

2013年信託法律(修訂)條例草案
Trust Law (Amendment) Bill 2013

背景 Background

- ▶ 香港信託法的主要法例，由制定至今均未有重大檢討或修改
- ▶ The principal legislations of Hong Kong's trust law regime have not been substantially reviewed or modified since enactment
- ▶ 當中的部分條文已經過時，不能切合現代信託的需要
- ▶ Some of their provisions are outdated and cannot meet the needs of present-day trusts

背景 Background

- ▶ 考慮信託業所提出的各項法例現代化建議以及參考英國和新加坡近年進行的信託法改革
- ▶ Based on an overall review of the various modernisation proposals put forward by the trust industry and with reference to the recent trust law reform of the UK and Singapore
- ▶ 政府於二零零九年和二零一二年就建議進行諮詢，回應者普遍對立法建議表示支持
- ▶ The Administration conducted public consultations on the proposals in 2009 and 2012. Respondents indicated general support for the legislative exercise

目的 Objectives

- ▶ 利便現代信託管理，提升香港信託服務業競爭力，吸引財產授予人來港設立信託，從而提升香港作為國際資產管理中心的地位
- ▶ To facilitate present-day trust administration, bolster the competitiveness of Hong Kong's trust services industry and attract settlors to set up trusts in Hong Kong, thereby enhancing Hong Kong's status as an international asset management centre

條例草案範圍 Scope of the Bill

- ▶ 就本港信託法制度的某些特定範疇，修改普通法的規定及更新現有法例，包括：
 - ▶ 賦予受託人更大預設權力
 - ▶ 加強對受益人的保障
 - ▶ 財產授予人可保留的權力
 - ▶ 反強制繼承權規則的條文
 - ▶ 廢除反財產恆繼規則及更改反收益過度累積規則

- ▶ Modify the common law position and update existing legislation in certain specific aspects of our trust law regime, including:
 - ▶ Enhancing trustees' default powers
 - ▶ Enhancing protection for beneficiaries
 - ▶ Reserved powers of settlors
 - ▶ Provision against forced heirship rules
 - ▶ Abolishing the rule against perpetuities and changing the rule against excessive accumulations of income

條例草案範圍(2) Scope of the Bill (2)

- ▶ 不涵蓋的範疇包括在普通法下界定如何構成信託或可被視為財產授予人、受託人或受益人的規定
- ▶ Does not cover other aspects including the common law rules with respect to how a trust is constituted or when a person is to be regarded as a settlor, trustee or beneficiary



主要立法建議 Major Legislative Proposals

主要立法建議 Major Legislative Proposals

- ▶ 賦予受託人更大預設權力
- ▶ Enhancing Trustee's Default Powers
- ▶ 加強對受益人的保障
- ▶ Enhancing Protection for Beneficiaries
- ▶ 確保某些信託的有效性
- ▶ Ensuring the Validity of Certain Trusts
- ▶ 廢除反財產恆繼規則及更改反收益過度累積規則
- ▶ Abolishing the Rule against Perpetuities (“RAP”) and Changing the Rule against Excessive Accumulations of Income (“REA”)

主要立法建議 Major Legislative Proposals

- ▶ 大部分建議均適用於修訂條例草案生效之前和之後成立的信託
- ▶ Most proposals are applicable to trusts set up before and after the commencement of the amendment bill

賦予受託人更大預設權力

Enhancing Trustees' Default Powers

▶ 委任代理人、代名人和保管人的權力

Power to appoint agents, nominees and custodians

- ▶ 立法會資料摘要第7(a)段
- ▶ LegCo Brief para 7(a)
- ▶ 預設權力以利便管理信託
- ▶ Default power to facilitate effective administration of trusts
- ▶ 受託人須親自履行特定的重要職能
- ▶ Trustees are required to perform certain important functions

賦予受託人更大預設權力(2)

Enhancing Trustees' Default Powers (2)

