

File Ref.: G4/55/5C

LEGISLATIVE COUNCIL BRIEF

Trustee Ordinance
(Chapter 29)

Perpetuities and Accumulations Ordinance
(Chapter 257)

Trust Law (Amendment) Bill 2013

INTRODUCTION

At the meeting of the Executive Council on 29 January 2013, the Council **ADVISED** and the Chief Executive **ORDERED** that the Trust Law (Amendment) Bill 2013 (at Annex A) should be introduced into the Legislative Council (“LegCo”).

A

JUSTIFICATIONS

Enhancement of Hong Kong’s status as an international asset management centre

2. Hong Kong is a major asset management centre in Asia. As at the end of 2011, the trust industry held assets of an estimated HK\$2,600 billion^{Note (1)}. In view of recent trust law reforms by some major common law jurisdictions like the United Kingdom (“UK”) and Singapore to facilitate trust administration and attract more trust businesses, it is imperative for Hong Kong to modernise its trust laws in these aspects.

^{Note (1)} According to a survey conducted by the Hong Kong Trustees’ Association in 2012.

3. The trust law regime in Hong Kong is mainly based on common law, supplemented principally by the Trustee Ordinance (Cap 29) (“TO”) and the Perpetuities and Accumulations Ordinance (Cap 257) (“PAO”). These two ordinances have not been substantially reviewed or modified since their enactment in 1934 and 1970 respectively. Some of their provisions are outdated and cannot meet the needs of present-day trusts. Following a review of the TO and PAO having regard to the various modernisation proposals put forward by the trust industry and the recent trust law reform of the UK and Singapore, and based on the general support for the proposed modernisation exercise during the first public consultation in 2009, the Administration conducted a second public consultation in 2012 on the detailed legislative proposals to amend the TO and the PAO. The proposals in the Bill have taken into account feedback from the industry and other stakeholders. The major proposals are elaborated in paragraphs 6 to 9 below.

4. In this connection, our proposals seek to bolster the competitiveness of Hong Kong’s trust services industry and attract settlors to set up trusts in Hong Kong, which will in turn enhance Hong Kong’s status as an international asset management centre.

Scope of the Bill

5. In gist, the Bill seeks to modify the common law position and update existing legislation in certain specific aspects of our trust law regime, viz. to facilitate effective administration of trusts through enhancing trustees’ default powers; to provide for appropriate checks and balances so that trustees will exercise the new powers properly; to provide for validity of certain trusts; to abolish the rule against perpetuities and to change the rule against excessive accumulation of income. The scope of the Bill does not cover the common law rules with respect to how a trust is constituted and when a person is to be regarded as a settlor, trustee, or beneficiary. There will also be no change to other aspects of trust law or legislation not specifically covered by the Bill.

Key Legislative Proposals

Enhancing trustees' default powers

6. Trustees derive their powers to administer a trust mainly from the instrument creating the trust, the TO or any other enactment. As far as trustees' powers are concerned, the TO only provides the default position. The default powers conferred by the TO on trustees will only apply subject to the terms of the instruments creating the trust or any enactment. 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 administration of trusts in case the trust instruments do not contain specific provisions.

7. We propose to enhance trustees' default powers in the following aspects -

- (a) *power to appoint agents, nominees and custodians*: due to the increasingly sophisticated and multifarious activities of present-day trusts, trusteeship may require different professional skills that trustees may not possess. Under the TO, trustees' default powers to appoint agents or custodians to manage the trust property are of limited applicability. To facilitate effective administration of trusts, trustees should be given a general power to appoint agents, nominees and custodians to perform their functions other than the more important ones specified in the law ("the non-delegable functions"). For trusts that are not charitable trusts, the non-delegable functions are proposed to include the functions relating to the distribution of trust assets and the appointment of other trustees, etc. For charitable trusts, in view of the public nature of the needs that they meet, we propose that their trustees be given a default power to appoint agents to perform only those functions which relate to the investment of assets, raising of funds and implementing decisions of the trustees;
- (b) *power to insure*: section 21 of TO limits the default power of trustees to insure, as the insurance can only cover loss or damage by fire and typhoon. It is also unclear under the TO whether trustees may insure up to the market value or full replacement value of the property concerned. This is considered unduly

restrictive in present-day circumstances. We propose to widen and clarify trustees' default power to insure by empowering them to insure the trust property against risk of loss or damage caused by any event and by removing restrictions on the amount of insurance that the trustees may take out;

