

离岸信托

—— 财产保护及全球资产配置



北京大成（昆明）律师事务所 美国罗战律师事务所

1

大成律师事务所是亚洲最大的律师事务所，目前有着超过 4000 个律师。罗战律师事务所在离岸信托行业已有 20 多年的经验，非常荣幸为大家介绍离岸信托。

Dacheng Law Firm, the largest law firm in Asia with over 4,000 attorneys, and the Law Firm of Mark Merric, LLC that has over 20 years of experience in the offshore trust business are proud to present today's presentation on offshore trusts.

离岸信托 Offshore Trust

I. 前言
Forward

II. 离岸信托定义和架构
Definition of Offshore Trust

III. 对中国公民的好处
Benefits to Chinese

IV. 可行性及安全性
Feasibility and Safety

V. 成本预算
Cost

概览

本材料首先对信托和股份制公司做出比较，然后将具体描述中国公民从中可以得到的好处，包括将财富传承、保护财产不受债务人的影响、避免未来潜在的中国遗产税、便于做国际投资、以及增加信息保密性。然后结合离岸控股公司来详细讨论离岸结构

讨论完结构后，是关于控股公司以及中国公民如何保持对信托的间接控制，即中国公民可以更替信托保护人，而保护人可以更替受托人。中国公民同时作为控股公司的董事长控制了信托资产。接着将比较使用离岸信托和不使用离岸信托的税收情况。再接着将讨论设立离岸信托的相关成本。最后将讨论该结构的可行性和安全性。

Overview

This outline makes a brief comparison of a trust to a corporation. It then details the benefits to the Chinese person such as passing assets to the next generation, protection from creditors, protection against a possible future Chinese estate tax, investing internationally, and information confidentiality. A detailed discussion of the offshore structure combined with an offshore holding company follows. After discussing the structure, how the Chinese owner retains indirect control over the structure is discussed. Here the Chinese person has a removal/replacement power over the Protector, who in turn has a removal/replacement power over the trustee. The client serves as President of the holding company that controls the assets held by the trust. After discussing indirect control, then the taxation of the offshore structure is compared to the taxation of owning the assets individually. Then the costs of the structure are discussed. Finally, the feasibility and safety of the structure is discussed.

I. 前言

Forward

- (一) 财富之惑
Delusion of Wealth
- (二) 亟待解决的问题
Problems to be Solved
- (三) 对中国公民的好处
Overseas Success Stories
- (四) 对中国公民的好处
Primary Offshore Trust Jurisdictions

3

I. 前言

这部分将介绍中国高资产家庭历来遇到的一些问题以及使用朝代信托来解决这些问题。

I. Forward

This forward introduces some of the major problems that wealthy Chinese have as well as it introduces the concept of a dynasty trust to help solve these problems.



1. 中国“富不过三代”的魔咒

全球 100 家家族企业荣登 2006 年《胡润全球最古老的家族企业榜》（最近一期），榜单中没有任何一家中国的家族企业。这 100 家长寿企业主要集中在欧洲、美国和日本。其中英、法、美名列前三位，各有 17 家、16 家、15 家，第 100 名家族企业也有超过 225 年的历史。

2. 中国家族企业占比高、消亡快

据 2014 年最新统计数据显示，中国现存 300 多万家私营企业中，80% 以上为家族企业，在这些家族企业中，90% 以上选择“子承父业”式的交接模式。但我国家族企业的平均寿命仅为 24 年，其中只有不到 30% 的家族企业能进入第二代，不到 10% 能进入第三代，而进入第四代的只有大约 4%。

3. 交接后的中国家族企业发展不顺畅

据 2014 年最新统计数据显示，中国 A 股上市的家族企业中，只有 10% 完成了接班，交接后的 A 股上市家族企业的发展也并不顺畅——绝大多数家族企业均出现股价下跌现象，即使股价未持续下跌的，企业创始人掌权时，企业市值平均增长率约为 9.9%，而当第二代接班后，企业市值平均增长率几乎均下降至 2.5% 左右。

(一) Delusion of Wealth

1. Rich Three Generations Curse

Hurun's 2006 (latest issue) list of 100 oldest family businesses does not contain a single Chinese family business in the list. These oldest family businesses are concentrated in Europe, the United States, and Japan. England, France and the United States ranked in the top three with 17 family businesses, 16 family businesses, and 15 family businesses, respectively.

2. Succession of Chinese Private Businesses

In 2014, there were over 3 million family businesses. Of the 3 million family businesses, 80 percent of these were family owned businesses. Of these family owned businesses 90% of these families wished to transfer the ownership to the next generation. Unfortunately, the average life expectancy of a private Chinese business is only 24 years. Further, of the 90% that wished to transfer the family business to the next generation, only 30% were successful in transferring to the second generation. When the second generation transferred to the third generation, only 10% of the original family businesses were transferred. When it went to the fourth generation, this statistic reduced to 4%.

3. Succession of Public Traded Companies

Some Chinese take their private company public. After the company has gone public, the Chinese family generally manages the publicly traded company. When the older generation wished to change management to the second generation, less than 10% of these successions were completed. Further, for those 10% of successions that were completed, the average growth rate of 9.9% decreased to 2.9% under the management of the second generation.



（二）我们的目标

设立离岸信托主要有四个目标。首先是为未来中国的包括遗产税在内的政策变化做规划，其次是保护资产，第三是帮助家族财富有效传承，最后是通过将财产分散到国际投资来避免财富受某一个地区的经济环境的影响。

（二）Our Goals

There are four primary goals to be solved by the offshore trust. First is to plan for future policy developments within China, such as a possible estate tax. Second is to protect a client's assets. Third is to transfer the wealth to successive generations and break the curse of wealth plus three generations. Fourth is to diversify and avoid being dependent on one economy through international investment.




1. 如何保持财富的价值

上面的图中显示了财富从父辈传承到后代的过程中不断在增长价值。但如果没有适当的规划，财富在传承的过程中是很难维持其价值的，尤其是到了第三代的时候。

1. How to Ensure Wealth For Future Generations

The above slide depicts wealth increasing from the parent to the child, grandchild, and great grandchild. Unless proper planning has been done, most of the time, wealth is lost from generation to generation, with wealth seldom surviving the third generation.

朝代规划 Dynasty Planning

➤	秦	公元前221 – 206	15 年	
➤	隋	公元 581 – 618	37 年	
➤	北魏	公元 386 – 534	148 年	


最长的朝代
Longest Dynasty?



罗马
753 BC ? BC
- 4?? AD?

富不过三代

周



公元前1046 – 221
825 Years

2. 朝代信托规划

历史向我们一再地证明了富不过三代的规律。一度盛况空前的秦朝只存在了 15 年，而隋朝则延续了 37 年，北魏历史稍长延续了 148 年。历史上大部分的朝代都历时很短，有人认为罗马时代是世界历史上存在时间最长的朝代，但罗马是一个经历了多个朝代的帝国，而其中每一个朝代的历史都不超过几百年。即使是托勒密十一世克利奥帕特拉(Cleopatra)二世罗马王朝也只存在了 275 年。事实上，世界历史中存续时间最长的是周朝，共持续 825 年。

我们的英国、法国和美国的不少客户都已将他们的财富传给了他们的下一代和再下一代，这些家庭都使用了朝代信托作为他们家族财富规划的基本工具。

2. Dynasty Trust Planning

A brief view of history shows the curse that wealth does not generally last more than three generations. The Qin dynasty only lasted 15 years. The Sui dynasty lasted 37 years, and the Northern Wei dynasty lasted 148 years. While many dynasties in history were short-lived, one might ask what was the longest dynasty in the history of the world? Some might guess that it was Rome. However, Rome was an empire that has many dynasties of which none lasted longer than a couple of hundred of years. Even Cleopatra's Ptolemaic dynasty lasted only 275 years. Actually, the longest dynasty in the history of the world was the Zhou dynasty, which lasted 825 years.

As related to our clients, England, France, and America had several families that had passed on wealth from generation to generation. These families used dynasty trusts as the foundation of their planning.

