The Application of Family Trust in China

1、Because of the increase of the high-net-worth individuals, the family trust business is booming.

With the rapid growth of the Chinese economy, there have been a lot of wealthy and high-net-worth individuals (“HNWIs”). According to the report named “The Report of Chinese Private Wealth in 2007” which was released by China Merchants Bank and Bain Consulting, between 2006 and 2016, The total amount of investible assets held by Chinese HNWIs had grown from 3.6 trillion dollars to 23 trillion dollars. According to the report named “The Report of the Data Analysis of Chinese High-net-worth Individuals in 2007”, in 2017, the number of high-net-worth individuals in China had reached 1.97 million. According to the report named “The Report of the Development of China Private Banks’ Market” which was released by China Construction Bank, in 2018, the number of high-net-worth individuals in China had reached 1.67 million. According to the report named “The Sustainable Development’s Report of Chinese Family Wealth in 2019” which was released by Jianxin Trust Co., Ltd. and Hurun Report, the number of high-net-worth households with assets of 1.4 million dollars in mainland China has been 1.61 million and the number of super-high-net-worth families with 14 million dollars of assets is 110 thousand.

With the changes in the age and the stage of wealthy accumulation of HNWIs, they pay more attention towealth safety and succession. According to the “Hurun Report”, the average age of Chinese richest persons in the top 100 is older than 54, among which more than 80% are older than 50 years old. Subsequently, wealth succession becomes a paramount important issue.

However, in this process, HNWIs are also faced with risks, such as divorce, debt and disputes of inheritance. In addition, more and more family members have obtained overseas nationality, residency or overseas taxation residency, which makes wealth succession more challenging.

2、Family trust business is increasing

Started in 2013, Chinese family trust business is gradually increasing. According to public statistics, among the 68 domestic trust companies, the number of companies participating in family trusts as trustees increased from 6 in 2013 to 34 in 2018 and the total amount of family trust assets has also increased from more than 140 million dollars in 2013 to 7 billion dollars in 2019, and may increase to 84 billion dollars in 2020.

According to the regulations of the China Banking Regulatory Commission（″CBRC”), only trust companies holding trust licenses can operate family trust business. Commercial banks, insurance companies, third-party wealth management institutions, etc. often cooperate with trust companies to carry out family trust business. Among them, the cooperation between the private banking department of commercial banks and trust companies is the main form of Chinese family trust business.

″Guidance on Risk Supervision of Trust Companies″ which was promulgated and effective on 8 April 2014 by the CBRC clearly stated that the family trust—— ″exploring family wealth management and tailoring asset management solutions for customers″ is one of the original business of trusts , and it is encouraged by the government.

3、The entrusted assets of the family trust are increasingly diversified

From legal point of view, assets to be put into the family trust are diverse including financial assets, insurance policies, stock equity, real estate, art, etc. However, at present, types of underlying assets of Chinese family trust are relatively single, most of which are financial assets, and other types of assets are not common. HNWIs would like to set up a family trust with stock equity or real estate, but the cost of taxation is often a burden. . China adopts a two-subject tax system with turnover tax and income tax as the main ones. Setting a family trust with underlying assets such as stock equity or real estate will be regarded as sales when the title is transferred to the trustee, so the client has to pay the corresponding taxes. In addition, the value of Chinese assets has increased rapidly in recent years, resulting in higher asset premiums and taxes. Most clients hold a wait-and-see attitude. With the promulgation of “Charity Law of the People’s Republic of China” in 2016 and the ″Management Measures for Charitable Trusts″ in 2017, charitable trusts are receiving more and more attention. In addition to setting up charitable trusts, the combination of family trusts and charities is becoming more and more popular. In practice, the combination of charitable trusts and family trusts has become the main choice for the wealthy family to carry out charity.

4、Family trusts are faced with some challenges

Up to now, there is no judicial precedent for family trust business in mainland China. Although China is a civil law country where decisions from cases are not binding, judicial precedents can reflect the development and problems of a certain subject.

Tax planning is one of the advantages of family trusts, but at present China has not promulgated inheritance tax. Many people believe that the promulgation of inheritance tax is on the government's agenda in 5 or 10 years.. Some clients are in doubt that whether setting up a family trust would avoid the inheritance tax in the future. The Securities Industry Regulatory Commission（″SIRC″） considers that the beneficiaries of a trust can be changed, which will make it difficult to judge a company's controller. Therefore, the SIRC stipulates they do not accept Pre-IPO arrangement via trusts.

As controls of Chinese foreign exchange become increasingly stringent, it is difficult for individuals to transfer their assets to overseas countries and put those into an overseas family trust by legal means. Many people realized that Compared with other asset holding methods, the advantages of family trusts are obvious. It is predicted that setting up Chinese family trusts will be the main method for HNWIs to manage their wealth in the future.