



WEALTH MANAGEMENT
FOR MANAGERS

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UNLOCKING THE POTENTIAL OF LABUAN TRUSTS: A FOCUS ON PURPOSE TRUSTS

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1. Characteristics of High Net Worth Families

1. **Characteristics:**
 - 1.1 A significant capital base.
 - 1.2 An annual net increase in capital.
 - 1.3 Capital in diverse geographical locations.
 - 1.4 Growth in family memberships across generations.
 - 1.5 Geographic dispersion of family members.

1. Characteristics of High Net Worth Families

Therefore:

- Domestic solutions insufficient to accommodate global dynamics.
- The need to consider the laws of multiple jurisdictions.
- Planning for the long term.
- Structure with indefinite period.
- Provide for flexibility.
- Adopt organized approach to maintain family cohesion.

2. Key Concerns of High Net Worth Families

2.1 Asset protection:

- Adverse claims.
- Claims arising from marital breakdown.
- Country and political risks.
- Imposition of exchange control.
- Expropriation and nationalization.

2. Key Concerns of High Net Worth Families

2.1 Asset protection (cont'd):

- Spendthrift beneficiaries.
- Beneficiaries with special needs.

2.2 Tax minimization:

- In home country.
- Beneficiaries in taxing jurisdictions (e.g. USA, Canada, Australia, U.K.).

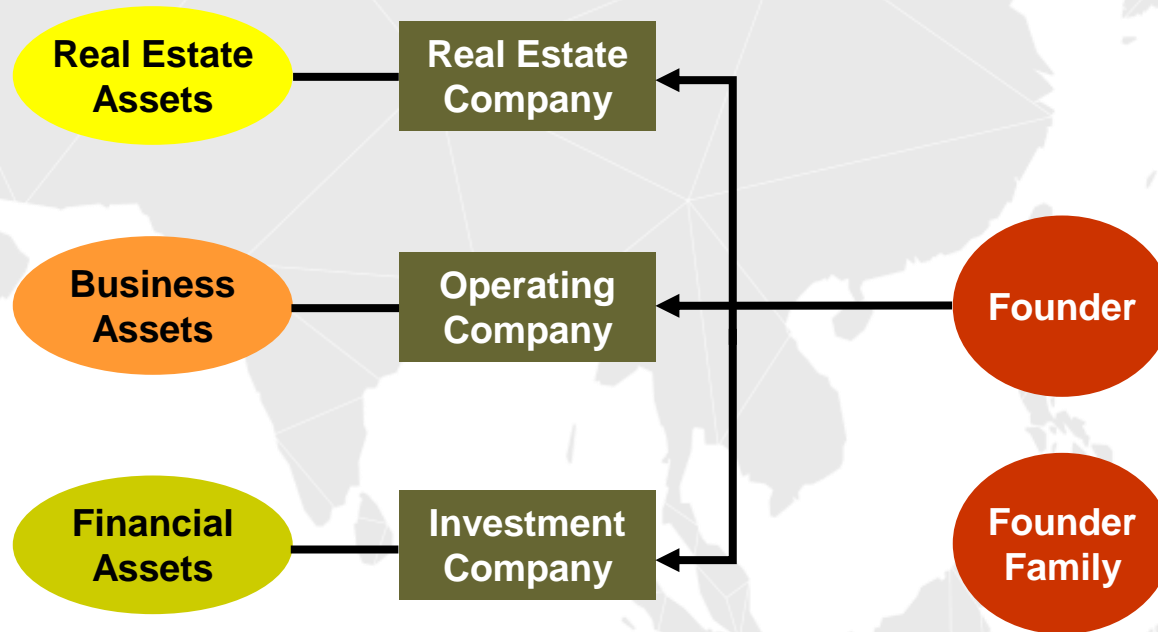
2. Key Concerns of High Net Worth Families