- (c) *entitlement to receive remuneration*: under the common law, trustees are not permitted to receive remuneration unless they are authorised by the trust instruments or other circumstances ^{Note (2)}, and trustees acting in a business or profession are not permitted to receive remuneration in respect of services that are capable of being provided by lay trustees unless they are expressly allowed to do so. There are increasing concerns that the common law position may lead to trusts not being able to appoint trustees with professional knowledge even if the administration of the trusts so warrants, and this may undermine the interest of the beneficiaries and impact on the attractiveness of Hong Kong as an asset management centre. Some comparable common law jurisdictions have already amended their trust laws in this regard. Having regard to overseas experience and specific provisions in their legislation, we propose to introduce statutory provisions enabling trustees acting in a business or profession to receive remuneration under specific circumstances stipulated in law. The proposal would have the effect that, if the trust instrument has provided for remuneration, a trustee acting in a business or profession may, subject to inconsistent terms in the instrument, receive remuneration out of the trust funds in respect of services provided even if the services are capable of being provided by a lay trustee. Where the trust instrument is silent on remuneration, a trustee acting in a business or profession may receive reasonable remuneration out of the trust funds for the services provided. There will be provisions for checks and balances, including certain restrictions on the application of the provision on trustees of charitable trusts, given the public nature of the needs that they meet; and
- (d) *scope of authorised investments*: in the absence of express provisions in the trust instruments, trustees may invest any trust funds in authorized investments specified in the Second Schedule

^{Note (2)} Apart from the trust instrument, authorisation for remuneration may also come from an order of the court, the beneficiaries, etc.

to the TO. In response to suggestions for changes made by the trust industry and in consultation with relevant financial regulators, we propose to revise the conditions regarding investment in shares as follows:-

- (i) to lower the market capitalisation of shares from HK\$10 billion to HK\$5 billion; and
- (ii) to replace the current five-year dividend requirement by a dividend requirement in any three of the previous five years, and to accept dividends in forms other than cash for the purposes of satisfying the dividend requirement.

We also propose to take this opportunity to stipulate expressly that the list of default authorized investments does not cover structured products, as defined in the Securities and Futures Ordinance (Cap 571), having regard to the risk of these financial products.

Appropriate checks and balances

8. In parallel to the proposal 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. Our proposals include -

- (a) *statutory duty of care*: case law has established that, in the investment of trust funds, appointment of agents and administration of trust property, trustees owe beneficiaries a duty of care, and the English courts have further expressed the view that a higher standard should be owed by paid trustees or trustees acting in a professional capacity. Such duty of care under the general law can be excluded or modified by the trust instrument. We propose to provide for a clear statement of the standard of care to be expected of trustees. The proposed standard is that a trustee must exercise such care and skill as is reasonable in the circumstances, having regard in particular to any special knowledge or experience that the trustee has or that is held out by the trustee as having; and if the trustee is acting in the course of a business or profession, having regard to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession. Subject to the terms of the trust

instruments, the statutory duty of care will apply to trustees when they are exercising the powers and duties in relation to making investments, appointment of agents, nominees and custodians, taking out insurance, etc. The default statutory duty of care, when it is applicable, will replace the existing common law duty of care which might otherwise have applied. As settlors should be given greater flexibility to reflect their intention in the trust instrument, and having considered overseas experience as well as existing common law position, we consider that the proposed statutory duty of care should be default in nature (i.e. the duty can be excluded or modified by the trust instrument) and should not be mandatory;

