

**The Insurance Institute of Hong Kong Limited**

# **Law of Succession and Application of Insurance Policy in Business**

*Speaker: Mrs Christine Koo*

*Date: 21<sup>st</sup> January, 2010*



**Christine M. Koo & Ip,**

**Solicitors & Notaries**

*Tel:* (852) 2524 8996

*Fax:* (852) 2523 6922

*E-mail:* [christinekoo@cmkoo.com.hk](mailto:christinekoo@cmkoo.com.hk)

*Web-Site:* <http://www.cmkoo.com>

# Application of Insurance Policy in Business Succession Planning

# A brief introduction to Hong Kong Partnership Law

- ◆ Partnership dissolves upon death of a partner
- ◆ Deceased's estate is entitled to share partnership asset
- ◆ Fund to buy out the partner's rights

(Copy Right Reserved)

# **A brief introduction to the concept of a limited company and joint venture**

- ◆ Shares in a limited company
- ◆ Shares in a joint venture

(Copy Right Reserved)

# Limited Company

- ◆ Shares in a limited company
- ◆ Succeeded by spouse/children
- ◆ Fund to buy out the spouse/children's right

(Copy Right Reserved)

# How does insurance policy help?

Insurance policy provides pre-agreed pre-estimated, ready fund for the purpose of business succession

(Copy Right Reserved)

# The Insurance Product

- ◆ Term Life  
Tax deductible – running expenses of business
  
- ◆ Endowment (?)
  
- ◆ Whole Life (?)

(Copy Right Reserved)

## **What is Business Succession (“BS”)?**

“Business Succession” is the process whereby the interest of a deceased’s Business is acquired by Co-owners, with the aim of bringing about the smooth continuation of the Business

(Copy Right Reserved)



# The Problem

- ◆ What happens to a Small Business when one of the co-owners dies unexpectedly?
- ◆ What happens to the control of the Business?
- ◆ Can the surviving owners quickly get together enough cash to buy out the deceased person's interest at a fair and reasonable price?

## The Problem (Con't)

- ◆ Will the surviving owners be forced into business with outsiders or with their former associate's heirs?
- ◆ Could the Business collapse because the survivors cannot get their hands on an immediate source of cash?
- ◆ Does the Business have to be sold in order to pay out the deceased's Estate?

**The Answer**

A Term Life Policy

Plus

A Business Succession Agreement

(Copy Right Reserved)

# How Business Succession Operates?

- ◆ The Business takes out a Policy on each co-owner's life and nominates itself as the Beneficiary.
- ◆ If an insured co-owner of the Business dies or retires the Proceeds are paid by the Insurance Company to the Business.

(Copy Right Reserved)

# Tax

- ◆ Since the Business is the owner of each policy, and pays the premiums, each co-owner shares the total cost of all policies in proportion to his share in the Business
- ◆ Since the Business owns the policy, the premium is working expenses and is deductible from tax.
- ◆ The proceeds are estate duty free [Section 10(ga) of the Estate Duty Ordinance]

# The BS Agreement

- ◆ The BS Agreement should be signed by the partners at the time of taking out the policies
- ◆ It sets out the arrangement in details and each co-owner nominates the person who is going to receive the proceed and release the business interest

# Difficulties and Solution

(Copy Right Reserved)

# Law of Succession

## 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

<b>Relative Surviving</b>	<b>Other Relatives</b>	<b>Entitlement</b>
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>

# Who should make a Will

## 誰應該立遺囑

- Person with young children 有年幼子女之人
- Married couple & without children 已婚而無子女之人
- Remarried person with children borne with previous spouse 有不同配偶及不同配偶所生的子女之人
- Person travel outside Hong Kong frequently with spouse 時常與配偶一同外遊之人

# (Con't) Who should make a Will

## (續)誰應該立遺囑

- Person without any children or relative  
無親無故之人
- Unmarried person 未婚之人
- Person with special testamentary intention  
有特別意願之人
- Person who own property outside Hong Kong 國外有財產物業之人

**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 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

**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

# Law of Succession

## 繼承法

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

# 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

# Sharp v. Adam

Adam – successful – stud farm – multiple sclerosis (93) – cannot speak/write – spelling board – nodding – shaking his head – rolling eyes, blinking – dies in Aug 2002

2 daughters – mother divorced (92) – 3/2001 – change Will – good friend – solicitor - appeal

**Tam Mei Kam v. HSBC**  
**International Trustee Ltd**  
(Anita Mui's case)

- Write a Will and a Trust on the same day.
- 18 days of Trial.

