

# **Hong Kong Securities & Investment Institute**

## **Trust and Trustee Meeting Client's Needs in Wealth Management**

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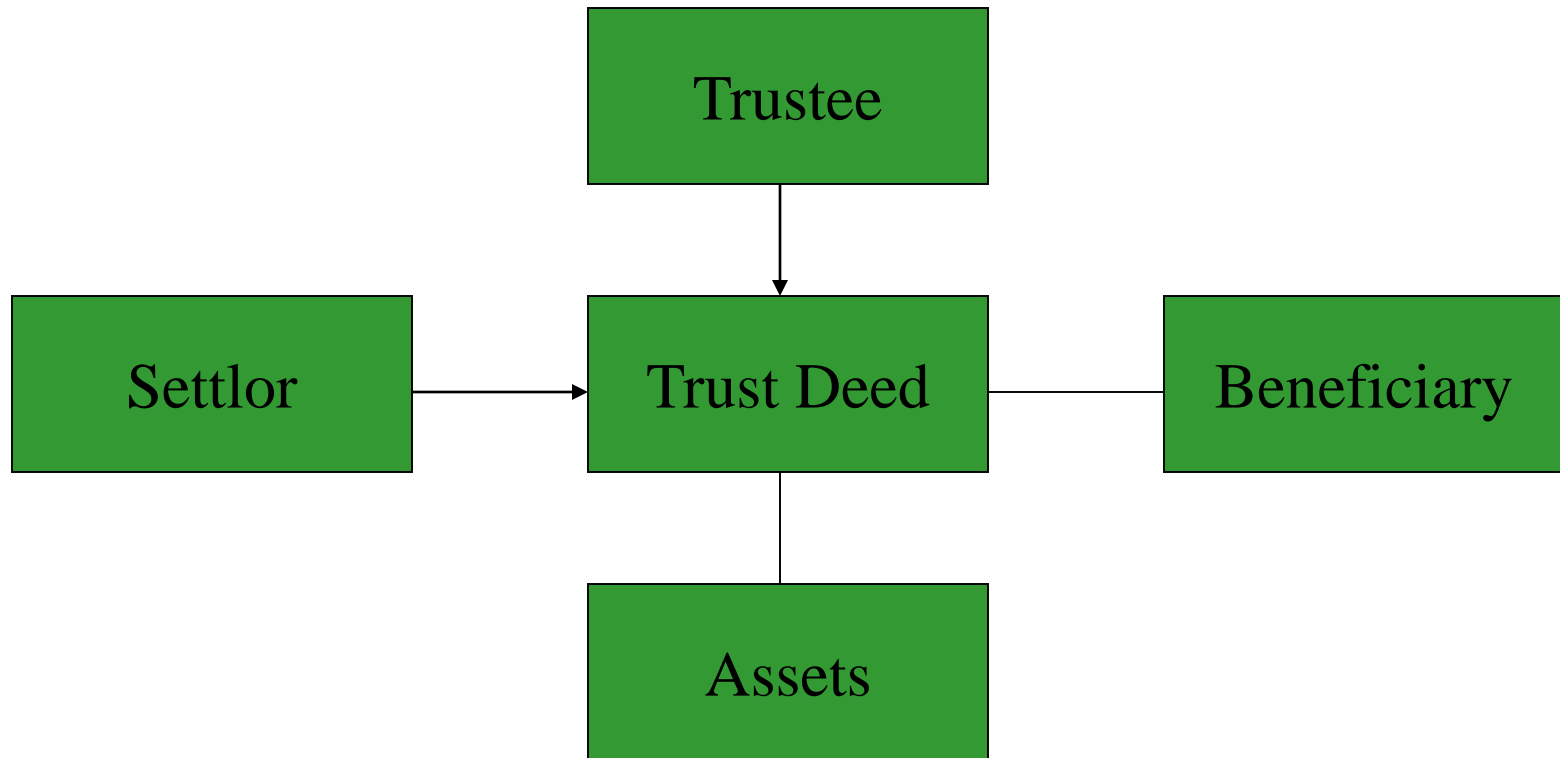
# **What is a Trust**

