

The Hong Kong Institute of Bankers

- (1) Protecting your Wealth through Trusts**
- (2) Protecting yourself through Will & EPA**

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TRUSTEE ORDINANCE (Cap 29)

Hague Convention

Hong Kong, a party to Hague Convention on “The Law Applicable to Trusts and on Their Recognition” since 1997.

Use of Trust

Individual Clients

1. Trustee of Discretionary Trust
2. Trustee of Family Trust
3. Acting as Executor and Trustee of a Will
4. Acting as Attorney of Enduring Power of Attorney

Use of Trust

Individual Clients

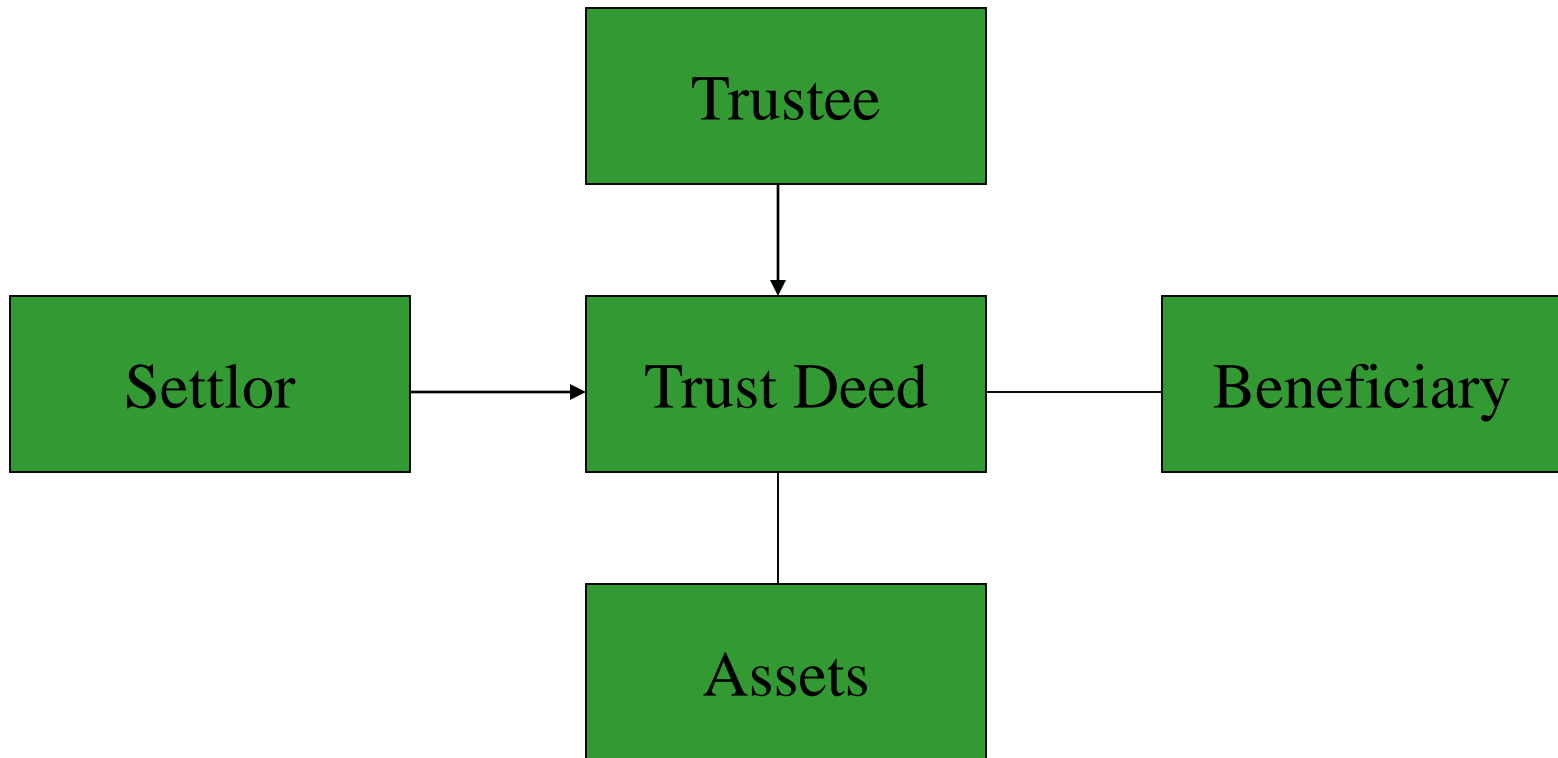
5. Trustee for holding assets, e.g. in divorce cases
6. Trustee of Single Premium Life Policy
7. Trustee of Juvenile Life Policy
8. Trustee of Business Succession Plan

