



TRUST IN HONG KONG



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TRUSTS IN HONG KONG



ESTABLISHING A TRUST IN HONG KONG



Why use a Trust?

The range of uses to which a trust may be put is open-ended, but flexibility and confidentiality are the principal advantages that a trust has over other legal forms designed to hold, preserve, and transfer wealth.

Private trusts do not generally need to be registered and such trusts are not subject to the same regulatory strictures as bodies corporate. For example, a trust does not need to draw up audited financial statements or file annual returns with the Companies Registry. In most cases, a public search will not reveal the identity of the beneficiaries of a trust.

The concept of trust has proved to be enormously adaptable and is widely used in financial planning.

1. Asset Protection

Trusts may be used to preserve the continuity of ownership of particular assets, such as a business, within a family. By vesting legal ownership of the assets in the trustee, the relevant individuals may be able to continue to benefit from the assets, whilst avoiding fragmentation of ownership amongst a large number of second and third-generation beneficiaries.

The creation of a trust eliminates the chance of a beneficiary's portion of assets becoming owned outside the family upon his or her death, allowing settled assets to be retained intact for the benefit of future generations. A carefully structured trust may also assist in preserving the settlor's business or assets in the event of the settlor's divorce or insolvency.

2. Succession Planning

A trust provides an efficient vehicle for the transfer of beneficial interests following the death of a settlor. Upon the death of a settlor there will be no need to obtain a grant of probate or similar formalities in order to deal with the trust fund.

Furthermore, a trust can be utilised to own shares in a corporation that owns immovable property rather than directly in the actual property itself, which might provide appealing tax and financial planning options.

3. Tax Planning

A trust may be constituted to arrive at tax-efficient outcomes both in Hong Kong and abroad. Depending on the taxing jurisdictions involved, a trust may be used to mitigate or eliminate income tax, capital gains tax, and inheritance tax/estate duties.

CREATION OF A TRUST

A trust is created when a settlor transfers property or any asset to a trustee who manages it for the benefit of a beneficiary.

Hong Kong follows a common law system. Therefore, a trust can be formed orally or in writing by two methods:

- The settlor declares that the trustee will hold the property for the benefit of the chosen person or purpose.
- The transfer of the property to the trustee.

There is no obligation on parties to register trust documents with the Hong Kong authorities regarding document registration.

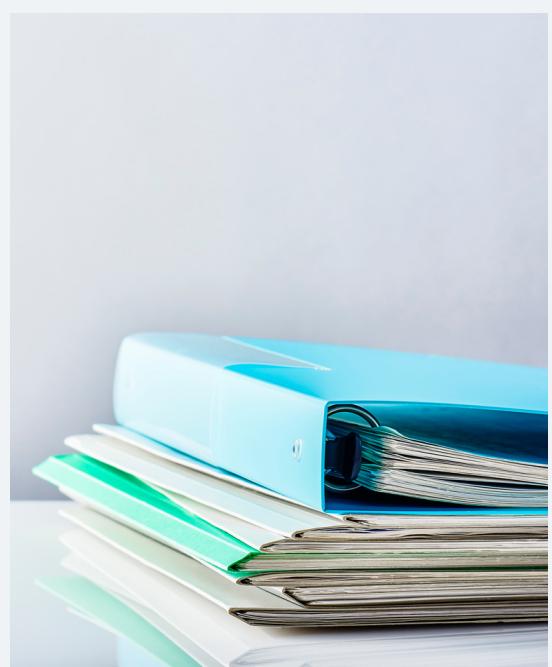
Further, submitting audited financial statements or an annual tax return is not required for a Hong Kong trust.

The provisions of the Trustee Ordinance mainly bind Hong Kong trustees.

Any property may be held under a trust, for instance, cash, securities, personal and real property.

Main uses of Trust formation

- To hold assets such as property, bank accounts, shares, stocks, and assets of offshore companies; insurance and assurance policies.
- To protect assets from creditors.



