the first paragraph of Article 22 of this Law and one of the co-beneficiaries applies to the People's Court for annulling the disposition of the trust property, the decision made by the People's Court to such an effect shall be effective to all the co-beneficiaries.

Chapter V

Modification in and Termination of a Trust

Article 50 Where the settler is the only beneficiary, he or his successor may revoke the trust. Where it is otherwise provided for in the trust documents, the provisions there shall prevail.

Article 51 After a trust is created, the settler may replace the beneficiary or dispose of his right to benefit from the trust under one of the following circumstances:

- (1) the beneficiary commits a major tort against the settler;
- (2) the beneficiary commits a major tort against the other co-beneficiaries;
- (3) the change or disposition wins the consent of the beneficiary; and
- (4) other circumstances stipulated in the trust documents.

Under one of the circumstances listed in subparagraphs (1), (3) and (4) in the preceding paragraph, the settler may revoke the trust.

Article 52 A trust will not be terminated due to the facts that the settler or trustee dies, loses his capacity for civil conduct, the trusteeship is dissolved or canceled according to law or he is declared bankrupt, neither will it be terminated due to the fact that the trustee resigns, except it is otherwise stipulated in this Law or the trust documents.

Article 53 Under one the following circumstances, a trust shall be terminated:

- (1) the cause for its termination specified in the trust documents arises;
- (2) the continuance of the trust goes against the purposes of the trust;
- (3) the purposes of the trust have been realized or cannot be realized;
- (4) the parties concerned, through consultation to terminate it;
- (5) the trust is cancelled;
- (6) the trust is revoked.

Article 54 Where a trust is terminated, the trust property shall be owned by the person specified in the trust documents; where there are no such specifications in the documents, the following order of precedence shall be applied for determining the ownership:

- (1) the beneficiary or his successor; and
- (2) the settler or his successor.

Article 55 After the ownership of the trust property is determined according to the provisions in the preceding Article, the trust shall be deemed subsisting while the trust assets are being transferred to the owner, and the owner shall be deemed the beneficiary.

Article 56 Where a trust is determined, the People's Court takes compulsory measures with regard to the original trust property according to the provisions of Article 17 of this Law, the owner shall be deemed the person against whom the measures are taken.

Article 57 When, after a trust is terminated, the trustee, in accordance with the provisions of this Law, exercises the right to request for remuneration or to obtain compensation from the trust property, he may have a lien on the property or raise the request to the owner of the property.

Article 58 Where a trust is terminated, the trustee shall make a liquidation report on the trust business handled. Where the beneficiary or the owner of the property has objections to the report, the trustee shall be exempted from the liability for issues listed in the report, except for the illegitimate acts committed by him.

Chapter VI

The Charitable Trust

Article 59 The provisions in this Chapter are applicable to public welfare trusts where there are no provisions in this Chapter with regard to some matters, the provisions in this Law or other related laws shall be apply.

Article 60 A trust created for one of the following purposes in the interest of public welfare is a public welfare trust:

- (1) relief for the poor;
- (2) relief assistance to people suffering from disasters;
- (3) helping the disabled;
- (4) developing education, science, technology, culture, art and sports;
- (5) developing medical and public health undertakings;
- (6) developing undertakings for the protection of the environment and maintaining ecological environment; and
- (7) developing other public welfare undertakings.

Article 61 The State encourages the development of public welfare trusts.

Article 62 A public welfare trust shall be created and its trustee shall be appointed with approval by relevant public welfare undertaking administration authority (hereinafter refer to as the "public welfare administration authority, in short").

Without approval by the public welfare administration authority, no one may carry out activities in the name of a public welfare trust.

The public welfare administration authority shall support activities conducted by welfare trusts.

Article 63 No property under a public welfare trust or the income from it may be used for non-public welfare purposes.

Article 64 Trust supervisors shall be appointed for public welfare trusts.

Trust supervisors shall be specified in the trust documents. Where there are no such specifications, they shall be designated by the public welfare administration authority.

Article 65 The trust supervisor shall have the right, in his own name, to file a lawsuit or the other legal acts in the interests of the beneficiary.

Article 66 No trustee of a public welfare trust may resign without the approval of the public welfare administration authority.

Article 67 The public welfare administration authority shall inspect the trustee as to how he handles the public welfare affairs and disposes of the property.

The trustee shall, at least once a year, makes a report on the trust business handled and the status of assets disposed of, and upon acceptance by the trust supervisor, the report shall be submitted to the public welfare administration authority for examination and approval, and the trustee shall announce the report.

Article 68 Where the trustee for a public welfare trust goes against his obligations under the trust, or is unable to perform his duties, the public welfare administration authority shall replace the trustee.

Article 69 If, after a public welfare trust is created, an event unforeseeable at the time of the creation of the trust occurs, the public welfare administration authority may, on the basis of the purposes of the trust, revise the related articles in the trust document.

Article 70 Where a public welfare trust is terminated, the trustee shall, within 15 days from the date the cause for the termination arises, report to the public welfare administration authority the cause for its termination and the date the trust is terminated.

Article 71 Where a public welfare trust is terminated, the trustee shall make a liquidation report on the trust business handled and, upon acceptance by the trust supervisor, submitted it to the public welfare administration authority for examination and approval, and the report shall be announced by the trustee.

Article 72 Where, upon termination of a public welfare trust, there is no owner of the trust property, or such owner is not a specified member of the general public, the trustee shall, upon approval by the public welfare administration authority, use the trust property for purposes similar to the original ones, or transfer it to public welfare organizations or other public welfare trusts having similar purposes.

Article 73 Where the public welfare administration authority violates the provisions of this Law, the settler, trustee and beneficiary shall have the right to file a lawsuit at the People's Court.

Chapter VII

Supplementary Provisions

Article 74 This Law shall go into effect as of October 1, 2001.