Background

Basic Form

3 Basic Parties:

- **Trustee**
- **Settlor / Grantor**
- **Beneficiary**



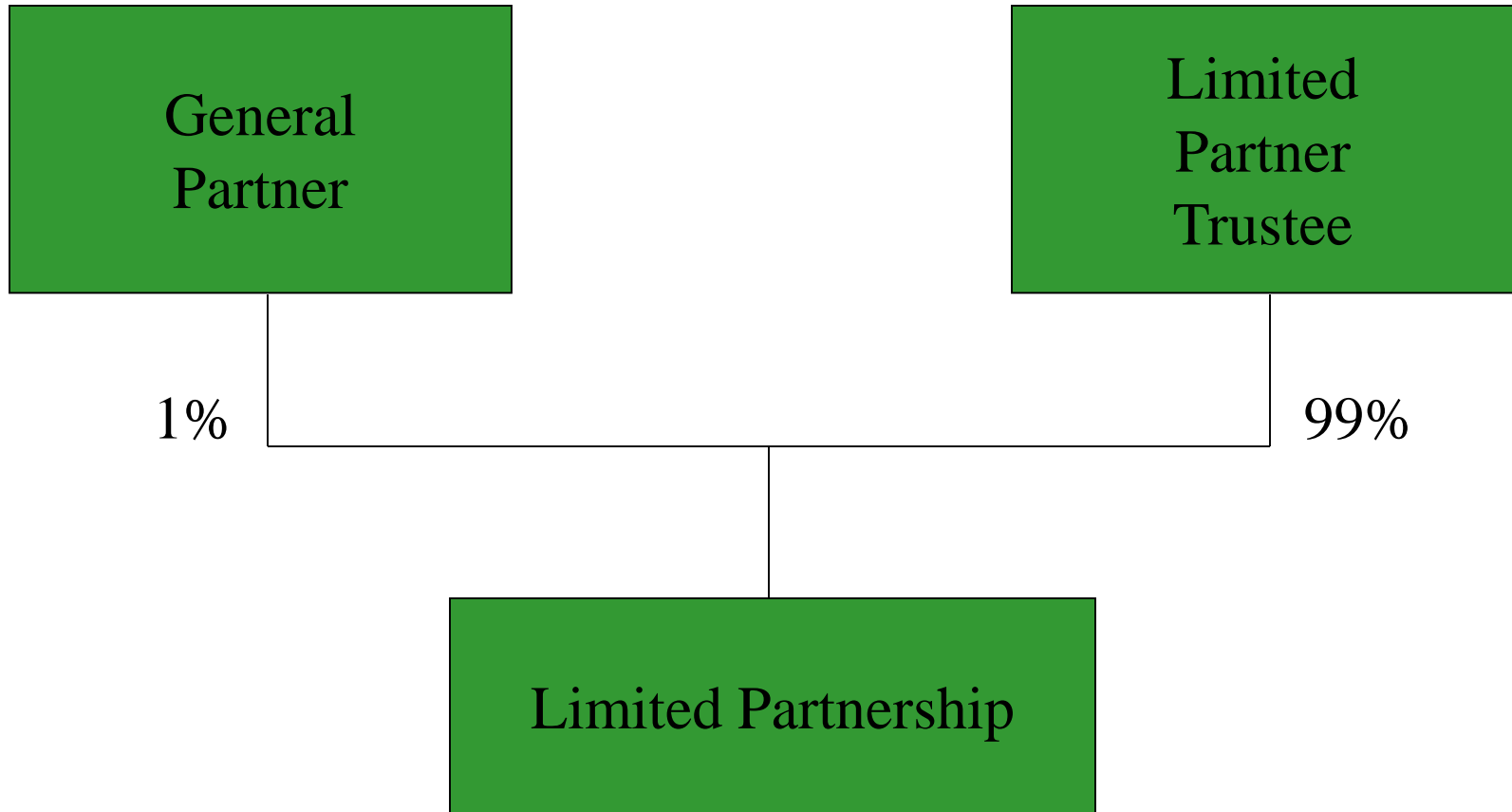
Variations

- **Trustee**
 - Individual / Trust Corporation

- **Settlor / Grantor / Protector / Governing Committee / Successor Protector**

- **Beneficiary**
 - Discretionary
 - Family Member
 - Charitable Organizations
 - Investors / Employees
 - and so on.