2.3 Family business:

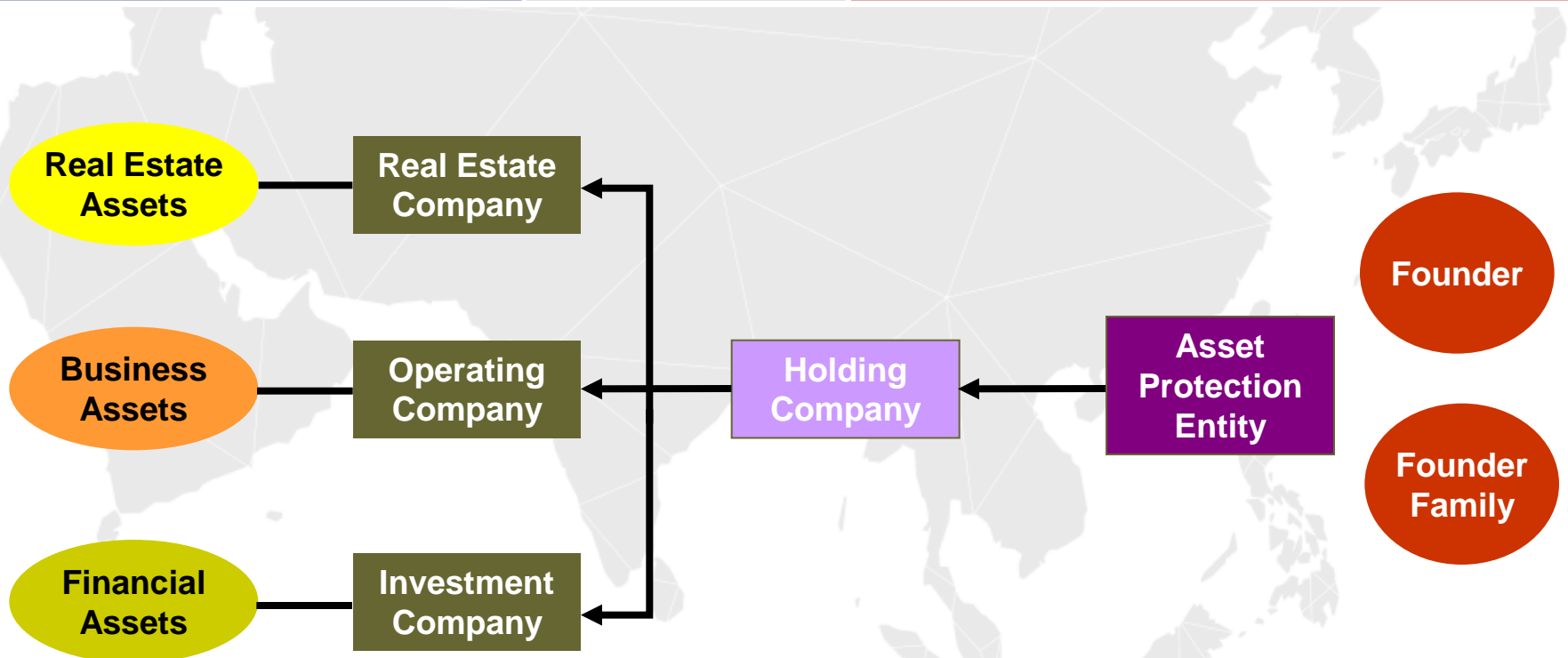
- Avoiding fragmentation of ownership.
- Encouraging participation in management by succeeding generations.

Solution: Asset Protection Structure

3. An Estate with No Plan



4. Asset Protection Structure



5. Asset Protection Structure

5.1 Choice of structure. For example, in Labuan, there are various options such as,

- ▶ Labuan Trust which has its source in the common law trust.
- ▶ Labuan Foundation is akin to the civil law concept of foundation.
- ▶ Labuan Purpose Trust.

