



The Hong Kong Trustees' Association
Best Practice Guide for Trustees of Private Trusts

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Introduction

This Guide sets out the best practices which aim to educate and raise industry standards of members of the Hong Kong Trustees' Association ("HKTA") in relation to their private client trustee activities.

The Guide consists of 3 parts:

1. Guiding Principles
2. Guidance Notes, and
3. Practice Guidelines

The Guiding Principles

When acting as trustee, certain duties and powers are imposed and created pursuant to the provisions of the trust deed, the Trustee Ordinance and general common law. The Guiding Principles seek to guide members of the HKTA on how such duties and powers should be discharged and exercised. The application of these general Guiding Principles will vary depending on the particular trust involved and the terms by which that trust is constituted. However, applying these principles when acting as trustee should assist members of the HKTA in meeting their fiduciary obligations.

The 9 Guiding Principles are to be observed by and are applicable to all Hong Kong trustees of private trusts.

Guidance Notes

The Guidance Notes are designed to provide members with information on how the Guiding Principles will be met. These Notes should not be treated as a definitive guidance and should be applied or adopted as appropriate as required in the circumstances taking into account the scope and nature of the trustee activities being undertaken. The Guidance Notes are not intended to convey or mandate the only way to address a particular issue.

Practice Guidelines

Practice Guidelines may be issued under this Guide from time to time to provide members with suggestions on how the Guiding Principles in relation to particular areas of practice may be met. Practice guidelines will be more detailed than Guidance Notes and cover more practical issues.

Practice Guidelines should not be treated as a definitive guide to a particular practice area and should be applied or adopted as appropriate and as required in the circumstances given the scope and nature of the trustee activities being undertaken. Practice Guidelines are not intended to convey or mandate the only way to address a particular issue.

Review of and Changes to the Guide

The Guides will be regularly reviewed by the Best Practices Sub-committee. Any change to this Guide requires the approval, by majority resolution, by the members of the HKTA Executive Committee. Any proposed change will be circulated in advance to members for consultation and all views will be taken into account by the Executive Committee when considering the implementation of any such change.

Conflict between the Guide and other Codes

In the event of any conflict between this Guide and any laws, regulations, codes or guidelines (including codes of conduct) (collectively “Other Codes”) issued by a regulatory or professional statutory body to which a trustee may be subject, the Other Codes will take precedence. However, in all cases, a trustee should seek to resolve any conflict taking into account the Guiding Principles.

Important Note

The HKTA does not accept, and hereby expressly disclaims, all and any responsibility and liability of any nature whatsoever, including liability for loss or damage, for the consequences, direct or indirect, of any act or omission on the part of any of its members or any other person, whether negligent or fraudulent or otherwise, and whether in breach of trust or not, in observing and performing or failing to observe or perform any of the provisions or principles of this Guide (and any changes thereto) and all Practice Guidelines that may be issued thereunder.

Furthermore, it should not be inferred or understood from the adoption by any member of the HKTA or any other person of this Guide or of the standards of practice herein contained or of the Guiding Principles contained herein, or from any statement by any such member or person that such member or person will or intends to observe and perform such standards of practice or Guiding Principles, that the HKTA endorses

such member or other person or the standard of performance or otherwise of such member or other person in the conduct of such member's or other person's activities as trustee.

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GUIDING PRINCIPLES

- 1. Act in Good Faith**
- 2. Act with Prudence and Care**
- 3. Act with Skill and Diligence**
- 4. Act with Integrity and Independence**
- 5. Maintain Confidentiality**
- 6. Comply with Applicable Laws and Regulations**
- 7. Communicate Effectively in a Transparent Manner**
- 8. Promote the Highest Standards of Governance**
- 9. Act in Accordance with Trust Objects**

GUIDANCE NOTES

Principle 1: Act in Good Faith. Acting in good faith and in the best interests of beneficiaries of the trust subject to the provisions laid down by the client (settlor).

Acting in the best interests of the beneficiaries in this context includes:

- **Balancing Objectives.** Striving for a balance between (i) the objects of the trusts, (ii) the settlor's wishes, (iii) maximizing long term asset growth, (iv) minimizing management costs, (v) minimizing risk and (vi) making payments to beneficiaries in a timely manner.
- **Disclosure and transparency.** Maintaining and disclosing a clear statement of the risks and objectives of the trust together with a transparent fee structure, where appropriate. Ensuring that fees are fair and reasonable.
- **Fees and Charges.** Ensuring that fees and charges in relation to a trust are fair and reasonable.

Principle 2: Act with Prudence and Care. Acting with prudence and reasonable care in the performance of your duties.

In considering what is “reasonable”, you need to consider what a person acting in the same capacity and with the same objectives would do under the same circumstances.

