

The use of Guarantee Companies (and Hong Kong) New strategies and solutions

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Current Issues Facing Advisers

- The tax debate shows no sign of slowing down
- The “fair share” argument
- Introduction of FATCA is game-changer
- UK now has a GAAR
- Attacks on trusts and offshore entities:
 - France: Art 14, Revised Finance Act 2011
 - Spain: Modelo 720, Law 7/2012, October 2012
 - Italy: Art 9, Law No. 97, August 2013

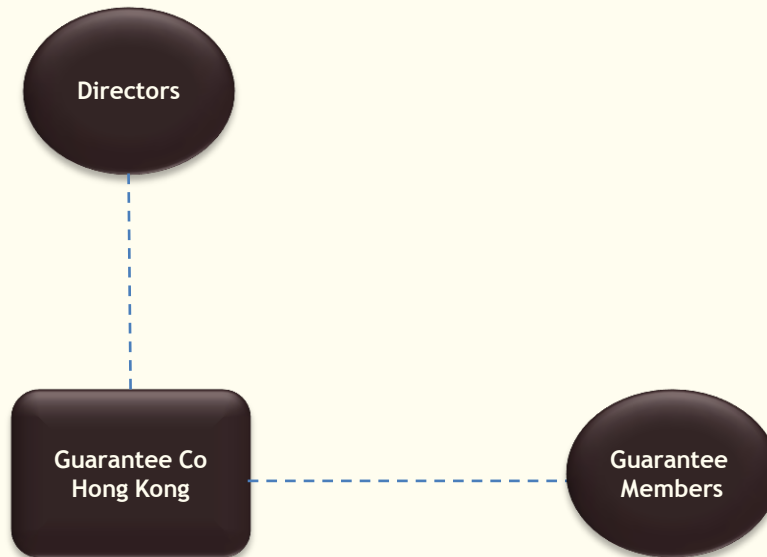
Current Issues Facing Advisers

- Laws tend to focus on ownership and control
- Trust rules focus on settlor and beneficiary
- Foundations the obvious answer
- However, limited jurisdictions offer foundations
- Guarantee Company the antidote
- Some interesting possibilities

Key Features of Guarantee Company

- A GCo is an incorporated company
- It has no share capital and cannot issue shares
- It has a board of directors
- It also has Guarantee Members (“GMs”)
- GMs contribute in the event of a winding up
- GM’s also entitled to distributions

Hong Kong Guarantee Company



Key Features of Hong Kong Guarantee Company

- HKGCo is subject to HK corporate taxation
- HK operates territorial system of taxation
- HK now has 29 DTAs
- Many with important partners
- IRD will issue Certificate of Resident Status
- Available to non-HK companies too
- Public registry discloses certain information

