
Panama Private Foundation

The Best Solution to Asset Protection for China Clients

The Trust Law of the People's Republic of China was adopted in October 2001. Since then, the law has started to promote its concept of trusts to business professionals and affluent individuals in China. Thirty months after the adoption of the Trust Law, the author's view is that few lawyers and wealthy individuals in China actually understand the concept of a trust. This conclusion is drawn from meetings in the past two years with partners from 67 law firms and 55 wealthy owners of non-state-owned enterprises in Beijing, Shanghai, Guangzhou, Shenzhen, Hang Zhou, Wen Zhou, Chang Zhou, Tai Xing, Nan Jing, Fu Zhou, Quan Zhou, Xia Men, Chong Qing, Cheng Du, Shi Jia Zhuang and Xian. The two main issues are that the China Trust Law does not have provisions indicating how to set up a trust and operating under such a law which means the Law is not applicable in reality when a trust is set up, while wealthy people do not have faith in the trust when assets are transferred to trustees. The recent People's Congress has amended China's Constitution to include provisions on the protection of legitimate private assets and the expectation of human rights.

Concept of a trust in China

For Chinese people, a trust is not a new concept from Western countries. It has a long history in China. When warriors were preparing to fight, they asked friends or relatives to look after their treasures and, in the event of their death, to pass them on to those whom they loved. The modern concept of trust law is sourced from common laws, which is obvious when looking at the Trust Law of China adopted in October 2001. However, Chinese people only know of the concept of a trust without having an insight into what a trust really is in practice. Wealthy people doubt the security of a trust and the creditworthiness of a trustee.

Inapplicable China Trust Law

Under the China Trust Law, in order to qualify as trustees, organizations must be governed by the Regulations of Trust and Investment Companies issued by the People's Bank (the Central Bank of the Chinese central authority). At the time of writing (April 2004), the State Council had not issued any regulations on the qualifications of a trustee provisioned in the Trust Law. According to article 1, Section 2 of the Regulation of Trust and Investment Companies, a trust (trustee) company is a non-banking financial organization which is permitted to charge service fees (it is illegal for an organization to charge fees if it is not a permitted trustee). A law firm is not able to provide trust services by charging services pursuant to the Trust Law and the Regulations of Trust and Investment Companies. This is the reason why law firms in China believe that the China Trust Law is inapplicable.

Offshore trust solution – Panama Private Foundation

The setting-up of offshore trusts relies on Chinese lawyers, who are normally personal legal advisers to the individuals concerned. The Chinese lawyers, many with backgrounds of Western education, work with foreign law firms and banks to set up trusts for their clients in offshore jurisdictions. Generally speaking, Bermuda, the Cayman Islands, Switzerland, Hong Kong and even Singapore are their choices. Nevertheless, wealthy people are curious about how a Chinese law firm arranges an offshore trust and operates it in offshore jurisdiction. They do not have trust on management of their assets by someone to whom they have to transfer assets, as to set up a trust a settlor has to transfer assets to a trustee. The most important issue for Chinese investors is how they can best control their assets when a trust is set up in an offshore jurisdiction.

Most recently, the Panama Private Foundation has become an acceptable vehicle to Chinese lawyers and wealthy individuals because of the fact that a foundation founder may be a foundation council member and a beneficiary and even an inspector. It is easily understood that wealthy people may be able to control assets that are transferred to a private foundation. The cost of managing assets through a private foundation are much less than those incurred when managing a trust. The Panama Private Foundation is clearly the best solution to asset arrangement.

Notes

* member of the Inter-Pacific Bar Association and the China International Law Society.

1 Source: Xinhua.com, 3 March 2004, section 13 of the amended Chinese Constitution: ‘title of legitimate properties owned by the Chinese citizens is not violated....the state protects title and heritage of private properties’.