

ICS TRUST (ASIA) LIMITED



An Introduction to Trusts

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TRUSTS

I. THE HISTORICAL BACKGROUND OF TRUSTS

The trust is a very old and established legal concept dating from Roman times. Trusts were extensively used in England during the Crusades and other foreign campaigns when prolonged absences were commonplace. Trusts were in use in England as early as the 11th century. Initially, a trust ensured that certain property could be enjoyed by one's descendants, which in turn often avoided the payment of feudal dues. Thus, trusts have for centuries been a feature of tax planning.

To create a trust, a person (the "settlor" or "grantor" in the US) would transfer the ownership and title deeds of specific assets or property to a close friend or a younger relative (the "trustee") relying to a great extent, on the trustee's good faith to carry out his instructions or wishes. The word "trustee" (also called a fiduciary), is derived from the Latin word "fidere," which means "faith." The settlor would stipulate in the trust that the trustee was to "use" the property in a certain way, typically for the benefit of the settlor's oldest son, the spouse and other relatives (the "beneficiaries"). An agreement was usually drawn up and signed to record the arrangements (the "trust deed").

Trust arrangements were not always respected. With the settlor absent overseas for extended periods, and in many instances, probably dead, even the most loyal trustee could succumb to the temptation to disregard the terms of the trust and benefit himself or another non-beneficiary. In such cases, the true beneficiaries had to resort to the courts of Chancery for assistance. However, these courts often rejected the beneficiaries' claims because they lacked the necessary title deeds to prove ownership. This led to the development of the courts of Equity, which would compel the defrauding trustee, on equitable grounds, to observe the terms of the trust and make restitution to the beneficiaries of any deficiency in the trust's assets.

II. WHAT IS A TRUST?

The trust stems from English common law and thus exists in all countries whose legal system is based on English common law principles. In general terms, one can describe the trust as an arrangement between two parties, whereby one party (the "settlor" or "grantor") transfers certain or all of his assets into the nominal ownership of another party (the "trustee") who is responsible to hold them for the benefit of third persons (the "trust beneficiaries").

A trust can be created by a living person, which is then called an *inter vivos* (or “lifetime”) or it can come into being upon the death of a person as a result of a *testamentary* (or “will”) *trust* disposition or will, which is known as a *testamentary trust*. A trust can be used to own or operate anything, such as a functioning business company, but it has no legal personality of its own, so it cannot open a bank account for example.

An important key to understanding how a trust works stems from the type of dual ownership inherent in any trust structure. The trustee is the legal owner of the property as the assets are held in the name of the trustee; while the beneficiaries have beneficial or equitable ownership of the trust property. Thus, when a trust is created (settling of a trust), legal ownership has been separated from the beneficial ownership and enjoyment of the property.

It is this dual ownership that gives trusts their unique attraction as tax planning vehicles. Once the settlor has placed assets in a trust, he or she is no longer the legal owner. If, however, the settlor is a beneficiary of the trust, he or she remains a “beneficial owner” vis-à-vis the trustee. This dual character provides the settlor and the beneficiaries with measures to assist with creditor protection planning, as well as estate and tax planning.

Finally, it is worth emphasizing that there needs to be a transfer of legal ownership of the property to establish the trust. This should be fully documented to show that a change of ownership has in fact taken place. An important aspect of establishing a trust is that intention to form it has been achieved. The test that a valid trust has been created is certainty of objects and subjects. Clear demonstration of a transfer of the legal ownership of the Trust fund will contribute greatly in establishing the certainty of subject.

III. TYPES OF TRUSTS

Many different types and forms of trusts exist. The most common types of trusts are the discretionary versus the fixed or non-discretionary trust, and the revocable versus irrevocable trust. The “Creditor Protection Trust” and the “Asset Protection Trust” have recently become very popular.

A. *The Discretionary Trust*

This is the most commonly used form of trust and has proved to be very effective for protecting family wealth.