- (b) *statutory control on exemption clause in relation to trustees acting in a business or profession*: under the common law, a trustees' exemption clause in the trust instrument can validly exempt trustees from liability of all breaches of trust except fraud. We note the increasing use of wide exemption clauses by trustees and it is not inconceivable that in some cases, settlors may not be aware of the trustees' exemption clauses in the trust instruments nor be able to comprehend their purpose or effect. To better protect beneficiaries in the event of a breach of trust, we propose to subject trustees' exemption clauses to statutory control if the clauses seek to exempt trustees from liability arising from fraud, willful misconduct and gross negligence, i.e. the exemption clauses will be void in these cases. Given the mandatory nature of the provision, we consider it more appropriate to confine its application to trustees who act in a business or profession and are remunerated. The proposed statutory control on trustees' exemption clauses will apply to trusts whether created before or after the commencement of the Bill when enacted ^{Note (3)};
- (c) *checks and balances in relation to the appointment of agents, nominees and custodians*: in connection with the proposed wider default powers for trustees to appoint agents, nominees and custodians, we propose that in addition to the statutory duty of care, trustees should be required by law to give clear guidance to their agents who are delegated with asset management functions, i.e. functions relating to the investment of trust assets and the

^{Note (3)} To allow trustees of existing trusts to prepare for the implementation of the statutory control on exemption clauses, the statutory control will take effect one year after the commencement of the Bill.

acquisition, disposal and management of trust property. Trustees will have a duty to review arrangements under which their agents, nominees and custodians act. There will also be certain restrictions on the choice of nominees and custodians. Regarding the existing power for a person who is an individual trustee to temporarily delegate the trusts, powers and discretions vested in the person as trustee, we will require that, if a trust has more than one trustee, a delegation should not result in having only one attorney or one trustee administering the trust, unless that attorney or trustee is a trust corporation. This will better reflect the settlor's intention of having more than one trustee to administer the trust; and

- (d) *beneficiaries' rights to appoint and retire trustees*: under the common law, beneficiaries of full age and capacity and are absolutely entitled to the trust property may act together to terminate the trust through court proceedings. However, the process would normally be costly and time-consuming, and there may be cases where the beneficiaries may wish to replace a trustee without terminating the trust. We propose to provide beneficiaries with the right to appoint and retire trustees by way of a court-free process.

Other proposals

9. Apart from the proposals mentioned in paragraphs 6 to 8, we propose to amend our trust laws in the following areas -

- (a) *reserved powers by settlors*: it is generally acceptable under the common law for a settlor to reserve to the settlor some (but not excessive) powers to control the trust property. We propose to amend the TO 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. We will also provide in the TO that where an investment power or asset management function has been reserved by the settlor, a trustee who has acted in accordance with the exercise of the power is exempt from liability;

- (b) *abolition of the rule against perpetuities (“RAP”) and the rule against excessive accumulations of income (“REA”)*: under the common law, RAP dictates that the interest in trust properties must vest in the beneficiaries not later than 21 years after the termination of the life of a specified individual at the time of the creation of such interest, otherwise the interest may fail. The common law rules were modified by the PAO, which provides for an alternative fixed perpetuity period of 80 years and for the mitigation of strictness of the RAP. On the other hand, REA stipulates that settlors may choose one of the six statutory accumulation periods ^{Note (4)} for which the income of a trust may be accumulated. However, the rules are complex and do not meet present-day needs. Having regard to overseas legislation, and possible implications on existing trusts, we propose to abolish the RAP and REA with prospective effect for all new non-charitable trusts, and allow settlors to set up perpetual trusts in Hong Kong. On the other hand, we propose to retain certain restrictions on accumulations of income for new charitable trusts so that the income will be applied for the intended charitable purposes; and
- (c) *provision against forced heirship rules*: forced heirship rules are mandatory rules typically found in some civil law jurisdictions to restrict the freedom of testators in determining how to pass their estate on their death. In essence, they require a particular portion of the estate be reserved for designated categories of heirs. If there is not enough left in the estate to satisfy the indefeasible portions of the aforesaid heirs, property in trusts set up by the testator during his or her lifetime may be clawed back to make up for the shortfall. We have commissioned a consultancy study on the possibility of introducing provisions against forced heirship rules in Hong Kong. The study concludes that such a statutory change could help reassure potential settlors that their Hong Kong