# What is Trust Law ?

## 什麼是信託法？

### Express Trust

- A) Discretionary Trust
- B) Unit Trust
- C) Charitable Trust
- D) Family Trust

# (Con't) What is Trust Law ?

## (續) 什麼是信託法 ?

### Implied Trust

- A) Resulting Trust
- B) Constructive Trust

# What is a Trust ?

Definition:

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

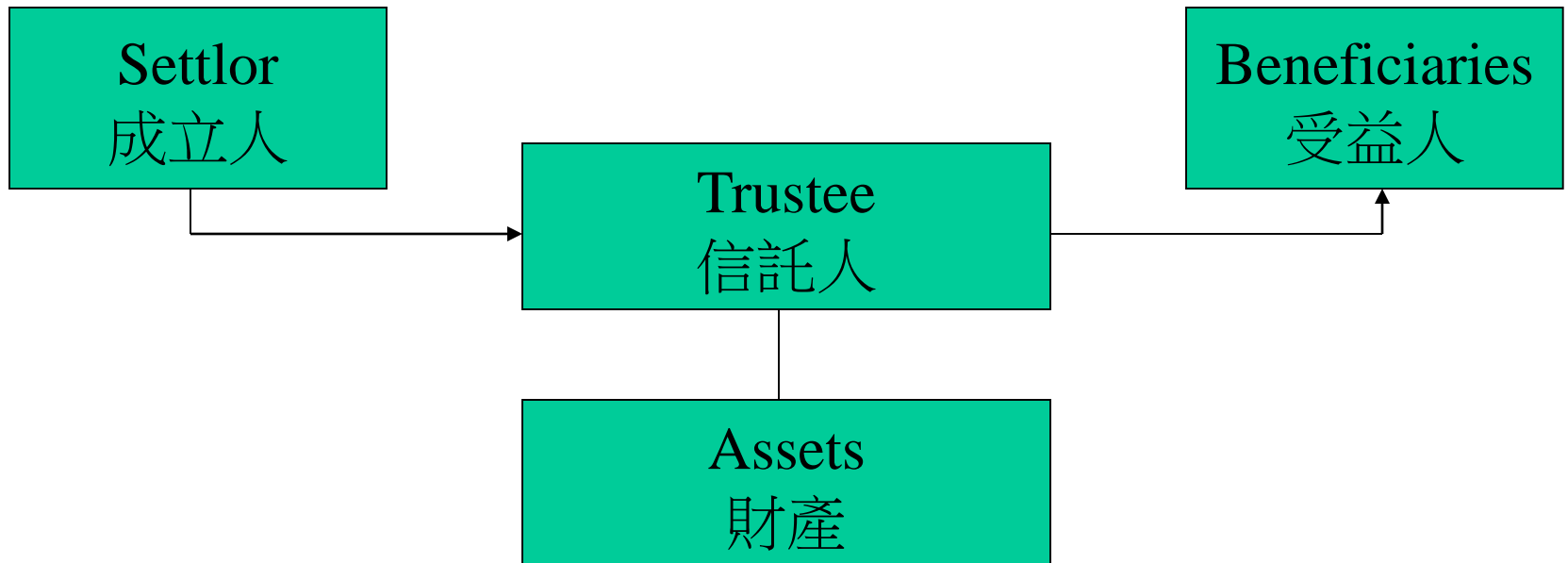


# (Con't) What is a Trust ?

Key Concept in Common Law:

- Separation of ownership of property (legal ownership) and the enjoyment of property (beneficial ownership).
- 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



# What are the Duties of the Trustees?

- To act in the best interests of the Beneficiaries
- Integrity
- Observe the terms of the trust
- Observe the proper law of the trust
- Impartiality
- Asset preservation
- To act in accordance with the laws of the governing jurisdiction

# What is Trust Policy ?

## 什麼是信託保單？

- \* By Contract
- \* By Law

# Q & A

## 問題討論

Thank You

謝謝

## **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**  
顧張文菊、葉成慶律師事務所 有限法律責任合夥