The settlor gives the trustee discretion to decide which member or members of a class of beneficiaries should be entitled to receive trust property such as money. In fact, the trustee generally has discretion as to whether any distribution of the trust property (whether income or capital) should be made at

all, and if so, to what extent, and to whom. The settlor will almost always, when settling a discretionary trust, provide the trustee with a letter of wishes expressing what he hopes will happen even though he acknowledges that the trustee is not bound to follow his wishes.

A form of discretionary trust, called the “accumulation and maintenance trust”, is designed to provide primarily for children. Income producing assets are placed into the trust and the trustee is given powers to accumulate the income or to apply it for the maintenance or schooling of children. As such, the accumulation and maintenance trust is a very useful device to ensure that children will be properly provided with an education. In some countries, such as the United States, this type of trust can provide an effective means of splitting income in order that it be taxed at a lower overall tax rate.

The discretionary trust has become very popular, predominantly for two reasons:

First, none of the beneficiaries have a direct claim against the trust fund, since it is entirely a matter of the trustee’s discretion as to whether a particular beneficiary will receive anything at all from the trust. This is critical in tax and estate planning, as well as in the avoidance of sovereign risk. As the beneficiaries have no specific interest in the trust fund, actions by creditors or governmental bodies against a particular beneficiary are generally of no effect, and the claims cannot be enforced.

Second, due to the discretion granted to the trustee, this type of trust has a great deal of flexibility and thus enables the settlor to respond quickly and efficiently to changing circumstances (in future years). For example, if a beneficiary of a discretionary trust becomes seriously ill and incurs high medical expenses, the trustee can increase payments to this beneficiary by exercising its powers of discretion.

B. The Fixed or Non-Discretionary Trust

In contrast to the discretionary trust, the deed of trust of a fixed or non-discretionary trust specifies what portion of the trust income and assets should be distributed to each beneficiary and when such distributions should be made. A typical example of a fixed interest trust is a gift of a house “to my wife for the duration of her life, then to my children.” The provisions of the trust deed can be changed during the settlor’s lifetime, but effecting such changes would require time-consuming and costly legal assistance.

A beneficiary of a non-discretionary trust may have on a specific date a fixed interest in, for example, the income of the trust fund or a specific amount of

capital. Due to the exact nature of this interest, it can be sold by the beneficiary, attacked by creditors, taxed, expropriated or otherwise interfered with by the governmental bodies of the country where the beneficiary is resident.

Due to these significant drawbacks, the non-discretionary trust must be carefully considered and is hence more suitable for a settlor who does not want to give the trustee full discretion.

C. The Irrevocable Trust

The irrevocable trust, cannot, as its name suggests, be revoked (taken back) by the settlor. However, in certain cases, it can be terminated. For example, if the settlor is also a trust beneficiary or under the deed can be added to the class of trust beneficiaries, and if the trustee has the discretion, the trustee may distribute the entire trust fund to the settlor, thereby terminating the trust.

An irrevocable trust certainly offers better protection than a revocable one in that the assets placed into an irrevocable trust constitute a completed gift and are no longer considered property of the settlor or the settlor's estate. These protections are usually quite important from a tax standpoint as well as with respect to creditor protection.

D. The Revocable Trust

The revocable trust allows the settlor or any another appointed person to revoke or cancel the trust, at which time the assets immediately revert to the settlor. The power to revoke the trust ceases upon the death of the settlor, or, if applicable, upon the death of another appointed person who has been granted this power. When these events happen, the revocable trust then becomes an irrevocable trust.

Many settlors choose to create a revocable trust, because it guards their rights to cancel the trust and take the assets back at any time. Revocable trusts are popular in the USA because by putting assets into a revocable trust, the need for probate may be avoided.

E. The Creditor Protection Trust or Asset Protection Trust

Asset Protection trusts have become very popular due to an increasingly litigious society, especially in the USA. In addition, professional indemnity insurance has now become prohibitively expensive prompting many professionals, such as doctors and lawyers, high net worth individuals and even companies, to legitimately protect their assets against possible future

malpractice claims or more general creditors. Such trusts help to avoid or deter litigation through legitimate use of a foreign jurisdiction's trust legislation.

