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Special Needs Estate Planning in Hong Kong

Protecting Your Loved Ones — Today and Tomorrow

KNOWING WHAT MATTERS

Families face a dual burden: the immediate demands of daily care and the long-term worry of "who will look after them when I am gone".

This anxiety is heightened in Hong Kong, where costs of care, housing, and medical support are significant and rising.

THE GOAL

Preserve autonomy, protect assets, and maintain access to government schemes, without over-burdening siblings or other relatives.

The Risks of "Simple" Planning

- **Assumption of Capacity:** Traditional wills assume beneficiaries can manage money and make independent decisions.
- **Financial Vulnerability:** Large outright gifts expose persons with disabilities to financial abuse, mismanagement, or family conflict.
- **Loss of Benefits:** Direct inheritance can disrupt eligibility for means-tested subsidies or essential community support services.

These laws and schemes provide a scaffolding on which private arrangements—wills, trusts, enduring powers of attorney, and care plans—can be built.

01

Anti-Discrimination Legislation

Fundamental protections ensuring equal treatment and access to services for persons with disabilities in Hong Kong.

02

Disability Allowance Scheme

Monthly financial support administered by the Social Welfare Department for those certified as severely disabled.

03

Guardianship (Cap. 136)

Mental Health Ordinance provisions allowing the Guardianship Board to appoint decision-makers for incapacitated adults.

04

Special Needs Trusts

Official mechanisms for trusts administered through the Social Welfare Department's Special Needs Trust Office.

The Central Issue: Mental Capacity

Can the person with disabilities:

- Understand information?
- Retain information?
- Weigh information to make decisions?

This applies to their own welfare, finances, and medical treatment.

Mental Health Ordinance (Cap. 136)

Empowers the Guardianship Board to make guardianship orders for mentally incapacitated persons aged 18 or above.

Allows appointment of a **private guardian** (usually family) or a **public guardian** (Director of Social Welfare).

Powers Conferred

Orders specify powers such as deciding on residence, consenting to medical/dental treatment, or handling limited financial matters.

Note: Deputyship and court-based orders are reactive and intrusive. They are safety nets, not substitutes for advance planning.

An EPA under Cap. 501 enables a person, while mentally capable, to appoint trusted attorneys to manage their property and financial affairs. Unlike an ordinary power of attorney, **an EPA continues ("endures") beyond the donor's mental incapacity**, ensuring continuity of financial support.



Mental Capacity

The donor must be fully mentally capable at the time of signing. It is crucial to prepare early, not at the edge of capacity.



Formal Execution

Must be executed before a registered medical practitioner and a solicitor in Hong Kong, with prescribed certificates.



Enduring Protection

If the donor later loses capacity, the attorneys can seamlessly continue managing financial affairs for the family.

For the older generation (e.g., parents of a special needs child), this is a critical safeguard.

"Trusts are at the heart of special needs estate planning in Hong Kong."

THE MECHANISM

Trusts allow one set of people (trustees) to hold and manage assets for the benefit of another (the person with special needs), under detailed written terms.

THE KEY ADVANTAGE

Properly structured trusts allow funds to be used for "supplemental" needs—enhancing quality of life, therapies, equipment—without unnecessarily inflating the beneficiary's apparent means for public benefits.

Three Main Types of Trust Structures

Private Discretionary Family Trust

Settled by parents or relatives, usually with professional or family trustees.

Full trustee discretion over distributions

Can benefit special needs person and other family members

Highly customizable terms

Stand-by or Testamentary Trust

A trust that springs into full operation on the death of the settlor via a will.

Defers full funding until after parents' lifetime

Cost-effective during lifetime

Funded by estate assets or insurance proceeds

Government Special Needs Trust

Administered by the Special Needs Trust Office (SNTO) under the Social Welfare Department.

Director of Social Welfare Inc. acts as trustee

Pool funds for investment while maintaining individual accounts

Regular disbursements according to settlors' wishes

During Settlor's Lifetimes

- + **Cash & Portfolios:** Immediate transfer of liquid assets to establish the trust.
- + **Real Property:** Transferring real estate which might be sold and reinvested by the trustee.
- + **Asset Scrutiny:** For private trusts, illiquid or high-risk assets should be carefully evaluated given the welfare-focused nature of the structure.

On Death (Testamentary)

- **Via Will:** Directing that part or all of the estate be transferred to the trust upon death.
- **Life Insurance Proceeds:** Naming the trust as the beneficiary of life insurance policies to provide a guaranteed lump sum.

Government SNT Model:

Currently accepts cash in Hong Kong dollars. Funds from different trust accounts are pooled for investment, with gains or losses allocated pro rata.

An outright inheritance or substantial assets in the name of the person with disabilities can affect their eligibility for means-tested programmes.

Even if the general Disability Allowance remains payable, the overall mix of government support often depends on the beneficiary's financial circumstances.

KEY SCHEMES TO CONSIDER

Disability Allowance Scheme

Monthly allowance for those certified as severely disabled (not strictly means-tested, but foundational).

Means-Tested Support

Public housing, Comprehensive Social Security Assistance (CSSA), medical fee waivers, and community services.

Tax Allowances

Disabled Dependant Allowance and conditions for dependent parent/grandparent allowances in salaries tax.

01 Avoid Direct Personal Accounts

Do not hold large personal accounts in the beneficiary's name. Instead, use trusts or controlled accounts managed by trusted persons to prevent disqualification from means-tested programmes.

