

INFORMATION SHEET ON THE
RWANDA TRUST



Rwanda enacted a new law N° 063/2021 OF 14/10/2021 to govern. **A Rwandan trust** is any trust whose creation is based on Rwandan law as its proper law whether or not it was created on the territory of Rwanda or whether it is being operated by residents of Rwanda or not.

Definition

A trust exists when a settlor, in accordance with the trust instrument, transfers his or her property to a trustee who then administers it for the benefit of the beneficiaries or for a known purpose.

Beneficiaries

A settlor indicates the following in the trust instrument:

- the names of a beneficiary;
- ascertainable persons including a class of persons or a relationship to some persons whether or not living at the time of the creation of the trust or at the time when members of a class are to be determined;
- the provision for addition to or exclusion of a beneficiary from a trust;
- imposition upon a beneficiary of an obligation as a condition to access benefits;
- the interest of a beneficiary constituting movable property of which a beneficiary may sell, pledge, transfer or otherwise deal with his or her interest in any manner according to the terms of the trust; 6° whether a settlor or a trustee of a trust may also be beneficiaries of the trust.

Characteristics

The characteristics of a trust are the following:

- the trust assets constitute a separate fund and are not a part of the trustee's own estate;
- the legal title to the trust assets stands in the name of the trustee, or in the name of another person on behalf of the trustee;
- the trustee has the power and the duty, in respect of which he or she is accountable, to administer, employ or dispose of the assets in accordance with the trust instrument and the special duties imposed by law;
- the reservation by the settlor of certain rights and powers and the fact that the trustee may himself have rights as a beneficiary are not inconsistent with the existence of a trust;
- the reservation by the beneficiary of rights on interests from assets administered or the fact that there is a purpose of a trust.

Types of Trust

1. Purpose Trust

A purpose trust is created for a specific purpose rather than providing any benefit to beneficiaries. A purpose trust is valid if:

- the purpose for its creation is valid and enforceable;
- the purpose for its creation is specific, reasonable and achievable;
- the purpose for its creation is in line with the Rwandan cultural values, lawful or not contrary to public order;
- the trust instrument provides for appointment of an enforcer capable to execute purpose trust and for appointment of another enforcer when the existing one is no longer in place;
- the trust has at least one (1) trustee;
- the trust instrument provides for the disposition of surplus property of the trust upon its termination whether on the date of expiry or on the occurrence of a certain event or for any other cause.

Appointment of an enforcer

A trust instrument specifies an enforcer and a successor to be approved by a competent authority for a purpose trust in order for the trust to be valid and to ensure enforcement of its objectives.

An enforcer of a purpose trust cannot be:

- the trustee of that same trust;
- related to the trustee of that same trust.

2. Charitable Trust

A charitable trust promotes a charitable purpose and does not benefit any specific person. A charitable trust is created for one or more of the following objectives:

- relief of poverty;
- advancement of education;
- advancement of faith-based community development activities;
- protection of the environment;
- advancement of human rights and fundamental freedoms;
- any other purpose beneficial to the population approved by the organ in charge of registration of trust instruments.
- Purposes of the charitable trust may be pursued in Rwanda or elsewhere and are beneficial to a section of the public in Rwanda or a class of persons not resident in Rwanda.

3. Protective trust

A protective trust is created where beneficiaries are unable to sell or give away their equitable interests in the trust property for the purposes of protecting beneficiaries who need legal protection in order to prevent them from frittering away their inheritance.

Duration.

A Rwandan trust exists for a maximum period of ninety-nine (99) years. However, after a period of ninety-nine (99) years, a settlor or beneficiaries may create another trust. However, a purpose trust that holds a property located in Rwanda can exist for a period of more than ninety-nine (99) years.

Core terms of Trust

A trust instrument must include the following core terms:

- contact details of the settlor including his or her name and address. In the event the settlor is not domiciled in Rwanda, the address registered in Rwanda is included;
- the name and address of the trustee;
- the intention of the settlor to create the trust or the declaration of the trustee that he or she holds property on trust;
- the purpose of a trust;
- the property transferred or held on trust and the duration of the trust;
- the names of the beneficiaries, where they have already been identified, the protector or enforcer;
- duties, powers, rights of the trustee;
- beneficiaries, their duties, powers, and rights, subject to the types of trust which are not required to have beneficiaries;
- the procedure for decision making;
- the proper law of the trust.

