

**For information  
on 18 June 2013**

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

**Committee Stage Amendments proposed by the Administration**

Members are invited to examine the mark-up version of the provisions at **Annex**, with the Administration's proposed Committee Stage Amendments ("CSAs") marked thereto. The proposed CSAs cover the commencement date of the Amending Ordinance, amendment in response to Members' suggestion, drafting changes and consequential amendments.

2. The wording of the proposed amendments is subject to any refinement by the Law Draftsman.

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

**Clause 1**

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Trust Law (Amendment) Ordinance 2013.
- (2) This Ordinance comes into operation on 1 December 2013<sup>1</sup> ~~a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.~~

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<sup>1</sup> To specify the commencement date of the Amending Ordinance.

**Clause 27**

The newly added sections 41M, 41N and 41Y of the TO –

**41M. Review of agents**

- (1) While an agent continues to act for a trust, the trustees of the trust must—
  - (a) keep under review the arrangements under which the agent acts and the way in which those arrangements are being put into effect;
  - (b) if circumstances make it appropriate to do so, consider whether there is a need to exercise any power of intervention that the trustees have; and
  - (b) (如有關情況致使令到該等受託人適宜考慮是否有需要行使其干預權力屬適當<sup>2</sup>)須考慮是否有需要行使該項權力；及"
  - (c) if the trustees consider that there is a need to do so, exercise the power of intervention.
- (2) If an agent has been authorized to exercise asset management functions, the duty to review under subsection (1) includes—
  - (a) a duty to consider whether there is a need to revise or replace the policy statement made for the purposes of section 41F;
  - (b) if the trustees consider that there is a need to revise or replace the policy statement, a duty to do so; and
  - (c) a duty to assess whether the policy statement is being complied with.

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<sup>2</sup> Drafting amendment to the Chinese version to tally with the English text.

- (3) The trustees must carry out the review as frequently as the circumstances of the trust may require having regard to the nature of the functions required to be exercised by the agent.
- (4) Section 41F(3) and (4) applies to the revision or replacement of a policy statement under this section as it applies to the making of a policy statement under that section.
- (5) For the purposes of subsection (1)—  
*power of intervention* (干預權力) includes—
  - (a) a power to give directions to the agent; and
  - (b) a power to revoke the authorization or appointment of the agent.

#### **41N. Review of nominees and custodians**

- (1) While a nominee or custodian continues to act for a trust, the trustees of the trust must—
  - (a) keep under review the arrangements under which the nominee or custodian acts and the way in which those arrangements are being put into effect;
  - (b) if circumstances make it appropriate to do so, consider whether there is a need to exercise any power of intervention that the trustees have; and
  - (b) (如有關情況致使令到該等受託人適宜考慮是否有需要行使其干預權力屬適當<sup>3</sup>)須考慮是否有需要行使該項權力；及

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<sup>3</sup> Drafting amendment to the Chinese version to tally with the English text. Please also see the amendment to section 41M above.

- (c) if the trustees consider that there is a need to do so, exercise the power of intervention.
- (2) The trustees must carry out the review as frequently as the circumstances of the trust may require having regard to the nature of the functions required to be exercised by the nominee or custodian.
- (3) For the purposes of subsection (1)—  
***power of intervention*** (干預權力) includes—
  - (a) a power to give directions to the nominee or custodian; and
  - (b) a power to revoke the appointment of the nominee or custodian.

**41Y. Transfer of movable property not affected by foreign law of inheritance**

- (1) 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 incorporated or established in Hong Kong; or
    - (iii) a body corporate incorporated or established outside Hong Kong and<sup>4</sup> the central

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<sup>4</sup> Amendment introduced in response to Members' suggestion.

management and control of which is in Hong Kong.

- (2) A person who during his or her lifetime transfers any movable property to be held on trust (whenever created) is regarded as having the capacity to transfer the property if the person has capacity to do so under any of the following laws—
  - (a) the law applicable in Hong Kong;
  - (b) the law of the person's domicile or nationality; or
  - (c) the proper law of the transfer.
- (3) A law relating to inheritance or succession of a foreign jurisdiction does not affect the validity of the transfer of any movable property to be held on trust if the person transferring the movable property had the capacity to do so under subsection (2).
- (4) The reference to law in paragraph (a), (b) or (c) of subsection (2) does not include any choice of law rules that form part of the law in any of those paragraphs.”.

