

Business Succession

Will And Trust

生意承傳 – 遺囑與信託

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How to plan Business Succession

如何計劃生意承傳

A brief introduction

- ◆ Unlimited company 無限公司
 - Sole proprietor 個人東主
 - Partnership 合夥生意

- ◆ Limited company 有限公司

- ◆ Joint Venture 合資企業

Partnership

- ◆ Partnership dissolves upon death of a partner
合夥人身故，合夥生意解散

Deceased's estate is entitled to share partnership asset
死者後人有權分享合夥人生意的資產

Limited Company

- ◆ Limited Company - Shares passes to Deceased estate
有限公司的股東身故，股份由後人繼承

Tax 稅務

- ◆ No estate duty 無遺產稅
- ◆ No stamp duty by way of succession
繼承 – 無印花稅

Will and Law of Succession

遺囑及繼承法

What Happen If Died Intestate ? 如果沒有立遺囑，死後會怎樣？

Law of Succession

繼承法

- Probate 遺囑檢定書
- Letters of Administration 遺產承辦書

Law of Succession 繼承法

Relative Surviving	Other Relatives	Entitlement
1. Spouse	No issue, or parent or brother or sister of the whole blood or issue of such a brother sister	All to spouse
2. Spouse and issue	Other relatives immaterial	Spouse takes \$500,000 and half of the residue; the other half is held on statutory trusts for issue
3. Spouse and parent or brother or sister of the whole blood or issue of such brother or sister	No issue	Spouse takes \$1,000,000 and half of the residue; the other half is held for parent(s) or on statutory trusts for such brothers or sisters
4. Issue	No spouse	All to issue on statutory trusts
5. Parent(s)	No spouse, no issue	All to parent(s)
6. Brothers and sisters of the whole blood	No spouse, no issue, no parent	All to such brothers and sisters on statutory trusts
7. Brothers and sisters of the half blood	No spouse, no issue, no parent, no brother or sister of the whole blood	All to such brothers and sisters on statutory trusts
8. Grandparent(s)	None of the above	All to grandparent(s)
9. Uncles and aunts of the whole blood	None of the above	All to such uncles and aunts on statutory trusts
10. Uncles and aunts of the half blood	None of the above	All to such uncles and aunts on
11. None of the above relatives		All to Hong Kong Government as <i>bona vacantia</i>

What are the contents of a Will
「平安書」內容

[如有疑問請與本行溫小姐聯絡（電話: 2526 7666）.]

TESTATOR
立「平安書」人

NAME : _____ (_____)

姓名

Surname

Given Name

(In Chinese)

姓

名

中文

SEX : _____

性別

PASSPORT/H.K.I.D. NO. : _____ (Photocopy is enclosed)

護照 / 香港身份証號碼

(附上影印本)

OCCUPATION : _____

職業

DATE OF BIRTH : _____

出生日期

RESIDENTIAL ADDRESS 地址 : _____

MARRIAGE STATUS : Single/ Married/Divorced (Please delete whichever inapplicable)

婚姻狀況

單身 / 已婚 / 離婚

(請刪去不適用者)

EXECUTOR AND TRUSTEE

執行人及信託人

NAME : _____ (_____)

姓名	Surname	Given Name	(In Chinese)
	姓	名	中文

SEX : _____

性別

PASSPORT/H.K.I.D. NO. : _____ (Photocopy is enclosed)

護照 / 香港身份証號碼

(附上影印本)

OCCUPATION : _____

職業

DATE OF BIRTH : _____

出生日期

RESIDENTIAL ADDRESS 地址 : _____

RELATIONSHIP WITH TESTATOR : _____

與立「平安書」人之關係

(Copy Right Reserved)

BENEFICIARY

受益人

A) NAME : _____ (_____)

姓名 Surname 姓 Given Name 名 (In Chinese) 中文

Sex : _____

性別

Passport/H.K.I.D. No. : _____

護照 / 香港身份證號碼

Date of Birth : _____

出生日期

Relationship : _____

關係

Residential Address 地址 : _____

% of Estate : _____

財產分配百分比

(Copy Right Reserved)

INFANT BENEFICIARY

未成年受益人
(即十八歲以下)

NAME : _____ (_____)

姓名

Surname

Given Name

(In Chinese)

姓

名

中文

SEX : _____

性別

Passport/Birth Certificate No. : _____

護照 / 出生證明書號碼

Date of Birth: _____

出生日期

Relationship : _____

關係

Residential Address 地址 : _____

If the Beneficiary is under the age of 18, we suggest that you should appoint a guardian.