LLP



For Wealth Management

Traditional Use

- Succession – Family Trust e.g.
- Asset Protection – Divorce, Creditor, Discretionary Trust
- Avoid Probate (particularly multi-jurisdiction)
- Tax – Planning, Estate Duty, Stamp Duty
- Avoid Risk - Bankruptcy
- Confidentiality
- All of the above

For Wealth Management

Use in Insurance Related Products

- For Business Succession
- For Juvenile Policy
- For Premium Finance

Trust Compare to:

- **Will**
 - Effective upon death
- **Enduring Power of Attorney**
 - Effective on a date to be fixed or become incapable

Trust

- Effective now
- Effective upon death

Client's Concern

- **Fee**
- **Service**
- **Multi-jurisdictional Assets**
- **Risk**

Should the Trust have a Protector?

- **Protector**
- **Guardian**
- **Supervising Committee etc.**

Offshore Trust v. Local Trust

- **HK v. Singapore v. Switzerland v. VISTA, LST, SISTA, STAR**

Will and Law of Succession

遺囑及繼承法

- WILLS ORDINANCE (Cap 30)
- INTTESTATES' ESTATES
ORDINANCE (Cap 73)

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

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> |

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 : _____ DATE OF BIRTH : _____
職業 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

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 who will also be an additional executor.

如受益人年齡為18歲以下，我們提議你委任一位監護人，該監護人亦為額外之執行人。

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

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

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

- Write a Will and a Trust on the same day
- At least 5 litigation cases as of August 2015

ENDURING POWERS OF ATTORNEY ORDINANCE (Cap 501)

What is an EPA?

- A legal document
- Donor (“D”)(授權人): gives A power
- Attorney (“A”)(受權人): act on D’s behalf
 - D subsequently becomes mentally incapable
 - A to take care of D’s specified financial affairs

Who needs an EPA?

- EPA **NOT revoked** by D's subsequent mental incapacity
 - *cf.* Ordinary Power of Attorney (revoked)
- Mental incapacity
 - Mental disorder / mental handicap; OR
 - Unable to communicate to grant a PA

How to create an EPA?

(1) Execution

(a) Prescribed form

(b) Prescribed manner

(2) Registration

Execution – Prescribed Form

- Must specify (i) the power and/or (ii) property or financial affairs
 - Collect income due to D
 - Collect capital due to D
 - Sell D’s movable property
 - Sell/lease/surrender D’s immovable property
 - Spend D’s income
 - Spend D’s capital
 - Exercise D’s power as trustee
- *cf.* GPA (general power over all of D’s properties)

Execution – Prescribed Manner

- D must execute in the presence of...
 - Registered medical practitioner and solicitor;
OR
 - Registered medical practitioner, then within
28 days solicitor
 - Certify mental capacity and
voluntariness/authorisation

Execution – Prescribed Manner

- Neither the registered medical practitioner nor the solicitor be:
 - A
 - A's spouse
 - Related by blood or marriage to A
 - Related by blood or marriage to D

Execution – Prescribed Manner

- If D is physically incapable of signing, may instruct a person to sign **in the presence**, and **under the direction**, of D
- The person signing on D's behalf shall NOT be:
 - A
 - A's spouse
 - The registered medical practitioner or his/her spouse
 - The solicitor or his/her spouse

Execution – Prescribed Manner

- A must execute in the presence of...
 - 1 witness (NOT D / other A in the same EPA)

- A must be...
 - Trust corporation; OR
 - Individual: 18 or above + NOT bankrupt
 - NOT mental incapable

Effective Date

- Date of execution (before solicitor); OR
- D may specify a date / a triggering event in EPA

Registration

- To Registrar of the High Court
- A can only deal with D's assets after registration
- Registration does not validate invalid EPA
- Register is open for public inspection

Can EPA be revoked?

- D may revoke when mentally capable
- After recovery from mental incapacity, D may revoke with court order confirming the revocation
- A becomes bankrupt
- A/D dies
- By court order/direction

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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