Acting with **Prudence** includes:

- **Being Informed.** Acting on a fully informed basis and actively participating in discussions and decision making on matters over which the trustee has discretion under the trust deed.
- **Risk Management.** Policies and procedures to assist in identifying and managing risks proactively, consistently and in timely manner and detailing the internal controls in place to mitigate particular risks.
- **Seeking Assistance.** Seeking external professional help whenever additional expertise is required.
- **Client Due Diligence (CDD) and AML Provisions.** Policies and procedures should be in place to verify the settlor’s source of funds and the identity of the beneficiaries before payment of any benefits is made. You should ensure CDD and AML procedures are carried out in accordance with the applicable laws and regulations.

Acting with **care** includes a number of facets:

- **Good faith.** Acting with proper motive and purpose.
- **Consistency.** Exercising power and discretion consistently. To the extent that any decision constitutes a departure from agreed practice or procedure, you should be able to show that the decision was reasonable in the circumstances.
- **Collaboration.** Where there is more than one trustee, making decisions collectively and only acting on an individual basis if specifically directed to do so or if otherwise in the best interests of the trust or its beneficiaries.
- **Acting within Parameters.** Acting in accordance with the objects of the trust and working within any parameters set out in the trust’s governing documents and any ancillary rules, procedures, directions from the settlor or protector.

Principle 3: Act with Skill and Diligence. Acting with appropriate skill, competence and diligence in the performance of your duties.

- **Skill and Time.** You should not accept any appointment without understanding the nature of the role including the laws, regulations and rules of the trust, and the time you need to devote to execute the required functions in a timely, efficient and professional manner.
- **Knowledge.** Ensuring the purpose, objects and mission of the trust and all appropriate laws are known and understood by all relevant staff/individual trustees and that their understanding is kept current and relevant.
- **Investment.** Ensuring policies and procedures detailing the underlying assumptions and the strategy guiding the investment decisions of the trust are in place. If you are unsure of the nature of the investments or risks involved you need to seek professional advice. You may need to employ and be guided by investment experts.
- **Internal controls.** You should implement adequate procedures and controls in managing, administering, and overseeing, as applicable, the operation of the trust.

Principle 4: Act with Integrity and Independence. Acting fairly, consistently, objectively and impartially when reaching decisions relating to the trust and its beneficiaries. Maintaining independence and integrity by managing conflicts of interest fairly and objectively.

You should act with the utmost professional standards at all times and avoid any actions which may serve to compromise the reputation of the trust. Particular attention should be paid to the following areas:

- **Conflicting Duties.** Not permitting any outside duties or responsibilities to unduly influence your decisions or compromise your ability to act in the best interests of the beneficiaries. Where such outside duties and responsibilities arise as a function of you as trustee conducting your business within a wider organisation eg. a bank with multiple service lines, you should ensure there is proper segregation of decision making and other activities in place to avoid any undue influence on your decision making or compromise your ability to act in the interests of the trust.
- **Conflicting Loyalties and Relationships.** Being careful not to put the interests of any one group of beneficiaries above another, except as provided for in the trust documents, or appropriate to the trustees' exercise of discretion.
- **Personal Conflicts.** Not putting yourself in a position where your own interests conflict with the interests of the trust.
- **Private Gain.** Not using the status or your position, or any information obtained during the course of your duties, for personal advantage or gain.
- **Connected Party Transactions.** Where the trustee has any involvement with any connected party, the trustee should deal with all connected parties on an arm's length basis and any such connections should be disclosed.
- **Ancillary Interests.** Not being unduly influenced by external factors, such as political, religious or philosophical beliefs, when making decisions on behalf of a trust unless provided for in the trust or ancillary documents.
- **Hospitality and commissions.** Not accepting, either directly or indirectly, any gift, service, remuneration, favour or entertainment from anyone engaged by or seeking business from the trust if it could reasonably be expected to influence a decision or be considered a reward for reaching a particular decision unless it is for the benefit of the settlor and beneficiaries. You are recommended to make prior disclosure of any fees, commissions or benefits paid, received or receivable by you in connection with the trust service from any third parties and implement written guidelines detailing your gifts and entertainment policy.

To the extent conflicts may be perceived or arise, you should take appropriate measures to deal with and manage the conflict, including:

- **Disclose.** Disclosing any real or perceived conflicts of interests to co-trustees and other affected parties in an effective and timely manner; and
- **Abstain.** Excluding yourself from any deliberations on any issues where there may be a conflict and abstaining from voting or other decision making.

Principle 5: Maintain Confidentiality. Maintaining the confidentiality of all trust related information and treating any personal data with the utmost care and sensitivity. Avoid disclosure of information to third parties except where required for the management of the trust or in accordance with the applicable law and regulations.

