

立法會
Legislative Council

LC Paper No. CB(1)1177/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/12/2

Bills Committee on Trust Law (Amendment) Bill 2013

**Minutes of the fourth meeting held on
Monday, 22 April 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon NG Leung-sing, SBS, JP (Chairman)
Hon Kenneth LEUNG (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kin-por, BBS, JP
Hon Dennis KWOK

Members absent : Hon Albert HO Chun-yan
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon Paul TSE Wai-chun, JP
Hon Martin LIAO Cheung-kong, JP

**Public officers
attending** : **Agenda item I**

Mr Patrick HO, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 3

Mr Arsene YIU
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services) 6

Ms Phyllis POON
Senior Government Counsel
Department of Justice

Miss Emma WONG
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Sharon CHUNG
Chief Council Secretary (1)6

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Anthony CHU
Senior Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant (1)6

Action

I Confirmation of minutes
(LC Paper No. CB(1)870/12-13 -- Minutes of meeting on
19 March 2013)

The minutes of the meeting held on 19 March 2013 were confirmed.

II Meeting with the Administration

A. Matters arising from the meeting on 9 April 2013
(LC Paper No. CB(1)869/12-13(01) -- Follow-up actions to be
taken by the Administration
for the meeting on 9 April
2013

Action

LC Paper No. CB(1)869/12-13(02) -- Administration's response to issues raised by members at the meeting on 9 April 2013 in relation to the rule against perpetuities and the rule against excessive accumulations of income

LC Paper No. CB(1)869/12-13(03) -- Administration's response to issues raised by members at the meeting on 9 April 2013 in relation to considerations and rationale of the proposals in the Bill)

B. Discussion on submissions received from organizations/individuals

(LC Paper No. CB(1)869/12-13(04) -- Summary of views submitted by organizations/individuals on the Bill and the Administration's response (Position as at 17 April 2013)

LC Paper No. CB(1)798/12-13(01) -- Submission from Mr David GUNSON dated 12 March 2013

LC Paper No. CB(1)798/12-13(02) -- Submission from The Chinese General Chamber of Commerce dated 12 March 2013

LC Paper No. CB(1)798/12-13(03) -- Submission from Joint Committee on Trust Law Reform dated 26 March 2013

LC Paper No. CB(1)798/12-13(04) -- Submission from Zurich Insurance (Hong Kong) dated 25 March 2013

LC Paper No. CB(1)798/12-13(05) -- Submission from Mr YEUNG Wai-sing, Eastern District Council member dated 27 March 2013

Action

- LC Paper No. CB(1)798/12-13(06) -- Submission from The Chinese Manufacturers' Association of Hong Kong dated 28 March 2013
- LC Paper No. CB(1)798/12-13(07) -- Submission from The Hong Kong Association of Banks dated 28 March 2013
- LC Paper No. CB(1)798/12-13(08) -- Submission from Baker & McKenzie dated 28 March 2013
- LC Paper No. CB(1)798/12-13(09) -- Submission from Hong Kong General Chamber of Commerce dated 28 March 2013
- LC Paper No. CB(1)798/12-13(10) -- Submission from The Law Society of Hong Kong dated 2 April 2013)

C. Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)357/12-13 -- The Bill
LC Paper No. CB(1)700/12-13(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
(*Restricted to members*))

Other relevant papers

- (File Ref.: G4/55/5C -- Legislative Council Brief
LC Paper No. LS26/12-13 -- Legal Service Division Report
LC Paper No. CB(1)700/12-13(02) -- Paper on Trust Law (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (background brief))

2. The Bills Committee deliberated (Index of proceedings attached at the **Appendix**).

Action

Follow-up action to be taken by the Administration

- Admin 3. The Bills Committee noted that the United Kingdom and Singapore had retained the rule against perpetuities ("RAP") for trusts and fixed the perpetuity period at 125 years and 100 years respectively. Given that the proposed abolition of RAP as applied in Hong Kong under the Bill would lead to a major change to Hong Kong's trust law regime, the Administration was requested to reconsider whether Hong Kong should abolish RAP as applied in Hong Kong or just extend the perpetuity period, consult the trust industry and relevant organizations on the two options, and report to the Bills Committee the result as soon as possible.

II Any other business

4. The Chairman advised that the next meeting of the Bills Committee had been scheduled for 7 May 2013, Tuesday, at 4:30 pm. If it was anticipated nearer the time that the meeting would clash with the continuation of a Legislative Council meeting, the meeting would be re-scheduled.

5. Members agreed that the Administration's response to views submitted to the Bills Committee should be sent to the organizations/individuals who had provided written views on the Bill to the Bills Committee. The organizations/individuals should also be invited to attend the next meeting if they had any comments on the Administration's response or further views on the following issues --

- (a) the proposed abolition of RAP as applied in Hong Kong;
- (b) the proposed statutory control of trustees' exemption clauses; and
- (c) the proposal in the submission from the Joint Committee on Trust Law Reform on adding an "anti-Bartlett v Barclays" provision to the Bill.

