

Hong Kong Trustees' Association
Trust Training Certificate Course Part A Syllabus

Unit	Module	Learning Objective	Outline
Unit 1 – Introduction to Trusts	Module 1: Overview of Trusts	<p>At the end of the Module, candidates should be able to</p> <p>(a) understand the nature of a trust;</p> <p>(b) identify the parties to a trust, including</p> <ul style="list-style-type: none"> • Settlor, • Beneficiaries, • Protector, • Enforcer, and • Trustees <p>(c) understand the roles and duties of each of these parties to a trust; and</p> <p>(d) explain why and how trusts are used.</p>	<ol style="list-style-type: none"> 1. What is a trust? 2. Structure of a trust with a holding company 3. Parties to a trust <ul style="list-style-type: none"> • Settlor • Beneficiaries • Protector • Enforcer • Trustee • Authorised persons 4. Why and how are trusts used? <ul style="list-style-type: none"> • In estate planning • For investment • To provide employee benefits and retirement benefits

Unit 1 – Introduction to Trusts	Module 2: Fundamental Principles and Structure of Trusts	<p>At the end of the Module, candidates should</p> <ul style="list-style-type: none"> (a) understand the nature and duties of Trustees; (b) understand the extent of a Trustee’s liability and how far he may be relieved from it; (c) understand the extent of the liability of a Protector and the extent to which he too can be relieved from liability; (d) understand the nature and extent of the powers of Trustees; (e) recognize the language in which a trust may be framed and the form in which a trust may be created; (f) understand the key principles of the validity of a trust; 	<ul style="list-style-type: none"> 1. The duties of trustees <ul style="list-style-type: none"> • Factors • General duties of trustees • Statutory duty of care 2. Trustees’ powers <ul style="list-style-type: none"> • General factors • Dispositive powers • Administrative powers 3. Liability of trustees 4. Liability of protectors 5. Provision of information 6. Variation of trust 7. Termination of trust 8. Language form and validity <ul style="list-style-type: none"> • Language • Form 9. Governing law <ul style="list-style-type: none"> • General factors concerning the governing law 10. Migration of trusts
---------------------------------	--	---	--

<p>Unit 2 – Types of Trusts and when appropriate</p>	<p>Module 3: Types of Trusts and their uses</p>	<p>At the end of this Module candidates should be able to:</p> <ul style="list-style-type: none"> (a) Recognise the common types of trusts for estate planning purposes (b) Recognise the common types of trusts for investment purposes (c) Recognise the common types of trusts for employee benefits purposes (d) Appreciate the limitations of certain jurisdictions for some types of trusts 	<ol style="list-style-type: none"> 1. Fixed interest trusts 2. Protective trusts 3. Discretionary trusts 4. Charitable trusts 5. Non-charitable Purpose trusts (“NCPT”) 6. Revocable and Irrevocable trusts 7. Employment benefit trusts (“EBT”) 8. Pension trusts 9. Bare trusts and declarations of trust 10. Unit trusts 11. Resulting trusts and constructive trusts
<p>Unit 2 – Types of Trusts and when appropriate</p>	<p>Module 4: Retention of Control</p>	<p>At the end of the Module, candidates should be able to</p> <ul style="list-style-type: none"> (a) Recognise the common types of trusts if retention of control is a key consideration of the Settlor. (b) Explain how these types of trusts could provide for retention of control by the Settlor or others and why. (c) Recognise which jurisdictions offer the solutions. (d) Elaborate common applications, e.g. reserved power trust, VISTA (e) Identify the problems with retention of control trusts. 	<ol style="list-style-type: none"> 1. Reserved power trusts 2. Private trust companies (“PTCS”) 3. Special types of trusts (VISTA, LST and SISTA) 4. Case studies

<p>Unit 3 – Other Estate Planning Vehicles</p>	<p>Module 5: Other Estate Planning/Succession Vehicles</p>	<p>At the end of this Module, candidates should be able to</p> <ul style="list-style-type: none"> (a) Recognise the commonly used vehicles and strategies for estate planning other than trusts and foundations (b) Explain the key features of each of these vehicles for estate planning (note particularly HK Holding company issues) (c) Describe how these vehicles are related to or compliment different type of trusts 	<ol style="list-style-type: none"> 1. The nature of holding companies of trusts and its use and appropriateness in estate planning 2. The nature of insurance and, in particular and its use and appropriateness in estate planning 3. The nature of wills and their use and appropriateness in estate planning 4. The nature of pre-nuptial agreements and their use and appropriateness in estate planning 5. The nature of a gift and its use and appropriateness in estate planning 6. The nature of loans and its use and appropriateness in estate planning
--	--	---	---

