

通過信託實現財富傳承

Wealth Management through Trust



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Part I

What is a Trust ?

什麼是信託(託拉斯) ?

Part II

Use of Trust on Individuals

私人信託

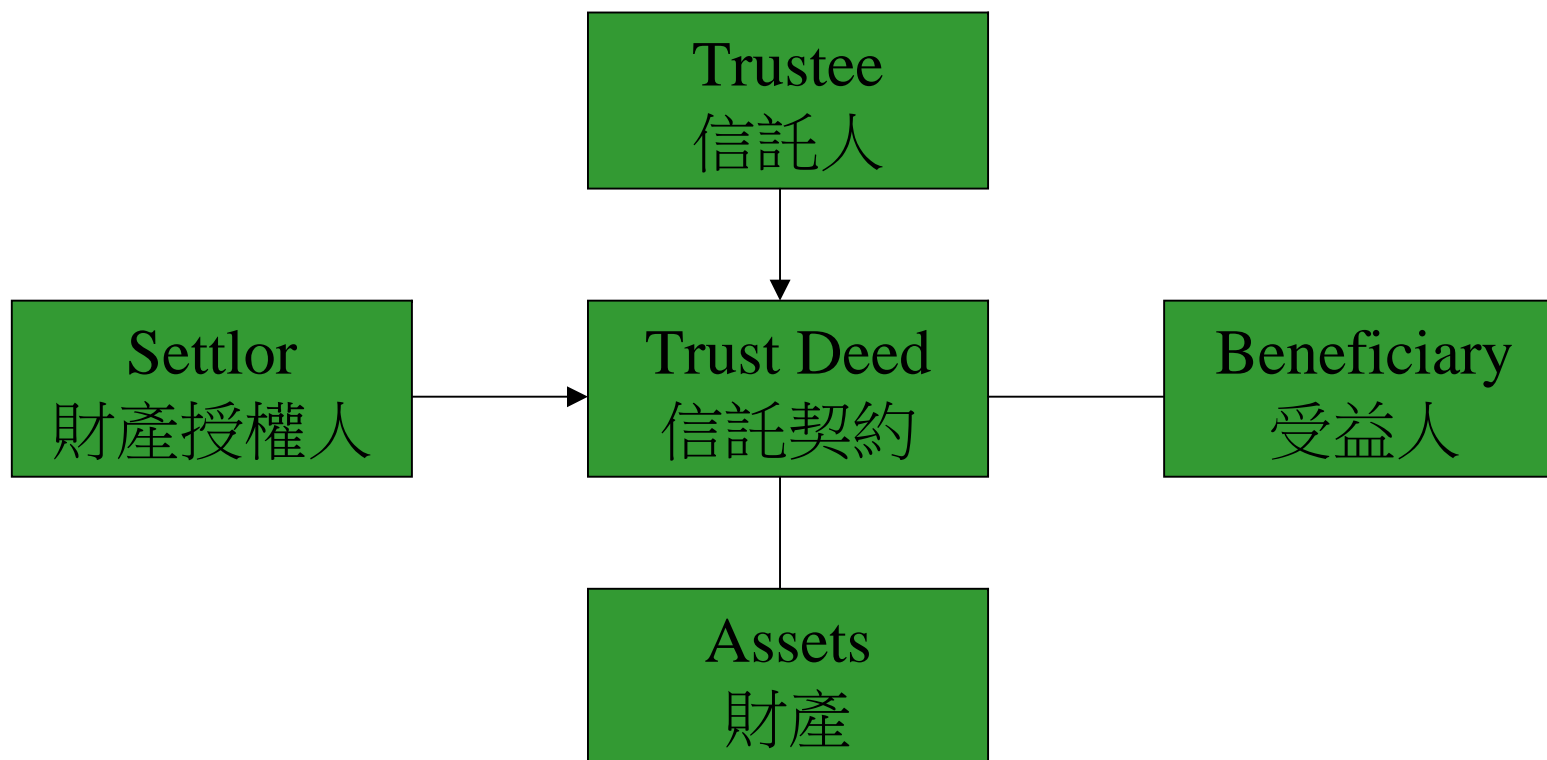
Part I

信託主要內容

- **Settlor** 財產授予人
- **Trustee** 信託人
- **Beneficiary** 受益人
- **Trust property** 財產

其他

- **Protector** 信託保護人
- **Investment Manager** 投資人
- **Administrator** 管理人
- **Custodian** 監管人