KEY FEATURES OF HONG KONG TRUST

- The trust business in Hong Kong is well-established and broad, and the financial services sector is one of the four pillars of the Hong Kong economy.
- As a global financial centre with a well-educated workforce, robust infrastructure, and a sound legal system, Hong Kong offers the trust industry a deep and solid foundation.
- Hong Kong is the gateway to China and therefore still has a clear comparative advantage over other economies in Asia.
- Many industry players believe that various global and local regulatory developments in Hong Kong will ultimately benefit the development of the local trust industry.
- The ability to attract and retain talent in Hong Kong is seen as one of the major challenges to the industry going forward.





THE HONG KONG TRUST INDUSTRY

Hong Kong's trust industry is intricate and diverse, providing an array of services to local and international clients that range from retail products and wealth and estate planning, to fund and pension administration and sophisticated trust structures.

The trust industry also encompasses a variety of market players and regulators from different segments of the financial services sector. In addition, Hong Kong stands as a renowned international centre for trust-related businesses such as legal, tax, accounting and professional services. Users of trust services range from high-net-worth individuals (HNWIs) and wealthy families, to corporates, pension scheme providers and charities.

Hong Kong has an established, diverse trust industry to support various financial services sub-sectors. The common-law concept of trusts has been in use in Hong Kong from its early days as a British colony. With this robust foundation, a sophisticated industry has emerged that offers products and solutions for institutional businesses, wealthy individuals and families, retail investors, and charities.

In addition to specialised technical trust services, Hong Kong has become a centre for trust administration as well as for an expanding array of trust-related businesses such as legal, tax, accounting and professional services, in recent years.

ADVANTAGES OF ADMINISTERING A TRUST IN HONG KONG



Hong Kong trusts are not subject to any tax. Any earning procured by the trust from the properties outside Hong Kong will not be taxable to the trustees, trust entity or beneficiaries. There is further no dividend, withholding or capital gains tax. In addition, there is no gift duty.

Settlers possess more significant control over their trust assets in Hong Kong than in any other jurisdiction. They can freely manage and invest in the trust. In some jurisdictions, however, settlors are not allowed to exert control over the daily operations of the trust.

MAIN TYPES OF TRUSTS IN HONG KONG

CORPORATE TRUST

Corporate trust providers play an important role in the Hong Kong financial services sector, providing core trustee services and important associated activities such as acting as custodians as listed below:

Core activities:

- Trust set up
- Professional trustee
- Trust administration
- Trust structuring for corporates

Retail funds, which are supported by the corporate trust structure, have seen significant growth over the past decade, although the market remains small compared to more established jurisdictions.

Related activities

- Custodian duties
- Fund administration

An important element of Hong Kong's strategy is to build on the number of recently established offshore RMB funds to help achieve the city's goal of being the main offshore RMB centre.

Industry segments

- Fund management (including MPF funds)
- Professional services – legal, tax, accounting and corporate advisory services

The trust industry is vital to Hong Kong's fund management industry, providing professional trustee services for retail investment products which are generally set up using a unit trust structure. Some of the most significant products in this category include unit trusts, exchange-traded funds (ETFs) and real estate investment trusts (REITs).

PENSION SCHEME

The main type of pension scheme in Hong Kong is the Mandatory Provident Fund (MPF) scheme that was launched by the Hong Kong government in 2000. Subject to exemptions, all employees and self-employed persons aged between 18 and 64, and are normally residing and working in Hong Kong, are covered by the MPF system.

The MPF is Hong Kong's government-mandated approach to retirement savings. Depending on employee classification, global employers may be required to contribute to these funds.

