



## HK DISCRETIONARY TRUST

Many jurisdictions – among them Hong Kong rival for the position of Asia’s leading asset management centre – have modernized their trust law in recent years, in some cases offering a more attractive regime.

Perhaps the biggest advantage to Hong Kong is the removal of restrictions on the length of time a trust may operate. With the changes in effect, it is now possible to create a trust which continues in perpetuity, which could become a significant differentiating factor for Hong Kong. Many trust jurisdictions have a fixed maximum period for which a trust can be established, and such time limits can be a concern for families who would like to see a trust continue over several generations.

The other key change concerns Settlor powers. Typically, a trust may be invalid if the person establishing it retains control over the assets, which can be an issue for families who wish to actively participate in the management or investment of the trust assets. Under the new law, however, such active participation by the family need not invalidate the trust.

Forced heirship rules, requiring a proportion of an individual’s estate to pass to certain heirs, typically the spouse or children, upon their death can be an issue for international families. Assets placed in a Hong Kong trust will now be protected from such rules, providing greater flexibility.

The regime also becomes more flexible thanks to new provisions enhancing Trustees’ powers. Trustees can now appoint professional asset managers to manage a portfolio for investments, which should simplify administration.

The amendments also enhance the protection of Beneficiaries, bringing Trustees’ duties in line with international industry standards. For example, professional trustees will now be held to a higher standard and will no longer be able to exclude liability for willful misconduct or gross negligence.

Against the backdrop of global uncertainty, HNWI’s are seeking strong, stable trust structures and perceived credibility of the jurisdictions in which to establish them is an important consideration. Crucially, for families who would not have had Hong Kong even on their long-list of potential jurisdictions for trust structures pre-2013, it is now a real option.

**PLEASE FEEL FREE TO CONTACT US WITH ANY QUESTIONS OR QUERIES.**

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