6. Common Law Trusts

6.1 Concept of Common Law Trust

- Classic doctrine of common law jurisdiction.
- A Trust is a legal relationship between Settlor, Trustee and Beneficiaries.
- A Trust is not an autonomous juridical person and is represented by Trustee.

6. Common Law Trusts

6.2 Parties in a Trust:

➤ **Settlor**

- Settles the trust by transferring assets to Trustee.

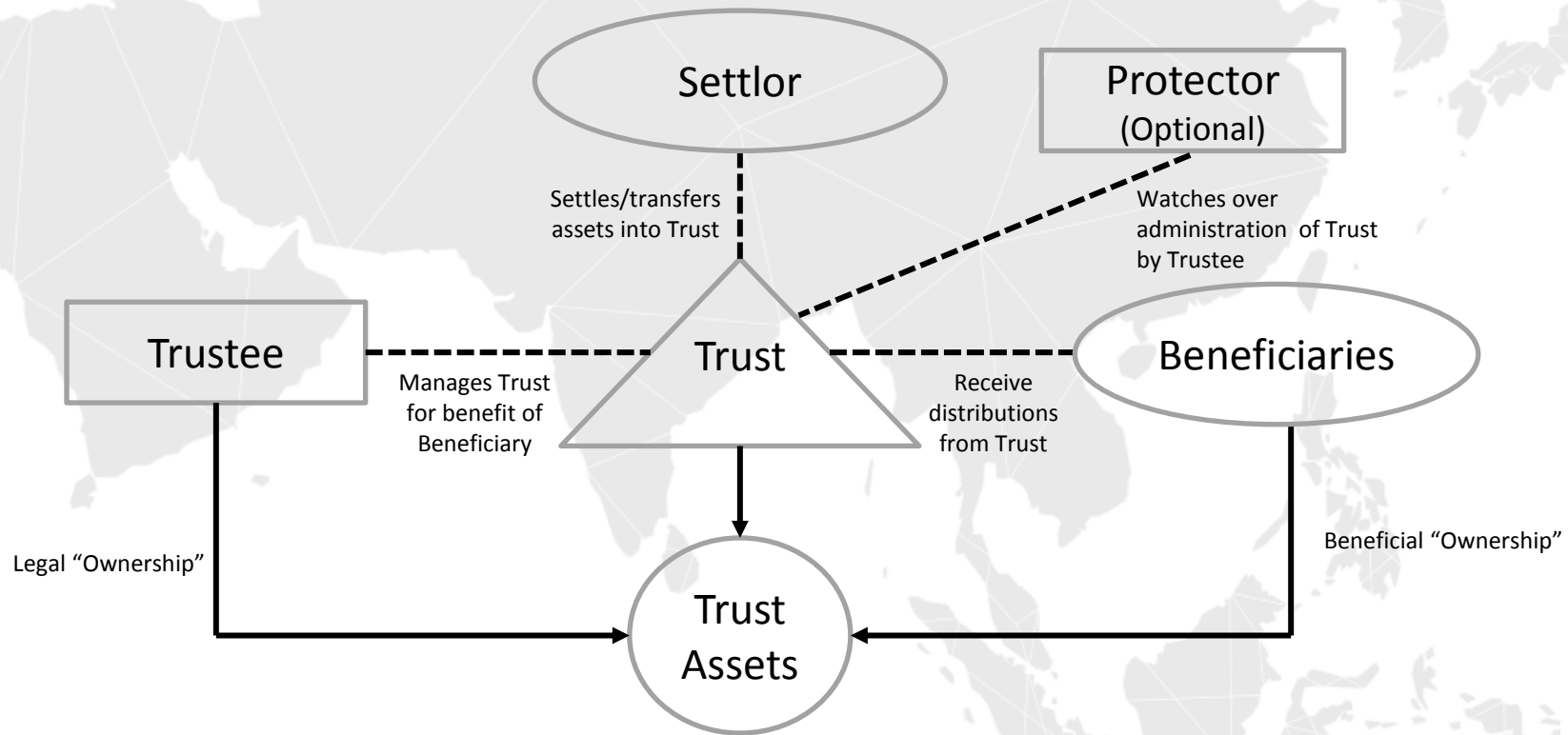
➤ **Trustee**

- Legal owner of trust assets but is legally obliged to manage trust assets for benefit of Beneficiary – the duty of loyalty.

