

Wealth Protection

Trust, Will and Business Succession Planning

Presented by: Mrs Christine Koo



Christine M. Koo & Ip, Solicitors & Notaries

Address : Room 601, Tower 1, Admiralty Centre
18 Harcourt Road, Hong Kong

Tel. No. : (852) 2524 8996

Fax No. : (852) 2523 6922

E-mail : christinekoo@cmkoo.com.hk

Date: 25 July 2014

What is a Trust

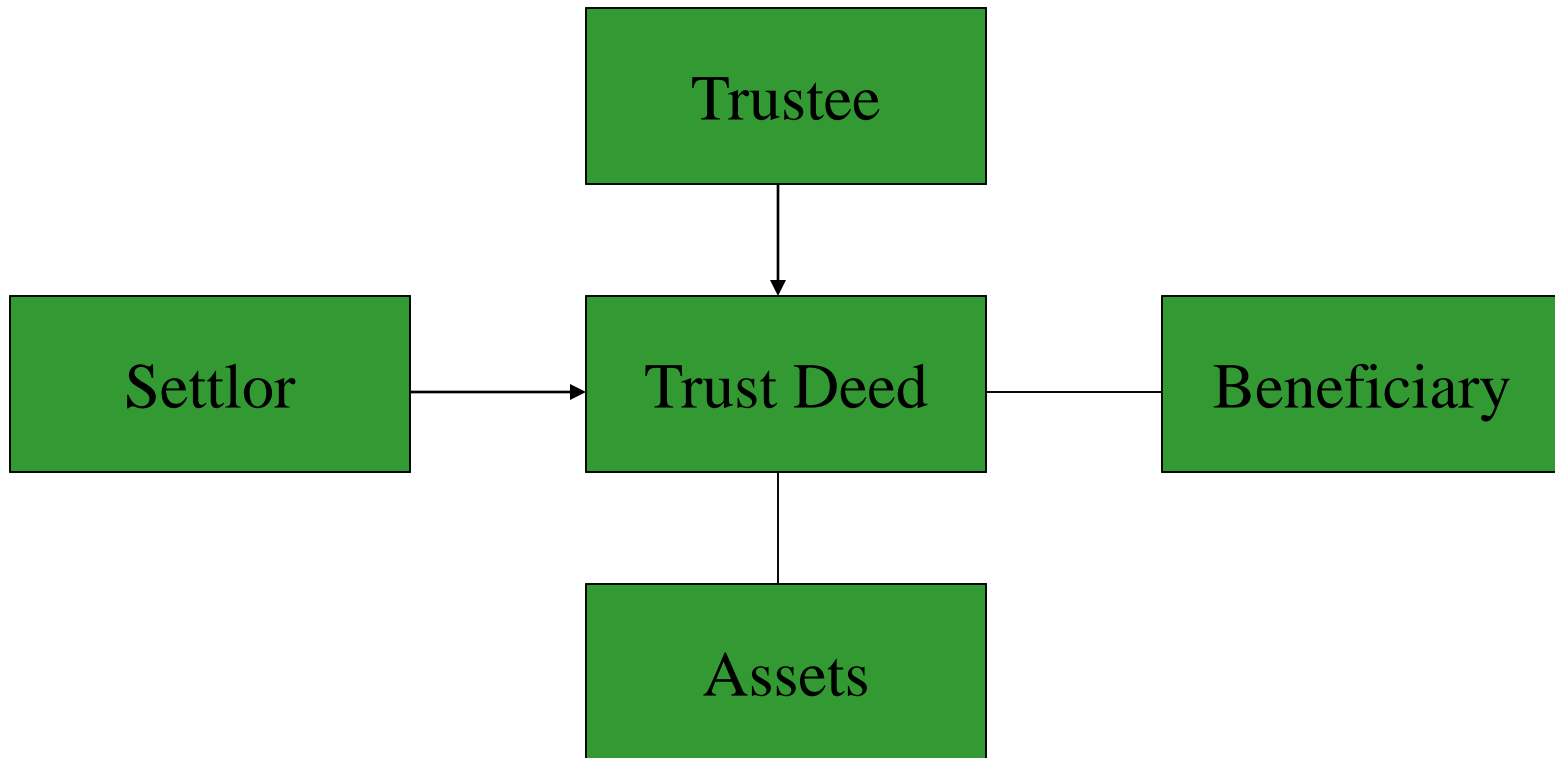
- **No prescribed structure**
- **Flexible**
- **Not an investment product**

Background

A. Basic Form

3 Basic Parties:

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



B. Variations

- **Trustee**
 - Individual / Trust Corporation

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

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

C. Hague Convention

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

**30. CONVENTION ON THE LAW APPLICABLE
TO TRUSTS AND ON THEIR RECOGNITION¹**

(Concluded 1 July 1985)

The States signatory to the present Convention,
Considering that the trust, as developed in courts of equity in common law jurisdictions and adopted with some modifications in other jurisdictions, is a unique legal institution,
Desiring to establish common provisions on the law applicable to trusts and to deal with the most important issues concerning the recognition of trusts,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE

Article 1

This Convention specifies the law applicable to trusts and governs their recognition.

Article 2

For the purposes of this Convention, the term "trust" refers to the legal relationships created – *inter vivos* or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the following characteristics –

- a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

Article 3

The Convention applies only to trusts created voluntarily and evidenced in writing.

Article 4

The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Fifteenth Session (1984)*, Tome II, *Trusts – applicable law and recognition* (ISBN 90 12 04930 X, 423 pp.).

