

A special Trust for a special child

by Rajmohan Krishnan, 8th July, 2017

■ Family Office

Given the vagaries of life, parents of a person with special needs should set up a special Trust for this person as soon as they learn about his/her medical condition.

Deep inside a grand mansion in south India, a man in his 30s – let's call him Lakshmana – brings his canvas to life with masterly strokes of colour and imagination. Lakshmana is the second son of one of the biggest industrialists of the region. In a parallel universe, he would be in a boardroom, finding ways to expand his father's business empire. In this universe, he suffers from a lesser-known mental ailment that makes him unsuitable for life in the fast lane. So, his elder brother has taken over the business while Lakshmana's retired father worries about his child's future.

Lakshmana's plight is not uncommon. Many UHNI families have children with special needs due to congenital defects, accidents or some other reason. At times, certain ailments might disqualify the children from assuming leadership roles in the family business. However (and this should be self-evident), they remain integral members of their families.

The UHNI parent of a person with special needs will do well to set up a Trust with this special person as the beneficiary. Assuming that the person is incapable of many cognitive functions, the Trust should take care of the following:

1. *Ensure a sufficient corpus*

Whether the corpus is created all at once or over a period of time, it must be sufficient to take care of the needs of the person with special needs. Assume that the person will enjoy great longevity and also have an expensive healthcare regimen throughout his/her life. Inflation, market fluctuations and other events of destiny should have no bearing on the availability of funds in this Trust. In short, such a person should not have to depend on his/her siblings or others, for a single rupee even in the worst-case scenario.

2. *Account for non-financial needs*

People with special needs often lose the ability to manage the simplest of tasks. So, the Trust Deed should clearly state the modus operandi for the following needs:

- Daily and long-term healthcare needs of the person including medication, routine check-ups, psychiatric interventions, hiring and firing of nurses etc.
- Daily and long-term maintenance of the person's properties, including the home the person is residing in.
- Management of the person's image in the wider world, including liaising with the media and other entities.

3. *Appoint a Corporate Trustee*

Parents of a person with special needs may not prefer appointing any family members as Trustees – the intention being that a Trustee should not perform his duties being influenced by any potentially unresolved negative emotions. Instead, a Corporate Trustee can be appointed to follow the instructions detailed in the Trust Deed to the letter.

4. *Appoint a Protector*

A trusted family friend or an extended family member is usually appointed as a Protector to the Trust. This person acts like a neutral third party who shall be consulted with, to make critical decisions regarding the welfare of the beneficiary. A Protector doesn't just ask questions. His main responsibility is to protect the interest of the beneficiary and make sure that the Trustees abide with the Trust Deed instructions.

5. *Create a succession plan for the assets of the Trust*

What should happen to the wealth remaining in the Trust once the person with special needs passes away? This question needs to be answered at the time of the Trust's creation. In exceptional circumstances, if there is a reason to insulate such a person from the rest of the family, it should be ensured that the rest of the family has no chance of any benefit including financial, from the Trust or from the death of such person. Similarly, the family members should also be insulated from the expenses related to the upkeep of the person with special needs including legal claims on the family business, if the intention is to keep this person away from the family business. Needless to say, one hopes and assumes that, in most families, there is no reason for such stringent demarcation of territories.

In conclusion

Given the vagaries of life, parents of a person with special needs should set up a special Trust for this person as soon as they learn about his/her medical condition. The latest acceptable time for the creation of the Trust is when the patriarch or matriarch is putting together a succession plan for the entire family.

Every family member must learn to love and connect with the special person and cherish their unique abilities. At the same time, legally binding papers must ensure that there is no reason for animosity, malice, distrust or resentment.

With their expertise, the Family Office personnel can put together a customised model that works for everybody involved.