

**For information  
on 22 April 2013**

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

**Supplementary Information arising from  
the Meeting on 9 April 2013**

**Purpose**

In response to Members' request at the third meeting of the Committee on 9 April 2013, this paper provides an overview on the considerations and rationale of the major legislative proposals in the Trust Law (Amendment) Bill 2013 ("the Bill"). This paper should be read in conjunction with the Legislative Council Brief (LC Paper No. G4/55/5C) ("LegCo Brief").

**Considerations and Rationale of the Proposals in the Bill**

2. Hong Kong is a major asset management centre in Asia. In view of recent trust law reforms by some major common law jurisdictions like the United Kingdom and Singapore, it is imperative for Hong Kong to modernize its trust law to facilitate trust administration and attract more trust businesses. In this regard, the Trustee Ordinance (Cap. 29) ("TO") and the Perpetuities and Accumulations Ordinance (Cap.257) ("PAO"), the two principal ordinances in the trust law regime in Hong Kong, have not been substantially reviewed or modified since their enactment in 1934 and 1970 respectively. Some of their provisions cannot meet the needs of present-day trusts.

3. We commenced a review of the trust law in 2008 and thereafter conducted public consultations in 2009 and 2012 on the broad direction and detailed legislative proposals respectively for modernizing the trust

law. The rationale and considerations of the proposals have been discussed at the Consultation Papers and Consultation Conclusions<sup>1</sup>. We briefed the Legislative Council (“LegCo”) Panel on Financial Affairs on the matter on four occasions<sup>2</sup>, and received general support from Members.

4. The legislative proposals in the Bill have taken into account feedback from Members and comments received in these consultations. The major proposals are elaborated in the following paragraphs.

#### *Enhancing trustees’ default powers*

5. The default powers of trustees in the existing TO and the common law are rather limited. By way of example, section 21 of the TO limits the default power of trustees to insure, as the insurance can only cover loss or damage by fire and typhoon. Also, trustee’s default powers to appoint agents to manage the trust property are of limited applicability. Unless expressly authorised by the settlor, a trustee may not be able to appoint agents even if the trusteeship requires different professional skills that the trustee does not possess.

6. In view of increasing complexity of present-day trusts, we propose to enhance the default powers of trustees under the TO so as to facilitate effective trust administration, which in turn would promote the interest of the beneficiaries. The Bill has provided for a default power to appoint agents, nominees and custodians. It has also widened the default power to insure, provided for remuneration of trustees acting in the course of a business or profession, and revised conditions for investment in shares under the Second Schedule. Further details of the proposals are set out in paragraph 7 of the LegCo Brief.

---

<sup>1</sup> The Consultation Papers and Consultation Conclusions are available at <http://www.fstb.gov.hk/fsb/ppr/consult/index.htm>.

<sup>2</sup> LegCo Panel on Financial Affairs was briefed on the 2009 consultation proposals and conclusions on 6 July 2009 and 1 March 2010 respectively, and the 2012 consultation proposals and conclusions on 2 April 2012 and 3 December 2012 respectively.

### *Appropriate checks and balances*

7. In parallel to the proposals for giving new default powers to trustees, we propose to introduce a new default statutory duty of care for trustees and other checks and balances, so that trustees will exercise their new powers properly and beneficiaries' interest will be better protected.

8. In particular, the Bill has provided for a clear statement of the standard of care to be expected of trustees, under which trustees acting in the course of a business or profession would be subject to a higher duty. The Bill has also imposed statutory control on trustees' exemption clauses in trust documents to the effect that those clauses seeking to exempt trustees from liability arising from fraud, wilful misconduct and gross negligence will be void. In addition, there will be checks and balances in relation to the appointment of agents, nominees and custodians, and beneficiaries will be allowed to appoint and retire trustees in a court-free process under specified circumstances. Further details of the proposals are set out in paragraph 8 of the LegCo Brief.

### *Other legislative proposals*

9. The Bill also contains a number of other legislative proposals which will modernize our trust law and bolster the competitiveness of Hong Kong as a trust domicile. In particular, in response to strong request by the trust industry and having considered the implications carefully, we have included in the Bill a provision to put it beyond doubt that a trust would not be invalidated because of the mere fact that the settlor has kept to the settlor power of investment or asset management functions. The Rule against Perpetuities ("RAP") and the Rule against Excessive Accumulations of Income ("REA") will also be abolished<sup>3</sup>. There will also be a provision in the Bill to the effect that foreign forced heirship rules will not affect the validity of a lifetime transfer of movable assets to a trust expressed to be governed by Hong Kong law. Further details of the proposals are set out in paragraph 9 of the LegCo Brief.

---

<sup>3</sup> The considerations for the abolition of RAP and REA are set out in LegCo Paper No. CB(1)869/12-13(02).

## **Advice Sought**

10. Members are invited to note the content of this paper.

**Financial Services and the Treasury Bureau**  
**17 April 2013**