In general, creditor protection trust legislation (such as the Fraudulent Dispositions Act in The Bahamas), protects assets from all litigation started more than a certain number of years after the assets have been transferred into the trust. Under the laws of the relevant jurisdiction, foreign judgments are often not recognized, therefore creditors must commence independent proceedings in the jurisdiction's courts and must prove that the settlor had an intent to defraud them when creating the trust before the claim will be considered.

In addition to all the features of a standard trust, a creditor protection trust, when coupled with relevant jurisdictional law, can offer a high degree of protection and confidentiality. The most significant features in such a trust are that it must be discretionary and irrevocable; the settlor should not be a beneficiary and the trust fund should be limited to liquid assets (e.g., cash, deposits, marketable securities), which can easily be held in an offshore jurisdiction.

It should be noted that the actual validity of a trust may be attacked (by beneficiaries, creditors, deprived heirs) on the basis that although the trust was properly constituted (settled) and intended to have legal effect, the operation of the trust demonstrated that the settlor retained effective ownership and control of the assets. In effect, therefore, the trust is a sham. The point is, that a trustee may be deemed to hold property as the nominee of the settlor and not in its own right, particularly when the trustee acts upon the instructions of the settlor and exercises no independent discretion. The chances of this occurring when a professional trustee is utilized, are greatly reduced.

F. The Offshore Trust

An Offshore Trust is not really a type of trust, but anyone seriously researching establishing a trust will surely come across the term, so we should at least define it here. Basically, an offshore trust is one established in a jurisdiction different from the domicile of the settlor. However, it is generally understood to be a trust established in one of the offshore financial services jurisdictions like, BVI, Cayman Islands, Cook Islands, and Anguilla to name a few. Offshore based trusts have proved to be highly efficient vehicles for establishing the legitimate ownership of both offshore and onshore assets. They have been very useful in succession planning and family wealth management. The taxation of trusts in many developed countries is very complex due to their use for favourable tax planning. As a rule and depending upon factors such as the domicile of the settlor and beneficiaries, offshore trusts enable asset growth with minimal local taxation.

IV. WHO ARE THE PARTIES TO THE TRUST

A. *The Settlor*

The settlor is the person who transfers (“settles”) assets into the trust at its commencement. The trustee may look to the settlor for guidance in administering the trust. However, if the settlor is a nominee, this will not be the case.

An adult of sound mind can be a settlor and create a trust; similarly any person who is able to acquire property can be a trustee.

A settlor must have an unequivocal intention to create a trust, otherwise, the courts of the relevant jurisdiction may cancel or rectify the settlement. This is the case if the Trust deed was executed under duress or in ignorance or mistake, or procured by fraud or misrepresentation.

A common misconception is that the settlor can continue to treat the assets transferred into the trust as if they were still his own assets. This is clearly not the case and it is fundamental to understand that once the trust has been properly settled, (i.e., the assets have been transferred into the trust and the trustee is thus vested with legal title to the trust property), the settlor has given up both ownership and effective control of the assets.

B. *The Trustee or The Trustees*

The trustee, as the legal owner of the assets of the trust, is the person or entity entrusted by the settlor to administer and control the trust property (also referred to as the “trust fund”) for the benefit of the beneficiaries in accordance with the terms of the trust deed (also referred to as the “settlement”).

The trust assets constitute a separate trust fund and are not part of the trustee’s estate. Although the trustee assumes legal ownership of these transferred assets, the trustee may not enjoy the beneficial rights to the property or the “fruits” of the trust.

It is vital to choose your trustee very carefully as it is the trustee who will own all the assets of the trust in its capacity as trustee. The trustee’s responsibilities and duties should not be taken lightly. They must demonstrate a duty of care, utmost good faith and professional diligence in their role as trust administrator for the benefit of the beneficiaries. The trustee is also responsible for managing the investments and liquid assets of the trust. As a result, they normally err on the side of caution and adopt a conservative approach aimed at preserving the capital foundation of the trust.

Trustees are normally at liberty to engage third party professionals such as investment managers to aid in the running of the trust. They are also usually empowered to take their fees from trust property they hold. Such fees are often detailed in the trust deed.