Trust Industry in Hong Kong

香港信託行業

- **Private Banking** 私人銀行
 - 私人信託
- **Trust Company** 信託公司
 - 私人信託
 - 公司信託

Corporate Trusts

公司信託

- **Unit Trusts 單位信託基金**
- **Exchange-Traded Funds (ETFs)**
跟蹤指數基金
 - 100 ETFs were listed on the HKSE as at 31 December 2012
- **Real Estate Investment Trusts (REITs)**
房地基金
 - 9 REITs were listed on the HKSE as at 31 December 2012

Pension Schemes

退休保障計劃

- **MPF 強積金**
- **ORSO 公積金**

Charitable Trusts

慈善信託基金

The Hong Kong Jockey Club Charities Trust

香港賽馬會慈善基金

- Donated over HKD1.7 billion to various projects in Hong Kong

Private Trusts

私人信託

- **Wealth & Estate Planning**
用於個人財富管理 (在世及身故)
 - Private bank 私人銀行
 - Law firms 律師事務所
 - Independent trust companies
獨立信託公司

Private Trusts

私人信託

- **Offshore Trusts 海外信託**
 - 香港
 - 星加坡
 - 英屬維爾京群島
 - 開曼群島
 - 瑞士
 - 列支敦士登
 - 澤西島
 - 根西島

成立信託的土壤

- 法制健全
- 低稅環境
- 資金流動自由
- 私隱條例保障
- 信託法保障

Hague Convention 海牙公约

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



Hcch

HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

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.

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.).

Trust Company

信託人公司

- **Setting up a Trust** 成立信託
- **Be the Trustee** 成為信託人
- **Administering Trusts** 管理信託
- **Acting as Custodians** 作為財產監管人

Trustee Ordinance (Cap. 29)

受託人條例

S.97 “every person employed by the company to discharge any duties of such office shall be personally liable”

凡任何受僱方於該公司以履行該職位的每個人，須就其獲託付的職責負上個人責任。

Reserved Powers 保留權力

Reserving power to settlor relating to investment.

財產授予人可保留有關投資的權力。

Change of Trustee 更換信託人

- Beneficiaries of full age and capacity. 受益人已成年並具行為能力。
- Absolutely entitled under the trust. 在信託中享有絕對權益。

Types of Trustee 信託人種類

- **Individual 個人**
- **Trustee Company 信託人公司**
 - Subsidiary of Bank 銀行子公司
 - Subsidiary of Insurance Company 保險公司子公司
- **Independent Trustee Companies 獨立信託公司**