<p>Unit 3 – Other Estate Planning Vehicles</p>	<p>Module 6: Trust Protection Issues</p>	<p>At the end of this Module, candidates should be able to</p> <ul style="list-style-type: none"> (a) Describe how a trust may be attacked (b) Understand the protections offered by <ul style="list-style-type: none"> i. anti-forced heirship; ii. non-enforcement of foreign judgments; and iii. The use of an Employees Benefit Trust (“EBT”) to protect assets from a company’s creditors (c) Understand the following grounds for a claim against a trust’s assets on breakdown of marriage <ul style="list-style-type: none"> i sham trust; ii the trust is a nominee arrangement; iii the trust is a nuptial settlement; and iv the trust’s assets are a financial resource. 	<ol style="list-style-type: none"> 1. The general rules and benefits of asset protection 2. How far trusts offer protection for trust assets on breakdown of marriage 3. How far trusts accrued benefits are protected from creditors
--	--	--	--

<p>Unit 4 – Trusts Compared with Other Estate Structuring Vehicles</p>	<p>Module 7: Trusts Compared with Other Estate Planning Vehicles</p>	<p>At the end of this Module, candidates should be able to</p> <ul style="list-style-type: none"> (a) Recognise various estate structuring vehicles (b) Explain the key features of these various estate structuring vehicles, their differences and their respective advantages and disadvantages. (c) Be aware of how these other estate structuring vehicles are used in different jurisdictions and why they are used (e.g. laws) 	<ol style="list-style-type: none"> 1. The general nature of trusts, foundations, private companies, partnerships and limited partnerships, and segregated portfolio companies 2. Factors of comparison 3. Key benefits, shortcomings and differences regarding trusts, foundations, private companies, partnerships and limited partnerships, and segregated portfolio companies
--	--	--	---

<p>Unit 5 – Trustees and Compliance</p>	<p>Module 8: Trustee duties</p>	<p>At the end of this Module, candidates should be able to understand</p> <ul style="list-style-type: none"> (a) the fiduciary duty of a trustee; (b) a trustee's duty of care and duty to comply with the trust deed; (c) the consequences of and recourses available against a trustee who has breached trustee duties. (d) how the various duties of trustees manifest in ethical behaviour and what this means. 	<ol style="list-style-type: none"> 1. Fiduciary duty of a trustee <ul style="list-style-type: none"> • What is a fiduciary relationship? • Beneficiaries of a trust • Fiduciary duties and their nature • No-conflict rule • No-profit rule • Undivided loyalty • Duty of confidentiality 2. Duty of care (non-fiduciary duty) <ul style="list-style-type: none"> • Introduction • Common law duty of care • Statutory duty of care under Trustee Ordinance (Cap.29) • Functions to which the statutory duty of care applies 3. Duty to comply with the trust deeds <ul style="list-style-type: none"> • Duty to comply with the terms of the trust • Duties and powers • Managing the liability of trustees (effect of exclusion clauses and disclosure in trust instrument) 4. Consequences for breach and recourse available against the trustee <ul style="list-style-type: none"> • Introduction • Consequences for breach of trust generally
---	---------------------------------	---	--

			<ul style="list-style-type: none">• Other equitable recourse available against a trustee for breach of fiduciary duties• Breach of confidence <p>5. Ethical Behaviour</p>
--	--	--	--

<p>Unit 5 – Trustees and Compliance</p>	<p>Module 9: Hong Kong Securities and Futures Commission Regulatory Activity 13 Regime</p>	<p>At the end of this Module, candidates should:</p> <ul style="list-style-type: none"> (a) understand the scope of RA 13 and know its applicability to entities and to individuals; (b) understand the RA 13 licensing process and know the requirements. (c) know the ongoing compliance requirements of licensed or registered RA 13 depositaries and licensed representatives / relevant individuals of RA 13 depositaries. 	<ol style="list-style-type: none"> 1. Scope of RA 13 <ul style="list-style-type: none"> • Scope of RA 13 • Who needs to be licensed / registered for RA 13 2. RA 13 Licensing Requirements <ul style="list-style-type: none"> • Introduction • Licensing / registration criteria for RA 13 depositaries • Licensing/ registration criteria for personnel of RA 13 depositaries 3. Ongoing Compliance Obligations <ul style="list-style-type: none"> • Introduction • Schedule 11 to the Code of Conduct • Securities and Futures (Client Securities) Rules (Chapter 571H of the Laws of Hong Kong) ("CSR") • Securities and Futures (Client Money) Rules (Chapter 571I of the Laws of Hong Kong) ("CMR") • Securities and Futures (Keeping of Records) Rules (Chapter 571O of the Laws of Hong Kong) ("KRR") • OTC derivative reporting and clearing regime • Other Subsidiary Legislations and Codes and Guidelines
---	--	--	--