▶ 投保的權力

Power to insure

- ▶ 立法會資料摘要第7(b)段
- ▶ LegCo Brief para 7(b)
- ▶ 擴闊受託人在投保方面的預設權力，就任何事件所可能導致的損失或損壞，為信託財產投保
- ▶ Widen trustees' default power to insure trust property against risk or damage caused by any event
- ▶ 取消對受託人投保金額的限制
- ▶ Remove restrictions on the amount of insurance that trustees may take out

賦予受託人更大預設權力(3)

Enhancing Trustees' Default Powers (3)

▶ 在從事業務或專業期間行事的受託人的酬金

Remuneration of trustees acting in a business or profession

- ▶ 立法會資料摘要第7(c)段
- ▶ LegCo Brief para 7(c)
- ▶ 放寬若干規定，以利便信託委任具所需專業知識和經驗的受託人，保障受益人的利益
- ▶ Facilitate the appointment of trustees with professional knowledge and experience to better protect the interest of the beneficiaries
- ▶ 受信託文書的條款規限
- ▶ Subject to the terms of the instrument creating the trust

賦予受託人更大預設權力(4)

Enhancing Trustees' Default Powers (4)

▶ 調整預設准許投資項目的範圍

Fine-tuning the default scope of authorized investments

- ▶ 立法會資料摘要第7(d)段
- ▶ LegCo Brief para 7(d)
- ▶ 放寬有關投資證券的條件
- ▶ Relax certain conditions regarding investment in shares
- ▶ 風險管理 – 訂明預設准許投資項目不包括結構性產品
- ▶ Risk Management – stipulate expressly that the list of default permissible investments does not include structured products

加強對受益人的保障

Enhancing Protection for Beneficiaries

▶ 引進受託人的法定謹慎責任

Introducing statutory duty of care of trustees

- ▶ 立法會資料摘要第8(a)段
- ▶ LegCo Brief para 8(a)
- ▶ 參考普通法，就受託人所應達到的謹慎行事標準，提供清晰的陳述，而該標準尤須考慮到該受託人所具備或聲稱具備的任何特殊知識或經驗
- ▶ With reference to common law, provide for a clear statement of the standard of care to be expected of trustees, having regard in particular to any special knowledge or experience that the trustee has or holds himself out as having

加強對受益人的保障(2)

Enhancing Protection for Beneficiaries (2)

- ▶ 受託人免責條款的法定管制

- Statutory control on exemption clauses of trustees**

- ▶ 立法會資料摘要第8(b)段

- ▶ LegCo Brief para 8(b)

- ▶ 適用於在從事業務或專業期間行事且收取酬金的受託人

- ▶ Applicable to trustees acting in a business or profession receiving remuneration

加強對受益人的保障(2)

Enhancing Protection for Beneficiaries (2)

▶ 受託人免責條款的法定管制 (2)

Statutory control on exemption clauses of trustees **(2)**

- ▶ 擴闊普通法中只把免除因欺詐行為所需承擔的法律責任的免責條款視作無效的規定，以涵蓋故意作出的不當行為及嚴重疏忽
- ▶ Expand the common law position which only invalidates exemption clauses seeking to exempt liability from fraud to cover also wilful misconduct and gross negligence
- ▶ 於條例草案生效一年後才施行
- ▶ Takes effect one year after the commencement of the Bill

加強對受益人的保障(3)

Enhancing Protection for Beneficiaries (3)

▶ 委任代理人、代名人和保管人的制衡措施

Checks and balances in relation to the appointment of agents, nominees and custodians

- ▶ 立法會資料摘要第8(c)段
 - ▶ LegCo Brief para 8(c)

 - ▶ 檢討代理人、代名人和保管人據之行事的安排的責任
 - ▶ Duty to review arrangements under which agents, nominees and custodians act

 - ▶ 須向履行資產管理職能的代理人提供清晰指引
 - ▶ Clear guidance should be given to agents delegated with asset management functions

