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PACIFIC TRUSTEES TRUST NEWSLETTER

A Trust Company | Trusted by Everyone, Everywhere



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**DEAR VALUED CUSTOMERS, FRIENDS & ASSOCIATES OF
PACIFIC TRUSTEES.**

With the year drawing to close in just a few days time, we at Pacific Trustees would like to take this opportunity to wish our valued customers, friends and associates the very best for the Christmas Festive Season and the coming New Year!

In just the past few years, Pacific Trustees have seen considerable growth in the wealth business in this region with ever increasing number of High Net Worth Individuals coming online. This is notwithstanding the landmark changes that have taken place fairly recently in the Malaysian political landscape.



With the historical change of the Malaysian government for the very first time since its independence in 1957, Malaysia is now poised for much greater growth hitherto not known or seen since its former days under the leadership of its aspiring founding fathers of this nation. One thing certain in the aftermath of the gradually unraveling political landscape under Pakatan Harapan.. Is that Malaysians can and should expect for greater transparency and accountability of the public institutions. All of which will bode well for businesses and individuals that aspire to grow their wealth in an efficient economic environment.

We at Pacific Trustees will no doubt apply its expertise and many years of engagement in the private wealth industry to take full advantage of the positive changes to benefit and protect the interest of future generations of both families and businesses alike. While Pacific Trustees is well known by its tagline of being a leading independent Trustee company which is "Trusted by Everyone, Everywhere", such idealism has come about simply because Pacific Trustees carries on its business with a strong client-centric approach that places each of its customers' interest at the forefront.

With the myriad of trust and related structures that Pacific Trustees are well accustomed to, not only the High Net Worth Individuals but also increasingly the mass affluent families are benefiting with their legacy and succession planning done right with Pacific Trustees.

Not forgetting also the corporate trust landscape and the advent of the Real Estate Investment Trust, which have grown significantly and will continue to grow for the foreseeable future, has led to better capital markets that now have more sophisticated deployment of capital and funds. Such growth has come about and been made possible in part with the Trustee being required to take on an even greater responsibility. To this end, Pacific Trustees' team has played its active role under the Association of Trust Companies of Malaysia ("ATCM") in engaging the Securities Commission of Malaysia's task force in providing useful and practical feedback; all of which are crucial for taking the capital markets to the next level of market efficiency.

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**"TRUSTED BY EVERYONE,
EVERWHERE."**

With expanding markets, Pacific Trustees has moved on to regional financial hubs in Singapore and off-shore centre in Labuan. Operating under the umbrella of Pacific Trustees Group, the 3 companies (all of which are fully licensed and regulated by the authorities in their respective jurisdictions) are set to better serve the needs of clients seeking multi-jurisdiction solutions albeit under a cohesive and consistent solution provider.

With Pacific Trustee's inaugural issue edition 3 of the Trust Newsletter, we look forward to sharing and bringing to you the various issues and development that the Trust industry is undergoing.

And in closing the outgoing year, we wish to express our thanks and sincere appreciation to all our friends and associates for the continual and loyal support and businesses achieved.

Merry Christmas and a Happy New Year 2019 from the Pacific Trustees' team!



Impact, Implications and Uses of Lasting Powers of Attorney

BY: PACIFIC TRUSTEES SINGAPORE

Nowadays it has become increasingly important for many, especially the mass affluent all the way up to the UHNWI (ie Ultra High Net Worth Individuals) to appraise themselves on legacy and succession matters. Why so? Well the reasons are plentiful but key among them will include the increasing costs of health care, increasing geographical reach of family and businesses and last but not least, the hidden and high costs for not doing so. While many are familiar with having to write a Will at some point of time in their life, far more make the mistake of assuming that they have already discharged their duties to their spouse, family and business partners by doing so.

