

Guide to Using Private Family Trusts in India

Anil Chawla Law Associates LLP

<https://indialegalhelp.com/>

Disclaimer - This Guide is strictly for information only. While all efforts have been made to ensure accuracy and correctness of information provided, no warranties / assurances are provided or implied. Readers are advised to consult a Legal Professional / Chartered Accountant before taking any business decisions. Anil Chawla Law Associates LLP does not accept any liability, either direct or indirect, with regard to any damages / consequences / results arising due to use of the information contained in this Guide.

© Anil Chawla Law Associates LLP, May 2026

Contents

01. Introduction

02. Philosophy of wealth

03. Why Private Family Trust

04. Examples of Use Cases

05. Settlor / Author

06. Beneficiaries

07. Trustees

08. Manager

09. Procedure

10. Taxation

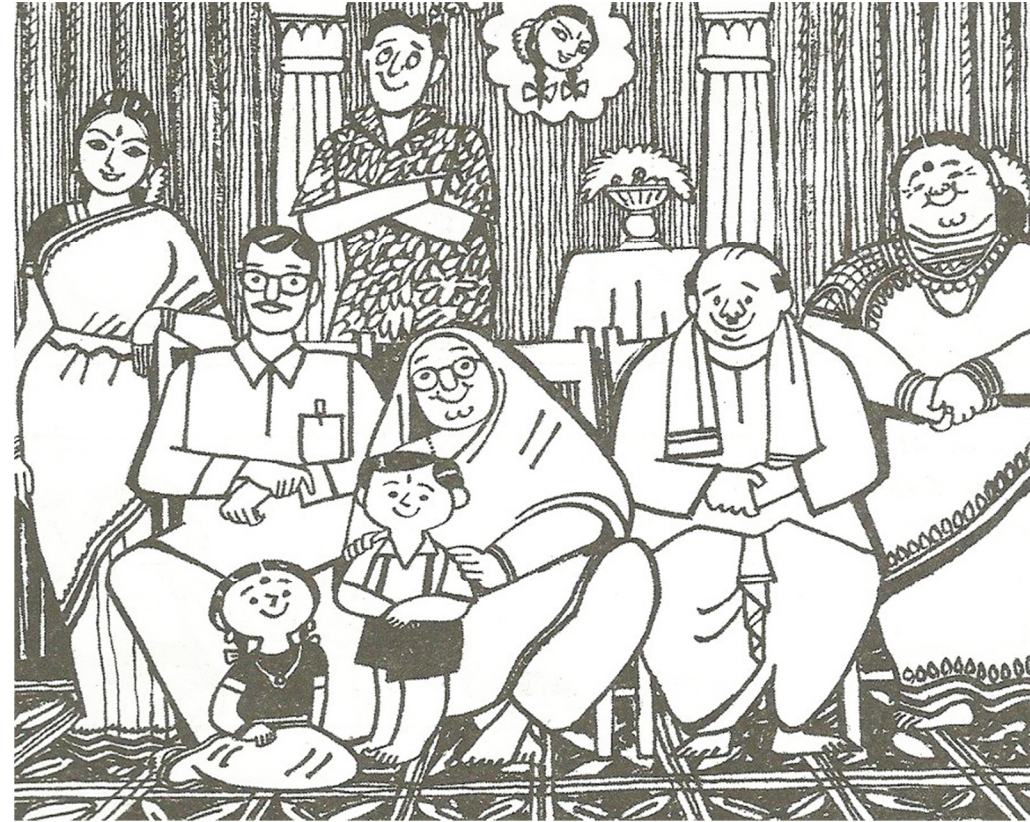
01. Introduction

Private Family Trusts (PFTs) are often used in India as a tool for wealth management and succession planning.

A PFT is very simple to set up with minimum formalities.

It can be designed and structured as per your needs. Typically, a PFT can be used to take care of dependents who may not be able to control and manage wealth. A PFT may also be used to prevent splitting up of family wealth.

A PFT is often used to ensure that one's wealth passes smoothly from one generation to the other.



02. Philosophy of Wealth

Individualistic hedonistic

- My wealth is for my enjoyment.
- No one, including my children, has any rights on my wealth.
- Aim is to sell off assets and have fun.
- Passing to next generation is NOT a priority.
- **Each One Burns What One Earns.**

If you believe in Individualistic Hedonistic Philosophy, this Guide is not for you.