02 Strategic Timing of Distributions

Time distributions so that they meet real needs without causing temporary spikes in apparent resources that might endanger means-tested benefits.

03 Channel Proceeds Directly to Trusts

Consider channeling life insurance proceeds or estate shares directly into a special needs trust rather than leaving them to the beneficiary outright.

"Legal instruments alone do not capture the rich detail of day-to-day care that a person with disabilities may require."

A letter of intent and a detailed care plan guide future caregivers and trustees on how best to support the beneficiary, providing a practical playbook rather than scattered records.

WHAT TO INCLUDE

- ✓ **Daily Life:** Routines, preferences, triggers, and communication styles.
- ✓ **Medical:** Diagnoses, medications, therapy schedules, and healthcare contacts.
- ✓ **Development:** Educational and vocational plans, long-term goals.
- ✓ **Social & Cultural:** Social relationships, religious or cultural considerations.
- ✓ **Living Arrangements:** Specific instructions about housing.

** Required for the Government Special Needs Trust*

Estimating lifetime care costs is essential to avoid under-funding a special needs plan.

1 Estimating Costs

Include direct medical expenses, specialised education, assistive technologies, respite care, housing adjustments, and transport. Must account for realistic inflation and longevity (often into the 70s or 80s).

2 The Role of Insurance

Life insurance on parents can provide a guaranteed lump sum to fund a trust. Critical illness and disability insurance protect the primary breadwinner's income and preserve earmarked savings.

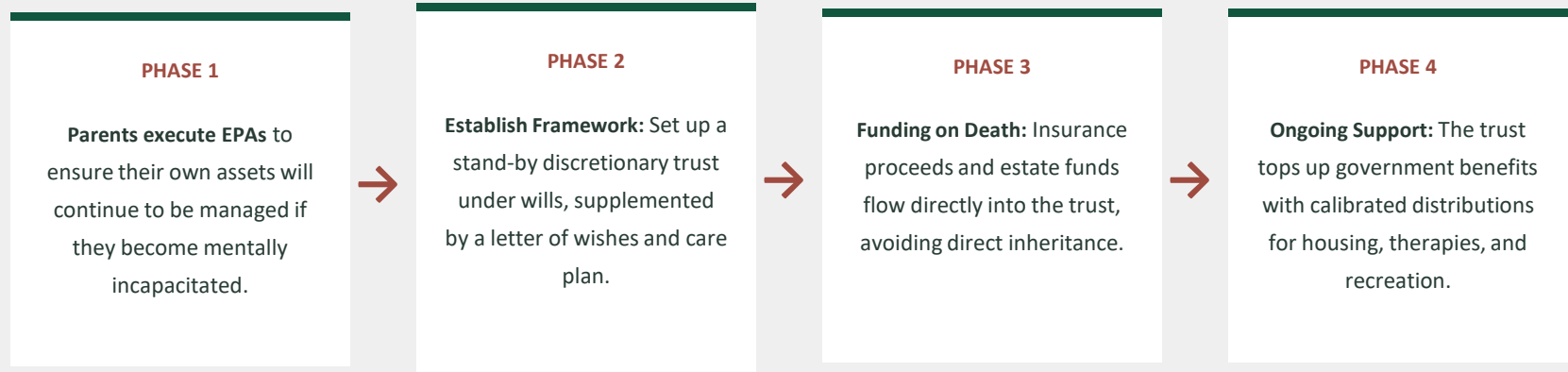
3 Investment Strategy

Balance preservation and growth. Adopt diversified portfolios tailored to the beneficiary's age, expected expenditure pattern, and family risk tolerance.

4 Tax Considerations

Utilize salaries tax allowances for disabled dependants. Structure asset ownership and timing of transfers to avoid unnecessary stamp duty or higher tax brackets.

Successful planning combines multiple tools working in concert.



A cohesive strategy protects the beneficiary, preserves assets, and maintains eligibility for essential government support.

FREQUENT PLANNING MISTAKES

- × **Outright Inheritance:** Leaving everything directly to the person with disabilities.
- × **Informal Arrangements:** Naming only one sibling as the "holder of funds" without a formal legal structure.
- × **Lack of Coordination:** Failing to align guardianship arrangements, trust terms, and government benefit rules.
- × **One-Size-Fits-All:** Not tailoring solutions to the specific nature of the disability or the family dynamics.

The Need for Tailored Solutions

For some families, a government-run SNT with modest initial funding is appropriate.

For others with significant assets or complex family structures, a bespoke private trust with corporate trustees and layered oversight is more suitable.

The Cost of Missteps: These errors can lead to family disputes, misuse of funds, loss of critical government support, and costly court interventions.

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	Main Purpose	Legal Basis / Provider
Guardianship Order	Appoint guardian for mentally incapacitated adult for welfare and limited financial decisions.	<i>Mental Health Ordinance (Cap. 136)</i>
Enduring Power of Attorney (EPA)	Manage donor's property and finances after they lose mental capacity.	<i>Enduring Powers of Attorney Ordinance (Cap. 501)</i>
Private Special Needs Trust	Long-term financial support under tailored terms with professional or family trustees.	<i>General trust law; private trustees</i>
Government Special Needs Trust	Pooled trust for special needs beneficiaries with regular disbursements.	<i>Special Needs Trust Office (SNTTO), SWD</i>
Disability Allowance & Tax Relief	Monthly disability allowance and related tax allowances for dependants.	<i>SWD, IRD allowances</i>



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Thank You

Questions & Discussion

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