The basics of Power of Attorneys

Power of Attorneys ("PAs") are legal instruments that are governed by both statute and laws of a country. Both Singapore and Malaysia have their separate legislations enacted to give persons under their respective jurisdictions the means to create valid and effective PAs for such uses as may be necessitated by their circumstances. Essentially PAs involve 2 parties, namely the Donor party and the Donee party. The former is the individual giving powers to the latter to permit the Donee to carry out acts (including the execution of legal documents) which the Donor would himself/herself be able to do. Lawyers are frequently resorted to in assisting to prepare the appropriate PA, which after due execution, will require that instrument to be lodged with the High Court of the respective jurisdiction in order for that instrument to become effective in law. As PAs are typically revocable, it stands to reason that when a Donor of a PA shall die or become incapacitated, can that PA still be effective? Whilst statutes and governing laws on Powers of Attorneys do make exceptions to keep a duly registered PA "alive" for the benefit of the Donee, they do so only in very limited circumstances. This means most PAs will likely become ineffective by these events.



Introduction of Lasting Powers of Attorney

In Singapore, the government of the day is cognizant of the fact that many of its citizens face challenges in their succession and legacy planning. Wills that are written without the expertise of professional scrutiny and at times under shadowy circumstances have led to many legal battles in Probate Courts. The ensuing result is the breakdown of fragile family relationships; which forms the bulwark for sustaining the fabric of a progressive and modern society. To combat this situation, Singapore has seen in fit to introduce in 2008 a special form of PA known as the Lasting Power of Attorney ("LPA") under the Mental Capacity Act (Cap. 177A) ("MCA").

The key difference of ("LPAs") with traditional PAs is simply that the former can only be used during the incapacitation of the Doner, whereas the latter can be effective immediately. LPAs are extremely useful therefore to cater to situations where the Doner's Will may not have come into effect (as Wills become effective only upon death of Testator) but the Doner has become incapacitated whether due to illness (eg dementia, stroke, etc), accident (eg head trauma) or inherent genetic pre-dispositions (eg Alzheimer's disease).

With that said, so how do LPAs actually work?

LPAs issued under the MCA come under 2 types. The first type is geared towards the personal welfare of the Doner. The second type is specifically tailored to allowing the Donee to manage the property and affairs of the Doner. These LPAs come into effect not immediately but only upon the occurrence of the trigger event where it can be established that the Doner no longer has the capacity to make his/her own decisions. Incapacitation of the Doner can come in many forms and is wide enough to cover situations such as comatose and insanity/breakdown of the Doner, whether temporary or permanent.

Type 1 LPAs

In Type 1 LPAs, the Donee can only be individual persons (with minimum age of 21 years and not an undischarged bankrupt). For the Donee to act, he/she must first establish (a) that Donee reasonably believes that the Doner lack the capacity and (b) that Donee also reasonably believes (i) that he/she must act to prevent harm to Doner, (ii) the act must be a proportionate response to likelihood of Doner suffering harm, and (iii) the seriousness of that harm.

Type 2 LPAs

In Type 2 LPAs, the Donee can be either individual persons (with minimum age of 21 years and not an undischarged bankrupt) or a professional corporate Trustee. The conditions for the Donee to act for Type 2 LPAs are same as those for Type 1 LPAs. Only that the exercise of those powers relate to the property and affairs of the Doner (ie everything else not related to personal welfare of Doner).

So what powers can a Doner give to the Donee here?

The MCA does not specifically specify what can be given but rather expresses what cannot be given. The key limitations of Type 2 LPAs are that the Donee cannot:-

- (i) Make sections 49L(2) or 49M(2) of the Insurance Act (Cap. 142) nominations for Doner;
- (ii) Revoke the nominations in item (i) above under sections 49L(7) or 49M(4) of the Insurance Act;
- (iii) Make a Will for the Doner;
- (iv) Execute a Memorandum under section 25(1) of the Central Provident Fund Act (Cap. 36); and
- (v) Revoke any Memorandum executed under item (iv) above or nomination made by the Doner under section 25(1) of the Central Provident Fund Act.