成功案例

Success Stories

案例一：邵逸夫家族的邵氏国际信托基金 First Case - Shaw Family International Trust Fund



• 资料来源：2008-8-8第一财经日报
• Source: First Financial
• Daily 2008-8-8

- 避免家族纠纷
Protect Against Children Fighting
- 资产保护
Asset Protection
- 财富有效传承
Transfer Wealth to Future Generations
- 国际投资及资产升值
International Investment

（三）海外成功案例

离岸信托的结构是根据每个家庭的不同情况而设计的。

1. 邵氏家族的国际信托基金

邵逸夫使用了多个信托的架构。首先他设立了一个邵氏家族国际信托基金来避免他的后代产生财产纠纷，同时也保护了资产不受债务人的影响。他还设立了一个信托来做国际投资从而使信托基金能够在传承的过程中保值。

（三）Overseas Success Stories

Overseas trusts are created for adopt to a variety of different family situations.

1. Shaw Family International Trust Fund

Mr. Shaw created a multimedia empire. He created the the Shaw Family International Trust Fund to keep his children from fighting with each other as well as asset protection from future creditors. He also created the trust to solve the Chinese saying that wealth does not last past three generations and to allow international investment to grow the trust fund's wealth.

案例二：李嘉诚家族信托

Second Case: Li Ka-shing Family Trust

➤ 亚洲首富，净资产319亿美元

Richest Person in Asia \$31.9 Billion

➤ 设用四个信托

Four trusts to hold business empire

➤ 称基金会为“第三个儿子”
捐款达14.1亿美元

Foundation that he refers to as “his third son.” - Donated \$1.41 billion

10

2. 李嘉诚

除了邵逸夫之外，包括李嘉诚、李兆基、杨受成等富豪，多数家族财团都已成立了家族信托。李嘉诚是亚洲首富，其净资产高达 319 亿美元。备注文字：众所周知，李嘉诚有两个儿子，长子李泽钜是长江集团副主席及董事总经理，次子“小超人”李泽楷是电讯盈科主席。但李嘉诚说，在他心中还有“第三个儿子”，就是成立于 1980 年的“李嘉诚基金会”，而这“第三个儿子”。李嘉诚至今也已捐赠了大约 14.1 亿美元。就是今天我们要谈的家族信托。李嘉诚家族的信托结构比较复杂，至少设立了 4 个信托基金和多层结构，通过巧妙的信托涉及控制其庞大的集团和产业，受益人包括其妻子和儿女。

2. Li Ka-Shing

In addition to Mr. Shaw, Li Ka-Shing, Lee Shau Kee, Albert Yeung have set up a consortium of family trusts. Li Ka-Shing is the richest person in Asia with an estimated net worth of 31.9 billion dollars. As we all know, Li Ka-shing has two sons, the eldest son Victor Li is vice chairman and general manager and director of Cheung Kong Group, the second son of "Little Superman" is PCCW chairman Richard Li. But Li Ka-shing, said in his heart as well as "third son" is founded in 1980 in the "Li Ka Shing Foundation". Li Ka-Shing has donated approximately \$1.41 billion to this foundation. These offshore family trust are what we want to talk about today. Li Ka-shing family trust structure is more complex, at least established a four trust funds and multi-layered structure, involving a trust controlled by clever its huge industrial groups and beneficiaries, including his wife and children.

案例三：娱乐圈明星信托案例

Third Case: Entertainment Stars Trust Case

➤王菲为女儿窦靖童设立了信托

Fay Wong created an offshore trust for her daughter of the first marriage, Dou Jingtong.

➤信托保护了资产不受之后的婚姻的影响

The trust protects against future claims against Faye as well as claims by a future husband of Dou Jingtong, and to live comfortably.

11

3. 王菲

王菲是中国著名的歌手艺人，她在 1996 年的时候与窦唯结婚，拥有女儿窦靖童，可惜两人的婚姻只维持到 1999 年。王菲后来在 2005 年与李亚鹏结婚。在第二段婚姻中，两任配偶之间总是会有一些潜在的冲突，而为了保障女儿窦靖童将来的生活，王菲设立了一个离岸信托来保护她的资产，以避免之后的婚姻对其财产产生威胁，同时也能够避免女儿之后的婚姻会对财产产生的威胁。

3. Faye Wong

Faye Wong, the famous Chinese singer and actress, was originally married to Dou Wei in 1996. In 1997, they had a daughter named Dou Jingtong. Unfortunately, their marriage ended in 1999. Fay Wong later remarried Nicolas Tse, a television actor, in 2005.

With second marriages, there are always potential conflicts with either the prior spouse or the current spouse. To protect her daughter, Dou Jingtong, Faye Wong created an offshore trust to provide for her daughter. The trust assets are also protected against future marital problems should Dou Jingtong marry.

案例四：国内知名企业家设立信托案例

Case Four: Well Known Entrepreneurs Trust Case

一、龙湖地产中的离岸信托结构

Lake Real Estate Offshore Trust Structures

- **吴亚军，2012年中国最富裕的女性**
In 2012 China's richest woman, Yajun Wu.
- **与前夫蔡奎于1995年成立龙湖集团**
She and her husband, Cai Kui, founded Longfor Properties in 1995.
- **2013年离婚，由于各自设立信托持有股份，公司所有权不因离婚而分割。**
In 2013, she divorced and they both created offshore trusts to hold their interest in Longfor Properties.

12

4. 吴亚军

“中国女首富”、龙湖集团董事长吴亚军去年和丈夫蔡奎正式离婚时，由于二人分别通过 Charm Talent 及 Silverland Assets 成立的两个信托各自持有龙湖股份，在信托合同期内，该部分股权的所有权均属信托公司所有。因此夫妻离婚不需涉及股权所有权的分割问题，因此虽然两人的离婚震惊地产界，但并不涉及龙湖集团的股权变动，对公司运营没有影响。

龙湖地产 2009 年上市前，吴亚军夫妇已经通过境外 BVI 和两个分别由二人担任设立人的家族信托间接持有公司约 90% 的股权。具体方式为：

2007 年 11 月，二人在开曼群岛注册了纯属空壳的龙湖地产。该公司的持有者为两家 BVI 公司——Charm Talent 及 Precious Full。2008 年 1 月，夫妇再成立一家名为 Longfor Investment 的 BVI，并由龙湖地产持有 100% 股权。

2008 年 6 月 21 日，Longfor Investment 收购夫妇俩在内地想要上市的资产——嘉许发展的全部已发行股本，并将这些股本分别按面值 19.2 亿港元和 12.8 亿港元转让予 Charm Talent 及 Precious Full。

同日，二人将 Charm Talent 及 Precious Full 分别持有龙湖地产的股份以零代价分别向另外两家 BVI——Silver Sea 及 Silver land 转让，并分别结算为吴氏家族信托及蔡氏家族信托，两个信托均由 HSBC International Trustee (下称“汇丰信托”) 为受托人。

至此，Silver Sea 全部股本由汇丰信托以吴亚军家族信托的受托人身份全资拥有。该信托为一项全权信托，受益对象包括吴亚军若干家族成员及一项以嘉许员工为目的建立的信托 Fit All。

