

Article

The Ha'avara Transfer Agreement

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ABSTRACT

The interesting story of how the Transfer Agreement (in Hebrew: “Ha'avara”), an agreement signed between the German government and Zionist authorities in 1933 to encourage Jewish emigration from Germany to Palestine, helped Jewish expatriates transfer their assets to their new home with the activities of two trust companies in Germany and Palestine. Taken from Alon Kaplan and Meytal Liberman's book, *Trusts and Estate Planning in Israel*, 2016 and upcoming—Second Edition (Juris Publishing.)

INTRODUCTION

The Transfer Agreement and its implementation is an illustrative example of how the concept of an English trust law was used in Palestine under the regime of the British Mandate.

The Transfer Agreement (in Hebrew: “Ha'avara”) (hereinafter: Transfer Agreement) was an agreement signed between the German government and Zionist authorities in 1933 to encourage Jewish emigration from Germany to Palestine and to help these Jewish expatriates transfer at least some of their assets to their new home.¹

As will be shown, the Transfer Agreement arrangements were a series of trust arrangements similar to a bare trust under English law. The practical implementation of the Transfer Agreement was a special commercial trust framework transaction under which a trust for each emigrant was established to release blocked funds of the Jewish emigrant in Germany and transfer them to Palestine for his benefit, where, upon his arrival, the funds would be released to him.

HISTORICAL BACKGROUND

The Transfer Agreement was a response to anti-Jewish measures in Nazi-era Germany, including Hitler's wish for a Jew-free Germany, as well as a response to the economic crisis in

Germany and the Jewish boycott of Germany.² Physical violence and anti-Jewish legislation in Germany were on the rise, forcing German Jews to emigrate. In 1933 an almost complete ban on alienation of capital from Germany was imposed to counter the economic crisis. With the Transfer Agreement a way was found to move Jews out of the country without major capital flight, which would have worsened Germany's already difficult economic situation.³

Germany saw the Transfer Agreement as being in its political and economic interest: It would rid Germany of its Jews, while overcoming the Jewish boycott, and thus help its economy.⁴ Germany would earn some foreign currency from goods exported through the Transfer Agreement, for payments were made partially in Palestine pounds. The goods were largely paid for in Reichsmarks from the blocked Jewish assets, whereas the immigrants received partial compensation upon arrival in Palestine. There was never a full reimbursement for the blocked Jewish assets since an insufficient quantity of goods was purchased in Palestine from Germany. Upon arrival the immigrants received from 1,000 to 2,000 Palestine pounds, depending on the quantity of German goods purchased through the Transfer Agreement.⁵

For German Jews the Transfer Agreement was the only way to emigrate while preserving at least some of their assets.⁶

¹ FRANCIS R. NICOSIA, *THE THIRD REICH & THE PALESTINE QUESTION* 41 (1985).

² *Id.*

³ *Id.* at 41.

⁴ *Id.* at 29, 33 & 36.

⁵ *Id.* at 47.

⁶ *Id.* at 41.

Palestine, unlike other jurisdictions, was able to accept immigrants with their assets in the form of German exports, though most of the remaining capital would stay in Germany. Industry was stimulated and supported by wealthy immigrants.⁷

THE TRANSFER AGREEMENT IN PRACTICE

In 1933 two trust companies were registered: Paltreu, the Palästina Treuhandstelle zur Beratung Deutscher Juden GmbH (Palestine Advisory Trust for German Jews, Ltd) in Germany, a partnership of the Anglo-Palestine Bank and two Jewish banking houses (M. M. Warburg and Co. of Hamburg and A. E. Wassermann of Berlin) and Trust and Transfer Office Ha'avara Ltd (hereinafter: Ha'avara Ltd) in Palestine. Paltreu collected the funds of Jewish emigrants and paid the German merchants for their exported goods with these funds. Ha'avara Ltd sold the German goods in Palestine and provided the immigrants upon their arrival either with the proceeds from these transactions in Palestinian currency, by importing goods from Germany, or purchasing real estate in Palestine.⁸

LEGAL ASPECTS OF THE TRANSFER AGREEMENT

Adam Hofri-Winogradow compares the Ha'avara Agreement to a charitable trust for the purpose of "distressed" beneficiaries set up by "public-sector Zionist" organizations. He refutes this thesis with the argument that no assets were in fact "given away."⁹

It is submitted that the nature of the individual transactions was a series of private trusts.¹⁰

The purpose of the Transfer Agreement was to rescue and preserve the assets of individual Jewish emigrants from Germany. This purpose was not a charitable or public purpose trust. The assets of the Jewish emigrants were not donated, as Adam Hofri-Winogradow expresses it "giving one's assets away," but remained to the benefit of the same person, the individual Jew who wished to emigrate.¹¹

The settlor in case of the Transfer Agreement did not wish to transfer the funds to the trustee for a certain public purpose, but for a specific beneficiary, the settlor himself.