➤ **Beneficiaries**

- Beneficiaries have equitable or beneficial entitlement to trust assets which is enforceable by law.

6. Common Law Trust Structure



6. Common Law Trusts

6.3 Trust Relationship:

- Created when Settlor transfers assets to Trustee to be managed for benefit of Beneficiaries .
- Trust involves a split in legal and beneficial ownership of trust assets.
- Trustee (legal owner) has the right to deal with trust assets but has an equitable obligation to deal with it for the benefit of Beneficiaries (beneficial owners).
- With split ownership, trust assets are not available to creditors of Trustee.

6. Common Law Trusts

6.3 Trust Relationship (cont.):

- Trust constitutes the most intense of fiduciary relationships. Trustee is called to the highest of fiduciary standards.
- Protector may be appointed to monitor the activities of and given power to remove and appoint Trustee.
- Terms of a Trust are usually contained in a trust instrument which is kept confidential.
- Letter/Memorandum of Wishes: In a discretionary trust, Settlor may express his overall wishes concerning how the Trust is to be administered but they are not legally binding.

7. Uses of Trusts in Estate Planning

7.1 Trust is a flexible financial and estate planning tool :

- ▶ Asset protection.
- ▶ Asset preservation.
- ▶ Succession planning.
- ▶ Confidentiality.
- ▶ Possible tax mitigation.
- ▶ Avoidance of forced heirship.

8. Labuan Trusts

8.1 Labuan Trusts Act 1996: provides for creation and recognition of Labuan Trusts.

8.2 Special features of Labuan Trusts include:

- ▶ Duration of Labuan Trust: limited or perpetual.
- ▶ Must be created by will or other instrument in writing.
- ▶ Registration of Labuan Trust is optional.
- ▶ Express recognition of reserved powers trust.