Governance

Appointment of a trustee and his powers

Appointment

- A trustee may be a natural person or a corporation.
- A trustee cannot hold a beneficial interest under the trust of which he or she is a trustee unless he or she is not the sole trustee or the sole beneficiary of the trust.
- A trust must have one (1) trustee unless the trust instrument provides for more than one (1) trustee. If the number of trustees is less than the number required by the trust instrument, the missing number of trustees required must be appointed within sixty (60) days from the date it was reported. The remaining trustees may only act for the purpose of preserving the trust property. A trustee may work for more than one trust. A trustee who works for more than one (1) trust cannot be affected by a notice based on trust instrument, a matter, a fact or a thing related to another trust, if the trustee receives a notice of it by reason of the trustee's actions or those of another trust unless there is sufficient proof of fraud.
- A trustee must disclose to his or her co-trustees any interest which he or she has as a trustee in another trust, if any transaction in relation to the first trust is to be entered into with the trustee of that other trust.

The powers of the trustee include:

- to invest the trust funds in any form of investment, and at any time vary an investment or retain an investment;

- to deal with or in any shares or securities;
- to concur in any scheme or arrangement including those relating to takeover, reconstruction, amalgamation or the approval of the sale of property or vote on a resolution or exercise any right or buy or sell any securities, if the investments include any form of securities in a body corporate or trust the trustee;
- to appoint a custodian;
- to sell any form of property including by way of auction;
- to insure property;
- to commence or participating in any legal or other action to protect the trust property, enforce rights or protect the interests of beneficiaries;
- to hire or lease any form of property; to lend money on a secured or unsecured basis;
- to borrow, issuing securities or otherwise raising debt on an unsecured basis; and if authorized by the trust instrument on a secured basis;
- to mortgage, pledge or otherwise to grant security or encumber any form of property of the trust only if authorized by the trust instrument;
- to grant and deal with negotiable instruments or other securities;
- to guarantee liabilities or performance;
- to open and operate bank accounts or similar accounts;
- to carry on a business and developing property;
- to manage property; to purchase property jointly;
- to settle litigation and grant waivers or releases except in respect of its own actions or failure to act;
- to appoint auditors, advisers, valuers and experts, engage agents and employ persons for remuneration and take advice including the interpretation of the trust instrument or any law. A trustee must exercise his or her powers only in the interests of the beneficiaries or in furtherance of the purpose of the trust and in accordance with the trust instrument. The trust instrument may require a trustee to obtain the consent of other persons before exercising powers or discretion. Persons who consent, however, are not considered as a trustee. For the sale of the immovable trust property, however, the trustee must apply to the settlor or, in the settlor's absence, the enforcer for prior authorization to use his or her powers.

Delegation of powers:

A trustee must not delegate his or her powers unless permitted to do so by this Law or by the trust instrument or by the competent authority. Subject to the trust instrument, a trustee may delegate both administrative and dispositive powers to a person in execution of his or her duties. However, a trustee must not delegate any discretionary power which is not provided for by the trust instrument.

Unless otherwise provided by the trust instrument, a trustee may:

- delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of the trust property;
- employ accountants, lawyers, notaries, bankers, custodians, investment advisers, brokers, property agents and other professionals or persons acting in relation to any of the affairs of the trust or holding any of the trust property;
- authorize, subject to disclosure of the accounts of the trust, an investment manager referred to in Item 1o of this Article to retain any commission or other payment usually payable in relation to any transaction. A trustee

is not liable for a loss to the trust arising from a delegation or appointment under this Article, in case the trustee makes such delegation, appointment or permits the continuation thereof in good faith and without negligence.

Power of appropriation of a trust property in the interest of a beneficiary Pursuant to the trust instrument, a trustee may, without the consent of any beneficiary, appropriate trust property in the interest of a beneficiary in such a manner and in accordance with such valuation as the trustee considered appropriate.

Power of accumulation and distribution of income Pursuant to the duration of the trust, the trust instrument may authorise the accumulation for a specified period of all or part of the income of the trust and add to the capital or retain for any period all or part of the income of the trust. Pursuant to the duration of the trust, the trust instrument may determine that:

- all or part of the income of the trust is not distributed or required to be distributed in accordance with the trust instrument;
- no trust accumulates income and adds it to the capital or retains income in its entirety. Subject to the trust instrument and while the trust continues in existence, there is no time period within which a power to accumulate income and add it to the capital, to retain income in its character as income or to distribute income must be exercised.

Power to manage a minor beneficiary interests

Pursuant to the trust instrument and to any prior interests or charges affecting the trust property, if a beneficiary is a minor and whether or not the beneficiary's interest is a vested interest or is an interest which becomes vested on attaining the age of majority, at any later age or upon occurrence of any event, the trustee has power to:

- accumulate the income attributable to the interest of such a beneficiary and add it to capital or retain it in its entirety waiting the attainment of the age of majority or such later age or the occurrence of such event;
- use such income or part of it to the welfare, education or other benefit of such a beneficiary;
- advance or appropriate to or for the benefit of any such beneficiary such interest or part of such interest. The receipt of a parent or the guardian of a beneficiary who is a minor is a sufficient proof to the trustee for a payment made for a minor.

