

# PRIVATE TRUST COMPANY structures in Hong Kong

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Trident Trust Company (HK) Limited

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## A) FAMILY A

- Well organised. Ability to discuss issues and find solutions.
- Ability to adapt to changes outside and inside family
- 4<sup>th</sup> generation

## B) FAMILY B

- Founder now 80 years old. No clear succession plan.
- Family and their lawyers waiting like vultures
- PTC managed by family member is “in a mess”

## **FAMILY GOVERNANCE** and **ADAPTABILITY**

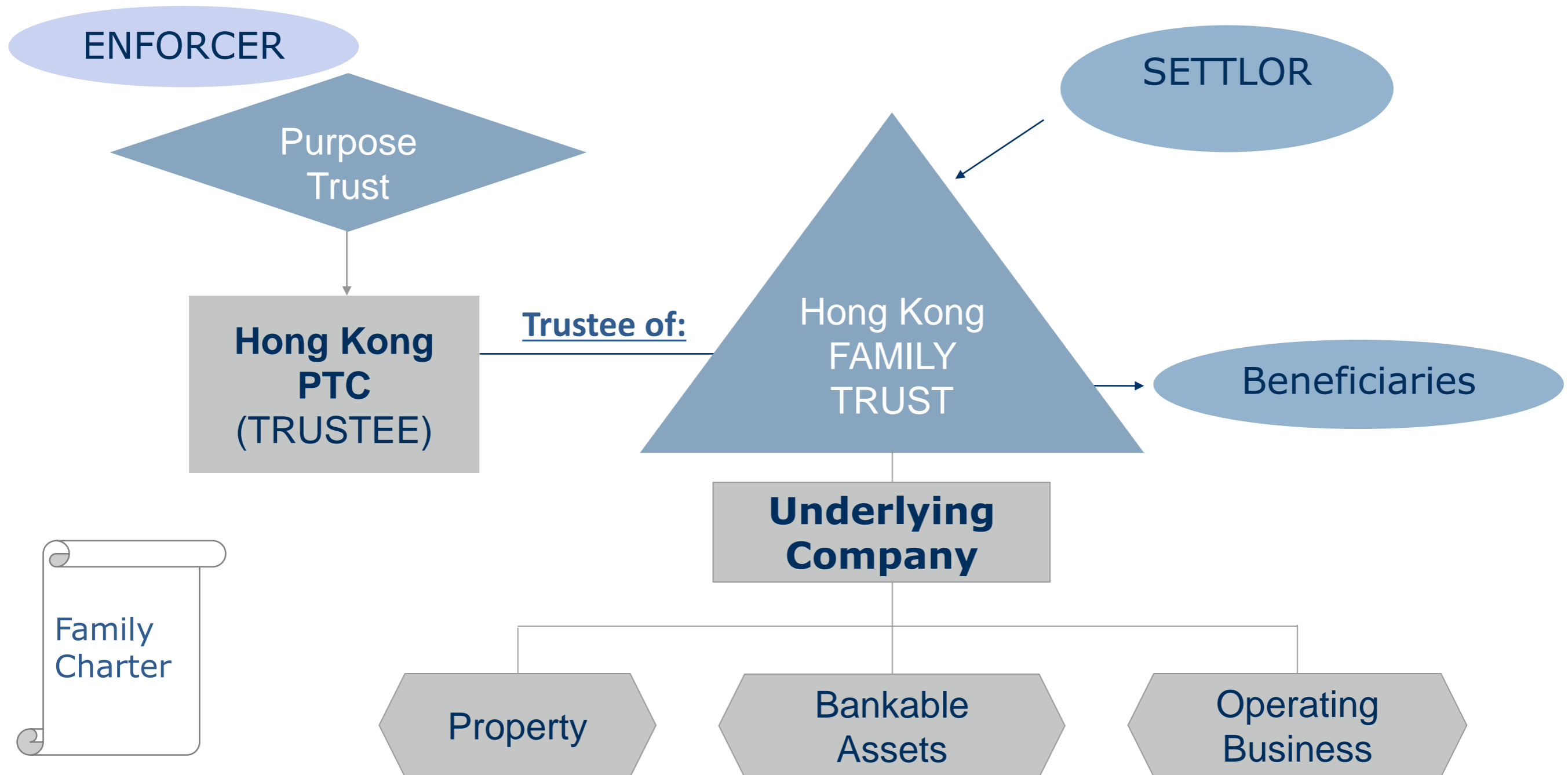
How to break the curse of the “*Wealth only last 3 generations*”

## A) WHAT IS A PTC?

- A company incorporated to act AS TRUSTEE of a family trust/s.
- Only acts for one family.
- Trustee decisions taken by **Board of Directors** of the PTC.
- Family members can also sit on the Board of Directors.
- Administration agreement

