# Private Family Trust Creation Process

A Step-by-Step Guide

## STEP 1: Decide the Type of Trust

The type of trust depends on the objective it needs to fulfill. Before deciding, it is important to understand the different types of private trusts:

- eOperational classification:

  Revocable Trust: The settlor retains the power to revoke the trust. Income is taxed in the hands of the settlor.
  Irrevocable Trust: The trust cannot be revoked. Income is taxed either in the hands of the trust or the beneficiaries.

- Classification based on beneficiary determination:

  Specific (Fixed) Trust: Beneficiaries and their shares are clearly defined.
  Discretionary Trust: Trustees decide the allocation of income or assets.

In our case, to avail full taxation benefits for our child, we created an irrevocable specific trust, since the beneficiary's share was predetermined.

For taxation purposes, irrevocable specific trusts are treated as an Association of Persons (AOP). If any beneficiary's individual income exceeds the basic exemption limit, the entire accumulated income of the trust may be taxed at the Maximum Marginal Rate (MMR). The purpose of income accumulation must be clearly specified in the trust deed to avail taxation benefits.

Since, in our case, the minor beneficiary has no income attributed to them, the trust is taxed at individual slab rates and MMR does not apply.

## STEP 2: Identify Key Parties

- Settlor: The person creating the trust. Preferably, the father or mother of the beneficiary (child), as defined under the Income Tax Act. Can be relative (as per Income Tax Act) as well: Spouse, siblings, siblings of both parents, siblings of the spouse, and any lineal ascendant or descendant (parents, grandparents, children, grandchildren).
- Trustees: Persons managing the trust (We, the parents, in our case); Settlor can be a trustee as well
- Beneficiaries: Family members (our child in our case).
- Protector: Optional.

### STEP 3: Draft the Trust Deed

- Name of the trust and its address.
- Objectives of the trust.
- Details of all parties (Settlor, Trustees, and Beneficiaries).
- Powers of the trustees.
- Distribution and operation rules.
- Initial corpus provided by the settlor to establish the trust fund.
- Executed on stamp paper (stamp duty varies by state).
- Signed in the presence of two witnesses.

### STEP 4: Register the Trust Deed (Optional)

Registration of the trust deed is not legally compulsory, but it is recommended for stronger legal enforceability.

### STEP 5: Apply for PAN of the Trust

- Apply via Protean (NSDL) or the Income Tax Department.
- Category: Trust.
- Apply online and pay a nominal fee.
- After verification by the Income Tax Department, submit copies of the trust deed, KYC of trustees, KYC of the beneficiary, and address proof of the trust.
- PAN will be issued in the name of the trust.
- The fourth character of the PAN will be the letter 'T'.

### STEP 6: Create Trust Seal

- Not legally mandatory.
- Required by most banks for account opening.
- Format: Beneficiary Name Trust/ For Trustee.

### STEP 7: Open Bank Account of the Trust

Banks usually open a current account for trusts. Documents required include:

- Trust deed.
- Trust PAN.
- KYC documents of trustees.
- Board resolution authorizing trustees to operate the bank account.
- Address proof (latest electricity bill or equivalent).
- Beneficiary KYC. In case of a minor, birth certificate and Aadhaar card are sufficient.

> Pro tip: Maintain proof of operations at the declared address (such as a nameplate or designated office premises). Banks conduct physical verification during account opening, and the process may take time due to extensive checks.

## STEP 8: Start Trust Operations

- As settlors or trustees, securities, assets, or funds can be gifted to the trust to manage the trust fund in line with the powers defined in the trust deed.
- Maintain proper books of accounts and compliances. Income tax return is filed using ITR-5.

## STEP 9: Annual Compliance

- File the trust income tax return annually.
- Audit the trust accounts, if applicable.
- Maintain resolutions, minutes, and statutory records.

## STEP 10: Demat Account Opening

- This is generally an offline process. Depending on the service provider, forms must be signed and KYC documents of trustees, trust PAN, and trust deed must be submitted.
- For mutual fund investments, you can visit the respective fund house websites and start direct investing.

> Pro tip: Use the same email ID as your personal investments. This simplifies tracking through CAMS and KFintech and allows seamless investing through their platforms.

## DISCLAIMER

This document is for educational purposes only. Legal and tax advice should be taken before implementation.

If you need assistance in creating a private family trust, reach out to us at finwise.owl@gmail.com.