Note (4) Briefly, the six accumulation periods are, subject to certain conditions, -

- (a) the life of the settlor; or
- (b) a term of 21 years from the death of the settlor; or
- (c) the duration of the minority of any person in being at the death of the settlor; or
- (d) the duration of the minority only of any person who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated; or
- (e) a term of 21 years from the date of the making of the disposition; or
- (f) the duration of the minority of any person in being at the date of the making of the disposition.

lifetime trusts will be protected from forced heirship rules. In response to strong request by the trust industry and having considered the implications carefully, including the possibility to enhance Hong Kong's attractiveness as a domicile for trusts, we propose to introduce a statutory provision 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.

Interface with the Mandatory Provident Fund Schemes Ordinance (Cap 485)

10. It should be noted that the Mandatory Provident Fund Schemes will continue to be regulated by the Mandatory Provident Fund Schemes Ordinance (Cap 485) ("MPFSO"). The MPFSO contains express provisions on the duties and powers etc. of approved trustees and the legislation is enforced by the Mandatory Provident Fund Schemes Authority. There are provisions in the Bill to the effect that our proposals will be subject to the provisions in the MPFSO.

THE BILL

11. The Trust Law (Amendment) Bill is divided into four parts -

- (a) Part 1 sets out preliminary provisions such as definitions and the short title and provides for the commencement of the Bill.
- (b) Part 2 contains amendments to the TO -
 - (i) *Statutory duty of care*: the new section 3A provides for the new statutory duty of care for trustees. The circumstances under which the statutory duty will apply are set out in the new Third Schedule.
 - (ii) *Power to insure*: the amended section 21 empowers a trustee to insure any trust property against loss or damage caused by any event and removes restrictions on the amount of insurance that the trustees may take out, and pay the insurance premium out of the income or capital funds of the trust.

- (iii) *Restrictions on power to delegate:* the amended section 27 clarifies the commencement of the period of delegation and provides that, for trusts having more than one trustee, exercise of a trustee's default power of delegation should not result in the trust having only one attorney or one trustee administering the trust, unless the attorney or trustee is a trust corporation.
- (iv) *Beneficiaries' right to appoint and retire trustees:* the new sections 40A to 40D enable all beneficiaries (or the sole beneficiary, as the case may be) under specified circumstances to appoint as well as retire trustees if all beneficiaries are of full age and capacity and are absolutely entitled to the trust property.
- (v) *Appointment of agents, custodians and nominees and associated requirements:* the new sections 41A to 41P provide for wider default powers of trustees to appoint agents, custodians and nominees, and specify requirements in relation to the appointment, including the trustees' duty to review the arrangements.
- (vi) *Remuneration of trustees acting in a business or profession:* the new sections 41S and 41T provide that in specific situations, trustees acting in a business or profession are entitled to charge remuneration for their services rendered to the trust.
- (vii) *Statutory control of trustees' exemption clauses:* the new section 41W provides that a remunerated trustee acting in a profession or business is not exempt from liability for a breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence.
- (viii) *Reserved powers by settlors:* the new section 41X makes it clear that a trust is not invalidated by reason only of the settlor reserving to the settlor powers of investment or asset management functions.
- (ix) *Anti-forced heirship rules provision:* the new section 41Y ensures certainty on the validity of a transfer of movable

properties to a trust which is expressly governed by Hong Kong law.