 - ▶ 法定謹慎責任
 - ▶ Statutory duty of care

 - ▶ 部分重要職能不能轉委
 - ▶ Some important functions are non-delegable
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加強對受益人的保障(4)

Enhancing Protection for Beneficiaries (4)

▶ 受益人委任和辭退受託人的安排

Appointment and retirement of trustees by beneficiaries

- ▶ 立法會資料摘要第8(d)段
- ▶ LegCo Brief para 8(d)
- ▶ 受益人如均已屆成年並有完全行為能力，且絕對有權享有信託財產，無需經法院批准，有權委任和辭退受託人
- ▶ Beneficiaries of full age and capacity and are absolutely entitled to the trust property may appoint and retire trustees by way of a court-free process

確保某些信託的有效性

Ensuring the Validity of Certain Trusts

▶ 財產授予人保留的權力

Reserve powers by settlors

- ▶ 立法會資料摘要第9(a)段
- ▶ LegCo Brief para 9(a)
- ▶ 訂明信託不會僅因財產授予人保留投資權力或資產管理職能而失效
- ▶ Provide expressly that a trust would not be invalidated because of the mere fact that the settlor has kept the power of investment or asset management functions

確保某些信託的有效性 (2)

Ensuring the Validity of Certain Trusts (2)

▶ 反強制繼承權規則的條文

Provision against forced heirship rules

- ▶ 立法會資料摘要第9(c)段
- ▶ LegCo Brief para 9(c)
- ▶ 訂立法例條文，訂明如信託示明是受香港法例管限的，海外的強制繼承權規則不會影響財產授予人在生時把流動資產轉移至該信託的有效性
- ▶ Introduce a statutory provision to the effect that foreign forced heirship rules will not affect the validity of a lifetime transfer of movable assets into a trust expressed to be governed by Hong Kong law

廢除反財產恆繼規則及更改反收益過度累積規則

Abolishing the Rule against Perpetuities (“RAP”) and Changing the Rule against Excessive Accumulations of Income (“REA”)

- ▶ 立法會資料摘要第9(b)段
- ▶ LegCo Brief para 9(b)
- ▶ 廢除反財產恆繼規則及更改反收益過度累積規則
- ▶ Abolish the RAP and change the REA
- ▶ 准許財產授予人在香港設立永續信託
- ▶ Allow settlors to set up perpetual trusts in Hong Kong
- ▶ 就慈善信託保留某些累積收益的限制
- ▶ Retain certain restrictions on accumulations of income for charitable trusts

與英國和新加坡的比較 – 概覽

Comparison with UK and Singapore – Overview

- ▶ 較英國及/或新加坡優勝的方案：
- ▶ Proposals ahead of UK and/or Singapore:
 - ▶ 永續信託（較英國及新加坡優勝）
 - ▶ Perpetual trusts (Ahead of UK and Singapore)
- ▶ 與在從事業務或專業期間行事的受託人有關的免責條款的法定管制（較英國及新加坡優勝）
- ▶ Statutory control on exemption clauses of trustees acting in a business or profession (Ahead of UK and Singapore)
- ▶ 受益人委任和辭退受託人的安排（較新加坡優勝，和英國看齊）
- ▶ Appointment and retirement of trustees by beneficiaries (Ahead of Singapore; on a par with UK)
- ▶ 反強制繼承權規則的條文和財產授予人保留的權力（較英國優勝，和新加坡看齊）
- ▶ Anti-forced heirship provision and reserved powers of settlors (Ahead of UK; on a par with Singapore)

與英國和新加坡的比較 – 概覽 (2)

Comparison with UK and Singapore – Overview (2)

- ▶ 其他建議與英國/新加坡看齊(除預設准許投資項目的範圍)
- ▶ Other proposals on a par with those in UK/Singapore
(Except the default scope of authorized investments)

THANK YOU 謝謝