

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1706 /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 sixth meeting held on  
Tuesday, 4 June 2013, at 4:30 pm  
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 Abraham SHEK Lai-him, SBS, JP  
Hon Starry LEE Wai-king, JP  
Hon Ronny TONG Ka-wah, SC  
Hon CHAN Kin-por, BBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Dennis KWOK  
Hon Martin LIAO Cheung-kong, JP

**Member absent** : Hon Albert HO Chun-yan

**Public officers attending** : **Agenda item II**

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

Mr Manuel NG  
Senior Government Counsel (Acting)  
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

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Action

**I Confirmation of minutes**

(LC Paper No. CB(1)1177/12-13 -- Minutes of meeting on  
22 April 2013)

The minutes of the meeting held on 22 April 2013 were confirmed.

**II Meeting with the Administration**

**A. Matters arising from the meeting on 27 May 2013**

(LC Paper No. CB(1)1186/12-13(01) -- Follow-up actions to be  
taken by the Administration  
for the meeting on  
27 May 2013

LC Paper No. CB(1)1186/12-13(02) -- Administration's response  
to issues raised by members  
at the meeting on  
27 May 2013 in relation to  
written submissions by  
deputations

Action

- LC Paper No. CB(1)1186/12-13(03) -- Administration's response to issues raised by members at the meeting on 27 May 2013 in relation to statutory control of trustees' exemption clauses
- LC Paper No. LS57/12-13 -- Paper on termination of a trust by beneficiaries prepared by the Legal Service Division)

B. 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

LC Paper No. LS26/12-13

LC Paper No. CB(1)700/12-13(02)

- Legislative Council Brief
- Legal Service Division Report
- Paper on Trust Law (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (background brief))

2. Members noted that a letter from the Joint Committee on Trust Law Reform ("JCTLR") dated 3 June 2013 in response to the Bills Committee's request for information about the proposed abolition of the rule against perpetuities ("RAP") was tabled at the meeting.

(*Post-meeting note:* The letter was circulated to members vide LC Paper No. CB(1)1303/12-13(01) on 14 June 2013.)

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

Action

Follow-up actions to be taken by the Administration

*Proposed abolition of the rule against perpetuities*

4. At members' request, the Administration was to provide the following information (to be collected from the industry if necessary), to facilitate their consideration of the proposed abolition of RAP –

- (a) the seven overseas trust jurisdictions which permitted perpetual trusts and the background which led to their decisions to abolish RAP; and
- (b) the impact of Singapore's decision to relax RAP by extending the perpetuity period to 100 years on its trust business.

*(Post-meeting note: Information provided by JCTLR in response to the above request was circulated to members vide LC Paper No. CB(1)1303/12-13(02) on 14 June 2013.)*

*Existing Section 4 of the Trustee Ordinance – Authorized investments*

5. Section 4(1)(b) stipulated that a trustee might invest any trust funds in his hand, whether at the time in a state of investment or not, in any other investment (including deposits in a bank outside Hong Kong) which might be authorized by the court on summary application for that purpose made in chambers. The Administration was requested to review whether the requirement that the authorization should be made by the court on summary application in chambers was necessary; and if not, whether the relevant part of the provision would be removed.

*(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1313/12-13(02) on 17 June 2013.)*

*Clause 27 –Part IVA to IVD added*

6. Members noted Hon Dennis KWOK's proposed amendments to the proposed new section 41W (viz. the proposed statutory control of trustees' exemption clause), which were tabled at the meeting. Some members expressed concern that the meaning of "fraud, willful misconduct or gross negligence" in the new section might not be clear enough under the Bill. The Administration was requested to consider Hon Dennis KWOK's proposed amendments.

Action

(*Post-meeting note:* Hon Dennis KWOK's proposed amendments tabled at the meeting were circulated to members vide LC Paper No. CB(1)1235/12-13(01) on 5 June 2013.)

*Clause 40 – Third and Fourth Schedules added*

7. Regarding section 1(b) of the new Third Schedule (Application of Statutory Duty of Care), the Administration was requested to consider whether section 6 (discretion of trustees) of the Trustee Ordinance should not be included.

