

Reforms a boost for City's sector

Long awaited changes to the Trustee Ordinance next year may help Hong Kong attract new companies, writes Chris Davis

Proposed changes to the Trustee Ordinance could help Hong Kong attract new trustee companies and bring the trust sector more in line with Singapore.

According to trust experts, changes to the Trustee Ordinance are necessary to increase the clarity and certainty of the trust law. It will also provide trustees the necessary legal authority for the efficient management of trusts in Hong Kong.

Industry professionals say Hong Kong's trust laws have not been revised since 1937, making them limited in scope when compared with competing offshore jurisdictions.

The proposed reforms include features reflecting the evolving market's needs, such as the reservation of settlors' powers of investment or asset management, antiferred heirship provisions and the imposing of a statutory duty of care on trustees in exercising their powers.

Carolyn Butler, CEO of The Hong Kong Trust Company, says the new trust laws are expected to be in place by mid-2011 in a number of areas. Reforms would also bring Hong Kong trust laws substantially into line with Singapore's. Despite the restructuring, under the present structure there remains an issue of the potential application of Hong Kong's tax rules.

"We would like to see Hong Kong become more attractive to the trust industry by encouraging them to set up Hong Kong trust companies and send their funds to Hong Kong for management. However, our current tax laws act as a deterrent because if a trust uses a Hong Kong company to hold the trust assets then those assets may be subject to tax," says Butler, who is chairman of the Hong Kong' Trustees' Association.

She says in addition to reforming trust and corporate laws in mid-2000, Singapore amended tax laws to provide explicitly for tax exemptions where foreign "owned" trust structures are managed and controlled from within Singapore. The city state imposes an income-tax on all Singapore sourced income, but provides an exemption for a "foreign trust" where the settlor and the beneficiaries are not from Singapore. "Obviously, it would be in Hong Kong's interests if trust providers were encouraged to establish Hong Kong companies, and to use the services of Hong Kong directors and managers. The reality is that, so far, such companies have been incorporated in Hong Kong, and are

managed in offshore tax jurisdictions, such as the British Virgin Islands,” Butler says.

Highlighting Hong Kong's strength's, Debbie Annells, managing director of Azure Tax, says Hong Kong has a depth of professionals who are more than capable of providing comprehensive trust services.

“Hong Kong's trust laws are old but effective. For example, Hong Kong has an advantage over Singapore in that trust laws operate under an international framework. Many people, including common law lawyers, can draft and advise on setting up a trust, while in Singapore, only a Singapore qualified lawyer can draft a trust agreement,” says Annells, whose company operates a Hong Kong registered trust company, which uses Hong Kong trust laws.

Annells says Hong Kong has been slow to promote trusts set up under Hong Kong law. “We see a lot of firms, including private banks, offering trusts which for historical reasons are set up in another jurisdiction and typically drafted under the legal framework of Bermuda, the Cayman Islands and Jersey. At the same time, the relationship between the settlor and trustee, and the management of the trust, is administered in Hong Kong. So, therefore, Hong Kong, misses out on business that is rightfully its own,” she says.

Christian Stewart, managing director of Family Legacy Asia, which advises families on family governance, says Hong Kong could learn a lesson from Singapore by focusing on the regulation of the trust industry. “The Singapore attitude is ‘good regulation’ leads to business growth. But, as yet, there is no specific regulation of trustees in Hong Kong,” Stewart says.

He says when Singapore updated its Trustee Act in 2004; the Monetary Authority of Singapore and Singapore trust companies used the event as the basis for an extensive marketing campaign to promote Singapore as an attractive trust jurisdiction. “The fact that Singapore updated its Trustee Act was all it needed. Hong Kong could do the same. Hong Kong is an excellent jurisdiction for private trust company structures - but is never thought of as such,” says Stewart.

Hong Kong's strengths include a well developed professional services sector, such as strong tax accounting and legal services.

To boost the trust industry, Stewart suggests trustees in Hong Kong could administer a private trust under Taiwanese law, written in traditional Chinese characters - for the Taiwan market.