- **No prescribed structure**
- **Flexible**

# **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.

# Hague Convention

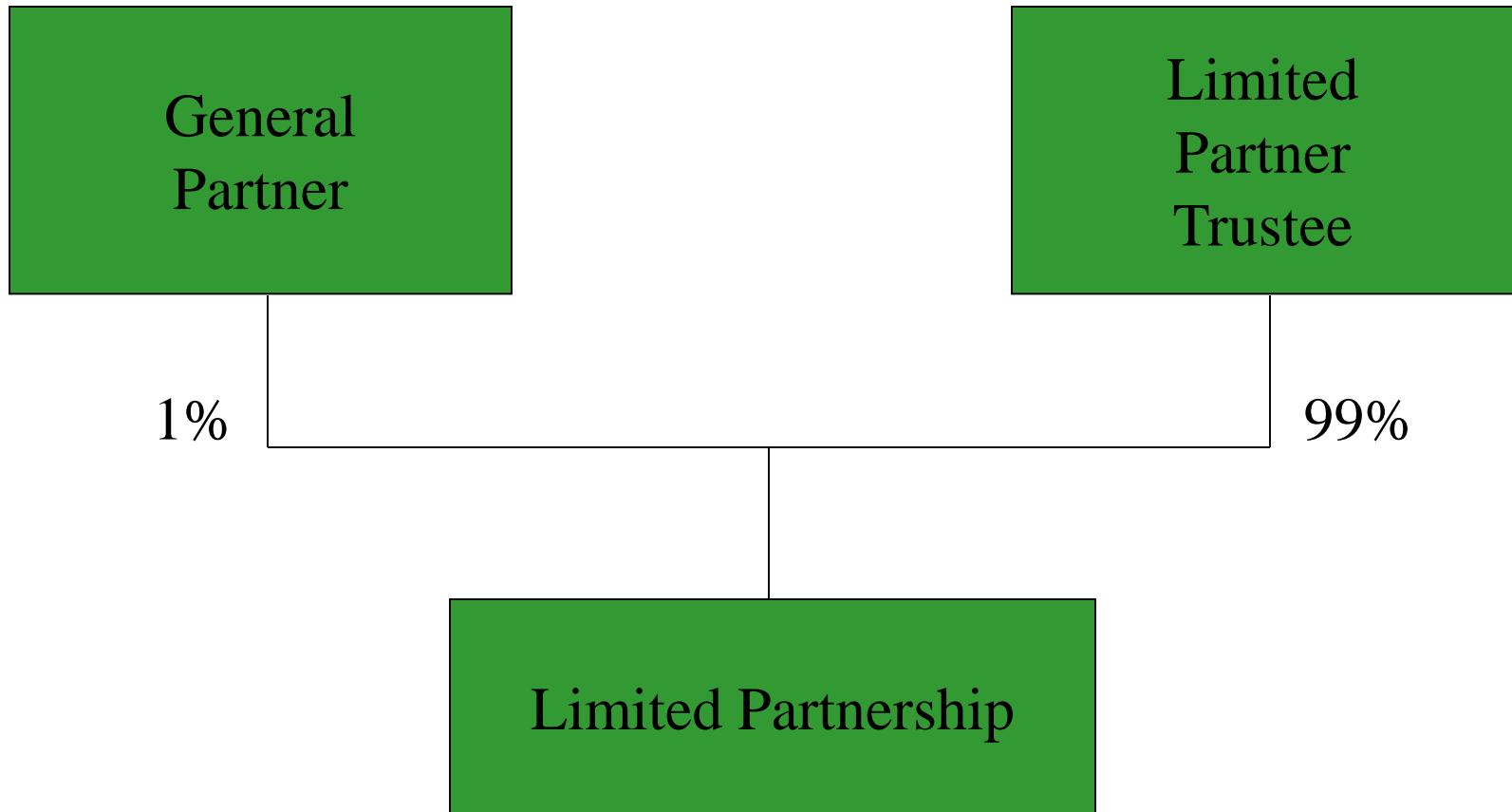
Hong Kong, a party to Hague Convention on “The Law Applicable to Trusts and on Their Recognition” since 1997.

(see attachment 1)

# Constitutive Document

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

# LLP





# **Powers and Duties of a Trustee**

## **Existing T. O. :**

- Extensive powers of trustee (Part II and III)
- Investment power and Misc
- No Duties

## **New T. O. :**

- Statutory Duties of Care  
(see MPFSO attachment 2)

# Powers and Duties of a Trustee

## Duties:

- Trust Deed  
MPFSO (Cap. 485)
- MPFSO (General Regulation)

# **Types of Trust and Trustee**

## **Types of Trust**

- **Express Trust**
- **Implied Trust**
  - **Constructive Trust**
    - Trust arise by operation of law, regardless of intention of parties
  - **Resulting Trust**
    - Contributor subjectively believes he retains the beneficial interest

# Types of Trust and Trustee

## Types of Trustee

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

# Use of Trust

## Individual Clients

1. Acting as Executor and Trustee of a Will
2. Acting as Attorney of Enduring Power of Attorney
3. Trustee for holding assets, e.g. in divorce cases
4. Trustee of Single Premium Life Policy

# Use of Trust

## Individual Clients

5. Trustee of Juvenile Life Policy
6. Trustee of Policy for Business Succession Plan
7. Trustee of Discretionary Trust
8. Trustee of Family Trust

# 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
- and so on.

# For Wealth Management

## Traditional Use

- Succession – Family Trust etc.
- Asset Protection – divorce, creditor, discretionary trust
- Avoid Probate (particularly multi-jurisdiction)
- Tax – Discretionary Trust
- Confidentiality – All types



# **For Wealth Management**

## **Use in Insurance Related Products**

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

# Pros & Cons of Using 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**

# Solution

**Settlor retain some control**

# Trustee Ordinance (Cap. 29)

## - Current Position

Part II. Investment

Part III. General Power of Trustee and  
Personal Representations

Part IV. Appointment and Discharge of  
Trustee

Part V. Power of Court

# Trustee Ordinance (Cap. 29)

## - Current Position

Part VI. Judicial Trustee

Part VII. Official Trustee

Part VIII. Trust Companies

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

# Trustee Ordinance (Cap. 29)

## - Proposed Amendments

- statutory standard of care – higher?
- professional trustees entitled to reasonable remuneration
- No to relieve a trustee from liability for fraudulent breach, etc.
  - Compare MPFSO
- settlor may reserve investment and asset management power

# **Trustee Ordinance (Cap. 29)**

## **- Proposed Amendments**

- abolishing the rule against perpetuity
  - Compare MPF Ordinance
- protect against foreign forced heirship (?)
- protect against divorce settlement (?)
- protect against creditor claim (?)



# 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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