

**For information
on 13 June 2013**

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

**Supplementary Information arising from
the Meeting on 4 June 2013**

PURPOSE

In response to Members' request at the sixth meeting of the Committee on 4 June 2013, this paper provides information in relation to the following –

- (a) the proposed statutory control on trustees' exemption clauses; and
- (b) section 6 of the Trustee Ordinance (Cap 29) ("TO").

**PROPOSED STATUTORY CONTROL ON TRUSTEES'
EXEMPTION CLAUSES**

2. We note Hon Dennis Kwok's proposed amendments to the new section 41W, which concerns the statutory control on trustees' exemption clauses. We understand that the amendments are proposed with reference to section 26 of the Mandatory Provident Fund Schemes Ordinance (Cap 485) ("MPFSO").

3. The model in section 26 of the MPFSO is one of the options put forward for public consultation in 2009 on the proposed statutory control on trustees' exemption clause. There was a view that the proposed regime is peculiar to a specific type of trusts and the rationale may not readily apply to all trusts¹. Also, during the public consultation in 2012, the majority of respondents who commented on the relevant provision preferred the threshold of "gross negligence" to that of "reckless" (which

¹ Raised by Hong Kong Bar Association.

is adopted in the model in section 26 of the MPFSO). We have considered the comments received during the consultations in drafting the current section 41W and consider it appropriate.

SECTION 6 OF THE TO

4. The proposed statutory duty of care applies to a trustee as provided in the Third Schedule to the TO. Our intention is that the statutory duty should apply to a trustee when exercising the power of investment. As section 6 of the TO only seeks to clarify the power under sections 4 and 5 (the exercising of which is covered by the statutory duty of care), we agree that section 6 should be deleted from the Third Schedule.

PROPOSED ABOLITION OF RULE AGAINST PERPETUITIES (“RAP”)

5. At the request of the Bills Committee, we have asked the Joint Committee on Trust Law Reform to provide further information to the Bills Committee on the reform of RAP in other jurisdictions. The Joint Committee will provide information to the Bills Committee directly.

ADVICE SOUGHT

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

Financial Services and the Treasury Bureau
10 June 2013