This structure may instead be compared to a transaction where funds are deposited with a custodian and the custodian charges fees for certain transfers, e.g., for foreign currency transfers. It would be more appropriate to define it as a "bare trust" under English law: A bare trust or a simple trust refers to a trust where the trustee has "no duty to perform except to convey the property to the beneficiary on demand and, so long as he holds it, to exercise reasonable care over the property, by maintaining or investing it."¹²

The bare trust is similar to a fiduciary or custodian agreement where the principal instructs the trustee to undertake a certain act, ie, to manage, protect or transfer his property or money on his behalf for remuneration. The trustee acquires ownership of assets, but holds it in trust for the beneficiary.

The Transfer Agreement was based on a mutual agreement between the Jewish emigrants and the trustee. The trustee's task was to collect the funds and to execute the transactions with the German export goods. The trustee did not have discretion on how, when or to whom the funds would be distributed, as is common for discretionary trusts established by deed, but was bound to deliver the funds to the beneficiary.

SUMMARY

The history of private trust and trust companies in Mandatory Palestine thus provides an example of a colonial population making use, for its own purposes, of the legal institutions made available by the colonizers.¹³

This article is an extract from Alon Kaplan and Meytal Liberman's upcoming book, *Trusts and Estate Planning in Israel—Second Edition*, 2025, published by Juris Publishing, Inc., all rights reserved. <https://jurispub.com/Bookstore/Trusts-and-Estate-Planning-in-Israel-Second-Edition.html>

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Meytal Liberman, Advocate and Notary, LLM, TEP, advises private clients in Israel and abroad on trusts and estate planning, including trusts, asset structuring, marital property division, wills, and incapacity planning. Meytal was admitted to the Israel Bar in 2013 and licensed as a notary in 2024. She has been licensed since 2018 to draft Enduring Powers of Attorney and other related instruments under Israeli law. Meytal has been a full member of STEP since 2015, after acquiring a Diploma in International Trust Management. Meytal is active academically and regularly lectures and publishes in the field of trusts and estates. Her writing includes a chapter in *Asia-Pacific Trusts Law*, Volume 2 (Bloomsbury, 2022) and contributions to the Hebrew book "Trust in Israel: Theory and Practice" (2017) by Alon Kaplan, for which she also served as General Editor.

⁷ Nicosia, *supra* note 1, at p. 44.

⁸ Hofri-Winogradow, Adam, *Zionist Settlers and the English Private Trust*, in *THE WORLD OF TRUSTS* 241 (Lionel Smith ed., 2013).

⁹ *Id.* at 242.

¹⁰ Alon Kaplan et al., *Israel*, at INTERNATIONAL CHARITABLE GIVING 337 (Clive Cutbill, Alison Paines & Murray Hallam eds. 2012).

¹¹ Adam Hofri-Winogradow further held that private trusts are usually trusts settled by a settlor and his legal and tax advisors and administered by them. However, the trustees, Paltreu and Ha'avara, acted on behalf of the settlors and may be compared to professional trustees, ie, such as trust companies of banks. See Smith, *supra* note 8, at 242.

¹² "A bare trust is one where the beneficiary has an immediate and absolute right to both the capital and income held in the trust. Bare trusts are sometimes known as "simple trusts." Someone who sets up a bare trust can be certain that the assets (such as money, land or buildings) they set aside will go directly to the beneficiaries they intend. These assets are known as "trust property." Once the trust has been set up, the beneficiaries can't be changed. The assets are held in the name of a trustee—the person managing and making decisions about the trust. However, the trustee has no discretion over what income or capital to pass on to the beneficiary or beneficiaries." See <http://www.hmrc.gov.uk/trusts/types/bare.htm#1>.

¹³ Smith, *supra* note 8, at 242.