如受益人年齡為18歲以下，我們提議你委任一位監護人。

GUARDIAN**監護人**

NAME : _____ (_____)

姓名 Surname 姓 Given Name 名 (In Chinese) 中文

SEX : _____

性別

PASSPORT/H.K.I.D. NO. : _____ (Photocopy is enclosed)

護照 / 香港身份證號碼 (附上影印本)

RELATIONSHIP : _____

關係

RESIDENTIAL ADDRESS 地址 : _____

Note : Please ensure she/he is willing to act

備註：請確保她 / 他願意成為監護人

(Copy Right Reserved)

SIGNATURE

簽署

DATE

日期

CONTACT TEL. NO.

聯絡電話

When to Write a Will

訂定遺囑的最好時間

- When you are healthy, physically and mentally 身體及精神都良好的時候

Trust

信託

What is Trust Law ?

什麼是信託法？

Express Trust (明示信託)

- A) Discretionary Trust (酌情信託)
- B) Unit Trust (單位信託)
- C) Charitable Trust (慈善信託)
- D) Family Trust (家事信託)

(Con't) What is Trust Law ?

(續) 什麼是信託法 ?

Implied Trust (暗示信託)

- A) Resulting Trust (歸復信託)
- B) Constructive Trust (構定信託)

What is a Trust 什麼是信託？

Definition 釋義:

- A Trust is an equitable obligation binding on a person (the trustee) to deal with the property over which he has control (the trust fund) for the benefits of other persons (the beneficiaries).

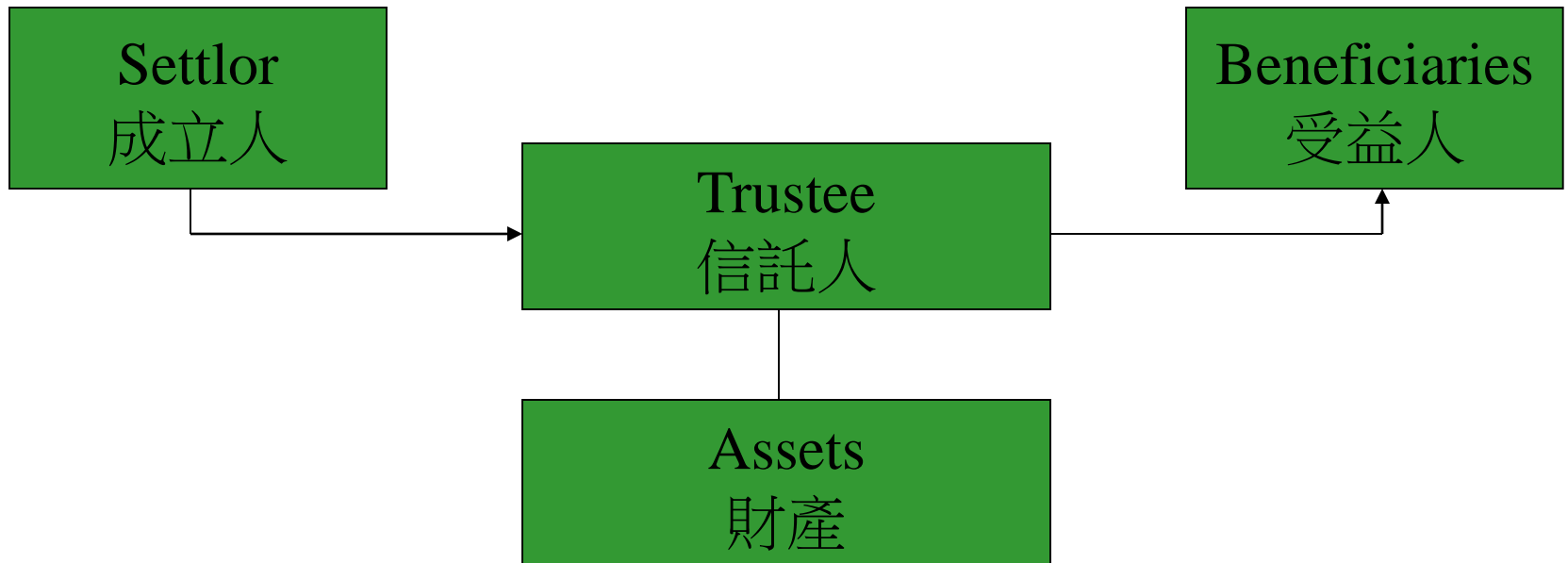
(Con't) What is a Trust ?