**EASY by design but DIFFICULT TO GET RIGHT IN PRACTICE**

## Purpose Trust, Hong Kong Private Trust Company, Hong Kong Trust



## In order to be a good trustee we have to have knowledge about:

### A) Legal requirements

- Trustee and Company ordinances
- Family law, probate and inheritance
- Anti-Money laundering laws

### B) Accounting and financial

- Keeping accounting records and produce trust accounts & beneficiary statements
- Tax reporting (HK, FATCA, CRS ....)
- Monitoring of investments

### C) Psychology and human nature

- How to prevent conflict between family members
- How to manage difficult beneficiaries

## CONTROL

- ▶ Benefits of a trust but wants to have some **control** over the trustee decisions and the trust assets.
- ▶ Can hold “high risk” investments like private company shares that a trust company does not want to hold.
- ▶ The PTC can become a formal “meeting place” for a wealthy family to take decisions about the family business but also about managing the family wealth and about distributions. This can be a great tool as part of a succession plan.

- ▶ Hong Kong TCSP (Trust or Company Service Providers) licensing requirements?
- ▶ Tax residence of the PTC if the directors are not tax resident in Hong Kong.
- ▶ “Mind & Management” test.
- ▶ Tax residence of the Trustee (the PTC) affects the tax residence of the Family Trusts.
- ▶ FATCA: Classification of each entity, Registration of FFI, Responsible Officer, GIIN, annual reporting to the US IRS
- ▶ Sponsorship by Trident.
- ▶ CRS / AEOI: Classification of each entity, registration of tax office’s portal, annual reporting
- ▶ Other tax reporting: USA 3520
- ▶ Tax residence of the underlying investment holding companies.
  - Who will be the directors?
  - BVI / Cayman “substance requirements” from 2019

## New licensing regime for Trust Company Service Providers became law in HK on 1 March 2018

- ▶ This extended the AMLO requirements to trustees, company secretarial providers, real estate agents, accountants, solicitors.
- ▶ New regulator: Registry for Trust and Company Service Providers (part of Companies Registry)
- ▶ See website: [www.tcsp.cr.gov.hk](http://www.tcsp.cr.gov.hk)

## Exemption for PTC's and other non-professional trustees:

*If the company, **by way of business**, provides in Hong Kong a trust or company service to other persons, the company is required to apply for a TCSP licence.*

|  | ACTIVITY                     | YES / NO            |
|--|------------------------------|---------------------|
|  | Providing TCSP service       | Yes, act as Trustee |
|  | Regular / continuing service | Yes                 |
|  | Marketing                    | NO                  |
|  | Profit motive                | NO                  |



- ▶ Clients do not always have the time or experience to manage all the duties of a trustee.
- ▶ A professional trust company can assist the PTC
- ▶ Need to formally agree on division of tasks – Administration Agreement
  - ▶ **At the PTC company level:**
    - ▶ Company Secretary – Annual returns, prepare minutes of PTC board meetings, keep statutory minutes and registers.
    - ▶ Keep accounting and administration records of the PTC.
    - ▶ Arrange audit and tax declarations of the PTC
  - ▶ **At the level of each trust for which the PTC is the trustee:**
    - ▶ Attend PTC trustee meetings, keep minutes. Assist in “how to act as proper trustee”.
    - ▶ Keep accounting and administration records of each trust
    - ▶ Liaise with tax advisors to issue settlors and beneficiaries with reports required for tax filings
    - ▶ Liaise with legal advisors to prepare contracts and other legal documents
    - ▶ Keep documents required under anti-money laundering legislation
    - ▶ Family governance advice

# KEY DIFFERENCES: PTC's in other jurisdictions TRIDENTTRUST

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## ▶ **Singapore:**

- ▶ Singapore PTC is required to engage a licensed trust company to carry out trust administration services
- ▶ PTC can only act for “related trusts”
- ▶ PTC must have at least two local persons as directors.
- ▶ The accounts of the PTC is published and is public information.

## ▶ **BVI**

- ▶ Details of directors, shareholders and accounts must be given to the BVI licensed registered agent but is not available to the public. Director can be resident anywhere and can be corporate.
- ▶ PTC can only engage in “unremunerated trust business” or “related trust business”.
- ▶ M&A must state that it is a Private Trust Company. Name must have “PTC” in it.
- ▶ Annual declaration of compliance with BVI law.

## ▶ **Jersey**

- ▶ Notice to and approval required from Regulator
- ▶ Jersey PTC is required to engage a licensed trust company to carry out trust administration services
- ▶ Information about directors and accounts not available to the public.

**A) Great tool to hold family business assets**

**B) Need professional involvement**

**C) Need good recordkeeping about trust assets  
- helps to keep family's trust in the trustee**

**D) Do not become like FAMILY B**

- Founder now 80 years old. No clear succession plan.
- Family and their lawyers waiting like vultures
- PTC managed by family member is “in a mess”

**A well managed PTC can help FAMILY GOVERNANCE** and  
*We wish that your “Wealth last more than 3 generations”*

# Contact Us



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