The responsibilities and possible legal liabilities of the trustee must not be underestimated, and on account of these serious issues, most settlors obtain additional comfort by choosing a professional corporate trustee. Corporate trustees are subject to a number of rules which do not apply to individual trustees, for example, certain licensing rules and minimum capital requirements. Significantly, it is well established that a professional trustee owes a higher duty of care in the administration of trusts than a non-professional.

C. The Beneficiaries

The beneficiaries are the persons selected according to the terms of the trust deed to enjoy the trust property or income arising from it. While the beneficiaries enjoy the beneficial rights to the trust property, they have no legal rights to its ownership, as legal title is vested in the trustee.

Generally, any person irrespective of his age or mental capacity can be a trust beneficiary. Trusts can often be very useful if managing assets and providing income for those beneficiaries who are too young, too old, or too ill to manage them on their own.

D. The Protector

The protector is a person or entity appointed by the settlor to liaise with the trustee to ensure that the settlor's wishes are followed closely. The protector, under the terms of the trust deed, must often give consent before the trustee is permitted to exercise certain powers, such as the distribution of trust assets. Often the protector is a member of the settlor's family or some other close, trusted friend who has an in-depth knowledge of the settlor and the settlor's family. For many settlors, the appointment of a protector represents a form of insurance that the trustee will comply with his or her wishes.

A protector may also be a company controlled by the settlor's family or their lawyer or trusted friend.

V. WHAT DOCUMENTS COMPRISE A TRUST?

A. *The Trust Deed*

The trust deed is the instrument entered into between the settlor and the trustee, stipulating the terms under which the trustee must administer the trust fund. It also enumerates the role and powers of the trustee, the role and powers of the protector and often stipulates who the beneficiaries are to be.

The fundamental feature of the trust deed is that, as opposed to a contract, it is capable of being enforced by the beneficiaries, who were not a party to the creation of the trust deed.

B. *The Letter of Wishes*

The letter of wishes (also referred to as the memorandum of wishes) is a letter from the settlor to the trustee, setting out the guidelines the settlor would like the trustee to follow when administering the trust. The letter of wishes may always be changed by the settlor as circumstances change.

As the trustee must act independently, the letter of wishes is merely an expression of the wishes and desires of the settlor. It is not part of the trust deed and is not a legally binding document. It is, however, customary for the trustee to follow the wishes of the settlor as long as they are not in conflict with the spirit and purpose of the trust and do not create any breach of the law or the terms of the trust deed.

VI. WHO HAS THE POWER OR THE DUTY?

A. *The Settlor*

When the trust has been properly settled, the settlor has given up all his rights to the trust property. The settlor can be given powers, which are stipulated in the trust deed. These powers may include the power to revoke the trust or the power to remove and appoint protectors. Once the trust has been properly settled, the settlor generally has no duties with respect to the trust.

B. *The Trustee*

The trustee has a right to reimbursement (as stipulated in the trust deed) from trust property of all expenses properly incurred with respect to the administration of the trust. The trustee may not automatically remunerate itself for the provision of trustee services.

The trustee is charged with fiduciary duties of care in administering the trust and held to standards of financial prudence in investing the trust fund. The trustee must administer the trust in accordance with the powers granted to it by any statutory law, which may govern the trust and by the trust deed. In this respect, the trustee's duties and powers are in many instances closely linked.

The settlor can give the trustee very broad powers and discretion in managing and distributing trust assets; or the settlor can restrict such powers, for example, by permitting the trustee to make specified investments approved by the settlor or to make specified distributions to the beneficiaries upon their attainment of a certain age. It is the general trend, however, to create a so-called "discretionary trust" which permits the trustee to have the widest possible powers in order to maintain the flexibility required to meet changing circumstances, such as the general living situation of the beneficiaries, which can vary from time to time.