If the Doner wishes to make gifts under a Type 2 LPA, he/she will need to give express authorization to the Donee in the LPA itself. If the value of the gift is not specified in the LPA, then the Donee may make the gift(s) of such value which are not unreasonable having regard to all the circumstances and in particular, the size of the Doner's estate and having regard to the preservation of the Doner's property for application towards his/her maintenance during his/her life.



So how and when should one use LPAs?

If an individual has health issues or is employed or engaged in an industry that is likely to expose him/her to greater than normal risk of harm or accident, LPAs should be considered in addition to having to write a Will. Older people with a history of health issues are likely candidates who too should use LPAs to protect themselves. With soaring medical and healthcare cost, medical insurance when one is under incapacitation, is best utilized by the Donee of the LPA. The amount of the Doner's property made available to the Donee under the LPAs should ideally be for such amount that should not be so large that they are best dealt with under a Trust structure. In other words, the insurance proceeds and even bank account balances should be sufficiently large enough to cater to the medical and healthcare of the Doner during his/her incapacitation.

What amount is to be placed into the hands of the Donee should take into consideration the age, existing state of health and exposure to risk the Doner is expected to face.

If incapacitation is likely to be prolonged (eg brain trauma due to accident or brain tumour illness), there will of course be greater need to look into the welfare and interest of the Doner's family as well. In such situations, Type 2 LPA with gift provisions expressly to mandate the Donee to make gifts to family members to aid and sustain them during the period of incapacitation will be a most practical use (as they will not have access to the Doner's property under his/her Will yet).

To ensure that the property placed in the hands and control of the Donee is not abused or misapplied due to lack of experience, appointing a corporate Trustee with requisite experience and expertise to manage distribution to beneficiaries under trust structures will be a wise choice.

In Conclusion

Whilst LPAs are by no means a cure all solution, the correct utilisation of such instruments coupled with Wills and, if necessary, Trust instruments go a long way to protecting one's self and loved ones against adversities in life. LPAs can therefore be viewed as the long lost "left arm" where everyone else has hitherto been focused primarily on the strong "right arm" of protection that has been afforded by the well-oiled insurance industry.



I AM NOT RICH, CAN I STILL SET UP A TRUST FUND?

BY: PACIFIC TRUSTEES MALAYSIA

If you've heard of trust funds but don't know what they are or how they work, you're not alone. Many people know just one key fact about trust funds: they're set up by the ultra-wealthy individuals as a way to protect their wealth and passing on significant sums of money to family, friends or entities (charities, for example) after they pass away.

However, what many people don't know is that, setting up a trust isn't only useful for ultra high-net-worth individuals. People who have assets surplus to their own needs can also set up a Trust for their beneficiaries.

To understand how a trust fund operates, let's look at an example. You've worked hard all of your life and have built up a comfortable savings cushion. You know that sometime in the near future you would want your hard-earned savings to go to the people you love, or the charities or causes that you believe in.

Now, what about loved ones who are not as financially well off as you? You could be concerned about leaving them a lump-sum gift because they might use it irresponsibly. Furthermore, you may even like to see your money being carried over for generations to come. If this is how you feel, then you should set up a living irrevocable trust fund.

This type of trust can be set up to begin dispersing funds when certain conditions are met.

You can place cash, stock, real estate or other valuable assets in your trust. You meet with a trustee and decide on the beneficiaries and set conditions. For instance you may decide that the beneficiaries receive a monthly payment but can only use the funds for education expenses, expenses due to an injury or disability, or the purchase of a first home. It's your money, so you get to decide. It's as simple as that.

Because it's irrevocable, you don't have the option of later dissolving the trust fund. Once you place assets in the trust, they are no longer yours. They are under the care of a trustee.

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"WHY IS IT IMPORTANT TO APPOINT A COMPETENT TRUSTEES?"

When you set up the trust fund, you may have chosen a responsible family member to act as trustee. After 10 years, you have forgotten about that designation, but you have watched that family member slip into depression, maybe get involved with drugs or alcohol, and accumulate a criminal record. Is that who you still want to be in charge of your children's finances?