Unit 5 – Trustees and Compliance	Module 10: Hong Kong Monetary Authority's Code of Practice for Trust Business	<p>At the end of this Module, candidates should:</p> <ul style="list-style-type: none"> (a) understand the scope of the Code and the SPM Module TB-1; (b) be able to list what trust activities are covered under SPM Module TB-1 (including the exemptions); (c) be aware of the requirements imposed under the Code and the SPM Module TB-1 with respect to trustees and the HKMA's supervisory approach; (d) understand and know the general principles and practical standards under the Code. 	<ol style="list-style-type: none"> 1. HKMA's Code of Practice for trust business <ul style="list-style-type: none"> • Introduction 2. To whom does SPM Module TB-1 and the Code apply? 3. Which trust activities are covered? 4. Which trust activities are exempted? 5. Requirements imposed by SPM Module TB-1 <ul style="list-style-type: none"> • Conduct requirements for trustees • Appointment of managers and responsible officers • Introduction or referral of trustees • Notification and reporting requirements 6. Supervision by the HKMA and list of trustees <ul style="list-style-type: none"> • Supervisory approach • List of trustees 7. General Principles under the Code
Unit 6 – Trusts and Compliance	<p>Module 11: Compliance, Anti-Money Laundering, Legislative rules and how they apply to Trusts</p> <p>PART A – Anti-Money Laundering Ordinance and Companies Registry Requirements for Trust or Company Service Providers</p>	<p>At the end of this Module, candidates should</p> <ul style="list-style-type: none"> (a) Describe the trustee compliance requirements for most types of trusts and trustees e.g. TCSP licensing, AML, CDD, SOW, SOF, CRS and FATCA 	<ol style="list-style-type: none"> 1. Hong Kong legislation and regulations regarding trust companies 2. TCSP licensing process and requirements <ul style="list-style-type: none"> • Licensing procedures and exemptions • "Fit and proper test" • Renewal of license • Notice of change of particulars • Cessation of business or cancellation of license • Revocation or suspension of license

	("TCSPs")		<ol style="list-style-type: none"> 3. Obligations of a TCSP licensee and a Hong Kong company 4. Significant controller registers
Unit 6 – Trusts and Compliance	<p>Module 12: Compliance, Anti-Money Laundering, Legislative rules and how they apply to Trusts</p> <p>PART B Automatic Exchange of Information ("AEOI") FATCA and CRS Reporting Requirements for Trustees</p>	<p>At the end of this Module, candidates should</p> <ol style="list-style-type: none"> (a) Understand what / when generates reportable person or account (e.g. US person). (b) Understand the thinking process in determining the reporting requirements for a typical trust. (c) Be able to classify a trust and underlying company for FATCA and CRS purposes. 	<ol style="list-style-type: none"> 1. The tax residency of trusts and Hong Kong profits tax obligations 2. The principles of FATCA as they apply to trust structures and trustees' responsibilities 3. The principles of CRS as they apply to trust structures and trustees' responsibilities 4. Recordkeeping requirements

<p>Unit 7 – Trust Jurisdiction Comparison</p>	<p>Module 13: International Comparison of Trusts</p>	<p>At the end of this Module students should be aware of the key differences of most types of trusts by jurisdictions (focus is on Hong Kong, BVI, Channel Islands, Cayman Islands, Singapore and PRC).</p>	<ol style="list-style-type: none"> 1. Whether initial capital is required to create a valid trust 2. Validity of a trust and whether the trust can be for persons and purposes 3. Continuity of a trust 4. Asset protection 5. Non-enforcement of foreign judgments – anti-forced heirship 6. The office, role and powers of a protector 7. Reserved powers to the settlor and other relevant party (IES) 8. Protective trusts 9. Charitable trusts 10. A special type of trust – vista type trusts 11. Trust combined with a limited partnership 12. Application of the statutory duty of care 13. Aspects of trustees’ powers 14. Trustees’ duties 15. Liability and protection of trustees 16. Provision of information 17. Jurisdictions with a foreign trust regime 18. General anti-avoidance rules (“GAAR”) for taxation 19. Specific anti-avoidance rules (“SAAR”) for taxation 20. Jurisdictions which provide special types of trust which may legally mitigate tax
---	--	---	---