


Thailand's Private Trust Act



The proposed trust law aims to bring more wealth back to the country as both Thai and overseas assets (including real estate properties) can be used to set up a trust and promote Thai private banking business.

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PRESERVING A FAMILY BUSINESS FOR THE NEXT generation is the key to its long-term growth. A trust is one of the tools that enables family members to preserve the family's business legacy, extend the family's wealth over several generations and provide security for an ageing society. Trusts are now set to be incorporated in to the law in Thailand.

On 10 July 2018, the Cabinet approved the draft Private Trust Act Bill. It was sent to the Office of the Council of State for the next stage of legislative review. Some unique features of this law are that it allows a corporate entity to be a settlor and allows real estate (immovable properties) in Thailand to be preserved under the umbrella of trust law. These measures will give flexibility for asset and wealth management and opportunities for succession planning for property owners when they are not around until the next generation is ready. Moreover, the proposed legislation closes the loophole for any abuse of the trust as a fundraising vehicle and also prevents the trust being used for capital market transactions, which are already governed under a special trust law.

The proposed legislation also addresses legal and regulatory requirements that a person who sets up a trust should take into account. Those include foreign business law; foreign ownership of immovable properties; investment restrictions; and license requirements to hold specific types of assets.

Without trust laws, wealthy Thai families may have their family trusts set up overseas. The proposed trust law aims to bring more wealth back to the country as

both Thai and overseas assets (including real estate properties) can be used to set up a trust and promote Thai private banking business.

Highlights

The main purposes of the Private Trust Act are: (1) to provide a tool to manage and protect private financial assets and real properties efficiently and according to the property owners' true intentions; and (2) to prevent outward remittance for properties in Thailand to be managed overseas. We have summarized the key features below.

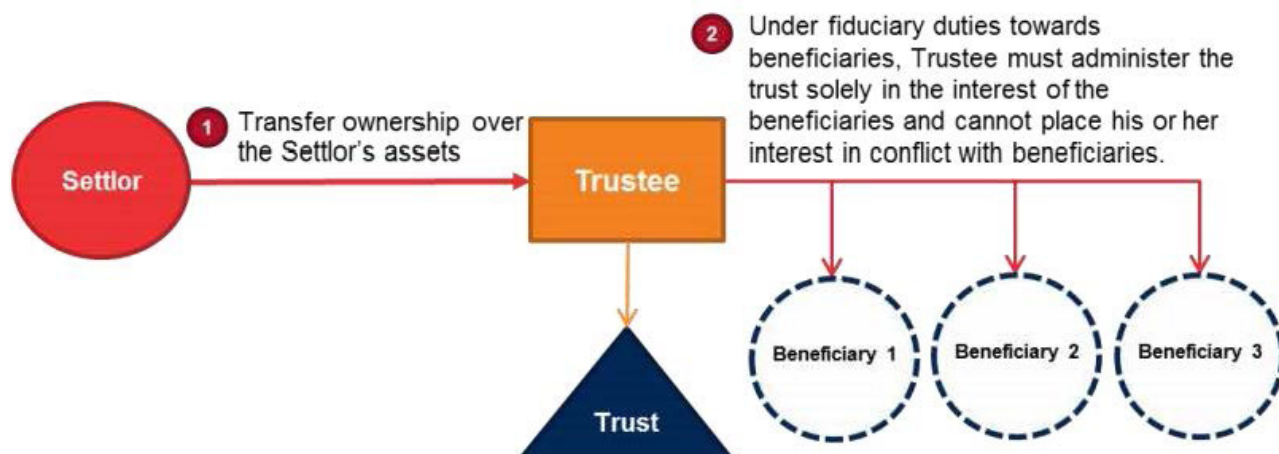
A. Setting up a trust

A trust can be set up by an agreement. To do so, the settlor, an individual or juristic entity, must transfer their assets to the trustee. A settlor cannot act as a trustee. Assets to be used for setting up the trust are broadly defined and are aimed to target both offshore and onshore assets including real estate.

“ FROM A TAX PERSPECTIVE, WE MUST ALSO NOTE THAT THE REVENUE DEPARTMENT DID NOT SIGNIFICANTLY PARTICIPATE IN THE DRAFTING PROCESS OF THE PROPOSED TRUST LAW LEGISLATION.”

B. Trustee

A trustee must be a qualified person under the Private Trust Act and obtain a license from the Office of the Securities and Exchange Commission (SEC). According to the current draft, the Private Trust Act allows commercial banks; financial institutions; securities companies; and other juristic entities (to be determined in the future) to apply for a trustee license. A trustee



cannot be a beneficiary of the trust. Powers and responsibilities of a trustee are listed in the Private Trust Act and are similar to those applied to trusts in the capital market. A trustee must comply with the duties defined in a trust agreement for the highest benefits for the beneficiaries.

C. Trust term

A 100-year term is the maximum term for the trust.

D. Trust documentation and oversight

A trustee must prepare a financial statement for the trust that it manages in accordance with the accounting standards. A financial statement for the trust must be submitted to the SEC Office and audited by an auditor approved by the SEC.

The SEC Office will supervise and oversee trust administration under the Private Trust Act. The SEC Office may reasonably order a trustee to perform an action or not to perform an action to prevent any

damage if there is a violation of the Private Trust Act or mismanagement.

Future tax developments

There might be further developments and revisions made by the Office of the Council of State during its review. From a tax perspective, we must also note that the Revenue Department did not significantly participate in the drafting process of the proposed trust law legislation.

Preliminary feedback from the Revenue Department is quite positive and suggests that there should not be double economic taxation on trust income and trust distributions; either the trust would be treated as a separate taxable unit or a disregarded vehicle for tax purposes, which should not cause double taxation.

We will have to wait and see whether tax mechanisms for trusts will impede their purpose. We will closely monitor the progress of the Private Trust Act and provide updates on any developments. ■