而 Silver land 全部股本由汇丰信托以蔡氏家族信托的受托人身份全资拥有。该信托同样为全权信托，受益对象包括蔡奎若干家族成员及 Fit All。

如此，在 IPO 前，吴亚军夫妇在龙湖地产中的资产，已通过信托架构成功将二人的权益做了妥善安排。

II. 离岸信托概念和结构 Definition of Offshore Trust



II. 离岸信托

简单的来说，由中国公司股东（信托设立人）在境外设立离岸控股公司（由信托协议控制），收购自己在境内的股权。

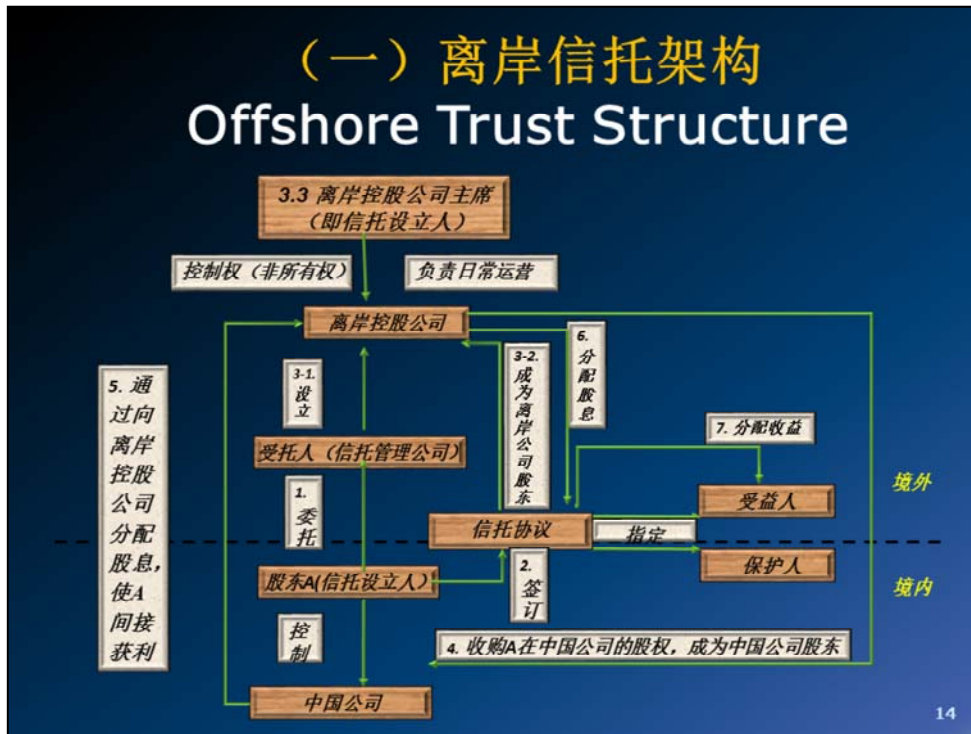
- (1) 离岸：信托设立人将实施信托的公司注册在中国大陆以外的地区。
- (2) 信托：信托设立人基于对受托人的信任，将其财产权委托给受托人，由受托人按照信托设立人的意愿，为受益人或信托设立人的利益或其它特定目的进行管理或处分的行为。
- (3) 信托设立人与受托人签署信托协议且信托协议开始执行后，则意味着信托设立人已将自己的资产转移给信托，信托拥有了资产的法律所有权。

II. Offshore Trust Definition

Basically, the Chinese shareholder will create an offshore holding company, owned by the offshore trust, and then transfer the stock in the Chinese corporation to the holding company.

- (1) The trust and the holding company are created outside the mainland China.
- (2) Trust: The settlor creates a trust based on his or her trust to the trustee and entrusts the property to the trustee, who is managing or dispose the trust assets for the benefit of the beneficiary or the settlor or for the other specific purposes.
- (3) After the trust agreement is signed by the settlor and the trustee and the trust starts operating, the settlor transfers the assets to the trust and the trust holds the legal ownership of the trust assets.

(一) 离岸信托架构 Offshore Trust Structure



(一) 离岸信托整体构架

上图为离岸信托的基本架构，可以根据信托设立人的具体需求（如境外上市、国际投资等）进一步丰富该架构。

(一) Offshore Trust Structure

The above diagram depicts an offshore structure. The structure can be set up according to the specific needs of the client. Such structure generally includes an overseas holding company as well as international investment.

(二) 委托人 (信托设立人) Trust Settlor



(二) 信托设立人

信托设立人是将自己的财产置于信托协议的人。在信托协议中，设立人保留撤换受托人与保护人的权利。

(二) Settlor

A trust settlor is a person who puts the assets into a trust agreement. In the trust agreement, the settlor retains the power to remove and replace both the trustee and the protector.



(三) 受托人概览

(1) 受托人由信托设立人选择，可以是自然人，也可以是专业信托管理公司。从专业能力和可靠角度考虑，选择专业信托管理公司较佳。信托保护人有权随时撤换受托人。

(2) 受托人的职责

(a) 依照信托协议的规定，为受益人的最大利益，管理、处分信托财产。

(b) 将信托财产分配给受益人。

(c) 可以根据信托授予人的遗产规划来修改信托协议。在该权利下，受托人可以修改受益人。但该权利受到信托保护人的否定权的限制。具体见下页。

(四) 受益人

按照信托协议约定，由信托设立人指定的、享受信托财产带来的收益的人，例如：信托设立人本人、信托设立人的子女或配偶等。受益人将成为最终的权益归属人。

(三) Trustee

- (1) Trustee is selected by the settlor. It could be either a natural person or a trust company. Due to the professional ability and reliance, using a trust company would normally be a better choice. The trust protector could remove and replace the trustee at any time.
- (2) The Trustee's Responsibilities include:
 - (a) Managing and disposing the trust assets for the benefit of beneficiaries according to the trust agreement
 - (b) Distributing the trust assets to the beneficiaries
 - (c) Hold a limited power to modify the trust agreement to reflect the settlor's estate plan. Pursuant to this power, the trustee would be able to add future beneficiaries within the settlor's family. This power is subject to the Protector's veto power discussed on the following pages.

(四) Beneficiaries

The trust beneficiary is named by the trust settlor in the trust agreement to receive the benefits of the trust assets. Usually, the beneficiary would be the settlor's spouse or children and will become the ultimate owner of the interest.

(五) 信托保护人 Protector

拥有否决受托人决定的权力
Veto Decision of the Trustee



由客户指定
Appointed by the Client

受托人-表决出售股份
Trustee – Votes to Sell Shares

更替受托人
Remove/ Replace Trustee



离岸信托
Offshore Trust

18

(五) 信托保护人

- (1) 信托设立人指定自己信赖的人或机构作为信托保护人，确保对信托的控制权。若信托财产巨大，信托设立人还可组建家族办公室担任保护人。信托设立人有权随时撤换保护人。
- (2) 信托保护人的职责
 - (a) 可以否决受托人的决策，撤换受托人。
 - (b) 可以否决受托人所做的信托财产分配决定。
 - (c) 可以否决受托人作出的任何关于离岸控股公司的决策。
 - (d) 更替受托人。
- (3) 信托保护人可以保障信托设立人去世之后，信托计划按照信托设立人生前的期望继续执行。

(五) Protector

- (1) The trust settlor can appoint a reliable person or entity as the trust protector to ensure the control of the trust.
- (2) Trust protector's responsibilities are:
 - (a) Veto the decision of the trustee and remove and replace the trustee;
 - (b) Veto any distribution decisions by the trustee;
 - (c) Veto any trustee decision regarding the holding company;
and
 - (d) Remove and or replace the trustee.
- (3) The trust protector also provides greater assurance that after the settlor passed away, the trust will continue to be managed in the way that the settlor wishes.

(六) 离岸控股公司 Offshore Holding Company



20

(六) 关于离岸控股公司

1. 作用

根据信托协议的约定，以离岸控股公司为主体，收购信托设立人在中国公司的股权，成为中国公司的股东，实现信托设立人的股权转移。

(六) Offshore Holding Company

1. Function in the structure

According to the trust agreement, the holding company is the main body of the structure. It will become the shareholder of the Chinese corporation after acquiring the shares from the Chinese trust settlor.

(七) 可进入信托资产的类型 Trust Asset Types



(七) 信托资产

信托可以持有流动资产，如现金、市场流通证券、债券，也可以持有不动产和商业权益。

(七) Trust Assets

The trust may own liquid assets (cash, marketable securities, and bonds), real estate, and business interests.

III. 离岸信托对中国公民的好处 Benefits Chinese National

- (一) 合法有效实现财富传承
Pass assets to next generation legally
- (二) 财产得到独立保护，不受破产、诉讼等事件的影响
Asset not owned by client – protected from creditor claims
- (三) 有效避免中国将来可能被征收的遗产税
Possible Future Chinese Estate Tax
- (四) 合理配置资产存放地，实现国际化发展
Diversity the Assets Location and Invest Internationally

22

III. 离岸信托对中国公民的好处

通过离岸信托可以将信托设立人的资产合法转移至境外，合理配置资产存放地，使资产在私有财产保护法制健全的国家地区发挥最大效用。

III. The benefits of creating offshore trust to the Chinese

By transferring the assets to the countries that have a well-developed private asset protection law, the clients will be able to properly diversify the assets into different locations and better protect their assets.

III. 离岸信托对中国公民的好处 Benefits Chinese National

(五) 信息保密

Information Confidentiality

(六) 信托设立人不会丧失对财产的控制权

Trust Settlor Does not Lose Control of
Property

(七) 通过税务策划合理避税

Reasonable Tax Avoidance Through Tax
Planning

23



(一) 合法实现财富传承

随着中国成为国际商贸中心，中国家庭的许多成员开始出国工作，留学。信托资产在客户的有生之年以及他们过世后传递到后代。离岸信托可向在世界任何地方的受益人作出收益分配。此外，该信托被创建朝代信托，这样如果需要它可以跨越多个世代。

(一) Pass Assets to the Next Generation

As China becomes an international business center, many members of Chinese families begin to work and study abroad. Both during the life of the clients as well as after their death, the trust passes assets to the next and subsequent generations. The offshore trust may make distributions to its beneficiaries anywhere in the world. Further, the trust is created as a dynasty trust so that it may span multiple generations if desired.