8. Labuan Trusts

8.1 Special features (cont.):

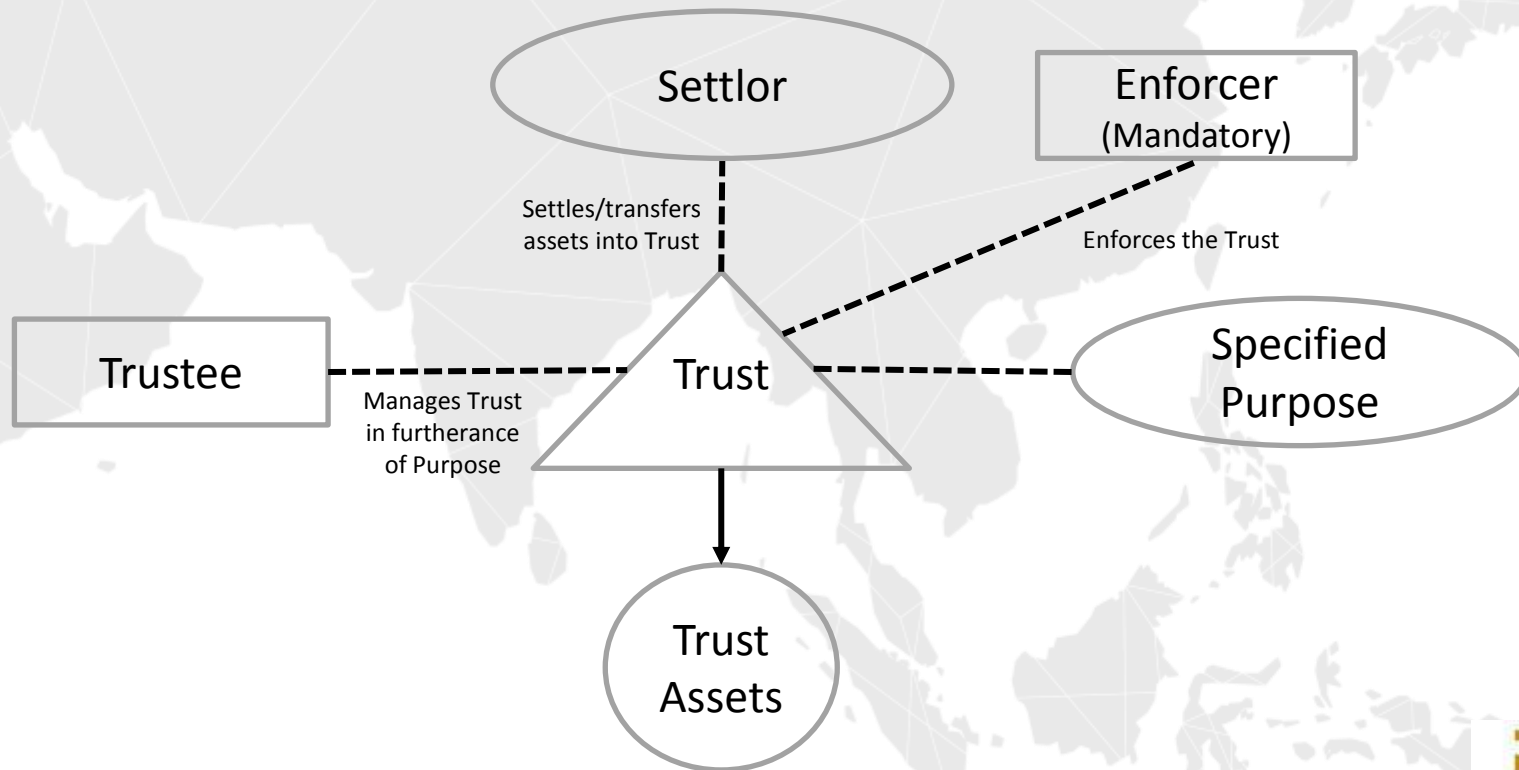
- ▶ Provisions for unenforceability of foreign claim or judgment.
- ▶ Statutory provision for secrecy and proceedings in camera.
- ▶ Redomiciliation of foreign trust.
- ▶ Migration of Labuan Trust.
- ▶ Trustee must be a Labuan trust company.
- ▶ Trust assets shall not include Malaysian property except with prior approval of Labuan Financial Services Authority.

9. Concept of Purpose Trusts

9.1 Historical development of Purpose Trust

- “Beneficiary” Principle.
- Common law exceptions to “Beneficiary Principle” such as:
 - Charitable trusts
 - Trust for animals, etc.
- Legislated non-charitable purpose trust.