In many situations, a corporate trustee may be a more prudent choice to effectively administer the trust. A corporate trustee offers experienced and knowledgeable professionals who deal with trusts as part of their day-to-day responsibilities and can provide the level of expertise required to ensure that the wishes of the settlor are carried out in the most effective way possible. A corporate trustee is well positioned to stay abreast of any changes in the economic environment and tax laws that may have an impact on the trust. Appointing a corporate trustee also provides a level of objectivity that may be difficult for family members or other individual trustees to match.

In conclusion

For those who are not high net-worth but wish to leave a legacy to children or grandchildren, a care trust may be right for you; it's not just available to high-net-worth individuals, and it offers a way for any hard earning individual to protect their assets long after they pass on.



Digitalisation Of Financial Transaction - Part 3

BY: PACIFIC TRUSTEES MALAYSIA

What is Robo-Advisor?

Robo-advisor is a digital investment management platform that provide automated financial advice/service or investment management with minimal or even without human supervision by using mathematical rules or algorithms. Most robo-advisors collect information from their investors about their financial health and future planning and goals through their platform and subsequently offer designated financial advice by recommending certain diversified investment portfolios to the investors automatically base on the data collected. These algorithms are executed by software and will be utilised to automatically allocate, manage and optimise investors' assets.

Advantages of Robo-Advisor

Cost is always one of the considerations when the investors make their choice of investment tools in the market, to maximise their investment returns. For robo-advisor investment platforms, their management fees tend to be lower than traditional advisors because most of the operation works can be done and are handled by computer algorithm.

The minimum amount to get the investment started with robo-advisor is lower than what traditional advisors require. This is a good news for newbie investors, fresh graduates or those from the lower-income group as they are only required to take out a minimal investment amount of their choice. Another advantage of choosing a robo-advisor is the level of convenience it offers. Investors may consider to use this kind of financial advice service if they lack the time to manage and monitor their investments.

In addition, humans certainly incorporate a significant amount of bias into the decision making process, particularly in the traditional advisor industry. With robo-advisor, those potential biases can be avoided based on mathematical rules and algorithms.

Disadvantages of Robo-Advisor

Robo-advisors that run their investment analysis using automated systems are not a financial planners nor advisors. A good financial planner or advisor goes beyond portfolio construction. They will get to know the investor personally, and provide a full suite of advisory services to address the entire financial picture.

Moreover, investors may have limited investment portfolios made available to them for their consideration as most of the robo-advisor prefer to invest the funds into U.S. bond ETFs and international stocks due to lower costs. While robo-advisory technology has made significant advancements, there is still a long way to go and develop before they are able to deliver the same level of personalisation as a traditional advisors.





Digitalisation Of Financial Transaction - Part 3

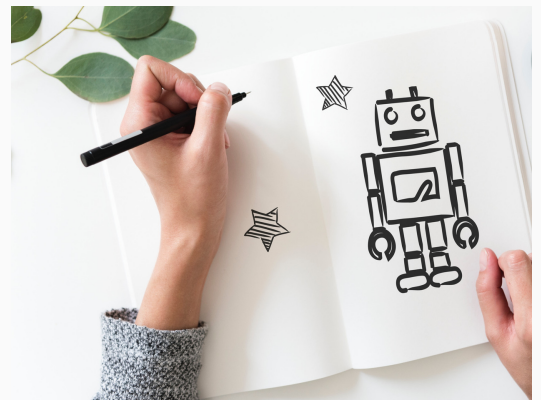
BY: PACIFIC TRUSTEES MALAYSIA

Governance Mechanism for Robo-Advisor

In Malaysia, robo-advisor is a form of the fund management and is regulated and governed by the Securities Commission Malaysia ("SC") under the Capital Markets and Services Act 2007 ("CMSA"). SC defines such robo advisor as Digital Investment Management. Prior to any offering of digital investment services to the public, the management company is required to apply for the relevant licence from SC. The approval process is thorough as SC will need to satisfy themselves that, amongst others, the proposal from the applicant fulfils certain criteria as well would be able to meet the need of the retail investors.