5. Trust Splits Into Separate Trusts

At this point of the analysis, there are primarily two concerns regarding discretionary dynasty trusts : (1) all children, grandchildren, and great grandchildren will be complaining to the same trustee requesting all sorts of distributions; and (2) studies have shown that seldom does the money make it to the children or grandchildren. The first concern discusses the situation where there is one discretionary dynasty, sometimes known as a “pot trust.”ⁱ In the example below, Brutus and Cleopatra are used as the children. From history, we have all learned that these two never got along ever since Brutus stuck the knife in Cleopatra’s lover’s back, “Big Julie.”

Since naturally there will be fights between siblings or worse yet grandchildren and great grandchildren, a pot trust is not used. Rather, upon the death of the settlor (or if a first marriage, the last of the settlor or settlor’s spouses), the trust will split into multiple discretionary dynasty trusts at each generation. Brutus now has his own discretionary dynasty trust, and Cleopatra has her own discretionary dynasty trust. The two never have to speak to each other again. Brutus is now responsible for keeping his family in line, and Cleopatra hers. Regarding the second concern, the purpose of these trusts is not to make sure that there is money to be available to the grandchildren or great grandchildren. Rather, one of the primary purposes is asset protection of the child’s beneficial interest by giving him or her the benefits of receiving his or her inheritance in trust. If the child does not consume his separate dynasty trust or the child does not exercise his or her testamentary power of appointment, then upon the child’s death what is left in trust goes to the grandchildren in separate dynasty trusts.

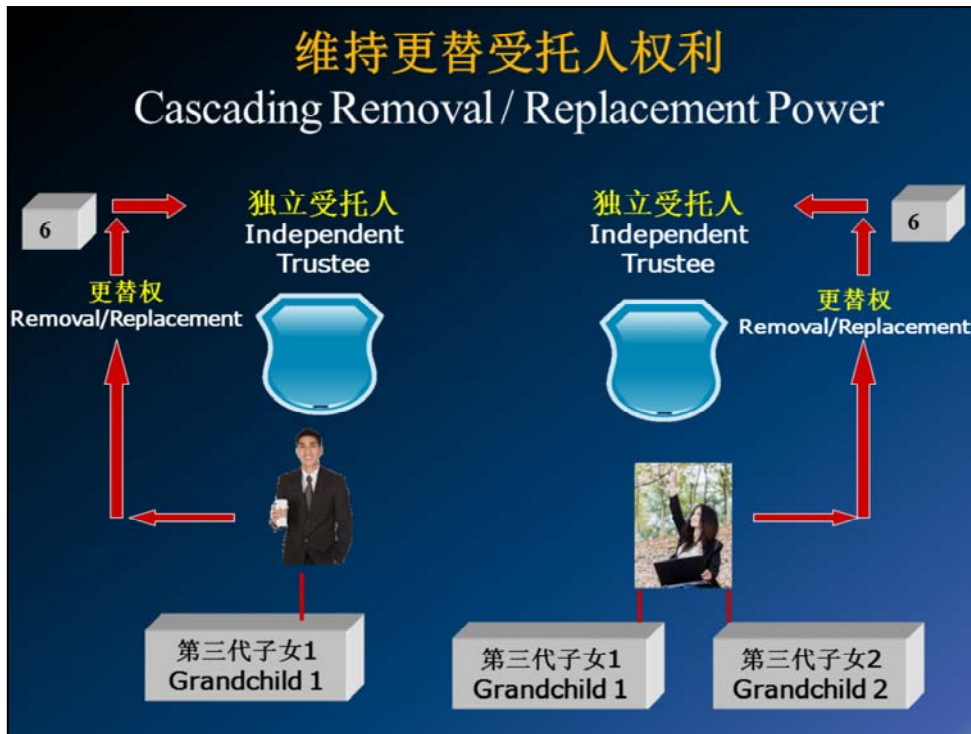
ⁱ The trust is analogized to a big pot of soup where all of the beneficiaries line up to fill their bowls.

5. 一个信托分为不同的几个信托

就这点分析，全权朝代信托有两个考量（1）所有的子女，孙子女，曾孙子女会对同一个受托人抱怨并要求各种分配，（2）研究表明，很少的钱分配到子女和曾子女。第一个考量的背景是全权朝代信托，有时被称为“一锅信托”。下面，以布鲁斯和克利奥帕特拉这两个孩子为例。历史上，我们都知道，这两个人关系从来都不好，因为布鲁斯从背后刺杀来克利奥帕特拉（埃及艳后）的爱人。

因为天然的，在兄弟姐妹之间，甚至孙子与曾孙之间的都会有不和，“一锅信托”不可以使用。在委托人去世（或者，如果是第一次婚姻，委托人或委托人的伴侣中后去世的那位），那么信托就会在每一代分为多个全权朝代信托。布鲁斯现在有他自己的全权朝代信托，克利奥帕特拉也有她自己的全权朝代信托。这两个人再也不需要干涉对方。布鲁斯现在负责维持他自己的家庭，克利奥帕特拉维持她自己的。

关于第二个问题，这些信托的目的不是为了确保有足够的资金留给孙子或曾孙。而是根据他们的自身情况通过信托来继承遗产已达到资产保护的目。如果孩子不消耗自己的独立朝代信托的资金，或不行使他遗嘱任命的权利，那么在这一代去世后，信托内的资产就会通过不同的信托传给再下一代。



6. 每个孩子现在都具有了更替受托人的权利

假设布鲁斯和克利奥帕特拉现在都到了特定的成熟的年纪(30, 35, 或 40岁), 每个孩子都会获得更替受托人的权利。因为每个孩子都有独立的信托, 每个独立信托都各自有受托人, 并且每个受托人都会独立做投资决定。

6. Each Child Now Holds a Removal/Replacement Power

Assuming Brutus and Cleopatra have reached a specified age of maturity (age 30, 35, or 40), each child receives a removal/replacement power over the trustee. Since each child has a separate trust, different trustees may serve on each separate dynasty trust, and each trustee may make investment decisions independently of the other trustee(s) on the other child trusts.

(二) 财产得到独立保护，不受破产、诉讼等事件的影响

Protect the assets from the creditors or lawsuits



Real Estate

Divorce

Example RE & Divorce



Owned by trust

Not Client

Not Trustee

Not Beneficiary



28

(二) 财产得到独立保护，不受破产、诉讼等事件的影响

信托财产依法独立于信托设立人和受托人（信托管理公司）的固有财产，不会与受托人（信托管理公司）的其他财产产生混同，亦不会因信托设立人或受托人（信托管理公司）的法律诉讼或破产而受到被冻结、被执行等影响。

(二) Protect the Assets from the Creditors and Lawsuits

The trust assets are not owned by the trust settlor or the trustee so that it won't be affected by the lawsuit or bankruptcy of any of them.

(三) 避免可能产生的赠予税和遗产税

Possible Future Gift & Estate

2003 & 2013

国际 Nation	遗产税和赠予税 Estate & Gift Tax	税率 Note
加拿大 Canada	在过世时征收所得税 Income Tax at Death	增值的50% 50% Gain
法国 France	征税遗产税和赠予税 Yes	市场价值的60%
德国 Germany	征税遗产税和赠予税 Yes	市场价值的50%
日本 Japan	征税遗产税和赠予税 Yes	市场价值的50%
南韩 South Korea	征税遗产税和赠予税 Yes	市场价值的50%
英国 United Kingdom	征税遗产税和赠予税 Yes	市场价值的40%
美国 United States	征税遗产税和赠予税 Yes	市场价值的40%

其他发达国家的普遍税率-15%至32%

Other Industrial Nations – 15% - 32%

29

(三) 避免被征收遗产税

信托作为一个独立于设立人的个体长久存在，不因为设立人的离世而终止。信托拥有财产的所有权，不会发生继承，没有遗产税。尽早将财产设立离岸信托，能够避免被征收将来可能发生的遗产税（有的国家遗产税的税率高达 40%至 60%。

(三) Prevent the Estate tax and gift tax

Trusts are independent from the settlor who created the trust. The trust owns the assets and the trust does not end when the settlor passes on. As an independent and never-died person, the trust prevents the issue of inheritance and the estate tax, which is typically 40%to 60% in most developed countries.

