

Key Facts Trusts

The trust is a well-established concept in common law originating in England during the Middle Ages. It is established under the concept of “dual ownership” – where the legal title is vested in a Trustee, with beneficial ownership being vested in the Beneficiaries.

In most cases the establishment of a Trust, if done in good time, can better serve an individual's succession needs, than setting up a standalone Company.

Trident Trust Company (HK) Ltd is registered as a trust company under Part VIII of the Hong Kong Trustee Ordinance to provide professional trustee services and Trident Trust has had a business presence in Hong Kong since 1992. Trident Trust can establish a Trust with a resident professional Hong Kong Trustee and provide Trust administration services to the Trust or in support of a Private Trust Company.

Hong Kong – An Overview

- Special administrative region of China
- Well-established legal system based on a mixed system of English model common law and Chinese customary law (in matters of family and land tenure)
- Free market economy, highly dependent on international trade and finance
- Hong Kong has substantially implemented the internationally agreed tax standard set out by the Organization for Economic Cooperation and Development guidelines and is part of its “white list”
- Hong Kong complies with the Hague Convention in the recognition of trusts

- Hong Kong Trust law currently allows for the situs or the governing law of a trust to be changed from Hong Kong or for resettlement of the assets in a new trust, subject to the laws of the receiving jurisdiction

Taxation

- Tax-efficient legislation with a treaty network of more than 30 double taxation agreements in place
- There is no capital gains tax levied in Hong Kong
- Taxation of income in Hong Kong is assessed on a territorial basis: only income arising in or derived from Hong Kong, is subject to tax in Hong Kong
- No estate duty for locals as well as foreigners

Trust Law Reform

- Hong Kong now has a promising opportunity to become a world renowned wealth management centre following recent amendments to its trust law. On 17 July 2013 the Trust Law (Amendment) Bill 2013 was passed. This amends Hong Kong's Trustee Ordinance (Cap.29) and the Perpetuities and Accumulations Ordinance (Cap.257) which date back respectively to 1934 and 1970. These amendments usher in much needed improvements and modernisation to the legal infrastructure for trusts subject to HK law.

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Key Legislative Amendments

The most significant amendments that will come into force on 1 December 2013 are:

- Providing appropriate checks and balances
 - The trustee must exercise the care and skill that is reasonable in the circumstances, taking into account any special knowledge or experience that the trustee has or has represented that it possesses.
 - Professional trustees cannot be exempted from liability for willful misconduct, gross negligence, or fraud.
 - Beneficiaries have the right to appoint and retire trustees.
- Improvement or validation of certain governing powers or rules
 - settlors can reserve to themselves certain powers
 - abolition of the rule against perpetuities: a Hong Kong trust can be settled for an unlimited amount of time
 - abolition of the rule against excessive accumulations of income
 - provision against forced heirship rules in jurisdictions outside Hong Kong
- Enhancing trustees' default powers where the trust instrument is silent
 - In view of the complexity of modern-day trust structures, the Trust Law Amendment Ordinance 2013 enhances the default powers of trustees to ensure that the law will support effective administration of the trust even if the trust instrument does not contain specific provisions. These default powers include:
 - The ability to appoint agents, nominees and custodians to perform certain functions
 - The power to insure trust property against loss or damage
 - The entitlement to receive remuneration
 - Authorisation to invest in a widened scope of investments

Private Trust Companies

- Hong Kong trust law provides that there is no requirement to obtain a licence to act as a Hong Kong trustee.
- There is no requirement for a Hong Kong trustee to be resident or administered in Hong Kong, or for it to be a Hong Kong Company.
- This offers a good foundation to establish a Private Trust Company ("PTC") structure, usually to hold the family business or listed company shares.
- Correct administration of the PTC is crucial to ensuring successful succession planning and protection provided by the "Family Trust".
- Trident Trust can provide professional support to the PTC, as trustee of the "Family Trust", to ensure that the Trust is properly administered.

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