Part II

Use of Trust on Individual 私人信託

1. Discretionary Trust 酌情信託
2. Family Trust 家庭信託
3. Executor and Trustee of a Will
遺囑執行人

Use of Trust on Individual 私人信託

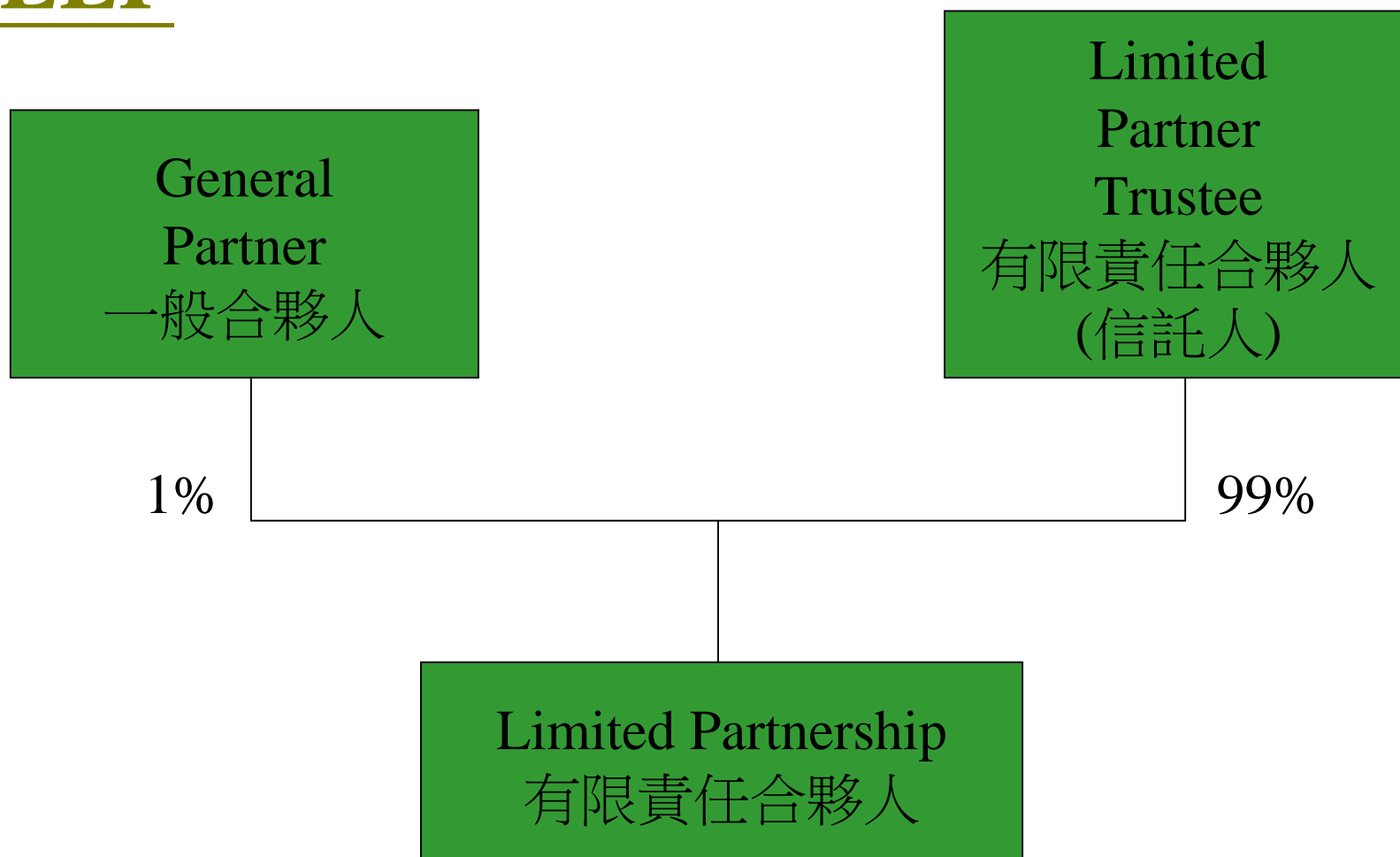
4. Divorce cases 離婚
5. Life Policy 人壽保單
6. Juvenile Life Policy 兒童保單

Constitutive Document

信託文本形式

- Trust Deed 信託契約
- LLP – Limited Partner / General Partner
有限合夥人契約
- Declaration of Trust 信託誓章

LLP



Types of Trust and Trustee

信託的種類及信託人

Types of Trust 信託的種類

- **Express Trust 明訂信託**
- **Implied Trust 隱含信託**
 - Constructive Trust 推定信託
 - Trust arise by operation of law, regardless of intention of parties
- **Resulting Trust 歸復信託**
 - Contributor subjectively believes he retains the beneficial interest

Powers and Duties of a Trustee

信託人的權責

- Trust Deed 契約
- MPFSO (Cap. 485) 法律、法規
強制性公積金計劃條例
- Trustee Ordinance 受託人條例

For Wealth Management

個人財富管理

Traditional Use 傳統用途

- Succession 延續 – Family Trust e.g.
- Asset Protection 資產保障 – Divorce, Creditor, Discretionary Trust
- Avoid Probate 避免遺產承辦 (particularly multi-jurisdiction)
- Tax 稅務 – Planning, Estate Duty, Stamp Duty
- Avoid Risk 避免風險 - Bankruptcy
- Confidentiality 保密
- All of the above 以上所有

For Wealth Management

個人財富管理

Use in Insurance Related Products

與保險相關的產品

- For Business Succession 業務延續
- For Juvenile Policy 兒童保單
- For Premium Finance 保費融資

Trust Compare to: 與信託比較：

Will 遺囑

- Effective upon death 過身後生效

Trust 信託

- Effective now 即時生效
- Effective upon death 過身後生效

Client's Concern 客戶的考慮

- **Fee 費用**
- **Service 服務**
- **Multi-jurisdictional Assets**
涉及不同國家的資產
- **Risk 風險**

Should the Trust have a Protector?

信託應否有一個保護人？

- **Protector** 保護人
- **Supervising Committee**
監督委員會

Choice of Offshore Trust

離岸信託的選擇

- **HK, Singapore, Switzerland**
- 香港、星加坡、瑞士、
英屬維爾京群島
- 語言，方便性，投資環境

Real Life Cases

信託例子

大： 新鴻基、霍英東、潘石屹(國內)

- **Opportunities and Challenges**
機遇與挑戰
- **Difference in Mentality between Mainland and Hong Kong**
兩地心態的差異
- **Future Trend 未來的展望**
中：梅艷芳
小：保險單持有人(版權所有)

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。

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