(Post-meeting note: To avoid possible clash with a meeting of the Legislative Council and with the concurrence of the Chairman, the meeting originally scheduled for 7 May 2013 had been rescheduled to 9:00 am on 27 May 2013. Members were informed of the arrangements vide LC Paper No. CB(1)921/12-13 issued on 25 April

Action

2013. Invitations for organizations/individuals who had provided written views to the Bills Committee to attend the meeting on 27 May 2013, together with the Administration's response to the views, were sent out on 29 April 2013.)

6. There being no other business, the meeting ended at 11:57 am.

Council Business Division 1
Legislative Council Secretariat
30 May 2013

Bills Committee on Trust Law (Amendment) Bill 2013

**Proceedings of the fourth meeting
on Monday, 22 April 2013, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000357 - 000516	Chairman	Confirmation of minutes of meeting on 19 March 2013 (LC Paper No. CB(1)870/12-13)	
000517 - 001305	Administration	Briefing on supplementary information on abolishing the rule against perpetuities ("RAP") and the rule against excessive accumulations of income ("REA") as applied in Hong Kong for new trusts (LC Paper No. CB(1)869/12-13(02))	
001306 - 002819	Mr James TO Administration Chairman	<p>Mr James TO expressed concern that --</p> <p>(a) if more trusts would be established in Hong Kong due to the abolition of RAP, that might mean that more properties, in case they were held in trusts, would not be available for circulation in the market;</p> <p>(b) notwithstanding that the lease term for land granted after July 1997 was usually 50 years, it was likely that the leases could be extended subject to payment of land premium and land would only be resumed by the Administration for public purposes; therefore, the Administration's argument that land grants in Hong Kong were in fact time-limited might not stand firm;</p> <p>(c) taking into account that land would only be resumed by the Administration for public purposes, if RAP was abolished, it was unlikely that private land held in trust would be returned to the Government;</p> <p>(d) considering the local situations, a more conservative approach should be adopted in respect of abolition of RAP; and</p> <p>(e) instead of abolishing RAP, the Administration should consider adopting a</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>longer fixed perpetuity period for trust properties.</p> <p>The Administration explained that --</p> <p>(a) assets in trusts were not confined to land; the proposal to abolish RAP as applied in Hong Kong was intended to enhance Hong Kong's attractiveness as a trust domicile;</p> <p>(b) if any private land was required for redevelopment purposes, there were several Ordinances which gave a power of resumption or compulsory sale; accordingly, given the leasehold land tenure system in Hong Kong, there was no apparent need for fixing a finite perpetuity period for the purpose of ensuring that land would not be tied up;</p> <p>(c) whether or not a property would be released to circulation in the market upon expiry of the trust holding that property would depend very much on the decision of the beneficiaries at the relevant time; RAP only served to impose a time limit in which future interest must be vested in beneficiaries; the beneficiaries were not obliged to release the assets to the market; and</p> <p>(d) without a crystal ball to assess with certainty the situation in the long distant future, it would be more a matter of judgment rather than quantitative analysis in determining whether a conservative approach (viz. to impose a fixed, longer perpetuity period) or a forward-looking approach (viz. to abolish RAP as applied in Hong Kong altogether) should be pursued.</p> <p>The Chairman's remarks that the ownership of private assets in Hong Kong could practically be perpetual</p>	

Time marker	Speaker	Subject(s)	Action required
002820 - 003511	Deputy Chairman Administration	<p>The Deputy Chairman's views that --</p> <ul style="list-style-type: none"> (a) the perpetuity of trust properties and the right to private property ownership were two separate matters; and (b) a fixed perpetuity period would increase the flexibility for the beneficiaries to dispose of the assets held in trust upon the expiry of the trust <p>The Deputy Chairman's enquires about --</p> <ul style="list-style-type: none"> (a) the reasons for Singapore to retain RAP and extend it to 100 years after it had reviewed and reformed its trust law regime; and (b) whether there were any professional or academic studies supporting the abolition of RAP <p>The Administration's explanation that --</p> <ul style="list-style-type: none"> (a) there was a common understanding among overseas common law jurisdictions that RAP was too complicated and required reform; in the United Kingdom (UK), there were both supporting and opposing views on the abolition of RAP when the trust law regime was under review, according to a report of the UK Law Reform Commission on the subject; as cited in the aforesaid report, subsequently RAP was retained in UK and the perpetuity period was extended to 125 years mainly to ensure that land would not be tied up in trust longer than desirable; for Hong Kong, it was considered that RAP could be abolished after considering the local context; and (b) it was established by case law, as quoted in footnote 4 in the Administration's paper (LC Paper No. CB(1)869/12-13(02)), that trustees had a duty to invest the trust fund for a reasonable return, failing which, there might be a breach of trust; moveable assets in trusts, such as cash and shares, 	