10. Purpose Trust Structure



11. Labuan Purpose Trusts

11.1 Special features of Labuan Purpose Trusts include:

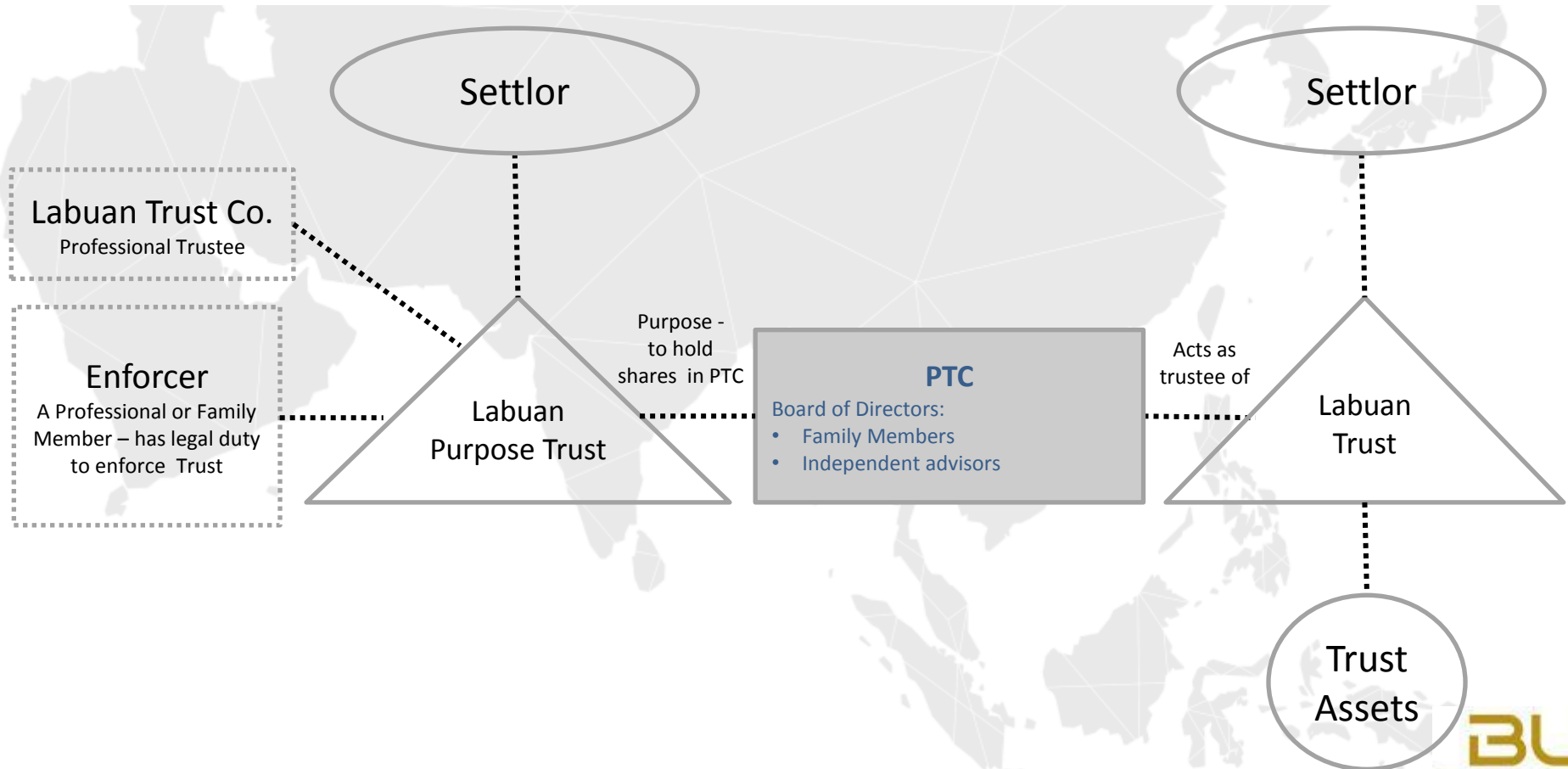
- Provision for Enforcer.
- Rights of Enforcer.
- Duration
- Hybrid trust (purpose and beneficiary).
- Effect of uncertainty.

12. Use of Labuan Non-Charitable Purpose Trusts

12.1 Uses of Labuan Non-Charitable Purpose Trusts include:

- ▶ For philanthropic purposes which may not qualify as charitable.
- ▶ To hold shares in a private trust company.
- ▶ To hold shares in a family business.
- ▶ To hold shares in a special purpose vehicle etc.

13.PTC Use of Labuan Non-Charitable Purpose Trust



14. Speaker's Profile

14.1 Millie practised in Malaysia for about 27 years and now practises in British Columbia, Canada in Borden Ladner Gervais LLP (BLG). Millie assists high net worth families in global estate planning

14.2 BLG is a Canadian national law firm with more than 750 lawyers and 5 offices in major centers across Canada and an office in Beijing, China.



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