如果在过世时产生遗产税
If Estate Tax, At Time of Death

<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">有离岸信托 With Structure</div>   <div style="border: 1px solid blue; padding: 5px; margin: 10px auto; width: 50px;">离岸信托 Offshore Trust</div> <p style="text-align: center;">无遗产税 No Estate Tax</p>		<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">无离岸信托 Without Structure</div> <p style="text-align: center;">40%-50%的 遗产税 Estate Tax 40%-50%?</p> 
---	--	--

30

目前中国是少数的还没有通过遗产税和赠予税的发展中国家之一。华尔街期刊报道过中国政府曾在 2013 年的 10 月考虑开始征收遗产税和赠予税，而早在 2004 年中国就曾公布了遗产税草案。很多评论员都认为中国在未来将会通过遗产税和赠予税。

如果资产在遗产税通过之前转入离岸信托，那么这些资产及它们的增值都将可以免于遗产税。

Currently, China is one of the few industrial nations that has not instituted an estate and gift tax. The Wall Street Journal reported that the Chinese government was considering such a tax in October of 2013. Further, a draft estate tax was released in 2004. In this respect, many commentators are of the opinion that China will adopt an estate and gift tax in the near future.

If the assets are transferred to the offshore trust prior to the implementation of a China estate and gift tax, these assets as well as their appreciated value will probably not be subject to a Chinese estate tax.

(四) 合理配置资产存放地，实现国际化发展
Diversity the Assets Location and Invest Internationally



31

(四) 合理配置资产存放地，实现国际投资

离岸信托资产可以更方便进入海外投资银行、房地产、实业等投资领域，也可以以外资身份进入国内投资，实现资产保值、增值。

(四) Diversity the Assets Locations and Invest Globally

The trust assets made it easier for the clients to make foreign investment through the foreign banks, in the real estate and industrial companies, increasing the value of the assets. The clients may also invest in the Chinese investments in the name of a foreign person.

(五) 信息保密性

Information Confidentiality



機
密



32

(五) 信息保密性

不同地区的管辖法有着不同的信息保密程度。香港和新加坡和中国大陆之间有着税收协定，同时也有着信息交换协议。而库克群岛和中国大陆之间没有税收协定。将信托和控股公司选择在不同的地区将可以达到不同程度的保密性。同时，根据需要也可以在结构中使用多个的控股公司。

(五) Confidentiality

Different jurisdictions have different levels of confidentiality. For example, Hong Kong and Singapore are income tax treaty countries that have tax information exchange agreements with China. Conversely, the Cook Islands does not have an income tax treaty. Different levels of confidentiality may be obtained by using an offshore trust in a different jurisdiction than the offshore holding company. Also, more than one holding company may be utilized.

(六) 信托设立人不会丧失对财产的控制权

Trust Settlor Does not Lose Control of Property

1. 更替信托保护人和受托人的权力

Power to remove and replace the trustee and/or protector

2. 离岸控股公司秘书

Secretary of the offshore holding company

3. 间接地控制中国公司

**Hold the control of the Chinese corporation
by indirect control of the trust**

33

(六) 间接的信托财产控制权

信托设立人通过持有更替信托保护人的权利而对信托拥有最大的控制权。同时，信托设立人作为控股公司的秘书还对公司的日常业务具有管理能力。

(六) Indirect Control of Trust assets

The settlor retains significant control over the trust by retaining a removal and replacement power over the protector. The settlor also manages the day to day operations of the holding company by serving as Secretary.



1. 更换信托受托人和保护人

信托保护人有权更换受托人，而信托设立人有权更换信托保护人，因此信托设立人对信托有着间接的控制权。

1. Power to Remove Trustee and Protector.

The protector has the power to remove and replace the trustee. The settlor has the power to remove and replace the protector. Therefore, the settlor has indirect control over the trust.



2. 离岸控股公司秘书

信托设立人作为离岸控股公司秘书，实际控制和管理离岸信托及离岸控股公司，对日常的经营管理做决策，无需征得受托人或信托保护人的同意。

2. Secretary

As the secretary of the holding company, the settlor controls and manages the holding company and the trust, being in charge of the daily operation and making any decision without the approval by the trustee or the protector.



3. 中国公司所属权

根据信托协议设立离岸控股公司后，离岸控股公司通过对中国公司股权的收购，成为中国公司股东。虽然信托设立人不再是中国公司的股东，但因为离岸控股公司在信托设立人的管理和控制之下，所以并不影响信托设立人对中国公司的管理，信托设立人仍是中国公司的实际控制人。

3. Ownership

After the holding company is created according to the trust agreement, it becomes the shareholder of the Chinese corporation by acquiring the shares from the Chinese settlor. Although the settlor is no longer the shareholder, he or she still holds the control of the Chinese corporation indirectly by managing and controlling the holding company.

(七) 通过税务策划合理避税

离岸信托设立和运营流程税收情况



(七) 税收对比

1. 各层面所设计的税务问题

(1) 财产转移所得税

如果赠予给信托的是现金，那么将无需缴纳任何赠予税。但如果转移的是股权，那么中国股东将需要在中国境内对增值部分缴纳 10%的资产转移所得税。

(2) 股息所得税

没有税收协定或不符合使用税收协定的要求时，支付给控股公司的股息需按照 10%代扣代缴所得税。符合税收协定时，股息将按照 5%或 10%被征税。为满足使用税收协定的要求，控股公司需要在当地有一定的经营活动。

(3) 控股公司所得税

如果控股公司拥有一定的经营所得，那么由于在离岸国家拥有常设机构，因此需要在当地缴纳公司所得税，例如在新加坡为 17%。

(4) 控股公司分配股息给信托时无税收

在大部分离岸国家，控股公司当信托分配股息时，无需向政府缴纳任何的股息所得税。

5. *信托层面不征税*

大部分离岸国家对信托不征税所得税。

6. *受益人分配所得税*

中国受益人从信托分配的所得在中国应缴纳 20%所得税。

(七) Taxation

1. Summary of Taxation

(1) Tax on Transfer

There is no gift tax when transferring cash to the structure. However, there is a transfer tax of 20% on the appreciation for any stock that is transferred.

(2) Dividend

Dividends are taxed at a 10% rate, unless they qualify for a treaty. To qualify for the treaty rate, the holding company will need distribution and marketing operating income.

(3) Holding Company Income Tax

If the company has distribution and marketing operating income, then it will have a permanent establishment in the jurisdiction and be subject to corporate income tax. The Singapore rate is 17%.

(4) No Withholding Tax When Dividends Paid by the Holding Company

When the dividends are paid by the Holding Company to the trust, then there is no withholding or dividend tax in most of the offshore nations.

(5) No Tax at the Trust Level

No tax is imposed at the trust level in most of the offshore nations.

(6) Distributions

Distributions are taxed at 20% on the income accumulated in the trust.

选择控股公司的考虑因素 Factors in Choosing a Holding Company

1. 入境交易还是出境交易
Inbound to China or Outbound Export
2. 公司业务类型
Type of Business
3. 税收协定
Treaties
4. 控股公司在当地的税率-所在国家的法律决定
Tax Rate of Holding Company - Jurisdiction
5. 信息保密性
Confidentiality
6. 便捷性
Convenience

C. 个人所得税

中国的个人所得税应税收入分很多类型，例如（1）股息、利息和无形资产使用权收入；（2）资产转移收入；（3）工资。退休金和保险金相关的问题将在之后具体讨论。

C. Individual Taxation

China classifies individual taxation into a few major categories such as (1) dividends, interest, and royalties; (2) transfer of property; and (3) salaries and wages. Retirement plans as well as life insurance also creates some issues so they are also discussed in this outline.