C. The Beneficiaries

Generally, every duty imposed on the trustee represents a right conferred on the beneficiaries of the trust. Accordingly, beneficiaries have the right to have the affairs of the trust conducted prudently, and to have the beneficial interests distributed in accordance with the provisions of the trust deed. These rights are referred to as rights of a "negative" nature, in as much as they are concerned with ensuring that the trustee does not fail to perform his duties. The beneficiaries do not have rights of a more positive nature. They may take legal action against the trustee in case of a breach of trust or a departure from the terms of the trust deed. Although the beneficiaries may have a right to information about the trust, they do not necessarily have the right to view trust documents.

D. The Protector

Essentially, the protector acts in a fiduciary capacity to safeguard the interests of the settlor or the ultimate beneficiary. The protector is given particular powers by the settlor to oversee the performance of the trustee in the satisfactory administration of the trust. These powers may also be very broad, for example, giving the protector the power to veto certain decisions the trustee wishes to make or to advise the trustee as to which beneficiaries should receive trust distributions and in what amount.

VI. THE BENEFITS AND USES OF A TRUST

The use of an offshore trust can produce many substantial benefits. As always, proper professional advice needs to be taken in one's country of

citizenship, residence and domicile before implementation. The major advantages of an offshore trust include:

A properly planned and implemented trust can result in many substantial benefits. It is always advisable of course to seek appropriate professional advice in the jurisdiction of the settlor and beneficiaries where relevant. Some of the benefits of establishing a trust follow.

Family succession and Intergenerational planning: Settlers wish to ensure their preferences for wealth distribution are met after their demise and a trust is far more difficult to challenge than a will. The education and basic welfare of successive generations can be taken of and they can be protected against relatives who are incapable of or unwilling to undertake financial management for subsequent generations of beneficiaries.

Asset protection: increasing numbers of people are using trusts for protecting their assets from creditors and attack by would be litigants. Lawyers, doctors, accountants are all increasingly under personal threat from litigation aimed at attacking personal wealth in the event of misfortune, legally proven or otherwise.

Divorce in many countries can be equally ruinous to wealth. However, keeping family wealth in discretionary trusts can protect it from the matrimonial courts.

Privacy: Most offshore jurisdictions have robust privacy legislation. The arrangements made then between a settlor and trustee to establish a trust can remain private and undisclosed. The settlor may have assets the beneficiaries are not aware of and may want the trustee to maintain this arrangement after his demise.

Tax planning and savings: Trusts present many opportunities to plan for and mitigate the possible affects of inheritance, property and investment taxes. The benefits tend to arise when multiple assets are at stake and the wealth of higher net worth individuals is being planned, but increasingly, trusts are established where even single assets are settled and the effective management of them is paramount to the settlor. Nationalities of the settlors and beneficiaries play a large part in the benefits derived from a trust. Income or capital gains tax may be saved by assets held in an offshore trust.

The costs of setting up and maintaining a trust are fairly reasonable and the use of trusts is not restricted to just the super wealthy. Costs are also relative to the expected gains and peace of mind in having the solution in place for the inevitable. Proper advice taken in the settlor's own domicile may add to initial

expenses. The use of a trust should also be weighed with care before significant lifestyle changes, such as retirement or moving residence to a new country.

Most jurisdictions permit migration of existing trusts. This is sometimes useful as the jurisdictions providing the most effective asset protection change.

VII. CONCLUSION

We hope this brief introduction to trusts has improved your understanding about this ancient legal structure. Trusts are very useful and quite essential for both modern day tax planning and asset or creditor protection.

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We will be pleased to provide you with further advice concerning trusts and to act as your trustee.

HONG KONG AS A TRUST JURISDICTION

By **KISHORE K. SAKHRANI**

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INTRODUCTION

Public and aggressive promotion of a large number of offshore trust jurisdictions in exotic locations have perhaps obscured the fact that, Hong Kong itself is worthy of consideration as a jurisdiction in which to establish a trust either by using a local Hong Kong trustee or making the settlement subject to the laws of Hong Kong.

A major advantage of using Hong Kong to form a Hong Kong trust is the fact that, unlike a number of “sea and sand” jurisdictions, it is the second largest financial centre in South East Asia after Japan, supported by most of the world’s largest banks, and its legal and tax system is the best in Asia.