Inter-generational family wealth

- Wealth is a responsibility and duty.
- One owes it to the previous generations as well as to the future generations to take care of and grow the wealth.
- Each generation is a trustee for the future generations.
- I want to see my children and grandchildren enjoying good peaceful wealthy life even after my death.
- Aim is not to sell, but to build institutions that live for centuries.

03. Why Private Family Trust

Family benefits

- Assets are protected from business risks, creditor claims and litigation risks.
- Ensures family / business continuity across generations.
- Protection for dependents.
- Better control and flexibility.
- Possible to enforce discipline & milestones in family.

Business advantages

- Separation of control, ownership, management and benefits.
- Can prevent splitting of business into small non-viable units.
- Some assets like brands, family name can be owned by PFT and shared by family members.

Other advantages

- Confidentiality
- Tax efficiency in some cases
- Can be used to lay down rules within family.
- Helps build and strengthen family bonds.
- Useful instrument of succession planning.

04A. Example Use Case

Handicapped Child

Yes, we know that your child is not handicapped, but specially gifted. And you want to ensure that he / she is taken care of and protected even when you are not there.

A PFT is an ideal structure to take care of such a child (or such children).



Image courtesy: ID 165210764 © Sybirko | Dreamstime.com

04B. Example Use Case

Joint Family Holdings

A larger business has inherent strengths and can face difficult times better.

Splitting your business into small units for the sake of dividing among heirs may destroy it.

You do not want to see the business that you gave your life and blood to, die after your death.

A PFT can be the ideal structure to ensure that the business continues as one unit even after your death.

Some properties may have emotional value and may serve as an anchor for keeping the family together.



04C. Example Use Case

Minor Children

Nothing is more unpredictable than death. When one is in forties or even fifties, one does not think about death. But the unexpected can happen anytime.

Planning for the unexpected and ensuring that the ones whom you love remain protected even if some great tragedy strikes.

A PFT can help if such a misfortune strikes.



04D. Example Use Case

Immature Irresponsible Young Ones

Two brothers have built a massive business in the past three decades. Together, they have three sons and two daughters. Of the five, two are highly responsible and mature, one is an artist and two are happy-go-merry-go types who just move from one party to another.

Of course, with age, even the ones who are not so mature will grow up.

A PFT can help the family ensure that the growth phase of some heirs does not harm family wealth.



05. Settlor / Author

Who can declare a trust?

- Any person competent to contract – sound mind, age above eighteen years.
- Minor can declare trust with the permission of principal civil court.
- Author must give away some property (movable or immovable) to the trust.
- Author must have a clear right to transfer the property.

Other key points

- Author may be one of the beneficiaries.
- Author may be one of the trustees.
- Trust must have a real purpose beyond merely holding property.
- Purpose of Trust must be lawful.
- Trust Deed should be in writing and registered especially for immovable property.
- Trust must have (a) specific property (b) beneficiaries (c) trustees.

06. Beneficiaries

Who may be beneficiary?

- Any person capable of holding property can be beneficiary.
- An unborn child can be one of the beneficiaries.
- One or more living persons must be beneficiaries if an unborn child is a beneficiary.
- Beneficiaries can be public or mankind – charitable trusts. (This Guide is not about charitable trusts.)
- Trust Deed drafting to guard against Rule of Perpetuity – not applicable in case of charitable trusts.

Other key points

- One may decline to be beneficiary by sending notice to Trustee.
- Beneficiaries in a Private Family Trust should preferably be relatives of settlor. (Refer next slide for definition of relatives and related matters)
- Shares of beneficiaries may either be defined clearly in the Trust Deed or may be left to the discretion of the Trustees.
- If Trustees have discretion to decide shares of beneficiaries, the Trust will be subject to Maximum Marginal Rate of income tax.

06A. Beneficiaries (Relatives)

Relatives under Companies Act, 2013

- Husband / wife.
- Father including step-father.
- Mother including step-mother.
- Son including step-son.
- Son's wife.
- Daughter (not including step-daughter) and daughter's husband.
- Brother including step-brother.
- Sister including step-sister.

Key legal points

- No legal requirement that beneficiaries should only be specified relatives.
- If persons other than the specified relatives are included, please take care that the PFT does not fall under the category of Alternative Investment Fund under the relevant SEBI regulations.
- A PFT should not collect investments / deposits from strangers either by private placement or by public issue. If such investments / deposits are collected, compliance with SEBI & RBI regulations is necessary.

