KEY FACTS
ORSO

HONG KONG IS ONE OF THE WORLD'S TOP TRADING HUBS AND FINANCIAL SERVICES CENTRES. IT HAS A WELL-ESTABLISHED CORPORATE RETIREMENT SCHEME LEGISLATION AND SUPERVISION. THIS, COMBINED WITH THE HONG KONG SYSTEM OF TAXATION AND THE NETWORK OF DOUBLE TAXATION AGREEMENTS, MAKES HONG KONG AN IDEAL LOCATION FOR THE ESTABLISHMENT AND ADMINISTRATION OF GROUP RETIREMENT SCHEMES.

ORSO – HONG KONG OCCUPATIONAL RETIREMENT SCHEME

The Occupational Retirement Schemes Ordinance (ORSO) (Cap 426) came into force in 1993 to register and regulate corporate retirement schemes. To help the ageing workforce save for their retirement, the Mandatory Provident Fund Schemes Ordinance (MPFSO) was enacted in 1995 and the Mandatory Provident Fund (MPF) System was launched in December 2000. Almost all employers and employees working in Hong Kong must make certain mandatory contributions to MPF schemes. (Expatriate employees working in Hong Kong for more than 13 months and who are not members of an overseas retirement scheme must also make MPF contributions.) The ORSO retirement schemes continue to exist after the introduction of the MPF System and the Hong Kong government continues to encourage employers and employees to voluntarily make further contributions over and above the minimum requirements of the compulsory MPF System. The Mandatory Provident Fund Schemes Authority (MPFA) is a statutory body established in September 1998 under the MPFSO to regulate and supervise the operations of MPF schemes and ORSO schemes.

Trident Trust Company (HK) Limited is registered as a trust company under Part VIII of the Hong Kong Trustee Ordinance to provide professional trustee services and Trident Trust has had a business presence in Hong Kong since 1992. Trident Trust can establish a trust with a resident professional Hong Kong trustee and provide trust administration services to an ORSO corporate retirement trust, a family trust or in support of a private trust company. We can also provide corporate and secretarial services to Hong Kong companies.

KEY REQUIREMENTS

Occupational

There must be a past or current employment link between the company (as contributor) and the members (as beneficiaries). Members can be employees or directors of the employer. Members do not have to be resident in Hong Kong.

Retirement

Members can be paid benefits in accordance with the governing rules of the retirement scheme on retirement (as defined in the Inland Revenue Ordinance), incapacity or on termination of employment. In case of the member's death, the benefit will be paid to his/her beneficiaries in accordance with the governing rules.

Scheme/Plan

This is a formal arrangement governed by a trust deed and rules, registered or exempted with the MPFA, and administered by an independent trustee.

BASIC STEPS AND STRUCTURE OF AN ORSO RETIREMENT SCHEME GOVERNED BY TRUST

- A Hong Kong company (or a Hong Kong branch of a foreign company) can sponsor an ORSO retirement scheme.
- As the ORSO retirement schemes are voluntary plans, there is flexibility in how the terms of the trust deed and rules are drafted.
- An employer who operates, contributes to or otherwise participates in a retirement scheme in Hong Kong must make an application for registration or exemption with the MPFA within three (3) months. There are two options:

  - > ORSO registered scheme: This type has several requirements including an annual audit and investment restrictions.
  - > ORSO exempted scheme: This type is exempted from the annual audit and investment restrictions and is available for schemes that are registered or approved by an authority in a country outside Hong Kong (a list of recognized authorities similar to the MPFA can be found on the MPFA's website).

- > The company can make "employer contributions" to the ORSO retirement scheme. These are usually monthly cash contributions but can also be transfer of assets in specie. There are no legal limits to the amounts that may be contributed. Eligible employees and directors of the company can be added as members of the ORSO retirement scheme. Members may also make voluntary employee contributions if this is provided for in the trust deed and rules.
- > Extension to other group companies: Companies that are part of the same group under Section 67 of the ORSO may apply to become "participating employers". This extends the potential membership to all the eligible employees and directors of these group companies.
- > Distributions to members are made in the form of lump sum and/or regular payments. Transfer to other pension plans or annuity contracts are also possible.

VESTING

Vesting means the action of making a member fully entitled to the funds (or part of it) in his/her retirement sub-account.

For ORSO retirement schemes, the company will draft the vesting rules into the trust deed and rules. Vesting is usually delayed to act as an incentive for staff to stay with the company. In certain countries (e.g., the USA) members are often taxed on the foreign pension contributions at the moment of vesting. It is therefore important to consider this aspect carefully when preparing and administering the pension plan.

REASONS FOR CREATING AN ORSO SCHEME IN HONG KONG

- > Hong Kong is well known as one of the world's top finance centres. The ORSO and MPF retirement schemes are subject to supervision by the MPFA and each application must go through a rigorous approval process that can take several weeks. This registration process makes the retirement scheme easy to verify and be accepted by financial institutions and authorities in other countries.
- > Most governments are encouraging their citizens to save for their retirement. Many countries therefore have tax exemptions or tax deferral plans in place for corporate retirement schemes.
- > Greater flexibility in drafting the terms of the ORSO retirement scheme trust deed and rules.
- > Ability to hold a wide range of investments. This may even include real estate and private company shares. It is therefore possible to use this as a holding entity for a family business (subject to prior approval by the trustee).
- > Incentivise and retain staff and encourage a long-term approach to business.
- > Extension to other group companies and their employees. This enables the ORSO retirement scheme to be an international group pension plan.
- > As a general rule, Hong Kong ORSO and MPF retirement schemes are not subject to Hong Kong taxes.
- > Distributions from Hong Kong ORSO and MPF retirement schemes are not taxable in Hong Kong in specified circumstances (e.g., retirement, death, incapacity and termination of service with 10 years of service or more). Employee contributions to ORSO retirement schemes are not tax deductible.
- > Many of Hong Kong's comprehensive double taxation agreements (e.g., with the UK) specify that pension distributions from proper Hong Kong corporate retirement plans "in consideration of past employment" are only taxable in Hong Kong.
- > Employer contributions by Hong Kong employers are tax deductible to a maximum of 15% of the employee's total remuneration. Please consult with a Hong Kong tax accountant for further details.

- Taxation of income in Hong Kong is assessed on a territorial basis: only income arising in or derived from Hong Kong is subject to tax in Hong Kong. There is no capital gains tax and no estate duty levied in Hong Kong.
- Hong Kong is a special administrative region of China. It maintains its well-established legal system based on a mixed system of English model common law and Chinese customary law (in matters of family and land tenure).
- Free market economy, highly dependent on international trade and finance.
- Hong Kong complies with the Hague Convention on the recognition of trusts.
- Hong Kong trust law was amended with effect from 1 December 2013 and now offers similar features to its main competitors. The features include enhanced protection for beneficiaries, settlor reserved powers, anti-forced heirship rules and the abolition of the rule against perpetuities. Please refer to our brochure “Hong Kong Trusts: Key Facts” for more details.

