



# SETTING UP A TRUST

By Nancy Elewa

A trust is an arrangement where a person (settlor/grantor/donor) gives another party (trustee), the legal right to manage his/her assets for the benefit of another person (beneficiary) following the terms and conditions outlined in a trust agreement. A trust can be a property, a bond, a mutual fund or even a stock.

What to consider in setting up a Trust:

- **Determine Goals:** Define the purpose of the trust and identify the assets you want to place in the trust.
- **Choose the type of trust you are interested in:** There are various types of trusts such as private trust and public trust. Private trust is created for the benefit of specific people while public trust is created for the public/community at large.
- **Appoint a trustee:** A trustee can be a company or group of individuals or an individual or a firm.
- **Create a Trust Agreement:** In setting up a trust, the settlor/donor must show intention to create the trust which may be express or implied by conduct.
- **Transfer the assets to the trustee:** This is an important aspect, and it depends on whether it is a revocable trust, an irrevocable trust, or a testamentary trust. Revocable trust, also known as living trust, can be modified or terminated by the settlor during their lifetime. Irrevocable trust cannot be modified or terminated by the settlor once it is created except with the consent of the trustee and the beneficiary. Testamentary trust is created through a will and becomes effective only when the settlor dies.
- **Inform beneficiaries of their interests in the trust, their rights, and the provisions made for them.**

The benefits of setting up a trust include the following:

- **Asset Management:** Trusts allow for organized and efficient management of assets for the benefit of chosen beneficiaries.
- **Privacy:** Unlike wills, trusts can be kept private and don't go through the public probate process.
- **Probate Avoidance:** Assets placed in a trust can avoid probate, saving time and costs.
- **Control:** The settlor/grantor can maintain control over the distribution of assets even after their passing.
- **Estate Tax Benefits:** Certain trusts can provide tax advantages, reducing estate tax liability.
- **Asset Protection:** Irrevocable trusts can shield assets from creditors and lawsuits.

There are, however, disadvantages to setting up a trust:

- **Complexity and Costs:** Setting up a trust can be complex and may involve legal and administrative costs.
- **Irrevocability:** Once assets are placed in an irrevocable trust, they cannot be easily changed or revoked.
- **Ongoing Administration:** Trusts require ongoing management and adherence to the terms outlined in the trust agreement.
- **Lack of Immediate Control:** In some cases, the grantor may relinquish control over assets placed in an irrevocable trust.
- **Tax Consequences:** While trusts can offer tax benefits, they may also have tax implications that require careful consideration.

Where it is a company that is to be set up as a trustee, in addition to incorporating the company under the Companies and Allied Matters Act, such company must also be registered with the Securities and Exchange Commission (SEC). The registration requirements as trustees with SEC are as follows:

- Payment: Evidence of Payment of the following: Filing/Application Fee – ₦50,000; Processing Fee – ₦200,000; Registration Fee – ₦500,000; Sponsored Individual Fee – ₦50,000 for each sponsored individual.
- Forms: Duly Executed Form SEC 4A – For the Company; Form SEC 2 and 2D – Sponsored Individuals/Compliance Office; (Note that every Trustee is to have at least three sponsored individuals, one of whom should be a Compliance Officer who shall be responsible for monitoring compliance with the ISA 2007, Rules and Regulations, notifications, guidelines, instructions etc. issued by SEC or the Federal Government); and Form SEC 2 and 2D – Directors of the Company.
- Evidence of Required Minimum Paid-up Capital – ₦300,000,000 (i.e. Bank balances, fixed assets or Investment in quoted Securities).
- Current Fidelity Insurance Bond covering at least 10% of the minimum paid-up capital as stipulated by SEC's Rules and Regulations.
- Sponsored Individuals and Directors: Minimum of three sponsored Individuals, one of whom shall be a compliance officer; Managing Director of the Company to be among the sponsored individuals; One of the sponsored individuals shall be a lawyer experienced in trusteeship function; Full postal addresses of immediate previous employers, bankers (with Current Account number) and nominated referees of sponsored individuals; Detailed curriculum vitae of sponsored individuals and Directors which should include details of activities arranged from Secondary School to date with dates; (all gap in employment and educational history should be explained); Copies of credentials of sponsored individuals including secondary school and NYSC discharge certificates; originals will be required for sighting by the SEC; Evidence from the Sponsored Individuals of having the minimum of four years post-graduation experience to perform the Trusteeship and Compliance function as stipulated by SEC's Rules and Regulations; Police clearance report for each Sponsored Individual. Each sponsored individual is to report at the SEC head office in Abuja or the Lagos zonal office with two recent passport photographs to commence the process; and a copy of means Identification of the Directors and the Sponsored Individuals of the Company (International Passport, tax or utility payment documents).
- Applicant Company: The profile of the Company should include among others a brief history of the company, organizational and shareholding structure, and principal officers as well as details of past and current activities; The name(s) and address(es) of the company's subsidiaries/associated companies, type of business and percentage holding; Evidence of Payment of shares allotted to the shareholders; Operational manual or organizational chart of the company Business plan; Bank statement of accounts operated by the Company for the last 6 months.
- Corporate Documents of the applicant Company: A copy of each of the following, duly certified by the Corporate Affairs Commission - Certificate of Incorporation, Memorandum and Articles of Association– this should include the power to perform the specified function and CAC Form(s) showing Statement of Share Capital, Return of Allotment, and Particulars of Directors.
- Latest audited accounts or audited statements of affairs of the company. Note that the cash assets ratio shall be 60% liquid assets and 40% fixed and other assets.
- Sworn to undertake to keep proper records and render returns as may be specified by SEC from time to time signed by a director or the company secretary (to be notarized).

- Sworn undertaking to abide by SEC Rules and Regulations and Investments and Securities Act No.29 of 2007 by a director or the company secretary (to be notarized).
- A fair knowledge of the Rules and Regulations of the SEC and Investments & Securities Act No. 29 of 2007 and the Capital Market is an essential prerequisite for registration.

It is important to note that the SEC may require such other documents as it considers necessary for registration. An application for registration will only be considered as having been filed when all document(s)/information have been completed. Every applicant Company/Firm will be inspected while processing an application for registration.

#### ABOUT THE FIRM:

Kevin Martin Ogwemoh Legal, known as "KMO Legal," is a commercial law firm based mainly in Lagos, Nigeria—the bustling commercial hub of West Africa. The firm also has branches in Abuja and Port Harcourt, as well as a correspondent office in the United States of America.

Having been founded in 1988, KMO Legal boasts over three decades of experience in delivering high-quality services. Clients have come to depend on the firm to help them attain their respective individual and organizational goals.

The firm specializes in various practice areas, including:

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