

Comparison between the Administration's Proposed Trust Law Reforms and the Trust Statutes of Selected Jurisdictions¹

	Hong Kong Existing Position²	Hong Kong Reform Proposals³	United Kingdom⁴	Singapore⁵	Cayman Islands⁶	British Virgin Islands⁷
Trustee's duty of care	No general statutory duty of care	Introduce a general statutory duty of care	Statutory duty of care	Statutory duty of care	No general statutory duty of care	No general statutory duty of care
Trustees' general power of investment in default of express provisions in the trust instrument	Limited to investments authorised in Schedule 2 to the TO	Retain the range of authorised investments in Schedule 2 to the TO, subject to modifications and periodic reviews	General power of investment by trustees	General power of investment by trustees	Power of investment limited to certain categories (but including securities in which trustees in England are allowed to invest)	General power of investment by trustees

¹ These jurisdictions are selected because:

- (a) our review proposals have made reference to the recent reforms in the UK and Singapore; and
- (b) the trust laws of Cayman Islands and British Virgin Islands are more commonly adopted as the governing law for trusts created in Hong Kong.

² Mainly with reference to the Trustee Ordinance (Chapter 29) ("TO"), the Perpetuities and Accumulations Ordinance (Chapter 257) and the Recognition of Trusts Ordinance (Chapter 76).

³ See Consultation Paper on the Review of the Trustee Ordinance and Related Matters (June 2009).

⁴ UK Trustee Act 1925, UK Trustee Act 2000, UK Trusts of Land and Appointment of Trustees Act 1996 and UK Perpetuities and Accumulations Bill.

⁵ Singapore Trustees Act (Chapter 337).

⁶ Cayman Islands Trusts Law (2007 Revision).

⁷ British Virgin Islands Trustee Ordinance 1961 (Chapter 303).

	Hong Kong Existing Position	Hong Kong Reform Proposals	United Kingdom	Singapore	Cayman Islands	British Virgin Islands
Trustee's Power to delegate to sole co-trustee	No delegation to sole co-trustee, except for trust corporation	Retain the restriction on delegation to sole co-trustee with augmented safeguards	No restriction on delegation to sole co-trustee	No restriction on delegation to sole co-trustee	No provisions on delegation	No restriction on delegation to sole co-trustee
Trustees' power to employ agents	General power of appointing agents except for fiduciary functions	Invite views on whether trustees should be given a general power of appointing agents even for some fiduciary functions ⁸	General power of appointing agents even for some fiduciary functions ⁹	General power of appointing agents even for some fiduciary functions ¹⁰	General power of appointing agents except for fiduciary functions	General power of appointing agents except for fiduciary functions
Trustees' power to employ nominees and custodians	No general power to employ nominees and custodians	Introduce a general power to employ nominees and custodians	General power to employ nominees and custodians	General power to employ nominees and custodians	No general power to employ nominees and custodians	No general power to employ nominees and custodians
Trustees' power to insure	Power to insure against loss or damage by fire and typhoon	Power to insure against loss or damage by any event	Power to insure against loss or damage by any event	Power to insure against loss or damage by any event	Power to insure against loss or damage by fire	Power to insure against loss or damage by fire

⁸ The proposed power/provision may not be applicable to charitable trusts subject to public views.

⁹ Power of appointing agents is different between non-charitable trusts and charitable trusts.

¹⁰ See footnote 9.

	Hong Kong Existing Position	Hong Kong Reform Proposals	United Kingdom	Singapore	Cayman Islands	British Virgin Islands
Professional trustees' entitlement to receive remuneration	No default charging provision for professional trustees	Introduce a default charging provision for professional trustees ¹¹	Default charging provision for professional trustees ¹²	Default charging provision for professional trustees	No default charging provision for professional trustees	No default charging provision for professional trustees
Trustees' exemption clauses	No control on trustee exemption clauses	Subject professional trustees' exemption clauses to control	No control on trustee exemption clauses	No control on trustee exemption clauses	No control on trustee exemption clauses	No control on trustee exemption clauses
Beneficiaries' right to information	No provision on beneficiaries' right to information	Provide in statute certain basic rules regarding beneficiaries' right to information	No provision on beneficiaries' right to information	No provision on beneficiaries' right to information	No provision on beneficiaries' right to information (save for (i) exempt trusts which require information to be provided to the Registrar of Trusts and (ii) Special Trusts ¹³ which may	No provision on beneficiaries' right to information (save for purpose trusts which require information to be provided to enforcers)

¹¹ See footnote 8.

