

Speech

Speech by SFST at Hong Kong Trustees' Association Conference 2013

(English only) (with photo)

Monday, November 18, 2013

Following is the speech by the Secretary for Financial Services and the Treasury, Professor K C Chan, at the Hong Kong Trustees' Association Conference 2013 this morning (November 18):

Ka-shi (Chairman of the Hong Kong Trustees' Association, Ms Lau Ka-shi), distinguished guests, ladies and gentlemen,

Good morning. I am pleased to join you all today at the Hong Kong Trustees' Association (HKTA) Conference. I would like to thank the HKTA for organising this conference so that industry practitioners and professionals can meet to discuss issues that are important to the industry.

The trust industry is an indispensable pillar that cements our standing as a premier international asset management centre. Hong Kong has a dynamic trust industry that offers a diverse range of services and products to customers from all walks of life, spanning from low-income persons to ultra-high-net-worth individuals.

Some notable trust services available in Hong Kong include wealth and estate planning for inter-generational transmission of wealth and succession of family businesses, as well as corporate trust services that provide core trustee services such as trust administration and acting as a custodian.

Not only are trusts important for preserving family wealth for future generations and asset management, they have also proved to be a versatile device that has had a long-standing and prominent presence in the financial markets. Advances in the financial markets have spawned a kaleidoscope of financial structures and products that utilise trusts, such as Mandatory Provident Funds, real estate investment trusts and some hedge funds.

There are numerous advantages that set Hong Kong apart as a premier trust administration centre, including our position as an international financial centre offering a wide range of financial, legal and supporting services, our simple tax regime and our robust legal system and infrastructure.

In particular, Hong Kong's proximity to the Mainland offers a wealth of opportunities to the trust industry. The industry could tap into the burgeoning population of ultra-high-net-worth individuals in the Mainland who are seeking ways to manage their assets as well as hoping to preserve wealth and family businesses for passing on to future generations.

The continued development of our asset management industry will also create new opportunities for trust services providers. According to the annual Fund Management Activities Survey 2012 published by the Securities and Futures Commission (SFC), the combined fund management business in Hong Kong reached a record high of HK\$12.6 trillion as of end of last year, representing year-on-year growth of 39.3 per cent.

The SFC has formed a working group with the Mainland authorities to study the implementation of mutual recognition and cross-border offering of funds between Hong Kong and the Mainland. This initiative will bring about a wider investment platform for both jurisdictions in terms of more product offerings and a bigger investor base, attracting more asset managers to set up funds in Hong Kong.

The status of Hong Kong as a premier offshore Renminbi centre would also provide ample investment opportunities in offshore Renminbi products to trusts and funds.

Since the first Renminbi Qualified Foreign Institutional Investor (RQFII) investment quotas were granted in December 2011, the quota has been increased to RMB270 billion. At the end of September 2013, there were 22 retail unlisted RQFII funds authorised by the SFC, with a total RQFII quota of RMB28 billion and the total amount of assets under management reaching RMB11.7 billion. As at the end October 2013, nine A-share exchange-traded funds have been launched and listed on the Hong Kong Stock Exchange with a total RQFII quota of RMB55.5 billion and with the total amount of assets under management reaching RMB31.3 billion.

It is our goal to develop Hong Kong as the most competitive and dynamic wealth management business centre in Asia. This is a highly achievable aspiration if both the industry and the regulators work closely together to develop, nurture and protect the reputation of the industry, as well as the professionalism and ethical standards of its practitioners.

The Private Wealth Management Association was set up in September this year.

To facilitate development of the private wealth management industry, the Association has been working with the industry to launch an enhanced competency framework early next year, with a view to raising the competency and ethical standards of industry practitioners and developing a broad pool of professionals for the private wealth management industry.

It is of vital importance that our regulations are up to date in order to take on these new opportunities. With a view to modernising our trust law regime, we launched in 2008 the trust law reform exercise which sought to modernise the Trustee Ordinance and the Perpetuities and Accumulations Ordinance, the two main pieces of legislation in our trust law regime which have not been substantially updated since their enactment.

The exercise was brought to fruition with the passage of the Trust Law (Amendment) Ordinance 2013 (the Amendment Ordinance) in July. This would not have been possible without the unflagging support and useful advice from the industry, in particular the Joint Committee on Trust Law Reform that comprised the HKTA and the Hong Kong Branch of the Society of Trust and Estate Practitioners.