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		would thus be in a constant course of circulation in the market	
003512 - 004657	Administration Chairman	<p>Briefing on the Administration's response to the submissions received by the Bills Committee (LC Paper No. CB(1)869/12-13(04))</p> <p>The Chairman advised members that the Hong Kong Bar Association would provide written views to the Bills Committee soon.</p>	
004658 - 005347	Deputy Chairman Administration Chairman	<p>The Deputy Chairman enquired about --</p> <p>(a) the Administration's detailed explanation about the concerns relating to non-charitable purpose trusts ("NCPTs") ; and</p> <p>(b) whether the Administration considered that a licensing system for trust companies was necessary.</p> <p>The Administration explained that --</p> <p>(a) NCPTs had no specified beneficiaries and no major comparable common law jurisdictions had provided for the setting up of these trusts; there were regulatory concerns on the transparency of NCPTs and their perceived association with tax evasion;</p> <p>(b) the Administration considered it not prudent to take forward the proposal of providing for the establishment of NCPTs in the Bill at this stage; the implications of the proposal had to be duly assessed;</p> <p>(c) currently, the registration regime for trust companies was voluntary and was not for regulatory purpose; under the Trustee Ordinance (Cap. 29), a company which had registered as a trust company with the Registrar of Companies could trade or represent itself in that capacity; such a company had to meet certain statutory requirements, such as the required capital level and depositing investments or a bank</p>	

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		<p>guarantee with the Government;</p> <p>(d) as discussed in the meeting of the Panel on Financial Affairs in December 2012, there were already separate regulatory regimes governing trust companies which were engaged in certain investment activities or products, such as unit trusts were regulated by the Securities and Futures Commission and Mandatory Provident Fund ("MPF") schemes were regulated by the MPF Authority; and</p> <p>(e) as the existing system worked well, the Administration considered that a licensing system for trust companies was not necessary.</p> <p>The Chairman's remarks that appropriate regulation of the trust industry would be desirable. In response, the Administration remarked that in case a new licensing system was introduced for the trust industry, it was likely that the public would want to benchmark it against the existing regulatory regimes for the various financial sectors in Hong Kong</p>	
005348 - 010208	Mr CHAN Kin-por Administration Chairman Clerk	<p>Mr CHAN Kin-por enquired about --</p> <p>(a) the Administration's timeframe for starting a review on the trust industry's suggestion of incorporating the "anti-Bartlett v Barclays" provision to give statutory effect to clauses in trust deeds which relieved trustees from management and supervisory obligations with respect to underlying companies in certain situations and correspondingly exonerate them, and recognizing the validity of NCPTs ;</p> <p>(b) whether the Administration would convey its response to the Hong Kong Association of Banks ("HKAB"), given that the Association had provided detailed views on individual clauses in the Bill;</p> <p>(c) whether organizations which had provided views to the Bills Committee would be</p>	

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		<p>informed of the Administration's response and whether their further views would be sought;</p> <p>(d) whether the next meeting of the Bills Committee would be affected by the anticipated continuation of the Legislative Council ("LegCo") meeting when LegCo resumed the Second Reading debate on the Appropriation Bill 2013.</p> <p>Mr CHAN requested the Chairman to convey his concern to the President of LegCo that the scrutiny of the Bill might be delayed as a result of filibustering at the LegCo meeting.</p> <p>The Administration explained that --</p> <p>(a) detailed response had been made to HKAB's comments on individual clauses, noting that some of HKAB's comments had also been raised in the public consultation in 2012 and responded to in the consultation conclusions issued thereafter; and</p> <p>(b) the Administration would keep in view the implementation of the legislative proposals in the Bill after its coming into operation and would continue its liaison with the trust industry on further review of the trust law regime.</p> <p>At the invitation of the Chairman, the Clerk advised that it was the practice of some Bills Committees to send the Administration's response to the organizations/individuals who had provided views to the Committees.</p> <p>Members agreed that the Administration's response should be sent to the organizations/individuals who had provided their views to the Bills Committee.</p> <p>The Chairman advised that the next meeting was scheduled for 7 May 2013 but it might be re-scheduled to avoid clashing with the anticipated continuation of a Council meeting.</p>	

Time marker	Speaker	Subject(s)	Action required
		Members would be informed of the arrangement in due course.	
010209 - 010338	Deputy Chairman	The Deputy Chairman requested the Administration to reconsider whether Hong Kong should abolish RAP as applied in Hong Kong or alternatively just extend the perpetuity period, consult the trust industry and relevant organizations on the two options, and report to the Bills Committee the result as soon as possible.	The Administration to take follow-up action as in paragraph 3 of the minutes
010339 - 011225	Deputy Chairman Chairman Mr Dennis KWOK Administration Mr CHAN Kin-por	<p>The Chairman consulted members on whether a meeting should be held for receiving views on the Bill before the Bills Committee started clause-by-clause scrutiny of the Bill.</p> <p>Members agreed that the organizations/individuals who had provided written views to the Bills Committee should be invited to attend the next meeting if they had any comments on the Administration's response or further views on the following issues --</p> <ul style="list-style-type: none"> (a) the proposed abolition of RAP; (b) the proposed statutory control of trustees' exemption clauses; and (c) the proposal in the submission from the Joint Committee on Trust Law Reform on adding an "anti-Bartlett v Barclays" provision to the Bill. <p>The Chairman instructed the Clerk to remind all members that the Bills Committee would start clause-by-clause examination of the Bill if they raised no more questions on the policy issues related to the Bill.</p>	