

How do you set up a trust in Hong Kong?

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This survey provides a checklist of relevant issues to consider to help you to think about setting up a trust if you are living in Hong Kong (or elsewhere in Asia for that matter). Not every question will be applicable to your case, and the survey is not comprehensive, but the idea is to help you think about what your needs and options are. The survey is not intended to constitute tax or legal advice.

1. What are your objectives? What are you aiming to achieve? What is the purpose of the trust?

- To help manage family wealth
- To keep family wealth consolidated
- To avoid arguments within the family
- To preserve the family wealth
- To pass on family values
- As a vehicle to foster the stewardship of family wealth
- To house the Family Office
- To enhance the lives of the beneficiaries
- Succession planning purposes
- To protect the family wealth
- To help continue the family business
- As an emergency fund for the family
- As a "family bank" to help fund family member's new ventures
- To avoid probate
- To provide confidentiality
- To protect young beneficiaries
- To provide for your incapacity
- To provide for your surviving spouse
- For charitable and / or philanthropic purposes

Other (please specify)

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2. Are there any tax issues you have to plan for when setting up the trust? (Taxes often have a significant impact on the way you can set up a trust structure)

- There are US family members
- There are Canadian family members
- There are Australian family members
- There are UK family members
- There are family members with a connection to another high tax jurisdiction
- There are assets located overseas
- You are investing in foreign stocks e.g. US stocks or UK stocks etc

Other (please specify)

3. What kind of ownership structure would be suitable for your purposes? A trust structure is just one kind of possible ownership structure that can be set up (although it is a common one). Please note the rest of this survey does assume that a trust with an underlying investment holding company is chosen

- Joint ownership of assets
- An offshore investment holding company
- An LLC
- A limited liability partnership
- A common law trust
- A private, non charitable, foundation
- A company limited by guarantee
- A charity (which could be a trust or a company limited by guarantee)

Other (please specify)

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4. Assuming a trust is the right structure, what kind of assets would you like the trust to hold? The kind or type of assets that you are planning for does make a difference in practice to the structuring options available to you

- Financial assets
- One or more residential properties
- One or more investment properties / commercial buildings
- A life insurance policy
- Shares in a private company
- Shares in the family business
- A significant stake in a listed company
- Assets located outside Hong Kong

Other (please specify)

5. Who should have control over the investment decisions for the trust?

- The trustee
- The settlor
- The trustee but the settlor can also give investment directions
- The settlor, then the surviving spouse
- An investment committee

Other (please specify)

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6. Who should make the distribution decisions for the trust? In other words, who gets to decide on when to make payments of income and or capital to the beneficiaires of the trust?

- The trustee based on the fixed terms of the trust
- The trustee, exercising its discretion, but guided by a non binding letter of wishes
- The settlor should have power to direct payments of income
- The surviving spouse should have some role to play in this
- There should be a separate "distribution trustee" or "distribution committee" for the trust

Other (please specify)

7. Who is going to provide custody for the trust assets and who is going to do the accounting work and handle fund flows for the trust?

- The trustee
- An administrative trustee (or an agent for the trustee)
- A separate custodian should be employed
- An accounting firm will prepare the trust accounts
- The Family Office will assist

Other (please specify)

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8. How many trusts do you need?

- Do you need separate trusts for separate assets?
- Do you need separate trusts for assets in different jurisdictions?
- Do you need separate trusts for different members or branches of the family?
- Do you need a separate trust for charity / philanthropic purposes?

Other (please specify)

9. What kind of trustee should you consider?

- A bank affiliated trustee
- An independent professional trustee
- A private trustee company or "PTC"

Other (please specify)

10. How long do you want the trust to last for?

- The purpose of the trust is to avoid probate
- The surviving spouse can terminate the trust
- The adult beneficiaries can terminate the trust after the surviving spouse dies
- The trust can go on indefinitely but can be terminated at request of the protector
- For several generations
- Perpetually (possible in certain jurisdictions, but you have to carefully consider if this is wise)

Other (please specify)

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11. How flexible do you want the trust to be?

- The settlor should have wide flexibility
- The surviving spouse should have wide flexibility
- The protector should have wide flexibility
- The trust should be revocable
- The trust should be irrevocable
- Only the trustee should have the power to amend the trust

Other (please specify)

12. Where should the trustee be located?

- Hong Kong
- Singapore
- A "traditional" offshore center
- A "New" offshore center (for example, New Zealand or the US state of Delaware)

Other (please specify)

13. How is the family going to exercise oversight and supervision over the trustee?

- Through a protector or a protectors committee
- Through the family council
- Through the Family Office
- The trustee will be a Private Trustee Company

Other (please specify)

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14. Who from the family should be involved in the process of creating the trust?

- The asset contributor only (the traditional approach, but if possible not recommended)
- The asset contributor and his/her spouse
- The asset contributor and his/her spouse and adult children (this can help to prevent family fueds)
- The family council (this also can help to prevent family fueds)

Other (please specify)

15. What kind of trust structure would best serve your needs? (Note in practice the answer to this question usually depends on how you have answered the other questions in this document)

- A "short form trust"
- An "insurance trust"
- A "long form trust"
- A "stand by trust"
- A "purpose trust"
- An "incentive trust" (these need to be used with care)
- A "family bank" (often used to encourage entrepreneurial talent)
- A Cayman Islands' STAR trust
- A British Virgin Islands' VISTA trust
- A private trustee company ("PTC") structure
- A trust where investment control is reserved to an investment committee

Other (please specify)

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16. What else do you need?

- A will or wills
- Life insurance
- An "ethical will"
- A letter of wishes to the trustee
- A prenuptial agreement
- A policy on prenuptial agreements for the beneficiaries
- An "instruction manual" explaining how the trust structure works
- A tax opinion letter and / or tax advice on do's and don'ts
- A family constitution to address family (or business) governance

Other (please specify)

17. Is the trust going to own shares in a family business?

- Do you have a family council and / or an owners council?
- What family business policies should you have?
- What role does the Board play?
- What succession issues need to be addressed?
- Do you have a process for ongoing ownership education?

Other (please specify)

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18. Is the trust going to hold joint family financial wealth?

- Do you have a family council?
- What family policies should you have?
- Does the trust need a mentoring committee?
- Do you have a process for ongoing ownership education?
- Do you have a process for ongoing trustee & beneficiary education?
- Is there, or do you need a Family Office (where the wealth is significant)?

Other (please specify)