

Bills Committee on Trust Law (Amendment) Bill 2013

**Follow-up actions to be taken by the Administration
for the meeting on 13 June 2013**

Proposed abolition of the rule against perpetuities

1. Members noted the seven overseas trust jurisdictions, including The Bahamas, Cyprus, Guernsey, Jersey, etc., that had abolished the rule against perpetuities ("RAP"). They requested the Administration to advise whether the State of New York, the State of California and the State of Illinois were among the some 20 US States that had abolished RAP.

Clause-by-clause examination of the Bill

*Existing Section 4 of the Trustee Ordinance -- Authorized investments
(Follow-up action required for the meeting on 4 June 2013)*

2. Section 4(1)(b) stipulates that a trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in any other investment (including deposits in a bank outside Hong Kong) which may 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 necessary, whether the relevant part of the provision would be removed.

Spelling of "authorize"

3. The words "authorize" and "authorized" appear in many places in the Bill. The Administration was requested to advise whether it would consider unifying the spelling of these words as "authorise"/"authorised" (British spelling) in all Ordinances.

New section 41(I) -- Investment in bearer securities

4. New section 41(I)(4) provides that "Subsection (3) does not apply if the instrument creating the trust or an enactment contains a provision that (however expressed) permits the trustees to retain or invest in securities payable to bearer without appointing a person as a custodian." Members

requested the Administration to consider moving "(however expressed)" forward to follow "a provision".

Clause 41Y -- Transfer of movable property not affected by foreign law of inheritance

5. Section 41Y(1) stipulates that "This section applies in relation to a trust (whenever created) only if -- (a) the trust is expressed to be governed by Hong Kong law; and (b) at all times when the trust is in force, each trustee of the trust is either -- (i) an individual who ordinarily resides in Hong Kong; or (ii) a body corporate the central management and control of which is in Hong Kong.

6. Members opined that the coverage under (b) above could be widened to attract more trust business to operate in Hong Kong and suggested that "or (iii) a company incorporated in Hong Kong" be added to (b). The Administration was requested to provide written response to this suggestion; and, if the suggestion is not to be taken, the reasons.

Proposed Committee Stage Amendments

7. The Administration was requested to submit all the Committee Stage Amendments that it intends to move to the Bill Committee for members' consideration.

Council Business Division 1
Legislative Council Secretariat
17 June 2013