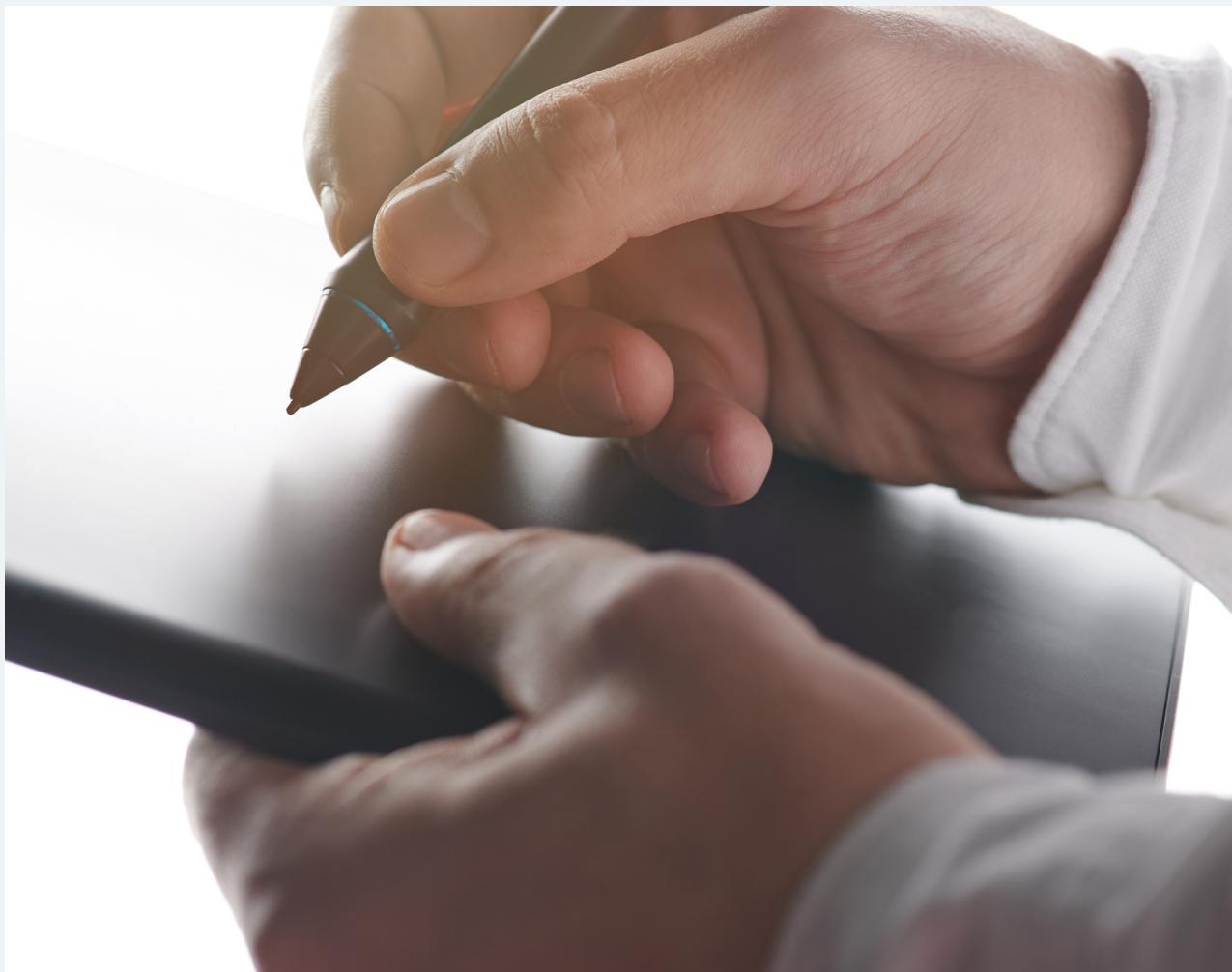
Under the MPF system, schemes are provided by third-party MPF approved trustees (generally banks, financial institutions or insurance companies) and are offered by employers to employees. Under each scheme as selected by the employer, the employee may choose from a number of investment funds based on their risk preference. The management of these investment funds can be further appointed to another third party by the MPF approved trustee managing the relevant scheme.

These schemes are likely to continue to grow and the role of the trustee within the design of the scheme will remain pivotal.