1. 控股公司设立地点的选择

Choices of holding company's place

协约国 Contracting- Country/Region	股东持股25%及 以上的中国预 提所得税税率 Direct Dividend Rate	股东持股低于 25%的中国预 提所得税税率 Other Dividend Rate	税收协定 Authority
1. 巴巴多斯 Barbados	5%	5%	China-Barbados 2000 Income Tax Treaty-Article 10
2. 新加坡 Singapore	5%	10%	China-Singapore 2007 Income Tax Treaty-Article 10
3. 香港 Hong Kong	5%	10%	China-Hong Kong 2006 Income Tax Treaty-Article 10
4. 卢森堡 Luxembourg	5%	10%	China-Luxembourg 1994 Income Tax Treaty-Article 10
5. 塞舌尔 Seychelles	5%	5%	China-Seychelles 1999 Income Tax Treaty-Article 10
6. 毛里求斯 Mauritius	5%	5%	China-Mauritius 1994 Income Tax Treaty-Article 10

40

2. 设立地点的选择

离岸信托的设立地点的选择将主要取决于以下几点考虑：

a. 考虑税收优惠

首先考虑，中国与离岸控股公司设立地的税收协定，使中国公司向离岸控股公司分配股息时离岸控股公司在中国应缴的税赋最低；其次考虑，设立地所得税税率较低，使离岸控股公司从中国公司获得股息时离岸控股公司在设立地应缴的税赋最低；再次考虑，离岸控股公司向信托分配收益时，设立地尽可能少征甚至免除信托在设立地应缴的税赋；最后考虑，受益人国籍所在地所得税税率较低，使信托向受益人分配收益时受益人在国籍所在地应缴的税赋最低。

b. 考虑信息保密

部分税收中立国未与中国签订税收协定，但这些国家因其较好的信息保密性，也常常作为离岸控股公司的设立地，例如：马恩岛、维尔京群岛、库克群岛、尼维斯、根西岛、泽西岛、巴哈马国、开曼群岛、百慕大群岛。

c. 成本

与中国有税收协定的国家与无税收协定国相比，设立信托的管理成本将会高一些。同样的，信息保密性越好的国家费用也将越高。

1. 控股公司设立地点的选择

Choices of holding company's place

协约国 Contracting-Country/Region	中国股息预提税税率 Dividend Rate	税收协定 Authority
6. 马恩岛 Isle of Man	10%	无税收 协定 No Treaty
7. 维尔京群岛 British Virgin Islands		
8. 库克群岛 Cook Islands		
9. 尼维斯 Nevis		
10. 根西岛 Guernsey		
11. 泽西岛 Jersey		
12. 巴哈马国 Bahamas		
13. 开曼群岛 Cayman Islands		
14. 百慕达群岛 Bermuda		

41

2. Choice of holding company's place

The place of formation of the holding company depends on the following three primary factors:

a. *Tax benefits*

First, the offshore region needs to have an income tax treaty with China so that the Chinese income tax would be reduced to the lowest rate when the Chinese corporation pays dividend to the holding company. Secondly, the region should charge a relatively low income tax on the earnings of the offshore holding company. Third, the offshore country does not tax or tax under a low rate the holding company's distribution to the trust. Finally, when the trust distributes earnings to the beneficiary, the country where the beneficiary is a tax resident charges a relatively low income tax.

b. *Information Confidentiality*

Some of the Tax neutral countries have not signed treaties with China, but they have very good information confidentiality and are often for forming the offshore holding company, such as Isle of Man, Virgin Island, Cook Island, Nevis, Guernsey, Jersey, Bahamas, Cayman Islands, Bermuda.

c. *Cost*

Treaty offshore countries have greater operating and administration costs when compared to non-treaty offshore countries. The same is generally true when more confidentiality is desired.

2. 合理避税方式

- 与利用国际税收协定的避税方式相结合
Use of Tax Treaties to Reduce Income Tax
- 离岸实体之间的交易无税收
No tax between offshore entities
- 延迟所得税直到收益被分配给受益人
Deferral of tax until distributed

42

3. 合理的避税方式

离岸信托主要能够在三方面提供避税优势。首先，如果控股公司满足使用税收协定的要求，那么公司将能够享受税收协定中提供的优惠条例。其次，当控股公司向信托分配收益时，信托是不用在当地缴纳所得税的。最后，中国客户在中国需要缴纳的所得税也被延迟到了在信托向其中国受益人分配收益时才需要缴纳。

3. Reasonable Tax Avoidances

The offshore trust provides three methods for reasonable tax avoidance. First, assuming that sufficient business is conducted abroad, the holding company may be eligible for income tax treaty benefits. Second, income transferred from the holding company to an offshore trust is not taxed by the country where the trust resides. Third, Chinese income tax is deferred until the income is distributed from the offshore trust to a beneficiary.

IV. 离岸信托的可行性及安全性 Feasibility and Safety

(一) 法律保障充分

Adequate Legal Protection

(二) 离岸信托业务成熟，法制环境健全

Experienced offshore trust service in well-developed legal environment

(三) 内部控制

Internal Controls

43

IV. 离岸信托的可行性及安全性

(一) 法律保障充分

首先，中国律师及外国律师将为信托设立人提供离岸信托各环节的法律依据，确保离岸信托设立的合法性。其次，对于受托人（信托管理公司）的选定，信托设立过程中各类文件的拟定，将由中国律师及外国律师共同审核，全程防控风险。

(二) 离岸信托业务成熟，法制环境健全

信托业务在发达国家已有长久的发展历史，信托服务体系完善，信托法制环境健全，能够充分保障信托财产的安全。

(三) 内部控制

信托的设计是为了防止受托人可以对信托的现金或流动资产任意取用。同时，信托是上过保险的。

(一) 法律保障充分
Adequate Legal Protection

**Dacheng Law
Offices**

Mark Merric



44

(一) 法律保障充分

首先，中国律师及外国律师将为信托设立人提供离岸信托各环节的法律依据，确保离岸信托设立的合法性。其次，对于受托人（信托管理公司）的选定，信托设立过程中各类文件的拟定，将由中国律师及外国律师共同审核，全程防控风险。

(一) *Adequate Legal Protection*

Both the Chinese attorneys and the American attorneys will provide the legal authorities in every stage of the offshore trust creation to ensure the legality of the offshore trust. They will also work together to help hire a good trustee and review all the relevant legal documents in the whole process to reduce the risk.

1. 北京大成律师事务所 Dacheng Law Firm

- 成立于1992年，亚洲第一大所
Formed in 1992, One of the largest firms in Asia
- 拥有4000多名律师
Over 4000 attorneys



- 中国50个城市设立分所，全球38家分所及成员单位
In 50 cities in China and 38 countries internationals

45

1. 北京大成律师事务所

北京大成律师事务所成立于1992年，亚洲规模最大的律师事务所，拥有律师人数叁仟柒佰余人。在中国50个主要城市设有机构，在美国、香港、欧洲、东南亚、南亚设有38家分所、成员单位。

1. Beijing Dacheng Law Firm

Beijing Dacheng Law Firm was formed in 1992. It is the largest law firm in Asia, having more than 3700 attorneys. It has offices in the major 50 cities in China and also has 38 offices and affiliates in Hong Kong, United States, Europe, Southeast Asia and South Asia area.

Ma Wei

马巍



- 云南律师协会副会长
Vice President of Yunnan Bar Association
- 云南、昆明市等多个政府法律顾问
Legal Counsel for Kunming & Yunnan Government + 8
 - 中国贸促会仲裁会仲裁员
China International Economic Trade Arbitration Commission (CIETAC)
 - 大成律师事务所昆明分所主任
Director of Yunnan Province of Dacheng
 - 大成律师事务所常务委员会委员
Dacheng Executive Committee (16 people)

46

马巍，博士，全国优秀律师，北京大成律师事务所高级合伙人、常务委员会委员、昆明分所主任、东盟专业委员会主任，云南省律师协会副会长，中国国际经济贸易仲裁委员会仲裁员，云南省人民政府、昆明市人民政府等多个单位顾问。

Wei Ma, J.D, Chinese national outstanding attorney, is the senior managing partner and the Global Executive Committee of Beijing Dacheng Law Firm and the director of Yunnan office. He is also the director of Dacheng ASEAN Committee, the Vice President of Yunnan Bar Association, the arbitrator of China International Economic Trade Arbitration Commission (CIETAC) and the legal counsel for different government offices including Kunming and Yunnan Government.

