

Hong Kong Updates its Trust Law

Changes Made
to Compete for
International
Fiduciary Business

Hong Kong has enacted a number of important amendments to its trust legislation, which will enhance the position of the jurisdiction as a trust domicile and as a fiduciary administration and management centre.

The amendments, which come into force on 1 December 2013, are the first major revision in 80 years to Hong Kong's Trustee Ordinance. The changes:

- protect Hong Kong trusts from forced heirship rules
- allow settlors to reserve certain powers
- enable Hong Kong trusts to be settled for an unlimited amount of time
- provide trustees with greater default powers
- place a greater duty of care on trustees and provide more protection for beneficiaries
- enable beneficiaries to appoint and remove trustees

More detail on these points is provided overleaf.

The changes to the Ordinance build on Hong Kong's reputation as a leading international financial centre with an established common law legal system, a well-educated work force and robust infrastructure. They will be of interest to advisors and their clients considering Hong Kong as:

- an administrative centre for trusts established in other jurisdictions (e.g. BVI, New Zealand)
- the advisory centre for trusts to be established in other jurisdictions
- the domicile and/or administrative centre for trusts established under Hong Kong law

Trident Trust Company (HK) Ltd is registered as a trust company under Part VIII of the Hong Kong Trustee Ordinance to provide professional trustee services and Trident Trust has had a business presence in Hong Kong since 1992.

In Hong Kong we provide a full range of fiduciary services to institutions, advisors and their clients located in Hong Kong and around the world. Through our Hong Kong office we also offer access to the corporate, fiduciary and fund administration services available through our Group's offices in 23 jurisdictions outside of Hong Kong.

For more information on Hong Kong fiduciary services, please contact Christiaan de Bruyn (cdebruyn@tridenttrust.com), Kevin Yan (kyan@tridenttrust.com), or your usual Trident Trust Group representative.

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This memorandum is intended to provide general information and guidance for the clients of Trident Trust Company (HK) Limited. It does not purport to be comprehensive or to render legal advice.

The Changes In More Detail

- **Forced Heirship:** Trusts governed by Hong Kong law will be protected from the operation of foreign heirship rules. Furthermore, foreign forced heirship rules will not affect the validity of a lifetime transfer of movable assets to a trust solely governed by Hong Kong law.
- **Reserved Powers:** Settlers will be able to reserve to themselves powers relating to investment or asset management functions.
- **The Rule against Perpetuities** will be abolished, meaning that a Hong Kong trust can be settled for an unlimited period of time.
- **Enhancements of Trustees' Default Powers:** In the absence of a trust instrument specifically granting trustees the powers normally required to carry out their role, trustees will have certain default powers, unless there are provisions to the contrary in the trust instrument:
 - **Appointment of agents, nominees and custodians:** trustees are authorised to delegate specific functions to agents, nominees and custodians, although the trustee must monitor the performance of these agents.
 - **Power to insure:** Trustees have the power to insure trust property against loss or damage caused by any event.
 - **Trustees' remuneration:** Professional trustees are entitled to receive remuneration.
 - **Authorised investments:** the scope of permitted investment has been widened. In future, trustees will be permitted to invest in companies quoted on a stock exchange provided that the companies selected each have a market capitalization of not less than HK \$5 billion and have paid cash dividends for the 3 years prior to the date on which the investment is made.
- **Duty of Care:** The amendments impose a statutory duty of care on trustees. Unless the trust instrument contains provisions to the contrary, the trustee must exercise the care and skill that is reasonable in the circumstances, taking into account to any special knowledge or experience that the trustee has or has represented that it possesses.
- **Exemption Clauses:** The amendments provide greater protection for beneficiaries. Professional trustees cannot now be exempted from liability for wilful misconduct, gross negligence or fraud.
- **Removal of Trustees:** Beneficiaries of full age and capacity can appoint and remove trustees, without the involvement of the courts and without terminating the trust.