**Law Change Delay Costs HK Millions**

**Outdated ordinance is allowing Singapore and Malaysia to snap up a bigger share of a lucrative and expanding market, writes Chris Davis**

Delays in modernizing Hong Kong’s trust ordinance could be losing the city millions of dollars in professional fees and services, according to the Hong Kong Trustees’ Association.

“The delay is very concerning because we are losing a lot of business to Singapore and Malaysia at a time when we should be attracting business,” says Association Chairman Carolyn Butler.

Proposed changes to the antiquated laws were scheduled to be presented before the last session of Legco but were delayed for a year, apparently because of a lack of time. Hong Kong has not revised its trust laws since 1937 and industry professionals consider the legislation dated and limited in scope compared with many competing offshore jurisdictions.

Butler says rising regulation and administration costs in Europe are diverting trust business to Asia. Wealth expansion across Asia is also creating a need for succession planning and asset management in the form of trusts.

“Hong Kong is still a good place for the trust business, but we would be even better if the trust ordinance was amended,” says Butler, who is also CEO of The Hong Kong Trust Company.

“If you have good trust laws, it opens the way for innovative financial instruments structured to protect assets. At the moment, special purpose vehicles managed under trust arrangements are exploding around the region, but Hong Kong is missing out and doesn’t seem to be focusing on these issues.”

Butler says amendments to the trust ordinance would benefit fund managers responsible for assets under management, administrators, lawyers, accountants and company secretaries. “The potential is enormous,” she says.

Proposed reforms include features reflecting the evolving market’s needs, such as the reservation of settlors’ powers of investment or asset management, anti-forced heirship provision and the imposing of a statutory duty of care on trustees in using powers.

Thelma Kwan, Head of Wealth Advisory for Asia-Pacific at Barclays Wealth, says setting up a trust is driven by needs, such as establishing a trust to ensure smooth succession planning or to manage assets passed on to the next generation.

Kwan says deciding to set up a trust requires no fixed level of assets. “Rather than think in absolute figures, the goal of a trust is to provide peace of mind, which will vary between individuals,” she says.

Key to ensuring a trust achieves its objectives is complete honesty and transparency at the time a structure is set up.

“From a client’s point of view, it is crucial they keep their trustee informed of any changes in circumstances and be open and sincere when divulging information so that they are not caught unaware,” Kwan says.

At the most simple level, the process of establishing a trust involves relinquishing legal ownership of assets by passing the legal title to a trustee. Kwan says most clients are able to continue being involved with the management of assets and play an active role in how the trust is administered, subject to the clients’ residence and tax rules. “A trust can ensure detailed wishes are carried out in complete confidentiality. This can include how, when and to whom assets are distributed. This can be important if there is more than one family involved. A trust can also ensure investment strategies are managed if, for instance, beneficiaries have no knowledge or interest in this area.”

Where an individual is involved in a business that could be a target for litigation, a trust can be set up to safeguard family interests from creditors. A trust can also be used to protect assets passed on to a son or daughter in the event the offspring become involved in a divorce.

A trust needs to be reviewed at least once a year, Kwan says. A change of circumstances, such as additional beneficiaries or beneficiaries moving to a jurisdiction with different tax laws, would also require a review.

Christian Stewart, Managing Director of Family Legacy Asia, says Asian families often lack documentation relating to inheritance and succession issues. This often results in feuds among siblings on the death of the head of the family.

“Setting up the trust becomes an opportunity to think through the ownership succession plan. However, the trust investment committee members have to do what is best for all beneficiaries. They are not allowed to put family values ahead of financial considerations,” Stewart says.

When a trust is set up, Stewart recommends family meetings are held to explain the structure, which may help to avoid surprises and increase family harmony.