Key Concept in Common Law 普通法下的概念:

- Separation of ownership of property (legal ownership) and the enjoyment of property (beneficial ownership)
擁有權及享受權分割
- The Trustees have legal ownership and cannot benefit from the property and the beneficiaries have an equitable interest in the property (I.e. the right to enjoy/benefit) that they do not legally own.

Discretionary Trust / Company Structure

酌情信託 / 公司架構



Advantage of Setting Up a Trust

成立信託的好處

- Succession Planning 承傳計劃
- Asset Protection 財產保護
- Disability/Death 無民事行為能力/死亡
- Confidentiality 財產保密
- Asset Management 財產管理
- Divorce 離婚

(Con't) Advantage of Setting Up a Trust (續) 成立信託的好處

- Taxation 稅務計劃:-
 - US Estate Duty 美國遺產稅
 - UK Inheritance Tax 英國繼承稅
 - Withholding Tax 預扣稅

The First Question a Potential Settlor Needs to Ask Himself 成立人第一件要問自己的事

- Where are my assets 我的資產在那裡？
- Do I need an overseas trust 我需要海外信託嗎？

Assets to be injected

注入信託的資產

- Stock/Bond 股票/債券
- Immovable properties 不動產
- Cash 現金 (?)
- Life Policy 人壽保單
- Collections 收藏品

Beneficiaries 受益人

Who can be a beneficiary?

- Settlor 成立人
- Settlor's Spouse 配偶
- Settlor's Children 子女
- Grandchildren 孫
- Charities 慈善

Use of Trust Company

信託公司的功用

- As Executor under Will 遺囑執行人
- As Trustee for Discretionary Trust Family Trust, Charitable Foundation 信託人
- As Trustee under Life Policy 保單信託人:
 - For Business Succession Plan
 - For Policy Finance

Trustee Company 信託公司

Incorporated under section 78(1) of
Trustee Ordinance (Cap.29)

信託公司條例

A private company without licence
cannot be a “public trustee”

普通公司不得作為大眾信託人

Types of Trustee Companies

各種大小信託公司

- Subsidiary of Bank 銀行屬下
- Subsidiary of Insurance Company 保險公司屬下
- Independent Trust Company 獨立信託公司
- Overseas Trust Company 海外信託公司
- Local Trust Company 本地信託公司
- Fee 收費、Service 服務

How to Use the Service of a Trust Company

如何運用信託公司

- Security 安全性
- Cash 現金
- Stock 股票
- Land Property 房產

Q & A

問題討論



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PLEASE NOTE

The law and procedure on this subject are very specialised. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

請注意

本題目之法律及程序十分專門。此文章只屬一般性之解釋，供你參考，而不應被依賴為關於任何特定事件之法律意見。如需法律意見，請與我所律師聯絡。

Christine M. Koo & Ip, Solicitors & Notaries LLP
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