As the government is looking to increase participation in, and make enhancements to, MPF schemes, the pension system shall continue to mature over time with assets reaching a scalable size.



PRIVATE TRUST



The primary use of private trusts within wealth management relates to wealth and estate planning. While Hong Kong is at the centre of the world's largest and fastest growing markets for the super-rich in Asia, there is a growing demand for these services from UHNWIs seeking to manage the inter-generational transmission of wealth and implement succession plans for family owned businesses.

As the pool of wealthy individuals increases, wealth and estate planners in Hong Kong are seeing increasing demand from third-tier wealthy individuals.

CHARITABLE TRUST



Charitable trust represents a small proportion of the wider Hong Kong trust industry. Charitable trusts are one of the four structures that can be used to set up a charity.

Unlike other areas of the Hong Kong trust industry where offshore trusts dominate, charitable trusts in Hong Kong are formed under Hong Kong Law.

As wealthy individuals look to create long-term legacies through philanthropy, charitable trusts are becoming important to advisors working with these individuals.

The trust structure provides a tool which the settlor can use to create a fund and a supporting organisation to achieve a specific charitable purpose that can survive generations.

OTHER TYPES OF TRUSTS





Bare Trust

A basic or single form of trust in which the beneficiary has all the right to assets once he/she reaches the age of 18. This trust is mainly used by parents or grandparents for the benefit of their children.

Testamentary Trust

Any trust that is lawfully created from a will. This type of trust is effective upon a settlor's death. The beneficiaries inherit property according to the specifications in the will.

Inter-Vivos Trust

This type of trust is created by a living person and can be revocable or irrevocable. The trust operates once the assets have been listed in the trust. The trustee holds vast powers for determining the allocation of benefits and investments.

Revocable Trust

The settlor has the right to alter or revoke the trust, meaning that the trust can revert back to the settlor at any time. Terms and stipulations can be amended at any time.

Irrevocable Trust

The settlor loses control over the assets in the sense that irrevocable trusts are fixed and unalterable after the trust deed has been signed. This type of trust helps protect the beneficiary's inheritance from creditors.

Fixed Trust

The beneficiary's entitlement is laid out in the trust deed. The trustee loses the responsibility to decide the distribution of trust funds.

Discretionary Trust

The beneficiary's entitlement is laid out in the trust deed. The trustee loses the responsibility to decide the distribution of trust funds.

REGULATORY REGIME FOR THE HONG KONG TRUST INDUSTRY



A number of regulators have jurisdiction over the portfolio of products and services being offered and managed in the Hong Kong market. The regulators and the areas they cover are:

1. Mandatory Provident Fund Schemes Authority (MPFA)

Regulates and supervises the operations of mandatory provident funds (MPF) and occupational retirement schemes (ORSO) in accordance with the Mandatory Provident Fund Schemes Ordinance (MPFSO). It registers provident fund schemes, approves trustees of registered schemes, regulates the affairs and activities of approved trustees and formulates relevant rules or guidelines.

2. Securities and Futures Commission of Hong Kong (SFC)

Regulates the securities and futures markets in accordance with the Securities and Futures Ordinance (SFO) and subsidiary legislation. Its responsibilities include setting and enforcing market regulations, licensing and supervising intermediaries seeking to conduct regulated activities for which the SFC has regulatory responsibility, supervising market operators, authorising investment products and/or offering documents prior to their distribution.

3. Hong Kong Monetary Authority (HKMA)

Regulates financial institutions (including banks, deposit-taking companies and money lenders) and aims to keep the Hong Kong dollar stable through the management of the Exchange Fund and monetary policy operations in accordance with the Exchange Fund Ordinance and the Banking Ordinance.

4. Insurance Authority (IA)

The Insurance Authority (IA) took over the regulation of insurance intermediaries from the three Self-Regulatory Organisations: Insurance Agents Registration Board established under The Hong Kong Federation of Insurers, The Hong Kong Confederation of Insurance Brokers and Professional Insurance Brokers Association.