2. Mark Merric



- 发表过70余篇文章

Published 70 articles Nationally

- 近期发表《各州信托法之比较》

Comparison of State Trust Law – Heckerling Edition

- 做过400多次国内和国际性演讲

Spoken Nationally and Internationally Over 400 Times

- 事务所强项业务为国际信托法和商业交易

Boutique law firm concentrating in International Business Transactions and Trust Law

- 通过与国际业务合作伙伴的合作，已为客户设立过1000余个信托，总资产约为50亿美金

Through his own firm, the Alliance of International Legal Counselors, and prior firms he and his team has worked on over 1,000 offshore trusts, with about \$5 billion in assets.

47

2. 罗战 — 美国法学博士，美国律师，美国税法硕士，美国注册会计师

罗战除了是一名律师，注册会计师之外，还在美国丹佛大学法学院任兼职教授。他的观点被包括《福布斯》，《投资人新闻》，《街》《丹佛商业期刊》，《石油天然气投资人》，《苏瀑商业期刊》在内的著名期刊杂志引用过。罗战也是一个国际演讲者，已演讲超过 450 多次讲座，发表过 70 多篇国家级的文章。在成为律师以前，罗战在美国四大会计事务所任职并培养了非常强的会计事务所的商业背景。罗战目前任罗战律师事务所的合伙人以及美国国际法律顾问联盟有限责任公司的合伙人。

他受邀在中国演讲过的组织机构包括：

- 复旦大学(2004年， 2011年和 2014年)；
- 上海律师协会；济南律师协会；青岛律师协会；
- 中国贸促会云南分会；中国银行云南分行

同时他也和其他作者联合出版过以下著作：

- 《资产保护规划指导》，CCH 出版；
- 《资产保护战略》，美国律师协会出版；
- 《资产保护战略二》，美国律师协会出版

通过与国际业务合作伙伴的合作，已为客户设立过 1000 余个信托，总资产约为 50 亿美金。

2. Mark Merric, JD, MT, CPA

In addition to being an attorney, Mark Merric holds a Masters of Taxation and he is a Certified Public Accountant, as well as an Adjunct Professor at the University of Denver's, Law School Graduate Tax Program. He has been quoted in Forbes, Wall Street Journal, Investor's News, On the Street, the Denver Business Journal, Oil and Gas Investor, and the Sioux Falls Business Journal. Mr. Merric is an international speaker presenting at over 450 seminars, and he has published over 70 national articles. Mr. Merric is the manager of the Law Firm of Mark Merric, LLC and a manager for the Alliance of International Legal Counselor, LLC. Prior to practicing as an attorney, Mark Merric developed a strong business background working for a Final Four Accounting Firm.

Mr. Merric is honored to have spoken at:

- Fudan University (2004); (2011); & (2014);
- Shanghai Bar Association; Jinan Bar Association; & Qingdao Bar Association;
- China Council . for the Promotion of International Trade (CCPIT) Yunnan; Bank of China (Kunming)

He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

Through his own firm, the Alliance of International Legal Counselors, and prior firms he and his team has worked on over 1,000 offshore trusts, with about \$5 billion in assets.

主要的离岸信托设立地区

Primary Offshore Trust Jurisdictions

离岸信托

离岸金融中心接受全球富人取道金融自由港，在其设立离岸信托安排。



(四) 主要的离岸信托设立地区

离岸信托的法律最早是在英格兰的一些岛屿国家，例如马恩岛、泽西岛和根西岛，发展起来的。由于香港曾受英国管辖，也采用信托法。之后信托法在一些离岸信托商业公司管辖区发展起来。在 1988 年，库克群岛首先通过了国际信托法，该法成为了其他地区的资产保护信托法的示范条例，1980 年代起，南达科他州成为美国主要的信托设立地。大陆法系国家例如列支敦士登，卢森堡和荷兰都已经建立了类似信托的结构，被称为家族的私人基金。

(四) Primary Offshore Trust Jurisdictions

Offshore trust jurisdictions first developed in the English islands of Isle of Man, Jersey, and Guernsey. As Hong Kong had strong influence from England, it also has trust law that was later adopted by Singapore. Later trust law developed in some of the Caribbean offshore trust business company jurisdictions, such as Cayman Islands, Nevis, and Barbados. In 1988, the first international trust statute was written in the Cook Islands and trust law expanded into the Pacific Islands with places like Samoa. In the 1980's, South Dakota emerged as U.S. primary trust jurisdiction. Civil law nations such as Lichtenstein, Luxembourg, and the Netherlands have something similar to a trust, which is known as a private foundation for your family.

2. Mark Merric, JD, MT, CPA

In addition to being an attorney, Mark Merric holds a Masters of Taxation and he is a Certified Public Accountant, as well as an Adjunct Professor at the University of Denver's, Law School Graduate Tax Program. He has been quoted in Forbes, Wall Street Journal, Investor's News, On the Street, the Denver Business Journal, Oil and Gas Investor, and the Sioux Falls Business Journal. Mr. Merric is an international speaker presenting at over 450 seminars, and he has published over 70 national articles. Mr. Merric is the manager of the Law Firm of Mark Merric, LLC and a manager for the Alliance of International Legal Counselor, LLC. Prior to practicing as an attorney, Mark Merric developed a strong business background working for a Final Four Accounting Firm.

Mr. Merric is honored to have spoken at:

- Fudan University (2004); (2011); & (2014);
- Shanghai Bar Association; Jinan Bar Association; & Qingdao Bar Association;
- China Council . for the Promotion of International Trade (CCPIT) Yunnan; Bank of China (Kunming)

He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

Through his own firm, the Alliance of International Legal Counselors, and prior firms he and his team has worked on over 1,000 offshore trusts, with about \$5 billion in assets.

2. Mark Merric, JD, MT, CPA

In addition to being an attorney, Mark Merric holds a Masters of Taxation and he is a Certified Public Accountant, as well as an Adjunct Professor at the University of Denver's, Law School Graduate Tax Program. He has been quoted in Forbes, Wall Street Journal, Investor's News, On the Street, the Denver Business Journal, Oil and Gas Investor, and the Sioux Falls Business Journal. Mr. Merric is an international speaker presenting at over 450 seminars, and he has published over 70 national articles. Mr. Merric is the manager of the Law Firm of Mark Merric, LLC and a manager for the Alliance of International Legal Counselor, LLC. Prior to practicing as an attorney, Mark Merric developed a strong business background working for a Final Four Accounting Firm.

Mr. Merric is honored to have spoken at:

- Fudan University (2004); (2011); & (2014);
- Shanghai Bar Association; Jinan Bar Association; & Qingdao Bar Association;
- China Council . for the Promotion of International Trade (CCPIT) Yunnan; Bank of China (Kunming)

He is also a co-author of the following three treatises:

- The Asset Protection Planning Guide: A State-of-the-Art Approach to Integrated Estate Planning, Commerce Clearing House (CCH) treatise, first edition;
- Asset Protection Strategies, American Bar Association (two chapters); and
- Asset Protection Strategies Volume II, American Bar Association published Apr. 2005 (MM responsible for 1/5 of the text).

Through his own firm, the Alliance of International Legal Counselors, and prior firms he and his team has worked on over 1,000 offshore trusts, with about \$5 billion in assets.

南达科他州信托公司



- 南达科他州信托公司主席 – **Pierce McDowell**
President – Pierce McDowell
- 公司以代理身份管理的资产达**750亿美元**
\$75 Billion Under Agency
- 公司直接管理的资产达**180亿美元**
\$18 Billion Under Administration

52

1. 南达科他州信托公司

南达科他州信托公司主要向美国和非美国的高净资产客户服务。罗战在每年发表的信托和遗产税文章中提到过，南达科他州是美国有着最为有利于纳税人的信托法。

南达科他州信托公司为高净资产（通常高于 2.5 亿美元）的客户设立他们私有的信托公司。私有的信托公司是指一个家族以设立他们自己的信托股份制公司的方式来管理他们的资产。公司通常会有三个无关联的主管和两个家庭成员主管。目前，南达科他州信托公司代理设立过的家族信托公司的资产已经超过 750 亿美元。

南达科他州信托公司为很多大型的信托提供受托人服务，该服务下的资产已超过 180 亿美元。

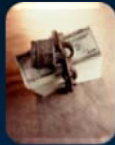
1. South Dakota Trust Company

South Dakota Trust Company specializes in high net worth clients both nationally and internationally. As noted in Mark Merric's co-authored article that is published annually in *Trusts and Estates*, South Dakota may well have the most favorable U.S. trust laws.