TRUST LAW IN HONG KONG

Hong Kong, now more correctly known as the Hong Kong Special Administrative Region, People’s Republic of China, continues to enjoy the same judicial system established under British rule, and its trust law, encompassing statute and case law, is firmly based on English law.

Features of Hong Kong trust law are as follows:

1. **Common trust powers:** The trust law largely follows English law and sets out the usual wide range of administrative and investment powers and discretions regulating the behavior of trustees. In summary, the powers and discretions are similar to the powers set out in most other English common law jurisdictions, such as the British Virgin Islands (‘BVI’) and Jersey.
2. **Discretionary settlements; revocable, non-revocable:** As with other jurisdictions, Hong Kong trust law provides for settlements that are fully discretionary, and the trustee may hold the trust assets for the perpetuity period and distribute them on a discretionary basis amongst named classes of beneficiaries. Both irrevocable and revocable trusts may be formed.

3. **Common modifications:** As with most trust deeds in other jurisdictions, powers wider than those set out in the *Hong Kong Trustee Ordinance* are usually incorporated in a Hong Kong trust deed, including wider powers of investment, power to trade, powers to make loans to the beneficiaries, and power for the trustee to resolve and seek consent to a transaction where there may be a conflict of interest, to name a few areas only. The terms of the typical Hong Kong trust deed will not differ materially from many other trust deeds used in the more common offshore jurisdictions.
4. **Broad Trustee Powers:** Powers are usually vested in the trustee to add or exclude beneficiaries, vary the terms of the trust, make loans to beneficiaries and to change the proper law applicable to the settlement. These powers may be subject to the consent of the settlor, protector or beneficiaries.
5. **Settlors of a trust:** The settlor may be a Hong Kong or foreign settlor, or the settlor may be a nominee. There are no taxation implications in Hong Kong relative to a foreign settlor who settles non-Hong Kong assets on a trust.
6. **Protectors:** Although Hong Kong trust law does not specifically refer to protectors, they may be appointed under the trust deed, and may be either a corporate or an individual and resident in any jurisdiction, including Hong Kong.
7. **Who may be trustees of a Hong Kong trust:** Hong Kong law allows appointment of individuals or private corporate entities as trustees. An offshore company may be the trustee of a trust where the proper law of the trust is Hong Kong.
8. **No public registration:** There is no requirement to register or make public any inter-vivos private trust settled by an individual, and the contents of the trust deed are confidential.

TAXATION

1. **Taxation of a trust:** Hong Kong is a low tax jurisdiction (15% and 16.5% for individuals and companies respectively), and operates a territorial tax system which **exempts** tax on profits earned **outside** Hong Kong's borders. Profits tax is assessed on companies, partnerships and other business entities, and, in very limited circumstances, a trustee, in respect of income earned in Hong Kong. However, for the foreign settlor of a Hong Kong trust owning assets

entirely offshore, the position is simple. Under Hong Kong's territorial tax system, income derived by the trust from assets **outside** Hong Kong will **not** be taxable to the trustee, the trust entity or the beneficiaries. Hong Kong is, therefore, no different from other tax jurisdictions in this regard.

2. **Taxation of beneficiaries:** Distributions to beneficiaries from a Hong Kong trust out of income earned either in Hong Kong or outside Hong Kong are not taxable in Hong Kong in the hands of the beneficiaries wherever located. There may, of course, be tax consequences in their country of residence.
3. **Gifts to the trust by a settlor:** There is no gift duty in Hong Kong, and gifts of property in Hong Kong, or the forgiveness of a debt based in Hong Kong or elsewhere, attract no gift duty nor are there any profits or other tax consequences based on accrual accounting rules, which do not exist in Hong Kong.
4. **No capital gains or goods and services taxes:** Hong Kong has no capital gains taxes and any goods and services or value added taxes. A Hong Kong trust selling property or other assets in Hong Kong or elsewhere at a substantial profit is free to distribute that profit, free of tax.