5. Companies Registry (CR)

The CR administers and enforces most parts of the Companies Ordinance. It registers local and non-Hong Kong companies and statutory returns, and provides the public with services and facilities for inspecting and obtaining company information kept in the Companies Register. Since 1 March 2018, the CR has taken up a new role as the licensing authority for Trust or Company Service Providers (TCSPs).



REGULATION OF TRUST AND COMPANY SERVICE PROVIDERS (TCSP)



DEFINING A TCSP



Under the regulations, a TCSP is an individual (such as a sole proprietorship), a partnership or a corporation that provides one or more of the following services to other persons:

- Form corporations or other legal persons.
- Act, or arrange for another person to act, as a director, named secretary, partner of a corporation or partnership, or similar position in relation to other legal persons.
- Provide a registered office, business address, correspondence or administrative address for a corporation, a partnership, or any other legal person or legal arrangement.
- Act, or arrange for another person to act, as a trustee of an express trust or similar legal arrangement.
- Act, or arrange for another person to act, as a trustee of an express trust or similar legal arrangement, or a nominee shareholder for a person other than a listed entity.

STATUS ENHANCING

The licensing arrangements aimed to strengthen Hong Kong's status as a global financial centre. The legislation's importance is reflected in the fact that failure to comply carries a potential fine and imprisonment.

At a high level, the process involves a test to identify if a TCSP, and every relevant person of the TCSP, are fit and proper to carry on or be associated with a trust or company service business. Before the new regime, trust or company service providers in Hong Kong did not have to adhere to such tests.

TCSPs are also required to apply for a licence, and the Registrar of Companies has the authority to approve or decline any application. It also has the power to suspend or withdraw the right to do business where there is evidence that a party has failed to observe the regulations.

The background to the change was laid out in the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance (Cap. 615).

The value of the new regime

The licensing arrangements are a stringent method to ensure the appropriate behaviour of all TCSPs that fall within their remit. However, viewed positively, they are an essential extension of Hong Kong's reputation for professionalism and the quality of its business sector.



TYPES OF TRUST SERVICES

- **Trustee services**

Trustee services in Hong Kong refer to a wide range of financial services that can be provided to individual, family and corporate clients. Trustees have a special fiduciary responsibility and are expected to make decisions in the beneficiary's best interests.

- **Trust and fiduciary services**

Trust and fiduciary services typically involve the transfer of property or other assets to another party and are categorized into various types, with the most common one being a will.

- **Trust asset and management services**

A professional trust management services provider in Hong Kong can ensure that the administration and management of your trust assets are properly taken care of. Proper administration and management of trust assets can help to reduce taxes while ensuring that assets are distributed according to your preferences instead of the court's legal standards.

- **Private Trust Setup Services**

Setting up a private trust company in Hong Kong is a good way to preserve wealth and assets in trust. A private trust company is an ideal tool for family businesses and investment planning while ensuring that the succession process is smooth.

- **Estate Planning Services**

Early estate planning and writing a will in Hong Kong can ensure that a person's wealth and assets are passed properly to desired loved ones and help to reduce taxes while ensuring that the wealth is preserved properly.

A well-constructed will is the only way of ensuring that a person's wealth and assets are inherited and managed by desired people. This control over one's assets is particularly important when said assets are split across different jurisdictions.

How we can help?

- We have extensive experience in both domestic and international trust services.
- We consult on every stage of a trust's life-cycle, from settlement, to restructuring, to termination, and have consolidated experience in designing and implementing trust structures.
- We benefit from an outstanding network in all major common law jurisdictions, and can therefore advise on international trusts and tax services.
- Our team is also in a position to assist trustees, settlors, and/or beneficiaries with any trusts disputes as and when they arise.
- We are in a unique position to provide full service consultation services in a time and cost efficient manner.

SERVING CLIENTS WORLDWIDE



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