Power of advancement

Subject to the trust instrument and to any prior interests or charges affecting the trust property, the trustee has the power to advance the benefit a beneficiary has in all or part of the trust property before the date of the occurrence of the event upon which the beneficiary becomes entitled thereto.

Conferring power over the trust property

The trust instrument may confer on a trustee or any other person the power to appoint or assign all or any part of the trust property or an interest in the trust property to trustees for the benefit of a person, whether or not such a person was a beneficiary of the trust immediately prior to such appointment or assignment.

Power of modification of a trust instrument and revocation of a trust Without prejudice to powers of the court to modify the trust instrument, a trustee has the power to modify the trust instrument in accordance with the trust instrument and upon approval by the competent authority for those concerned. Without prejudice to powers of the court to revoke the trust, a trustee has power to revoke a trust and any exercise of a power under a trust whether wholly or partly in accordance with the trust instrument and upon approval by the competent authority for those concerned. No such modification or revocation can prejudice anything lawfully done by a trustee in relation to a trust before the trustee receives notice of such modification or revocation. Subject to the trust instrument and other relevant laws, where the trust is revoked in whole or in part, the trustee holds the trust property, or part of the trust property which is subject to revocation, as the case may be, in trust for the settlor absolutely or, if he or she is dead, for his or her heirs and succession as if it had formed part of his or her estate at the time of his or her death until it is handed over to them.

Appointment of a corporate trustee

A corporate trustee may be required to supervise activities of a trust on the basis of a resolution of such corporate trustee, a resolution of its Board of Directors or other governing body or on the basis of a resolution appointing one or more of its officers or employees to act on its behalf in connection with the trust. The appointment of an officer to act on behalf of the corporate trustee does not relieve the corporate trustee from its obligations or liabilities.

Appointment of a constructive trustee

A court may appoint a constructive trustee who has fiduciary duties to take back or receive any profit, gain or advantage from a breach of fiduciary duties committed with fraud by the previous trustee or trustees as remedy to unjust enrichment. A person who pays or advances money to a trustee is not concerned with knowing whether that money is the actual amount that was required for that property or the use of such money. A person who is appointed as a constructive trustee has the fiduciary duty to deliver the recovered property to the person properly entitled to it.

Settlor's powers

The settlor has the following powers in connection with the trust:

- to revoke or modify the trust instrument or the trust and powers arising in whole or in part under the trust;
- to advance, pay, provide for the use of income or capital of the trust property or to give directives on such advancement, payment or use of income of the trust; 3° to issue directives on the appointment or removal of an officer of a corporation or an officer of a limited liability partnership, separate limited partnership or any other partnership having separate legal personality, in which the trust holds an interest whether or not such interest is in the corporation or partnership is wholly, partly, directly or indirectly held by the trust;
- to issue directives to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust property or the exercise of powers or rights arising from such property;
- to appoint or remove a trustee from office, enforcer or beneficiary or any other person who holds a power, discretion, right or who acts in connection with the trust or the trust property;
- to appoint or remove an investment manager or investment advisor;

- to change the proper law of the trust; to restrict the exercise of powers or discretion of a trustee by requiring that such powers are exercisable with the consent of the settlor or any other person specified in the trust instrument.

Appointment of a protector and powers

Appointment

The trust instrument may provide for the office of the protector whose function is to advise the trustee of the trust. The trust instrument may appoint as a protector:

- a person of full age and with no mental disability as certified by a recognized medical doctor;
- the settlor;
- a corporation;
- a partnership;
- a group of persons, whether incorporated or unincorporated.

Powers of a protector

Unless the trust instrument provides otherwise, the protector has the following powers:

- to remove from office a trustee and to appoint a new trustee;
- to determine the law of which jurisdiction is the proper law of the trust;
- to change the forum of administration of the trust;
- to refuse consent from certain acts of the trustees. The exercise of powers and discretion by the trustees is subject to prior consent of the protector. A protector who exercises any of the powers set out in Paragraph One of this Article is not considered to be a trustee by reason of exercising the power, unless otherwise provided under the trust instrument. The protector may also be a settlor, a trustee or a beneficiary of the trust. Subject to the trust instrument, the functions conferred on the protectors of trust may be exercised by a majority in number of the protectors if protectors are more than one in a trust. A protector who dissents from a decision of the majority of the protectors may require his dissenting opinion to be recorded in writing.

Licensing

Where a trustee administers a trust governed by laws governing capital market, he or she is licensed by the authority in charge of capital market. Where a trustee administers a trust not governed by laws governing capital market, he or she is licensed by the National Bank of Rwanda.

OUR CONTACT DETAILS

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