

# HKTA MEMBERS' FORUM

## 8 DECEMBER 2014

### REGULATION OF TRUSTEES IN HONG KONG

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December 2014

# Agenda

*The HK Trust Industry Report by KPMG and HKTA*

*Trustee Regulation Working Group's Observations*

*Should Trust Companies be regulated?*

*What Are Your Views?*

## The HK Trust Industry Report by KPMG and HKTA

The Majority of the survey respondents believe that in the near future, the Hong Kong trust industry is likely to focus on the various global and local regulatory developments more than other factors.

## Regulation of the Hong Kong trust industry

- At the moment, there are no single, specialised regulators in the Hong Kong trust industry.
- A number of regulators have jurisdiction over the portfolio of products and services being offered and managed in the market, often by virtue of regulating the wider banking and financial services industry.
- The regulators are:

**Mandatory Provident Fund Schemes Authority  
(MPFA)**

**Securities and Futures Commission  
of Hong Kong(SFC)**

**Hong Kong Monetary Authority  
(HKMA)**

**Office of the Commissioner of Insurance  
(OCI)**

## Regulation of the Hong Kong trust industry

- In general, trust companies and companies or individuals providing trust services are not required to apply for regulatory approval or licensing.
- Only certain trustees and products are regulated by different regulators (e.g. MPF trustees are regulated by the MPFA), certain services in Hong Kong can only be conducted by a Hong Kong registered trust company.
- For example, only a registered trust company can :
  1. apply for a probate or administration
  2. be appointed by the court as a trustee, or
  3. apply to be an approved trustee for an MPF scheme.

## Challenges and problems of the Hong Kong trust industry

- The industry faces the following problems:
  1. Multiple overlapping requests for compliance information and other data
  2. A heightened level of risk in unregulated areas of the industry
- At present, the challenge is that the trust industry supports a broad range of financial services, each of which has its own laws, regulations and regulators.

## Trustee Regulation Working Group's Observations

1. FSTB is of the view that if trustees approached the government on the issue of regulation, under the present environment, the approach will not be light-handed.
2. Over-regulation in other jurisdictions (such as the Channel Islands) has stifled business by driving up compliance costs.
3. The HKTA should be prepared and be ready to react when the issue of regulation or licensing of trustees is raised by any government authority. HKTA does not propose to actively engage any government authority in dialogue on this issue.

## Should Trust Companies be regulated?

HKTA Survey Results indicated that the majority (70%) believed that it is desirable for trust related business to be required by HK laws or regulations to require registration or licensing of the business as a whole.



## What type of regulatory regime?

If government was to impose regulation, what type of regulation?

The HKTA Trustee Regulation Working Group ("TRWG") prefers a light touch approach.

Some of the options are:

1. Registration of trustees;
2. A licensing regime with certain requirements and standards.

The requirements may be based on HKTA's own best practice guide, or external audit similar to the SFC Code (Appendix G- Guidelines for review of internal controls and systems of trustees/custodians). E.g. requirements to segregate assets, to have controls in place.

Perhaps a requirement is for the trust company to be independently audited, and its internal controls and procedures stress tested.

## Who should be regulated?

- The TRWG suggested terms of reference should be Hong Kong law trusts administered by Hong Kong trust companies.
- A question was raised about whether Private Trust Company arrangements (essentially family offices running family trusts) should be excluded.

## Confidentiality

- The TRWG noted concerns about maintaining confidentiality.
- Preference for there not to be a 'register of trusts' although a register of trust companies is acceptable. We would also be more interested in a licensing regime that may stress test a trust company's systems and controls, and not so much to be the party to review trust deeds, or review trust accounts.

# What Are Your Views?