**Clause 36**

To amend section 77(2)(f) of the TO –

**77 Application by company to be registered as a trust company**

(2)(f) the company is able to meet its obligations, apart from its liability to its shareholders, without taking into account the ~~investments or~~<sup>5</sup> sum deposited under paragraph (e).

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<sup>5</sup> Consequential amendment to that of s 77(2)(e)(i).

**Clause 40**

Section 1 of the newly added Third Schedule to the TO –

1. The statutory duty of care applies to a trustee when—
  - (a) exercising the power of investment under section 4(1) or any other power of investment, however conferred;
  - (b) exercising the power under section 5, ~~6~~<sup>6</sup>, 11(1), (2), (3), (4) or (5), 12 or 41I; or
  - (c) continuing to hold an investment that has ceased to be an investment authorized by the instrument creating the trust or the general law as mentioned in section 7.

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<sup>6</sup> Removed for reason set out in paragraph 4 of CB(1)1275/12-13(02).



**New Clause**

To amend section 80 of the TO -

**80. Deposit to be held as security**

(1) From the time of the issue to any company of a certificate under section 78, ~~the investments or~~<sup>7</sup> the sum of money deposited under section 77 ~~shall must~~<sup>8</sup> be held as security for the depositors and creditors of the company and for the faithful execution of all trusts which may be accepted by or imposed upon the company and for its obligations generally. (Amended 23 of 1975 s. 3)

(2) If at any time, ~~by reason of the decline in value of any investments so held by the Director of Accounting Services or of increase of the gross liabilities of any trust company,~~<sup>7</sup> and <sup>8</sup> the Registrar of Companies is of opinion that a trust company should furnish<sup>8</sup> additional security ~~ought to be furnished by the trust company~~<sup>8</sup> because of the company's increase of its gross liabilities<sup>7</sup>, ~~he the Registrar~~<sup>8</sup> may order the company to make, within a period to be stated in the order, a further deposit of a sum of money (as investments (being investments<sup>7</sup> contemplated by section 77(2)(e)) of a specified ~~value amount~~<sup>8</sup> with the Director of Accounting Services:<sup>8</sup> (Amended 23 of 1975 s. 3)

~~(2A) Provided that t~~<sup>8</sup>he company may appeal ~~from such against the~~<sup>8</sup> order to the Chief Executive in Council, whose decision ~~is shall be~~<sup>8</sup> final. (Amended 18 of 1999 s. 3)

~~(3) A trust company may, with the approval of the Director of Accounting Services and subject to such terms as he may specify-~~

~~(a) substitute-~~

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<sup>7</sup> Consequential amendment to that of s 77(2)(e)(i).

<sup>8</sup> Drafting change.

~~(i) other investments contemplated by sub paragraph (i) of paragraph (e) of section 77(2) for all or any of the investments deposited with the Director of Accounting Services under that sub paragraph; or~~

~~(ii) a sum of money, as contemplated by sub paragraph (ii) of that paragraph, for the investments so deposited; or~~

~~(b) if the company has deposited a sum of money under sub paragraph (ii) of paragraph (e) of section 77(2), withdraw the sum and either—~~

~~(i) deposit it with another finance company; or~~

~~(ii) substitute for the sum of money so withdrawn investments contemplated by sub paragraph (i) of that paragraph. (Replaced 23 of 1975 s. 3)~~

(3) If a trust company has deposited a sum of money with an authorized institution or a finance company under section 77(2)(e), the trust company may, with the approval of the Director of Accounting Services and subject to the terms that the Director may specify, withdraw the sum and deposit it with another authorized institution or finance company referred to in that section.<sup>7 and 8</sup>

(4) All money accruing by way of ~~dividends or~~<sup>7</sup> interest ~~in respect of investments deposited with the Director of Accounting Services or~~<sup>7</sup> in respect of sums deposited with an authorized institution or<sup>7</sup> a finance company under this Part ~~shall~~<sup>8</sup> ~~must~~ be paid to the trust company which made the deposit. (Replaced 23 of 1975 s. 3)

(Amended L.N. 16 of 1977)