

**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
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**Financial Services Branch
Financial Services and the Treasury Bureau
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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.