

**Comparison between the Administration's Detailed Legislative Proposals on Trust Law Reform
and the Trust Law Regimes of Selected Jurisdictions¹**

(a) Clarification of trustees' duties and powers

| | Hong Kong Existing Position² | Hong Kong Reform Proposals³ | United Kingdom⁴ | Singapore⁵ | Cayman Islands⁶ | British Virgin Islands⁷ |
|---|---|--|---|---|-----------------------------------|---|
| Statutory duty of care of trustees | 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 |
| Trustee's power to delegate | Restriction on delegation. Attorney must not be the trustee's sole co-trustee, except for trust corporation | Provide additional safeguard that if a trust has more than one trustee, the exercise of power of delegation should not result in the | 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 |

¹ These jurisdictions are selected because:

- (a) our detailed legislative 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 Detailed Legislative Proposals on Trust Law Reform (March 2012).

⁴ UK Trustee Act 1925, UK Trustee Act 2000, UK Trusts of Land and Appointment of Trustees Act 1996 and UK Perpetuities and Accumulations Act 2009.

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 Position² | Hong Kong Reform Proposals³ | United Kingdom⁴ | Singapore⁵ | Cayman Islands⁶ | British Virgin Islands⁷ |
|---|--|--|---|---|--|--|
| | | trust having only one attorney or one trustee administering the trust, unless that attorney or trustee is a trust corporation | | | | |
| Trustees' power to employ agents | Power to appoint agents to carry out administrative functions in relation to properties in Hong Kong, and may exercise all functions in relation to properties outside Hong Kong | Introduce a general power to appoint agents (regardless of the location of trust properties) to exercise any of their functions except for certain core ones, subject to certain safeguards ⁸ | General power to appoint agents (regardless of the location of trust properties) to exercise any of their functions except for certain core ones, subject to certain safeguards | General power to appoint agents (regardless of the location of trust properties) to exercise any of their functions except for certain core ones, subject to certain safeguards | Power to appoint agents to carry out administrative functions in relation to properties in Cayman Islands, and may exercise all functions in relation to properties outside Cayman Islands | Power to appoint agents to carry out administrative functions in relation to properties in British Virgin Islands, and may exercise all functions in relation to properties outside British Virgin Islands |
| Trustees' power to employ | No general power to employ nominees and | Introduce a general power to employ nominees | General power to employ nominees and custodians, | General power to employ nominees and custodians, | No general power to employ nominees and | No general power to employ nominees and |

⁸ For trustees of charitable trusts, agents should be allowed to carry out functions of generating income to finance a charitable trust's purposes, but not the execution of those purposes.

| | Hong Kong Existing Position² | Hong Kong Reform Proposals³ | United Kingdom⁴ | Singapore⁵ | Cayman Islands⁶ | British Virgin Islands⁷ |
|---|--|---|--|---|---|---|
| nominees and custodians | custodians | and custodians, subject to certain safeguards | subject to certain safeguards | subject to certain safeguards | custodians | custodians |
| Trustees' power to insure | Power to insure against loss or damage by fire and typhoon | Expand the 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 |
| Professional trustees' entitlement to receive remuneration | No default charging provision for professional trustees | Provide professional trustees with a right to receive remuneration for services rendered, subject to certain safeguards | Default charging provision for professional trustees, subject to certain safeguards ⁹ | Default charging provision for professional trustees, subject to certain safeguards | No default charging provision for professional trustees | No default charging provision for professional trustees |

⁹ The default provision is not applicable to charitable trusts.

(b) Better protection of beneficiaries' interests

| | Hong Kong Existing Position² | Hong Kong Reform Proposals³ | United Kingdom⁴ | Singapore⁵ | Cayman Islands⁶ | British Virgin Islands⁷ |
|--|---|--|---|---|---|---|
| Trustees' exemption clauses | No control on trustee exemption clauses | Subject certain professional trustees' exemption clauses to statutory 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 Remove Trustees | No statutory provision but court may order substitution of trustees | Provide an alternative court-free route for beneficiaries (who are of full-age and capacity, and are absolutely entitled to trust properties) to remove trustees | Alternative court-free route for beneficiaries (who are of full-age and capacity, and are absolutely entitled to trust properties) to remove trustees | No statutory provision but court may order substitution of trustees | No statutory provision but court may order substitution of trustees | No statutory provision but court may order substitution of trustees |

(c) Modernisation of trust law

| | Hong Kong Existing Position² | Hong Kong Reform Proposals³ | United Kingdom⁴ | Singapore⁵ | Cayman Islands⁶ | British Virgin Islands⁷ |
|---|--|---|---|---|--|--|
| Reserved powers of settlors | No statutory provision | Introduce a statutory provision to the effect that a trust is not invalid by reason only of the settlor reserving to himself powers of investment or asset management functions | No statutory provision | Statutory provision to the effect that a trust is not invalid by reason only of the settlor reserving to himself powers of investment or asset management functions | Wide range of powers can be reserved by settlors | Wide range of powers can be reserved by settlors |
| Rule against perpetuities | Puts a time limit within which trust properties must vest in the beneficiaries | Abolish the rule against perpetuities | 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 | Choice among six statutory accumulation | Abolish the rule against excessive accumulations of | Income can be accumulated for the duration of | Income can be accumulated for the duration of | Income can be accumulated for the duration of | Income can be accumulated for the duration of |

| | | | | | | |
|------------------|--|----------------------|-------------------------|-----------|-----------|-----------|
| of income | periods for which the income of a trust may be accumulated | income ¹⁰ | the trust ¹¹ | the trust | the trust | the trust |
|------------------|--|----------------------|-------------------------|-----------|-----------|-----------|

**Financial Services Branch
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¹⁰ The abolition of rule against excessive accumulations of income will not apply to charitable trusts. For charitable trusts, except for limited exceptions, a direction to accumulate will cease to have effect 21 years after the first day on which income may be accumulated.

¹¹ UK Perpetuities and Accumulations Act 2009 retains a 21-year restriction on accumulation for charitable trusts.