



## Escrow Services in Asia Pacific



### Introduction.

*Escrow* is the use of a third-party (Escrow Agent) to securely hold assets, funds or documents before they are transferred from one party to another, as a result of an underlying transaction or other obligation.

An *Escrow Agreement* is a legally documented arrangement that sets out all relevant terms and conditions relating to the deposit and release of the funds or assets held in Escrow and describes in detail the responsibilities of each of the parties involved.

An *Escrow Agent* is an independent third-party that holds the assets, funds or documents under the Escrow Agreement.



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## What is an Escrow being used for?

Escrows are useful for transactions where transfer of assets is involved and several obligations must be fulfilled before payment is released. Examples of use of Escrow:

**Property transactions:** for example, an Escrow arrangement can be used to hold funds for a buyer's deposit until the change of title is ready.

**Mergers and acquisitions:** an Escrow arrangement can facilitate proof of funds, the holding of funds to meet any retentions or deferred payments pending satisfaction of the seller's obligations, indemnification payments and compliance with regulatory requirements.

**Inter-insurance disputes:** typically, an Escrow arrangement is used to provide, without prejudice, funding to insured parties where a policy indemnity has been accepted in principle, but there is an aggregated dispute that remains outstanding.

**Financing:** where funds are to be released over a pre-agreed period (for example, in the case of project financing) or in the context of a restructuring, an Escrow arrangement can provide assurance to all parties that the relevant funds are sufficiently ring-fenced. An Escrow arrangement can also allow a lender to monitor a borrower's performance and reduce the risk of providing all loan amounts up front.

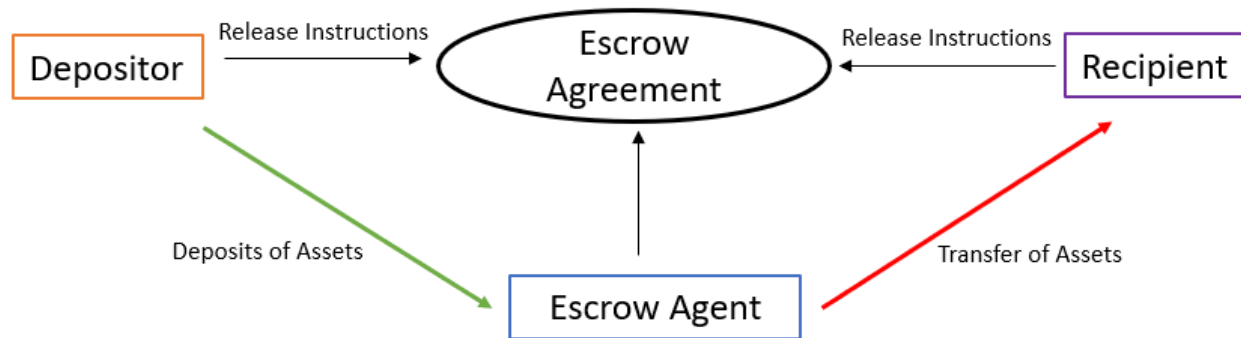
**Litigation:** the use of an Escrow arrangement can be used to demonstrate security for costs or to ring-fence contested funds pending judgement.

**Supply chain:** a supply chain Escrow arrangement can be used on complex cross-border trades to mitigate counterparty risk or to allocate other risks such as delivery of perishable products.





### Escrow structure.



### Escrow security.

Escrow structures ensure that the parties do not bear the same risk as in open trade. Before any assets or documents exchange hands in a two-party transaction, the Escrow Agent ensures that both sides comply with the transaction documentation. The Escrow Agent acts to protect both parties from potential defaults and/or fraud by the other party.

### Set up steps.

- Verify compliance for both parties involved in the Escrow and assess the (legitimacy of the) underlying transaction and documentation.
- Once the documentation for the underlying transaction is available, the Escrow Agreement will be tailored towards the transaction; a segregated bank account will be opened if the Escrow concerns funds.
- Once the Escrow Agreement is executed, the assets or funds can be transferred to the Escrow Agent.



### **Corpag acting as Escrow Agent.**

We help our clients with their Escrow needs through our Hong Kong and New Zealand offices.

We can set up (i.e. drafting of documentation and opening of segregated bank account) and maintain the Escrow and act as independent Escrow Agent.

#### *Corpag Services (Hong Kong) Trust Limited*

- Licensed Trustee Company under Hong Kong Trustee Ordinance (permitted to provide escrow services)
- Licensed TCSP service provider under the Hong Kong AML/CFT Ordinance (License number TC005418)
- Legally segregated bank accounts in multiple currencies (e.g. USD, EUR, GBP, HKD) with DBS Bank Hong Kong

#### *Corpag Services (New Zealand) Trust Limited*

- Reporting entity registered with Department of Internal Affairs according to AML/CFT act (permitted to provide escrow services)
- Member of IFSO for dispute resolution
- Legally segregated bank accounts in USD and NZD with ANZ Bank