¹² The default provision is not applicable to charitable trusts.

¹³ Those trusts, including non-charitable purpose trusts, permitted under Part VIII of the Cayman Islands Trusts Law (2007 Revision).

	Hong Kong Existing Position	Hong Kong Reform Proposals	United Kingdom	Singapore	Cayman Islands	British Virgin Islands
					require information to be provided as if the enforcer is a beneficiary)	
Removal of trustees by adult beneficiaries who are absolutely entitled	No express provision in the TO but court may order substitution of trustees	Provide an alternative court-free route for these beneficiaries to remove trustees	Provide an alternative court-free route for these beneficiaries to remove trustees	No express provision but court may order substitution of trustees	No express provision but court may order substitution of trustees	No express provision but court may order substitution of trustees
Rule against perpetuities	Allow settlor to set a perpetuity period not exceeding 80 years but not mandatory	Abolish the rule against perpetuities altogether OR Introduce a fixed perpetuity period	A bill has been introduced to replace the existing common law and statutory perpetuity periods with a single perpetuity period of 125 years.	A single perpetuity period of 100 years	The rule against perpetuity does not apply to the Special Trusts (for other trusts, a single perpetuity period of 150 years)	The rule against perpetuity does not apply to purpose trusts (for other trusts, settlor may set a perpetuity period not exceeding 100 years)
Rule against excessive accumulations of income	Choice among six statutory accumulation periods for which the income of a	Abolish the rule against excessive accumulations of income so that income can be	A bill has been introduced to abolish the rule against excessive accumulations of	Income can be accumulated for the duration of the trust	Income can be accumulated for the duration of the trust	Income can be accumulated for the duration of the trust

	Hong Kong Existing Position	Hong Kong Reform Proposals	United Kingdom	Singapore	Cayman Islands	British Virgin Islands
	trust may be accumulated	accumulated for the duration of the trust ¹⁴	income so that income can be accumulated for the duration of the trust ¹⁵			
Defining “protectors” of trust and their functions and duties	No definition of “protectors”	Invite views on whether “protectors” and their functions and duties be defined	No definition of “protectors”	No definition of “protectors”	No definition of “protectors” but has made reference to the term	Contain provisions on protectors
Reserved powers of settlors	No statutory provision	Invite views on whether to allow the settlor to reserve certain powers	No statutory provision	Settlor can reserve the power of investment or asset management functions	Wide range of powers can be reserved by settlors	Wide range of powers can be reserved by settlors
Governing law of trusts	Mainly governed by the Hague Convention on the Law Applicable to Trusts and on their Recognition (“Hague Convention”)	Propose maintaining the status quo	Mainly governed by the Hague Convention	Not signatory to the Hague Convention No specific provisions on governing law of trusts	The Hague Convention not applicable in Cayman Islands Have statutory provisions on the governing law of	Mainly governed by the Hague Convention

¹⁴ See footnote 8.

¹⁵ UK Perpetuities and Accumulations Bill retains a 21-year restriction on accumulation for charitable trusts.

	Hong Kong Existing Position	Hong Kong Reform Proposals	United Kingdom	Singapore	Cayman Islands	British Virgin Islands
					trusts	
Forced heirship	No statutory provisions to shore up the supremacy of Hong Kong trust laws over forced heirship rules	Invite views on whether to introduce statutory provisions to shore up the supremacy of Hong Kong trust laws over forced heirship rules	No statutory provisions to shore up the supremacy of its local trust laws over forced heirship rules	Statutory provisions to shore up the supremacy of its local trust laws over forced heirship rules	Statutory provisions to shore up the supremacy of its local trust laws over forced heirship rules	Statutory provisions to shore up the supremacy of its local trust laws over forced heirship rules
Non-charitable purpose trusts	Non-charitable purpose trusts generally void	Invite views on whether non-charitable purpose trusts should be allowed	Non-charitable purpose trusts generally void	Non-charitable purpose trusts generally void	Non-charitable purpose trusts are allowed	Non-charitable purpose trusts are allowed