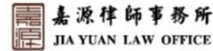


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蕭一峰律師行

in Association with  
與嘉源律師事務所聯營



2018年10月26日

# **Family Wealth Inheritance, Trust and Other Wealth Management Services in Hong Kong**

## **香港的繼承、信託及其他財富管理服務**

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# Introduction

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# Section A The Concept of Legal and Equitable (Beneficial) Ownerships

甲 法律擁有人 vs 衡平法 (實質) 擁有人

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# The Concept of Legal and Equitable (Beneficial) Ownerships

## 法律擁有人 vs 衡平法 (實質) 擁有人的概念

➤ A trust is a three-party relationship in which the trustor or settlor "settles" a property upon the trustee for the benefit of beneficiary.

信託是一項三方委託的關係。委託人，轉移財產至受託人，使得第三方（受益人）獲得利益。

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# The Concept of Legal and Equitable (Beneficial) Ownerships

## 法律擁有人 vs 衡平法 (實質) 擁有人的概念

- Family Trust is formed when a the settlor transfers assets to the trustee to hold the same upon trust for the beneficiary (family members) according to the terms of the Trust Deed. In discretionary trusts, the Settlor may leave a letter of wishes for the trustee to guide them as to the settlor's wishes in the exercise of their discretion. Letters of wishes are not legally binding documents. Trust Assets may include cash, real estate property and other investments property for the purpose of wealth management, investment, succession planning etc.

家族信託是指委托人將他的財產所有權委託給受託人，受託人按照信託協議管理信託內財產，並在指定情況下將該資產轉給指定的受益人。有些家族信托是酌情信托，通過簽訂沒有法律效力的意願書，委托人可以及受托人指引。信托可以處理投資理財、財富管理、財產傳承、養老規劃等多重目的。

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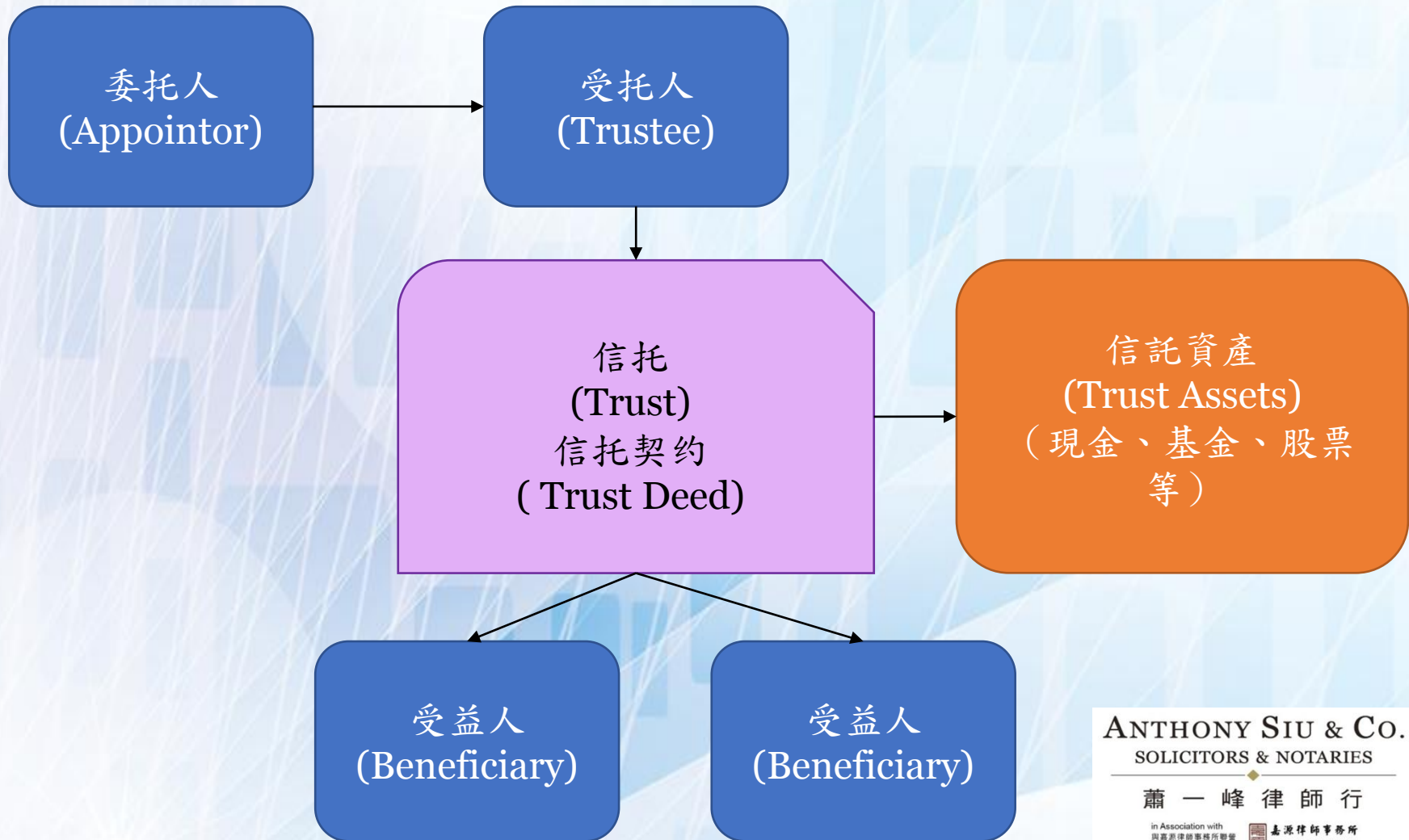
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# The Concept of Legal and Equitable (Beneficial) Ownerships

法律擁有人 vs 衡平法 (實質) 擁有人的概念



# Section B Sham Trust

## 乙 虛假信託、偽裝信託

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# The Concept of Sham Trust

## 虛假信託、偽裝信託的概念

### ➤ Definition of “Sham Trust”

#### 偽裝信託的定義

- See English case 見英國案例

*Snook v London and West Riding Investment Ltd*: CA 1967

- “acts done or documents executed by the parties to the “sham” which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create”

文件或行為上給予法院的印象跟實際關係不同

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# The Concept of Sham Trust

## 虛假信託、偽裝信託的概念

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- Another famous trust case from the Jersey Royal Court

另外一個最著名的信託案例是來自澤西島皇家法庭

*Abdel Rahman v Chase Bank (CI) Trust Company Limited and others*

- Hong Kong case

香港案例

*Kan Lai Kwan v Poon Lok To Otto and HSBC International Trustee*

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# 1st Question: Whether the grantor can retain the powers of investment and management

## 問題一：財產授予人能否保留財產投資和管理的權力

- Depends on the terms of Trust Deed or Deed of Settlement  
視乎信託契據條款
- Regulations stipulated in the Trustee Ordinance, Cap 29 and the Trust Law (Amendment) Ordinance 2013  
信託條例 (香港法例第29章) 及 2013年修定條例的規定
- An example from offshore jurisdictions - British Virgin Islands VISTA Trust  
離岸司法區例子 - 英屬處女島VISTA 信託

# 2nd Question: Whether the grantor can retain the power to remove trustee

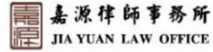
## 問題二：財產授予人能否保留撤銷受託人權力

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信託條例(香港法例第29章)及2013年修定條例的規定
- US Tax Example - US Inland Revenue Ruling 79-353  
美國稅務例子 - 美國稅務局裁決 79-353

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Thank you!

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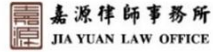
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