(*Post-meeting note:* The Administration's response to paragraphs 6 and 7 above was circulated to members vide LC Paper No. CB(1)1275/12-13(02) on 11 June 2013.)

**III Any other business**

8. The Chairman reminded members that the next meeting of the Bills Committee would be held on Thursday, 13 June 2013 at 2:30 pm.

9. There being no other business, the meeting ended at 6:22 pm.

Council Business Division 1  
Legislative Council Secretariat  
19 August 2013

**Bills Committee on Trust Law (Amendment) Bill 2013**

**Proceedings of the sixth meeting  
on Tuesday, 4 June 2013, at 4:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<u>Confirmation of minutes</u>			
000305 - 000455	Chairman	Confirmation of minutes of meeting on 22 April 2013 (LC Paper No. CB(1)1177/12-13)	
<u>Matters arising from the meeting on 27 May 2013</u>			
000456 - 001310	Chairman Administration	<p>The meeting noted the written reply of the Joint Committee on Trust Law Reform (LC Paper No. CB(1)1303/12-13(01)) dated 3 June 2013 to the Bills Committee's request for information about the proposed abolition of the rule against perpetuities ("RAP").</p> <p>The Administration's briefing on its response to the matters arising from the meeting on 27 May 2013 (LC Paper No. CB(1)1186/12-13(02) and (03))</p>	
001311 - 002541	Mr Martin LIAO Administration	<p>Mr Martin LIAO's enquiries on --</p> <p>(a) whether the abolition of RAP could attract more trusts to be set up in Hong Kong; and</p> <p>(b) the effect of abolition of RAP on trusts governed by Hong Kong law holding immovable assets in other jurisdictions which retained RAP and the application of law for these trusts</p> <p>The Administration explained that the abolition of RAP would provide Hong Kong with a competitive edge over other comparable common law jurisdictions.</p> <p>The Administration referred to LC Paper No. CB(1)800/12-13(02) and stated the general principle that immovables were governed by the law where they were situated, whereas the proposed abolition would provide certainty on</p>	

Time marker	Speaker	Subject(s)	Action required
		the validity of disposition of movable property.	
002542 - 003332	Mr James TO Administration Chairman	Mr James TO's enquiries about -- (a) the seven overseas trust jurisdictions which permitted perpetual trusts and the background which led to their decisions to abolish RAP; and (b) the impact of Singapore's decision to relax RAP by extending the perpetual period to 100 years on its trust business	The Administration to take follow-up action as in paragraph 4 of the minutes
003333 - 004102	Mr Ronny TONG Administration	Mr Ronny TONG's views that -- (a) immovables were governed by the law of their situs; (b) the retention of RAP in Hong Kong was not essential given that almost all private land in Hong Kong was leasehold land held by the Government with a fixed lease term	
004103 - 004402	Mr Dennis KWOK Administration	Mr Dennis KWOK shared Mr Ronny TONG's view that it was not essential to retain RAP in Hong Kong.  Discussion on the amendments proposed by Mr KWOK to new section 41W concerning statutory control on trustees' exemption clauses (LC Paper No. CB(1)1235/12-13(01))	The Administration to take follow-up action as in paragraph 6 of the minutes
<u>Clause-by-clause examination of the Bill</u>			
004403 - 005347	Chairman Administration ALA7	<u>Clause 1 – Short title and commencement</u>  <u>Clause 2 – Trustee Ordinance amended</u>  <u>Clause 3 – Section 2 amended (interpretation)</u>  <u>Clause 4 – Section 3 amended (application)</u>  <u>Clause 5 – Part IA added</u>  <u>Clause 40 – Third and Fourth Schedules added</u>  The Administration's briefing on the above clauses  ALA7's enquiry on whether section 1(b) of the	The