South Dakota Trust Company represents many super wealthy families (\$250 million +) that have set up their own private trust company. A private trust company is where a family creates their own trust company in corporate form to manage their trusts. Typically, there are three non-related directors and two family members on the board of directors. Under these private trust companies that were created by South Dakota Trust Company, there is over \$75 billion of assets under agency.

South Dakota Trust Company also serves as trustee of many large trusts. In this relationship, South Dakota Trust Company has over \$18 billion under administration.

使用美国信托公司的好处 Advantages U.S. Trustee



➤ 避免信托进入
黑名单国家
Avoids Trust in
Black Listed
Countries



➤ 便于移民和资金
转入美国
Immigration &
Money Laundering



➤ 投资美国金融
保险产品
Purchase
U.S. Insurance
Products

54

2. 使用美国信托公司（受托人）的好处

如果信托经过合理的设计并使用美国受托人，那么除了信托所持有的美国资产需要缴纳美国所得税之外，信托将不会产生任何美国税收。另外，使用美国受托人还有以下三大优势：

(1) 很多时候一个管辖区可能被另一个国家列入非贸易往来地区的黑名单中，而美国受托人被列入该名单的可能性是非常小的。

(2) 越来越多的中国公民及其子女选择移民到美国、加拿大或欧洲，而这些国家正有着越来越严格的洗黑钱的管制制度。当中国公民将资金转入这些国度的时候，需要证明这些资金不是通过非法渠道取得的。而当离岸信托的受托人不是美国受托人时，美国、加拿大或欧洲的很多银行都不会接受资金转入。通过使用一个会计账目历来非常明晰的美国受托人则能够帮助避免这些问题。

(3) 一般的离岸信托都不能够为中国公民购买美国的人寿保险。但通过使用美国受托人将能够实现。如果中国公民及其家人计划移民美国，那么购买美国人寿保险还有另外一个好处，就是避免所有的保险收益在当年被征收所得税。而大部分的离岸国家的保险产品在美国都不满足这样的条件，收益需要在当年缴纳美国的所得税

但使用美国受托人也有缺点，就是成本可能比某些其他的离岸信托常用国的费用要高一些。

2. Advantages of a U.S. Trustee

With a properly designed trust with a U.S. trustee, there will be no U.S. tax except on any U.S. assets owned by the trust. Further, using a U.S. trustee has the following three distinct advantages over typical offshore trust jurisdictions:

(1) Many times a particular jurisdiction may be black listed by a country. This prevents a national from doing business with a particular country. The likelihood of a U.S. trustee being subject to a black list is very remote when compared to the typical offshore jurisdictions.

(2) Many times a Chinese person or his children immigrate to the U.S., Canada, or Europe. These nations have adopted greater and greater money laundering regulations. When money is moved into these nations, the Chinese client needs to be able to prove the source of the funds and that the client is not involved in any illegal activities. When an offshore trustee is used from an offshore jurisdiction, many banks in the U.S., Canada, or Europe will not accept the funds. Conversely, this process is much simple with a U.S. trustee that has kept detailed books and records over the years.

(3) A typical offshore trust is generally not able to purchase U.S. life insurance on the life of a Chinese national. However, an offshore trust with a U.S. trustee can generally accomplish this. If the Chinese Client, spouse or children immigrate to the U.S. There is a second benefit to buying U.S. life insurance, most offshore insurance products will not qualify under the U.S. tax code as insurance. This means that the rate of return on the insurance product will be currently taxable. If U.S. life insurance has been purchased, this is not an issue.

The negative side of using a U.S. trustee is that the cost might be a little higher than some of the inexpensive offshore jurisdictions.

安全的内部控制 Safety Internal Controls

离岸信托受托人
Offshore Trustee



不具备银行或证券的
签字权

No signature authority
over bank or securities



离岸信托
Offshore
Trust

拥有最高500万美
金的赔偿保险

Bonded \$ 5 Million

56

(三) 安全性和内部控制

很多离岸信托的结构都允许并不受政府机构有效管制的受托人管理信托资产。这样一来，受托人迟早将可能对信托资产做一些不合适的处置。而我们所采用的结构防止了受托人可以任意取用信托财产，这是通过禁止受托人将信托资产用于自己的投资以及避免信托直接拥有流动资产来实现的。另外，所有的受托人都有高于500 万美元的赔偿保险。

(三) Safety and Internal Controls

Many offshore structures allow trustees that are not sufficiently regulated by governmental agencies to manage the trust assets. Sooner or later, someone hears about a story where the offshore trustee has misappropriated some trust assets. Our structures are designed to prevent the offshore trustee from having access to the trust assets, and thereby prevent him from running off with some Chinese beauty he may find. This is done by not having the trustee invest the assets in their own investments as well as not having any any liquid assets owned directly at the trust level. Further, all of the trustees that we use have at least a \$5 million bond.

V. 预算成本 Costs

服务主体	设立阶段		运营阶段	
	服务内容	预算支出	服务内容	预算支出
中国律师	担任信托设立人的法律顾问；1.协助信托设立人办理资产向离岸信托转移的手续，搭建完善的离岸信托架构； 2.协助信托设立人梳理境内资产，并对资产进行包装； 3.协助信托设立人选定受托人（信托管理公司）； 4.协助信托设立人与美国律师及受托人对接； 5.协助信托设立人设立离岸控股公司； 6.全程参与信托设立过程中各类法律文件的审核，防控法律风险。	20-50万元人民币	协助设立人进行境外财富规划，为信托后续管理及维护过程中出现的法律问题提供咨询及解决方案。	10万元人民币/年
美国律师	1.协助信托设立人拟定、审查信托协议； 2.协助信托设立人设立离岸控股公司； 3.协助信托设立人办理资产向离岸信托转移的手续； 4.协助信托设立人拟定、审查股权转移过程中的各类法律文件。	3.3-3.8万美金	协助设立人进行境外财富规划，为信托后续管理及维护过程中出现的法律问题提供咨询及解决方案。	按照具体的工作小时数计费，一般为1万美元/年。

备注：表中所述的预算支出不包含政府收费、服务人员差旅费、设立离岸公司当地的律师费、财务顾问费等费用。

57

V. 设立离岸信托的成本预算

在离岸信托设立过程中，需要中国律师、外国律师及信托管理公司全程提供服务，信托设立人每设立一个离岸信托（一个离岸控股公司）的成本预算如表中所示。

V. 预算成本 Costs

服务主体	设立阶段		运营阶段	
	服务内容	预算支出	服务内容	预算支出
信托公司	1. 协助信托设立人管理离岸控股公司; 2. 协助信托设立人管理信托; 3. 协助信托设立人提交相关的税收文件和年度会计账目服务。	1万至1.5万美金	管理、维护离岸信托。	1万至1.5万美金
税收协定控股公司	1. 设立公司 2. 指定当地的主管 3. 会计账目及税表填报	5500至12500美元	管理控股公司	5500至12500美元
其他运营成本	1. 开设外国银行账户	1千至3千美元	年度审计	2千至5千以上美元
	2. 某些税收协定国家要求提供经过审计的财务报表	3千至6千以上美元		
无税收协定要求控股公司	1. 设立公司 2. 开设银行账户 3. 需要时指定当地的主管	5千至1万美金	无税收协定国的控股公司通常只有投资类型的收入	2千5千美元
会计	建立财务报表 最低每小时200至300美元	1200美元 超过按每小时200-300美元	最低每小时200至300美元	1200美元 超过按每小时200-300美元

备注：表中所述的预算支出不包含政府收费、服务人员差旅费、设立离岸公司当地的律师费、财务顾问费等费用。

58

V. Cost of Creating Offshore Trust

For each offshore trust and offshore holding company, the overall estimated cost for creating one offshore trust with one holding company is listed in the above table. The cost covers the Chinese legal service fees, the American legal service fees and the trust company management fee.

联系我们：

马 巍 主任 18669211988

熊艳红 律师 15911533841


候墨月 律师 15812020429

网址：<http://www.dachengnlaw.com>
地址：昆明市南屏街华城大厦B座17-18楼
电话：0871-63199386
传真：0871-63189738

Mark Merric 001 303 800-4365

Lisa Liu 001 303 800-4356

网址：www.InternationalCounselor.com
地址：4155 E. Jewell Ave., Ste 500
Denver, CO 80222
电话：001 303 800-4369
传真：001 303 261-8374



志存高远 海纳百川 跬步千里 共铸大成