SUMMARY OF THE ADVANTAGES OF A HONG KONG TRUST SETTLEMENT

Having considered the essential features and legal and tax implications of a discretionary trust settlement, what are the advantages for the foreign settlor in forming a trust based in Hong Kong and with a Hong Kong trustee?

Much will depend on the settlor's personal circumstances and country of residence, but Hong Kong would appear to offer the following advantages over other well known jurisdictions:

GENERAL ADVANTAGES

1. **Stable political environment:** China has lived up to its promises to implement the "One Country, Two Systems" enshrined in the Joint Declaration between Britain and China, is not involved in domestic policy issues in Hong Kong. Hong Kong itself has a Bill of Rights and is a signatory to most major international conventions on human rights.

2. **Major financial centre:** A trust established in Hong Kong enjoys major advantages over trusts in other jurisdictions because of access to major international banks and investment opportunities. As well, banking, legal and accounting services of the highest calibre are available in Hong Kong as opposed to many offshore tax jurisdictions.
3. **No exchange controls and peg with US Dollar:** Hong Kong has no currency controls and the local Hong Kong Dollar is pegged to the US unit at HK\$7.80: US\$1. Funds in any currency can be freely transmitted at any time.
4. **Bank accounts:** Unlike most other jurisdictions, bank accounts in most currencies can be opened in Hong Kong.
5. **No tax on interest and dividends, and no withholding taxes:** There are no taxes on interest, not on dividends, and both profits derived by the trust can be remitted offshore without any withholding or other taxes.
6. **No residency / approval for foreign settlors:** Hong Kong has no controls on foreign persons or entities settling trusts or buying assets in Hong Kong.

SPECIFIC ADVANTAGES IN TRUST LAW AREA

1. **Hague Convention of the recognition of trusts:** Hong Kong has adopted and complies with all major international conventions relative to international law, including the Convention Applicable to Trusts and their Recognition, Hague Convention.
2. **Free and unrestricted transfer of trust income and profits:** The combined effect of Hong Kong's tax system will allow a resident Hong Kong trust which owns assets outside Hong Kong to remit income from those assets to the trust in Hong Kong without such income being taxable in Hong Kong and to remit it out again without withholding or other taxes.
3. **Use of Hong Kong trust as holding vehicles and repository of profits from operations elsewhere:** As remissions of income can come through the trust without the need for prepared accounts or audits of a trust in Hong Kong, the Hong Kong trust is an ideal mechanism for holding the ownership of other companies doing business elsewhere, with confidentiality and access to investment and banking facilities an added advantage.

4. **Change of proper law of the trust / resettlement:** Hong Kong trust law allows the situs or the law of the trust to be changed from Hong Kong or resettlement of the assets in a new trust, subject to the laws of the receiving jurisdiction.
5. **A major advantage over other jurisdictions:** Hong Kong is unique in the sense that income and profits of a trust earned in the actual jurisdiction of the trustee are exempt from tax, unlike other countries where profits may only be exempt if they are derived offshore, and trustee and other services are situated outside the trust jurisdiction. It is an enormous advantage to have the trustee and banking, investment, legal and accounting services all based in the same jurisdiction and subject to the same law, and in that respect, Hong Kong's advantages cannot be duplicated.
6. **Secure trust jurisdiction based on English law:** While Hong Kong trust law has not incorporated into its statute law some features of other jurisdictions, such as protectors and purpose trusts, a properly drawn trust deed can include most of these features, which in other jurisdictions are in any event subject to the terms of the trust deed. In summary, no trust established in Hong Kong is at any major disadvantage as compared with other jurisdictions.

SUMMARY

On any pragmatic view of the matter, the overall advantages of Hong Kong as the situs for a trust are compelling. Traditional tax havens are under attack. Many have no infrastructure. Hong Kong is a major finance and business centre well known internationally and the finance capital of China. Its role as a trust centre is likely to expand, and new services for trustees and their advisers are developing. Already the combined advantages of its trust and tax law cannot be matched by any other offshore centre, and for security reasons alone, it seems logical to base a trust in a well known and established financial centre.



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