



Formalities Involved In **Setting Up A Valid Trust**

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A trust created during your lifetime is called an *inter vivos* trust (*inter vivos* is Latin for between the living). This is a written agreement between the founder of the trust and the trustees. The agreement is called the trust deed and is signed in accordance with the Law of Contracts and lodged with the Master of the High Court. A trust deed is a legal document and its drafting requires specialised expertise. It is, therefore, important to use an expert and to familiarise yourself with the requirements and formalities involved in setting up an *inter vivos* trust so that it is valid.

Requirements for creating a valid trust

The Trust Property Control Act does not specify any requirements for the formation of a valid trust. It merely provides regulations which, when combined with Common Law principles and good practice, establish the following essential formalities:

- The founder must be capable of entering into a contract and must have an intention to create a trust.
- The founder's intention must be expressed in a way that imposes an obligation on the trustees to administer assets for the benefit of the beneficiaries.
- The trustees must accept the assets and the terms and conditions in accordance with which these assets will be administered, invested and distributed.
- The trust deed must make provision for

ascertained, defined or ascertainable beneficiaries. Alternatively, if the trust has an impersonal object (such as charity or public benefit), this must be clearly defined. A trust without a beneficiary or objective is considered null and void.

- The objective of the trust must be lawful and the provisions of the trust deed cannot be contrary to law or public policy.

The following guidelines should be considered when setting up or managing a trust:

The role and duties of a trustee

When exercising their powers, the trustees should at all times act in the best interest of the beneficiaries, adhere to the provisions of the trust deed and fulfil the following duties:

Statutory duties as per the Trust Property Control Act

- A trustee must lodge the trust deed with the Master of the High Court (Section 4).
- A trustee must provide the Master with an address for the service of notices and process (Section 5).