07. Trustees

Who may be trustee?

- Any person capable of holding property can be trustee.
- If trustee has to exercise discretion, should be competent to contract.
- Must be willing to shoulder the responsibility.
- Acceptance by trustee of trust is necessary.
- Trustee may disclaim the trust within reasonable time.
- Advisable to provide in the Trust Deed procedure for appointment of new trustees as well as renouncing of trusteeship by a trustee due to old age, disease and such other reasons.

Other key points

- Choosing an honest impartial person with integrity and ethics is most critical.
- Advisable that in a PFT at least some of the trustees are family members.
- Professionals like advocates, chartered accountants may be used, but it is not necessary.
- If charges / fees are to be paid to the trustee(s), the same should be clearly mentioned in the Trust Deed.

08. Manager

Use of professional manager by Trustee(s)

- Sec. 47 of Indian Trusts Act imposes restrictions on Trustees to delegate.
- Trusts often use services of Investment Managers to manage investments.
- Advisable that Trust Deed allows the Trustees to delegate powers to one or managers.
- Trustees should execute a formal agreement with manager(s) defining the terms of engagement clearly.
- Responsibility regarding properties of the Trust rests with the Trustees. Hence, it is necessary to put limits on the powers of the manager(s).

Other key points

- A manager can be either an individual or an LLP firm or a company.
- Please make sure that the manager(s) hold all properties in the name of the Trust and not in their name(s).
- Fiduciary oversight by Trustees on the manager(s) is an absolute must. It should be duly provided in the agreement between the two and must be exercised regularly.

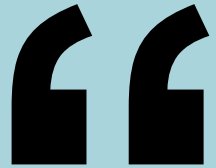
09. Procedure for PFT

First Steps

- Decide names of Settlor(s), Beneficiaries and Trustees.
- Decide the property / properties to be given in Trust.
- Select a law firm to draft the Trust Deed.
- Hold discussions with the law firm to draft and finalize the Trust Deed.
- Locate a local lawyer to register the Trust Deed at the Sub-Registrar office.
- Execute the Trust Deed.
- Ask the local lawyer to pay stamp duty and get e-stamp.

Legal Steps

- Registration at the Sub-Registrar office.
- Apply for PAN under Income Tax Act.
- Inform the Trustees and get their acceptance.
- Ensure Trust properties are duly transferred to the Trust by getting change recorded with relevant municipal and other authorities.
- There is no central or state regulatory body / authority for registration / regulation of private trusts.



A Private Family Trust is a powerful tool to preserve, manage and grow family assets across generations. While it may offer some tax advantages, using it to only save taxes may not be worth the effort.

10. Taxation of PFT

General Rules

- A Trustee has to comply with tax liabilities of the Trust. (s. 303, IT Act, 2025)
- If the Trust is revocable by the Settlor during the lifetime of the beneficiary, the income of the Trust is taxed in the hands of the Settlor (s. 97, IT Act, 2025)
- If beneficiaries are not known or if shares of beneficiaries are not defined as well as in case of oral trust, income of Trust is liable to maximum marginal rate of income. tax. (s. 307 & 308, IT Act, 2025)
- Short term capital gains taxed at 20%. (s. 196, IT Act, 2025)
- Long term capital gains taxed at 12.5%. (s. 197, IT Act, 2025)

When shares of beneficiaries are defined

- The Trust / Trustee shall file return on behalf of the beneficiaries as Representative Assessee. (s. 303, IT Act, 2025)
- Income of the Trust will be taxed in the hands of the beneficiaries as per the share of income receivable by each beneficiary. (s. 304, IT Act, 2025)

Always ready to help you



Advocate Dr. Anil Chawla

Senior Partner,
Anil Chawla Law Associates LLP



Advocate Dr. Yogita Pant

Partner,
Anil Chawla Law Associates LLP



Thank you

info@indialegalhelp.com

WhatsApp - +91 9425009280

indialegalhelp.com

Anil Chawla Law Associates LLP

Business Lawyers, Strategic Advisors and Insolvency Professionals

Anil Chawla Law Associates LLP

MF-104, Ajay Tower, E5/1 (Commercial),
Arera Colony, Bhopal – 462016 (MP), INDIA

1st May 2026

© Anil Chawla Law Associates LLP