Time marker	Speaker	Subject(s)	Action required
		new Third Schedule (Application of Statutory Duty of Care) should not include section 6 (discretion of trustees) of the Trustee Ordinance	Administration to take follow-up action as in paragraph 7 of the minutes
005612 - 005711	Administration Mr Dennis KWOK	<p><u>Clause 6 – Section 4 amended (authorized investments)</u></p> <p>The Administration's briefing on the clause</p> <p>Mr Dennis KWOK's enquiry on whether the requirement in section 4(1)(b) of the Trustee Ordinance that the authorization of trustees' investments should be made by the court on summary application in chambers was necessary; and if not, whether the relevant part of the provision would be removed</p>	The Administration to take follow-up action as in paragraph 5 of the minutes
005712 - 005854	Administration Mr Ronny TONG	<p><u>Clause 7 – Section 7 substituted</u></p> <p>The Administration's briefing on the clause.</p> <p>Mr Ronny TONG's enquiry on the definition and the application of statutory duty of care for trustees in the appointment of agents acting on behalf of trustees</p> <p>The Administration's response that --</p> <p>(a) the statutory duty of care pertained to that referred to in proposed section 3A and the standard was comparable to that of the United Kingdom; and</p> <p>(b) if the trustee had, inter alia, exercised statutory duty of care in the appointment of agent, the trustee could exculpate himself from any act or omission of the agent</p>	
005855 - 010819	Administration ALA7	<p><u>Clause 8 – repealed (investment in bearer securities)</u></p> <p><u>Clause 9 – Section 11 amended (powers supplementary to powers of investment)</u></p> <p>The Administration's briefing on the above clauses</p> <p>ALA7's enquiry about drafting of section 11(3)</p>	



Time marker	Speaker	Subject(s)	Action required
		and the Administration's response	
010820 - 012016	Administration Mr Dennis KWOK Chairman	<p><u>Clause 10 – Section 12 amended (power to deposit at bank and to pay calls)</u></p> <p><u>Clause 11 – Cross-heading before section 13 repealed</u></p> <p><u>Clause 12 – Part III, Division 1 heading added</u></p> <p><u>Clause 13 – Section 16 amended (power to do other acts)</u></p> <p><u>Clause 14 – Section 21 substituted</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the Hong Kong Bar Association's comments on the new section 21(3)</p>	
012017 - 012306	Administration Chairman	<p><u>Clause 15 – Section 22 amended (application of insurance money where policy kept up under any trust, power or obligation)</u></p> <p><u>Clause 16 – Section 23 repealed (deposit of documents for safe custody)</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Chairman's enquiry on the numbering arrangements and the Administration's response</p>	
012307 - 014416	Administration Chairman	<p><u>Clause 17 – Section 24 amended (reversionary interests, valuations, and audit)</u></p> <p><u>Clause 18 – Section 25 repealed (power to employ agents)</u></p> <p><u>Clause 19 – Section 27 amended (power to delegate trusts)</u></p> <p><u>Clause 20 – Cross-heading before section 28 repealed</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 21 – Part III, Division 2 heading added</u></p> <p><u>Clause 22 – Section 32 repealed (implied indemnity of trustees)</u></p> <p><u>Clause 23 – Cross-heading before section 33 repealed</u></p> <p><u>Clause 24 – Part III, Division 3 heading added</u></p> <p><u>Clause 25 – Sections 40A to 40D added</u></p> <p>The Administration's briefing on the above clauses</p> <p>The Chairman's enquiry about the arrangements under the existing law in case the continuing trustees did not consent to the retirement of a trustee on beneficiaries' direction</p> <p>The Administration's response that --</p> <p>(a) beneficiaries had to apply to the court for the retirement of a trustee; and</p> <p>(b) the proposed court-free mechanism was a new one which was not provided for in the present law</p>	
014417 - 015224	Administration Mr Dennis KWOK	<p><u>Clause 26 – Section 41 amended (vesting of trust property in new or continuing trustees)</u></p> <p><u>Clause 27 – Parts IVA to IVD added</u></p> <p>The Administration's briefing on the above clauses</p> <p>Discussion on the Hong Kong Bar Association's comments on the drafting of the new section 41B(1)</p>	
015225 - 015303	Chairman	Date of the next meeting	