

# Hong Kong Trust Law

Trusts in Hong Kong has more than 100 years of history. Since the amendment of the Hong Kong Trustee Ordinance (“HKTO”) on 1 December 2013, Hong Kong’s trust law is more in line with other comparable common law jurisdictions and becomes a more popular choice of trust governing law. Some important facts of Hong Kong trust law are set out below:

## 1. NO RULE AGAINST PERPETUITIES

Settlors can set up Hong Kong Trusts for an unlimited period of time. This is attractive for families which want to set up trusts for holding assets with high significance for estate and succession planning.

## 2. RESERVED POWER OF INVESTMENT

The law allows settlors to reserve power of investment or asset management functions in the trust instruments without invalidating the trusts. This provision gives certainty to settlors who want to manage the investment portfolio for the trusts.

## 3. PROVISION AGAINST FORCED HEIRSHIP

Hong Kong Trusts are protected from forced heirship rules: some civil law jurisdictions adopt mandatory forced heirship rules, which may require part of the estate to be reserved for spouse and/or children; however HKTO protects lifetime transfer of movable properties to a trust expressed to be governed by Hong Kong law against the forced heirship rules.

## 4. NO RULE AGAINST EXCESSIVE ACCUMULATION OF INCOME

There are no restrictions on Hong Kong Trusts for accumulation of income, which means that trust income can be accumulated during the trust period and only distributed to beneficiaries as and when needed.

## 5. BENEFICIARIES’ POWER TO APPOINT AND REMOVE TRUSTEES

Beneficiaries of full age and capacity and are absolutely entitled to the trust property and acting together, may appoint new trustees to replace the existing trustees without the need of going through court procedures.

## 6. DUTY OF TRUSTEES

### a. Statutory duty of care and provide for appropriate checks and balances

Trustees are required to observe a statutory duty of care. A trustee must exercise a level of care and skill that is reasonable in the circumstances, having regard to any special knowledge or experience that the trustee has. If the trustee acts in a business or professional capacity, any special knowledge or experience that is reasonably expected of a person acting in such business or professional capacity must be taken into account.

### b. Statutory control on exemption clause for trustees acting in a professional capacity

A remunerated trustee acting in a profession or business cannot rely on exemption clauses to relieve them from liability arising from trustees’ own fraud, willful misconduct or gross negligence.

## 7. DEFAULT POWER OF TRUSTEES

### a. Power to appoint agents, nominees and custodians

Trustees are allowed to appoint agents, nominees and custodians to exercise their delegable functions. Trustees need to give clear guidance to agents who are delegated with asset management functions. It is trustees' duty to review the arrangements under which their agents, nominees and custodians act.

### b. Power to insure

Trustees are free to insure property on trust against the risk of any loss or damage, and without limit to its market value or full replacement value.

## 8. SCOPE OF AUTHORIZED INVESTMENTS

Unless it is stated to the contrary in the trust instruments, trustees are restricted to invest funds in authorized investments specified in the Second Schedule to the HKTO. For listed companies, trustees are restricted to invest in companies:

- i. With market capitalization not less than HK\$5 billion; and
- ii. A track record of having paid dividends over the preceding 3 years.

## 9. TRUSTEES' REMUNERATIONS

The HKTO allows trustees acting in business or profession to receive reasonable remuneration out of trust funds for services provided, even without express provision in the trust instruments.

## Key contacts

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