

"Blind Trust" as a tool to prevent conflicts of interest

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In recent years, newspapers have published reports of "blind Trust" in connection with a mechanism designed to prevent conflicts of interest of public servant ("the official"), such as ministers and the prime minister. In the United States, blind trusts are regulated by the Ethics in Government Act of 1978. This law defines the conditions under which the official may hold assets, under via af blind trust, and these are: First, the trust must be held separately from the official and managed independently. Second, the trust is prohibited from including restrictions on the sale or transfer of assets. Third, the official is prohibited from receiving any information about the trust except for quarterly updates regarding its value, income and losses for the purpose of filing tax reports.

What is this "blind Trust" and what does it come to prevent?

In Israel ,In the Notice on Rules for the Prevention of Conflicts of Interest of Ministers and Deputy Ministers, 5763-2003, which came into effect in January 2003 (hereinafter: **the "Notice"**), **it was determined that "blind Trust" is a mechanism designed to prevent public officials who head executive positions** – i.e., the Prime Minister, Ministers and Deputy Ministers – from being in a situation of conflict of interest (paragraph 4 of the Notice), with the aim of enabling each of them to fulfill his or her duties impartially, With a fair attitude towards everyone and without any of them having personal interest in decisions or actions carried out in the course of their duties, not even in appearance (section 3 of the notice).

Section 16 of the notice entitled "Transfer of securities to a trust" is the one that establishes the obligation to transfer assets to a blind trust, and this is its language:

- (1) *Within 60 days of his appointment, the Minister will transfer the funds and securities owned by him and his family members to a public and*

independent trust company, which will hold and manage them in a "blind trust" manner.

- (II) The Minister and his family will not give the trust company any instructions on which securities to hold and which securities to sell or purchase, except for a one-time instruction, prior to the commencement of the service, regarding the types of investment to be included in the portfolio and the maximum rate of each type relative to the value of the portfolio, or a directive that these will be determined at the discretion of the trust company.*
- (III) The trust company shall not provide the Minister and his family, while the Minister is in office, any information about the transactions made in the securities; The only information provided will be the value of all securities, profits realized, and tax paid on those profits.*

The notice does not define the meaning of the term "blind trust", and mentions it in the above section in quotation marks. At the same time, from the language of the section, it can be concluded that this is a mechanism designed to prevent the the official from controlling his business and investments, so that the information will not constitute a consideration while performing his duties.

It should also be noted that Chapter IV of the Notice regulates the activities of the Permits Committee, which within the framework of its powers is authorized to grant personal permits to an official that exempt him or her from complying with some of the rules set forth in the notification. For example, the committee allowed a minister's spouse not to transfer her shares in a particular private company to a blind trust , under the circumstances of the special case.

Trust or agency?

Although section 16 uses the language "trust," a closer examination of legislation and case law reveals that the nature of the trust may change in different contexts. Thus, at one extreme is the private trust, which serves as a tool for intergenerational transfer of assets. In such a case, the settlor of the trust transfers ownership of the assets to the trustee and separates them during his lifetime so that they are deducted

from his estate. Henceforth, the trustee holds and manages the assets in accordance with the terms of the trust set by the settlor and according to the law. The trustee is independent in exercising discretion and is not subject to the settlor's instructions. In Israel, private trusts are established and regulated by the Trust Law, 5739-1979.

At the other extreme, on the other hand, there is an arrangement whereby the property owner transfers assets to the trustee so that the trustee will act independently in managing the assets in such a way that the property owner is not entitled to manage them or give instructions for managing them and can only receive information about the results of management. The relationship between the property owner and the trustee is regulated by an agreement that can be defined as a "trust agreement" or an "agency agreement". Such agreement is regulated by the Trust Law, 5739-1979 and the agency Law, 1965.

How, then, can "blind trust" be classified on the scale between clear Trust and an trust agreement and agency?

In our case, the notice establishes only the relationship between the official and the trust company but does not regulate all its terms. Therefore, it can be assumed that there must be an agreement between the official and the trust company in order to comply with the requirements of the notice. Also, according to section 16, the official is obliged to transfer the ownership of the securities to the trust company, which will hold them in escrow for the credit of the official.

In this sense, although ownership of the securities passes to the trust company, its authority to act on them is short-lived and expires at the end of the official's term of office or upon the death of the official, in which case the securities return to the ownership of the official, or to his estate, as the case may be.

In conclusion, the blind trust mechanism is more similar in its characteristics to an agency than to a trust, because this is only a temporary arrangement that does not detract the assets from the public official's ownership. In this regard, the official may not give instructions to the trust company and the trust company defined authority is to hold and manage the securities only, and at the end of the period – to return them.

It is desirable that the legislature regulate the terms of the "blind trust" as is done in the United States as mentioned above.

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