



The Hong Kong Trustees' Association
Best Practice Guide for Trustees of Corporate 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 trustee activities for corporate trusts.

Corporate trusts, in this context, refer to collective investment schemes in the form of a trust which enable a number of investors to pool their assets and have the pooled assets professionally managed by an independent manager and under which the unitholders are beneficiaries of the relevant corporate trust. It is noted that some corporate trusts are constituted by a declaration of trust (and hence investment powers rest with the trustee and the trustee appoints the investment manager), whilst others are constituted by a 2-party trust deed (e.g. the typical trust deed for a unit trust in which the investment manager has sole power over investments). There may be other forms of corporate trust structures where a trustee is in place and members may exercise their discretion in applying all or certain Principles in this Guide as they consider appropriate in the administration of such trusts. This Guide therefore needs to be applied appropriately to the constitution of the trust and the resulting responsibility of the trustee.

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 corporate trusts.

Guidance Notes

The Guidance Notes are designed to provide members with information on how the Guiding Principles may be met. These Notes should not be treated as definitive guidance and should be applied or adopted as appropriate and 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 investors/beneficiaries in accordance with the objects of the trust.

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

- **Balancing Objectives.** In case where the trust is constituted by a declaration of trust: Striving for a balance between the objects of the trusts, such as to (i) maximize long term asset growth, (ii) minimize management costs, (iii) minimize risk, and (iv) make payments to investors in a timely manner. In certain trust arrangements such as unit trusts, the balancing of investment objectives will be the responsibility of the appointed investment manager.

- **Acting in the Investors/Beneficiaries' Interest.**
 - (a) In cases where the trust is constituted by a declaration of trust: The trustee should consider the impact of decisions relating to the trust on the wider community. Wider community interests may include taking into account socially responsible management philosophies when selecting investments and ensuring responsible selling practices. However, in all cases, the interests of the investors/beneficiaries must remain paramount.

 - (b) Where the trust is constituted by a 2-party trust deed (e.g. unit trust): The trustee should administer the trust impartially in the interests of the investors/beneficiaries with diligence and in good faith, according to the terms of the trust deed and/or the applicable regulations.

- **Disclosure and Transparency.**
 - (a) In cases where the trust is constituted by a declaration of trust: Maintaining and disclosing a clear statement of the risks and objectives of the trust together with a transparent fee structure. Ensuring that fees are fair and reasonable.

 - (b) Where the trust is constituted by a 2-party trust deed: Ensuring that the fees of the trustee's delegates and agents 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 constitutive documents.
- **Risk Management.** Policies and procedures to assist in identifying and managing risks proactively, consistently and in a 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 for compliance with the principles set out in 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 constitutive documents and any ancillary rules and procedures.

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 the 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 are known and understood by relevant staff / trustees and that their understanding is kept current and relevant.
- **Investment.**
 - (a) In situations where the trust is constituted by a declaration of trust: 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.
 - (b) Where the trust is constituted by a 2-party trust deed: Comply with the terms of the trust deed and applicable law and regulations in relation to the trustee's responsibilities for investments 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 in accordance with reasonably expected standards of a professional trustee 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 trust.
- **Conflicting Loyalties and Relationships.** Being careful not to put the interests of any one group of beneficiaries above another. Being careful to keep your relationship with the trust sponsor and any service providers at arm's length, especially when the sponsor or provider is an affiliate or a related party or you otherwise have a relationship which may compromise your independence or objectivity.
- **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, except where disclosed.
- **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.
- **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 beneficiaries. You are recommended to 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 the trustee board and other affected parties in an effective and timely manner.

- **Abstain.** Excluding yourself from any deliberations on any issues where there may be a conflict and abstaining from voting or other decision making unless with the consent of the trustee board.

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 trustee board and investors/beneficiaries) 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 and transmission 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 any new regulatory/licensing regime applicable to the trustee's operation and communicate the changes and the new regulatory requirements 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 maintaining 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 the trust sponsor, investment managers, investors/beneficiaries and any other party with a legitimate interest in the trust, such as industry regulators, and government officials.

Particular attention should be paid to the following areas:

- **Accurate and Effective Communications.** Ensuring that all information and notices issued by you are true, fair, accurate, timely, not misleading, and are in all cases in accordance with the constitutive documents and the applicable regulations.
- **Handling Enquiries and Complaints.** Handling enquiries and complaints in a timely manner and ensuring all communications are clear, true and accurate, and in plain language.
- **Access to Information.** Facilitating the provisions of details of the trust including the constitutive documents, investment information and fee structure upon request, where appropriate (as set out in the offering document or determined by the investment manager or applicable regulators).

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.** Where applicable, working with the trustee board/trustees in improving governance, including sharing ideas and best practice.
- **Training.** Actively participating in induction and training of the trustee board and staff and ensuring they are aware of their duties, responsibilities and are fully informed.
- **Business Continuity.** Establishing policies and procedures to manage any disruption to your operations, including but not limited to epidemic, financial crises and systems failures.
- **Delegation to Service Providers.** Where applicable, establishing policies and procedures in relation to the selection, appointment, monitoring, assessment and supervision of service providers.
- **Conflicts of Interests.** Establishing policies and procedures to manage conflicts of interests.
- **Separation of Authority.** Ensure separation of duties and authorization when dealing with trust assets.
- **Insurance.** Ensuring you have adequate and appropriate Professional Indemnity Insurance in place.
- **Regular Review.** Review on a regular basis the efficiency and effectiveness of the trust's governance structure.

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

- **Equality of Interests.** Taking into account the interests of all investors/beneficiaries, particularly where decisions may affect different classes of investors/beneficiaries, taking into account different classes may be prescribed different rights and duties under the trust's constitutive documents.
- **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.
