

**For information
on 18 June 2013**

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

**Supplementary Information arising from
the Meeting on 13 June 2013**

PURPOSE

This paper provides supplementary information in response to Members' request at the seventh meeting of the Committee on 13 June 2013.

**PROPOSED ABOLITION OF THE RULE AGAINST
PERPETUITIES (“RAP”)**

2. The Joint Committee on Trust Law Reform advised that the following states in the United States have either abolished the RAP or made it possible for settlors to elect out of it in the trust deed – District of Columbia, Illinois, Alaska, Delaware, Idaho, Kentucky, Louisiana, Maine, Michigan, Maryland, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia and Wyoming.

SECTION 4 OF TRUSTEE ORDINANCE (CAP 29) (“TO”)

3. A trustee may invest the trust fund in accordance with the provisions in the trust deed. If there are no such provisions in the trust deed, section 4 provides that a trustee may invest in any investment specified in the Second Schedule to the TO and in any other investment which may be authorised by the court on summary application for that purpose made in chambers. The existing requirement for a trustee to seek the court's authorization for making investment not provided for in

the trust deed and beyond the scope of the Second Schedule to the TO provides for an appropriate check and balance in the exercise of powers by the trustees. Section 4(1)(b) provides for a speedy procedure for trustees to seek authorization from the court on their investments and can facilitate the administration of trusts. This established procedure has been working well. We consider that there is no need to amend the provision.

SPELLING OF “AUTHORIZE”

4. Our drafting counsel advised that it is an established practice in law drafting in Hong Kong to adopt the “ize” spelling (as opposed to “ise” spelling). The use of “authorized” in the Trust Law (Amendment) Bill 2013 is in line with the established practice.

NEW SECTION 41I(4) – INVESTMENT IN BEARER SECURITIES

5. Section 41I(4) is modelled on section 18(2) of the Trustee Act 2000 of the United Kingdom (“UK”). Moving “(however expressed)” forward to follow the term “a provision” would not make any material difference and we consider that it is not necessary to amend the provision.

NEW SECTION 41Y

6. Members suggested that the application of the provision, instead of being confined to bodies corporate with central management and control in Hong Kong, should be extended to bodies corporate incorporated in Hong Kong so as to bring added benefits to Hong Kong. We consider this suggestion acceptable and will propose a Committee Stage Amendment to the provision accordingly.

TRUSTEES' EXEMPTION CLAUSES

7. Under the present law, the court would construe “gross negligence” in light of the circumstances of each case. As explained in LegCo Paper No CB(1)1275/12-13(02) and at the last meeting, we consider it not prudent to create a definition of the term in the trust law regime at this stage, pending further development of case law and given that it is important to consider carefully the possible implications of any proposed definition of the term on different stakeholders and their views on any such proposal. We are prepared to consider in the future if there is any need to include a definition for “gross negligence”.

ADVICE SOUGHT

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

Financial Services and the Treasury Bureau
17 June 2013