Information in this context means any information relating to the trust (including information relating to the board and individuals connected with the trust) and any other information obtained by you in confidence.

Principles of Use Policy You should implement appropriate protections in relation to confidential information, including a policy for the collection, use, storage, protection, transmission and destruction of confidential data.

Principle 6: Comply with Applicable Laws and Regulations. Comply with all applicable laws, regulations and the trust constitutive documents.

To enable full compliance, you should implement a compliance program to include, amongst other things, where applicable.

- **Manage Change.** Implementing procedures to ensure a designated individual or team is given the responsibility to readily identify any changes to existing requirements, and communicate the changes to those who need to know, in an effective and timely manner.
- **Review.** Regularly reviewing the operation of the trust to ensure that the compliance program has been adopted, implemented effectively and is being complied with.
 - **Report.** Prompt reporting to appropriate parties (including the trustee board) in accordance with the laws and regulations, and requirements of the trust deed.
 - **Co-operate with regulators.** To deal with regulators in an open and cooperative manner and communications with relevant regulators should be timely and accurate.
 - **Accounting and record keeping.** To maintain adequate records and adequate internal controls of the trustee's records to demonstrate compliance with all applicable legal and regulatory requirements and trust governing documents.
 - **Compliance policies and procedures.** To establish a compliance function and compliance policy with proper approval from senior management which should be commensurate with the scale, complexity and risk profile of the trustee's trust business. Such policy should be subject to regular review to ensure adequacy and relevancy.

In addition to implementing a compliance program, you should:

- **Seek professional advice** on any applicable laws and regulations where additional technical expertise is required.

Principle 7: Communicate Effectively in a Transparent Manner. Communicating with interested parties in an informed, timely, accurate and transparent manner.

Interested parties in this context means settlors and beneficiaries and any other party with a legitimate interest in the trust.

Particular attention should be paid to the following areas:

- **Accurate and Effective Communications.** Ensuring that all information, reports and financial statements issued by you are true, fair, accurate, timely, not misleading and in accordance with the constitutive documents and the applicable regulations.
- **Handling of incidents.** Ensuring that a proper arrangement is in place to handle incidents such as disruption of services, data leakage, including notifying any impacted persons and safeguard all parties' interests.
- **Handling Enquiries and Complaints.** Handling enquiries and complaints in a sensitive and timely manner and ensuring all communications are clear, true and accurate and in plain language. You should implement adequate policies and procedures for handling and monitoring of complaints with regular reports to senior management for review.

Principle 8: Promote the Highest Standards of Governance. Actively contributing towards improving the governance of the trust and maintain a good governance structure to discharge your duties.

Good governance should include:

- **Consultation.** Working with the trustee board/co-trustees in improving governance, including sharing ideas and best practice.
- **Training.** Actively participating in induction, training and annual refresher training of the trustee board/co-trustees and staff to fulfil any trust-related continuous professional training requirements (including but not limited to ethics and compliance) in order to maintain on-going professionalism and ensuring they keep abreast of the latest development and are aware of their duties, responsibilities and are fully informed and to keep records of such training.
- **Business Continuity.** Establishing policies and procedures to manage any disruption to your operations, including but not limited to epidemic, financial crises and systems failures including those of your delegates.
- **Delegation to Service Providers.** Where appropriate establishing policies and procedures in relation to the selection, appointment, monitoring, assessment and supervision of service providers.
- **Separation of Authority.** Ensure separation of duties and authorization when dealing with client assets.
- **Insurance.** Ensuring you have adequate and appropriate Professional Indemnity Insurance in place.
- **Supervision of staff.** Ensuring adequate level of supervision of staff and ensuring that your key personnel and relevant staff are fit and proper for their roles and responsibilities. Appropriate policies, procedures and plans should be implemented to assess and record the adequacy of relevant academic and professional qualifications, experience and soundness of judgement of your staff.
- **Accountability.** Ensuring senior management are responsible and accountable for the day-to-day running of the trust business in compliance with applicable legal and regulatory requirements and internal procedures.

Principle 9: Act in accordance with Trust Objects. Acting fairly, consistently, objectively and impartially when dealing with the trust participants and beneficiaries. Particular attention should be paid to the following areas:

- **Equality of Interests.** Taking into account the interests of all trust participants and beneficiaries, particularly where decisions may affect different classes or types of trust participants differently.
- **Balancing Interests.** Balancing the interests of all types of trust participants and beneficiaries and treating each class fairly as between each other and as between classes.
- **Consistency.** Acting in accordance with the objects of the trust and taking a consistent approach to decision making. To the extent that any decision constitutes a departure from agreed practice or procedure, you should be able to show that the decision was reasonable in the circumstances.