The Amendment Ordinance, which will put Hong Kong's trust law on par with those of other major comparable common law jurisdictions, will come into effect on the first day of December this year. Among other benefits, it will enhance trustees' default powers and introduce a host of measures that can better protect beneficiaries, thereby bolstering the competitiveness of Hong Kong's trust services industry. It should also attract trusts to be set up in Hong Kong and enhance Hong Kong's status as an international asset management centre.

There are two initiatives in the Amendment Ordinance which I understand are particularly welcomed by the industry. The first one is the abolition of the Rule against Perpetuities, or the RAP. For many years trusts have been bound by this out-of-date and complex rule limiting the duration within which trust assets must be vested in beneficiaries. This convoluted rule is difficult to comprehend and could apply harshly to defeat the legitimate wishes of settlors.

With the support of the industry and respondents to public consultations, and having carefully considered the implications, we have taken the bold step to abolish the RAP through the Amendment Ordinance. After the Amendment Ordinance comes into operation, settlors can set up perpetual trusts in Hong Kong and be certain that their wishes can be materialised. This would greatly enhance the competitiveness of

Hong Kong as a trust domicile, given that the establishment of perpetual trusts is not possible in most major common law jurisdictions.

The second initiative which I would like to highlight is the introduction of the anti-forced heirship rule. With the internationalisation of the clientele of the trust industry, legal rules abroad impacting the constitution of and the transfer of assets into trusts have become increasingly relevant in present-day trust administration. In this regard, based on the support from the industry and respondents to our public consultations, the Amendment Ordinance includes a provision that allows settlors, especially those from civil law jurisdictions, to set up trusts in Hong Kong without worrying that the assets in the trusts would be clawed back by their heirs against their wishes in the future. This added certainty would present more opportunities for the industry to attract clients worldwide to set up trusts in Hong Kong.

We believe that the proposals in the Amendment Ordinance taken together would help bring business to the industry. I understand that this will be discussed further in today's conference.

We look forward to working with you to enhance awareness of the Amendment Ordinance both locally and overseas, with a view to maximising the benefits that would be brought to the industry and to Hong Kong as a whole. We will also continue to keep in view pertinent developments abroad and consider further improvement to our trust law.

With the trust law modernised to meet today's needs, it is therefore no surprise that, in the survey conducted by the HKTA and KPMG earlier this year, more than half of the correspondents took a positive view and made increasing trust assets their top priority for the next 12 to 18 months. At the same time, talent shortage, reflected in a lack of critical business knowledge among staff, was cited as a key challenge facing the industry. Compliance and regulations were also cited as key challenges, with the US Foreign Account Tax Compliance Act topping the list. There are other interesting findings in the survey, which I understand will be presented in a session later this morning.

In recent years, the international community has attached increasing importance to the transparency of beneficial ownership information of legal arrangements, including trusts. In July this year, the G8 endorsed a set of principles to ensure the integrity of beneficial ownership information, and indicated their commitment to publishing national action plans that set out the concrete action they will take to

counter money laundering and tax evasion.

As an international financial centre, Hong Kong is committed to working with the international community to respond to calls for better transparency with respect to the ownership information of legal arrangements. Indeed, in recent years, Hong Kong has taken forward initiatives to promote transparency in this regard, such as the implementation of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance for financial institutions.

We also note that the HKTA issued a set of practice guides last year that, among other measures, advise trustees to put in place policies and procedures on customer due diligence and combatting money laundering. This is a commendable effort which would be very useful in promoting compliance with the principles set out in the applicable laws and regulations within the industry.

We will pay close attention to the international developments regarding the transparency of beneficial ownership of legal arrangements, and continue to communicate with stakeholders and look into the relevant policies and legal issues, with a view to establishing a sustainable approach for meeting the pertinent international standards for Hong Kong.

Ladies and gentlemen, with the passage of the legislative proposals updating our trust regime, the year 2013 marks the start of a new era for the trust industry in Hong Kong. The Government is keen to promote Hong Kong as a global centre for trust services. I look forward to working closely with all of you to take our trust industry to the next level.

Thank you.

Ends