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

Use of Trust

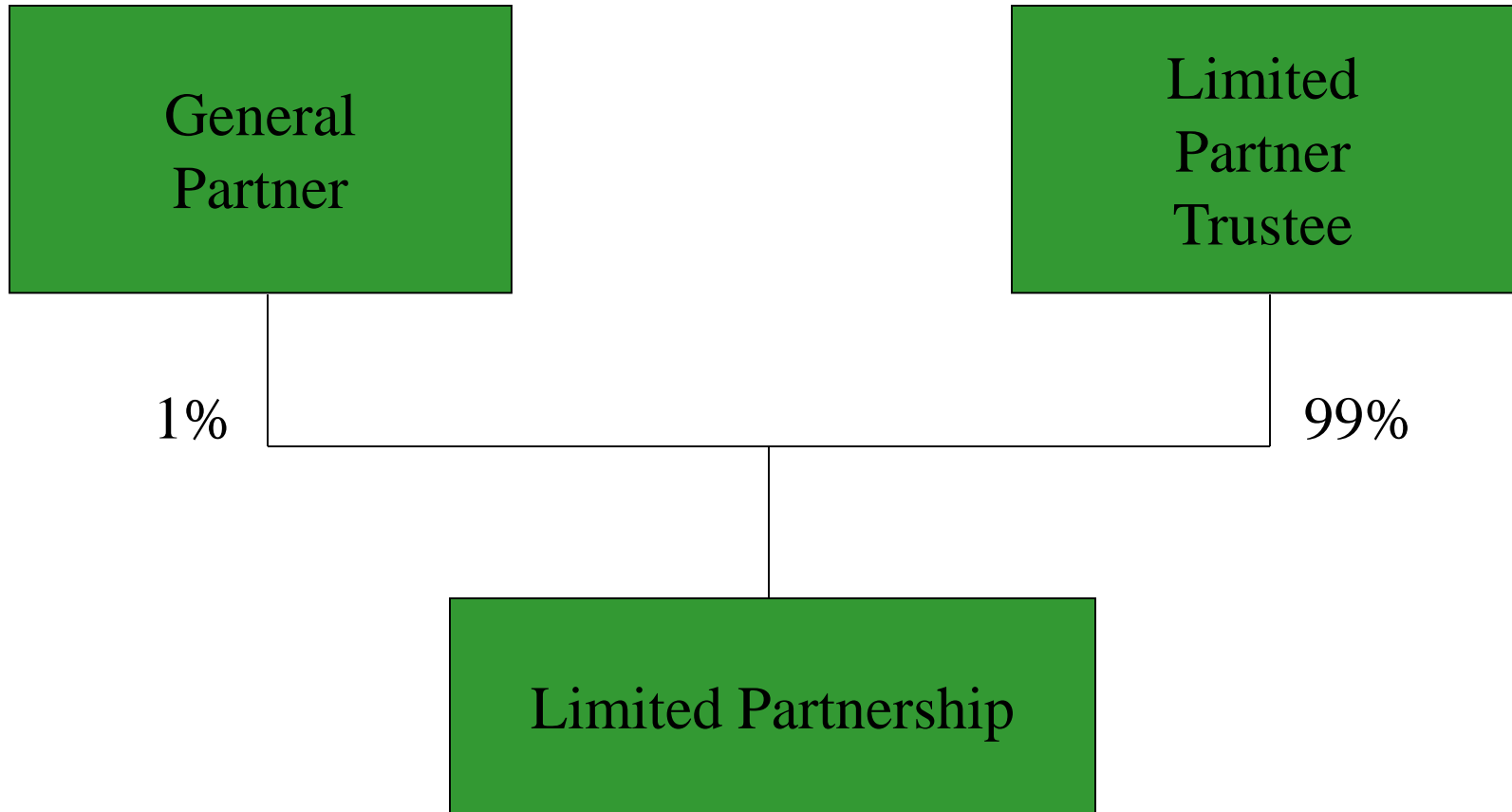
Corporate Clients

1. Trustee for Charitable Foundation
2. Trustee for Retirement Fund
(MPF and ORSO Scheme)
3. Trustee for Investment Fund and Private
Equity Fund
4. Trustee for Share Incentive Scheme
5. REIT

Constitutive Document

- Trust Deed
- LLP – Limited Partner / General Partner
- Declaration of Trust
- Master Trust Scheme (for MPF)
- REITs
- Code on Unit Trusts and Mutual Funds
- Family Trust

LLP



Types of Trust and Trustee

Types of Trustee

- **Individual**
- **Trustee Company**
 - Subsidiary of Bank
 - Subsidiary of Insurance Company
- **Independent Trustee Companies**

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

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 : _____

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

(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

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.

How to help
Business Succession Planning
by using Trust

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)

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

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?

(Copy Right Reserved)

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

Life Insurance Policy

(Copy Right Reserved)

The Insurance Product

- ◆ Term Life
Tax deductible – running expenses of business

- ◆ Endowment (?)

- ◆ Whole Life (?)

How does insurance policy help?

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

(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.

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.

(Copy Right Reserved)



The Problem

(Copy Right Reserved)

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

◆ Expensive

◆ Depends on which lawyer

(Copy Right Reserved)

Compare with Keyman Insurance

(Copy Right Reserved)

Q & A

問題討論



CHRISTINE M. KOO & IP, SOLICITORS & NOTARIES

Address : Room 601, 6/F, Tower 1, Admiralty Centre,
18 Harcourt Road, Hong Kong

Tel No.: (852) 2524 8996

Fax No.: (852) 2523 6922

E-mail: christinekoo@cmkoo.com.hk

Web-site: <http://www.cmkoo.com>

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