In relation to the above-mentioned criteria, the robo-advisor is required to appoint a custodian trustee to hold the investment funds collected from the retail investors. The licensed robo-advisor is obliged to cause the investor's fund to be deposited into a trust account maintained by a custodian trustee. The purpose of the appointment of a custodian trustee is to mitigate the risk of embezzlement of funds by the management company. The custodian trustee would also require to report to SC on a quarterly or half yearly basis as and when required.

To-date, StashAway Malaysia Sdn. Bhd. ("Stashaway") is the only licensed robo-advisor providing digital investment services to the retail investors in Malaysia and their custodian trustee is Pacific Trustees Bhd ("PTB"). PTB has been supportive in the financial technology industry by openly providing our custodian or trustee services to any potential fin-tech players as we foresee the rapid growth of this industry in Malaysia.





Desperately Seeking Substance

LABUAN BY:SOURCED IBFC

LINK: [HTTPS://WWW.LABUANIBFC.COM/INSIGHTDETAIL/198/DESPERATELYSEEKINGSUBSTANCE.HTML](https://www.labuanibfc.com/insightdetail/198/desperatelyseekingsubstance.html)

The unrelenting global demand for transparency has created an unprecedented need for substance, how and where can this need be met in Asia?

There is considerable interest to tap into the increased consumer spending in Asian economies, as the rising salaries of the region's growing middle class are expected to further drive demand for consumer products. Having a regional trading presence makes good economic sense. By setting up in Malaysia - which is a member state of the ASEAN Economic Community - businesses have access to more than 600 million potential customers whilst enjoying a relaxation of both tariff and non-tariff barriers, as agreed by ASEAN member states.

However, no business relishes the disruption caused by a tax audit. And yet, with the new mechanisms in place to exchange information, coupled with the highest levels of transparency ever seen and exacerbated by unprecedented cooperation amongst revenue authorities, the need for substance coupled with the impending probability of a tax audit has increased significantly. Businesses therefore have to be mindful that with tax information beginning to flow freely and efficiently between revenue authorities, companies located in pure traditional offshore financial centres may be seen as less attractive.

On the contrary, companies established in mid-shore financial centres such as Labuan International Business and Financial Centre (Labuan IBFC), which offers cost-efficient substance creation, may offer an ideal solution. So let's delve into some of the principles that can be considered as the key tenets of substance creation and how Labuan IBFC may be an ideal location for substance creation.

Substance Creation – Proximity

A trading company located a long distance from its market will attract scrutiny. Likewise, a trading company located in the same region as its market makes practical sense and acts as an indicator to support business purpose. Located in Asia, Labuan IBFC will be deemed as a reasonable jurisdiction to locate a company catering to Asian markets.

Substance Creation – Local Infrastructure

It is helpful if the infrastructure and services required to support the activities of a company can be obtained in the location that the company is domiciled. In Labuan IBFC, the infrastructure to support a company is extremely well developed and available at competitive rates.

Thus, Labuan IBFC represents a sensible choice because it is a credible location for a company, especially a trading company. The availability of local infrastructure and support facilities is also important from the viewpoint of determining the source of profits, which is generally made by reference to a "weighting" given to each and every activity producing the profits as well as the place where such activities are performed.

Operational Substance

For tax purposes, it is imperative that the trading activities are conducted by the trading company itself and not via some other entity; for instance, by having the trading company's head office located in another jurisdiction.

The fact that the trading company has to be seen to conduct the trading activities means that it must have operational substance. However, the need for operational substance creates an enormous challenge in relation to the taxation of a trading company, that is, where to locate the operational substance for maximum tax and cost efficiency.



LABUAN BY: SOURCED IBFC

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Fortunately, Labuan IBFC is tax neutral on this issue. Regardless of whether the trading company has a "light" or "substantial" presence, the same low tax outcome is achieved.

This would mean that the trading company has the flexibility of "housing" in Labuan IBFC those activities that may create a tax exposure in the head office's home location or alternatively in the targeted market.