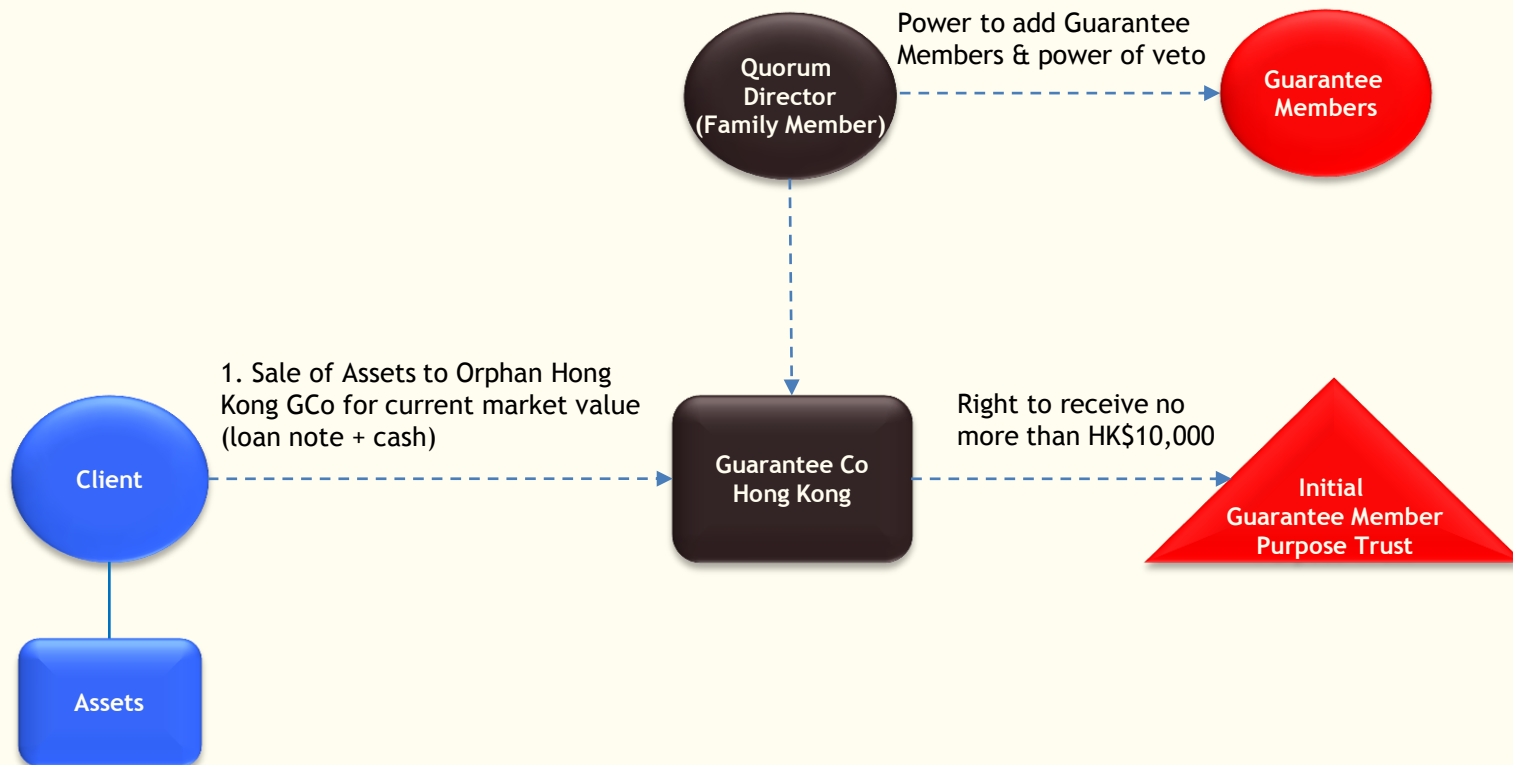
Key Features of Hong Kong Guarantee Company

- Board of directors must be a majority of HK residents
- A Quorum Director can provide security
- A GM is required at incorporation
- For tax and other purposes GMs can be added later
- Initial GM could be a Purpose Trust
- Client can be given Deed Poll Option
- Statutes can be drafted to provide flexibility

Hong Kong Guarantee Company



Hong Kong Guarantee Company



Step Plan

- Client sells assets to HKGCo
- All transactions entered into on arm's length terms
- Consideration is cash and loan notes
- Income and gains not liable to HK tax
- Income / gains of HKGCo used to pay down loan note
- Contracts can be conditional or unconditional
- Deferred completion give rise to planning opportunities
- HK DTA provisions might block domestic TAARs

The UK/HK Variation

- A UK company is resident in the UK
- DTA tie-breaker does allow non-resident UK company
- UK has a DTA with HK
- UK law allows incorporation of a guarantee company
- Art 4(3) of the DTA : POEM
- The result:
 - A UK incorporated company
 - Tax exempt
 - Confidential
 - Non-blacklisted
 - Not a trust
 - Private family foundation

Our Awards



- **Taxation Awards 2013**
 - *Winner: Best International Tax Team UK*



- **Taxation Awards 2012**
 - *Finalist: Best International Tax Team UK*



- **European Tax Awards 2010 and 2012**
 - *Finalist: Best Newcomer Europe*



- **Corporate International Global Awards 2010**
 - *Winner: Corporate Tax Advisory Award*



- **Taxation Awards 2009**
 - *Winner: Best International Tax Team UK*



- **The Lawyer Awards 2009**
 - *Finalist: Niche Firm of the Year UK*

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