By placing the contentious activities in Labuan IBFC, this creates no additional Malaysian tax and by corollary will help minimise foreign tax risks.

Where considerable operational substance is needed, Labuan IBFC, by virtue of being a substance "enabling" location, can help to enhance the operational substance of a trading company by making available local employees, office space and access to local support services at a relatively low cost by reference to Asian standards.

Source of Profits

As inferred above, the conventional rules to determine the "source" of trading profits can often catch out a trading company.

Such rules, developed over time according to tax case law and the capricious practices of the tax collector, create frequent disputes on whether the trading profits are "onshore" and taxable, or "offshore" and non-taxable.

Labuan IBFC employs a modern solution to this vexed question that is simple to understand and straightforward in application. Trading activities conducted with non-Malaysians in non-Malaysian currency would be regarded as offshore income, and may be taxed at 3% on the audited trading profits.

Malaysian Tax

Residency Malaysia has a territorial-based taxation system where tax residency plays an important part. It is worth noting that the Malaysian test for tax residency is a factual one of central management and control that is generally satisfied by the Board of Directors meetings being held in Malaysia. Having established Malaysian tax residency, the likelihood that a Labuan company will be taxed in the head office's location, which may employ a residence or source-based system of taxation, is therefore minimised.

Tax Treaty Benefits

Malaysian Residency A Malaysian tax resident Labuan company enjoys access to Malaysia's extensive tax treaty network.

This is hugely beneficial as Malaysia's tax treaties are in the nature of "comprehensive" tax treaties, and are designed specifically to overcome tax "friction" points that might impede international trade flows. As indicated earlier, it is a straightforward matter to establish tax residency in Malaysia and consequently a Labuan company may avoid the "pitfall" of being a dual resident and subsequently become potentially taxable in two jurisdictions.

Tax Treaty Benefits

Permanent Establishment A company that trades with a country is not generally subject to tax in the country traded with. On the other hand, a company that trades within a country may find themselves taxed there. Typically, Malaysian tax treaties have rules in place concerning "safe harbour" activities in the treaty party location; for instance, in relation to activities considered preparatory to the generation of profits. These may include marketing, soliciting sales, obtaining customer feedback, sourcing materials or holding stock for delivery as conducted either by employees or independent agents.



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Without a specific tax treaty, there are no specific "safe harbour" provisions and thus the final word on what constitutes trading within a country tends to lie with local tax collectors. This can result in some tough issues being faced, including the appropriate allocation of trading profits to their jurisdiction.

By being a tax resident in Malaysia, which in itself is an established trading nation with a treaty network currently in excess of 70 countries, a high degree of tax protection is provided to a Labuan company.

It is worth noting that such protection would not be available to trading companies located in countries that limit themselves to exchange-of-information-type tax treaties, which by their nature do not provide tax benefits nor "safe harbour" provisions.

Extending to a Representative Office

An extremely popular way to conduct preparatory business activities of an essentially non-revenue generating nature within Asia is to open a lightly-regulated representative office. The representative office is not a separate legal entity but an extension of its foreign parent company.

A representative office is advantageous because it may allow employees to be "on the ground" to explore and protect business interests before making any long-term or large-scale business commitment. It can also act as a vehicle to facilitate work visa applications of its non-citizen employees. A representative office of a Labuan trading company is extremely tax efficient. The Labuan company's profits will be efficiently taxed whilst the representative office, in accordance with local guidelines, is regarded as a non-taxable cost centre. Furthermore, provided the duties of the employees located in the representative office come within the ambit of the tax treaty "safe harbour" rules, there is increased protection from local corporate taxation and additionally, their presence contributes towards the operational substance of the Labuan company.

The Labuan Company

Best of Class in Asia! Businesses are starting to better understand how a Labuan company is a sensible choice for trading and investment holding within Asia, especially as the call for substance grows ever louder. Labuan companies enjoy a high degree of tax certainty and exist with the comfort of knowing that even the most stringent substance requirements, may be met cost effectively in Labuan IBFC. Arguably, Labuan companies may be considered "The Best of Class in Asia".



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