- (x) *Scope of authorized investments:* the amended Second Schedule relaxes the investment restriction on trustees in default situations insofar as it relates to the market capitalization and dividend requirements of shares. It is also expressly stipulated that the list of default authorized investments does not cover structured products.
 - (xi) *Other amendments:* the new Third and Fourth Schedules stipulate the circumstances in which the statutory duty of care applies and the transitional and saving provisions respectively.
- (c) Part 3 contains amendments to the PAO. A new part 2 is added to the PAO (containing sections 3A, 3B and 3C applicable to new instruments) -
- (i) *Abolition of the RAP:* A new section 3A provides that the RAP and REA cease to have effect in relation to instruments creating trusts or special powers of appointment taking effect on or after the commencement of this Amendment Ordinance. The new Section 3A also allows a trust to continue in existence for an unlimited period of time (the exception is a non-charitable purpose trust^{Note (5)} as described in the new section 3C) unless the terms of the trust provide to the contrary. The existing provisions in the PAO are relocated to a new Part 3 of PAO and would only be applicable to existing instruments which may last for years. This approach will be user-friendly to statute users in enabling their continuous access to the existing provisions.
 - (ii) *Abolition of the REA:* The new section 3A abolishes the REA. However, the new section 3B maintains certain restrictions on accumulations of income of charitable trusts.

Note (5)

There are only a few exceptions under case law, such as trusts for the caring of specific animals.

- (d) Part 4 contains related and consequential amendments to the Enduring Powers of Attorney Ordinance (Cap 501) and its subsidiary legislation.

B The existing provisions to be amended are at Annex B.

LEGISLATIVE TIMETABLE

12. The legislative timetable is as follows -

Publication in the Gazette	8 February 2013
First Reading and commencement of Second Reading debate	20 February 2013
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

- C 13. The proposal has economic implications as set out at Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, civil service, productivity, environmental or sustainability implications. The amendments proposed in the Bill will not affect the current binding effect of the TO and PAO.

PUBLIC CONSULTATION

14. We conducted a public consultation on the broad direction for modernising the trust laws in Q2-Q3 2009, and briefed the LegCo Panel on Financial Affairs on the 2009 consultation proposals and the consultation conclusions on 6 July 2009 and 1 March 2010 respectively. Members of the Panel were generally supportive of the proposed modernisation exercise. We conducted another public consultation on the detailed legislative proposals in Q1-Q2 2012 to solicit the views of the public and stakeholders including the trust industry, relevant professional bodies and practitioners, chambers of commerce, financial services regulators, major charitable

organisations and academics. The majority of respondents were generally in support of the legislative proposals, considering them important for enhancing Hong Kong's status as an international asset management centre. We also briefed the LegCo Panel on Financial Affairs on the 2012 consultation proposals and the consultation conclusions on 2 April 2012 and 3 December 2012 respectively. Members of the Panel generally supported the proposal to modernise our trust laws.

PUBLICITY

15. A press release will be issued when the Bill is gazetted on 8 February 2013 and a spokesman will be available to handle media enquiries.

BACKGROUND

16. The trust industry in Hong Kong, represented by the Joint Committee on Trust Law Reform, submitted a package of proposals to the Administration in August 2007 advocating a review of our trust laws. The Administration set out the broad direction of proposed changes to the TO and the PAO in mid-2009 for public consultation. The Administration also consulted the public on detailed legislative proposals in 2012. Respondents indicated general support for the legislative exercise.

ENQUIRIES

17. Enquiries relating to this brief can be directed to Mr Arsene Yiu, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 6384.

Financial Services and the Treasury Bureau
6 February 2013

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Clause

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A BILL

To

Amend the Trustee Ordinance and the Perpetuities and Accumulations Ordinance to extend trustees' powers in certain aspects; to impose a statutory duty of care on trustees; to provide for the validity of certain trusts; to abolish the rule against perpetuities; to change the rule against excessive accumulations of income; and to provide for related and consequential amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

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 a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

Part 2**Amendments to Trustee Ordinance****2. Trustee Ordinance amended**

The Trustee Ordinance (Cap. 29) is amended as set out in this Part.

3. Section 2 amended (interpretation)

- (1) Section 2, English text, definition of *trust for sale*—

Repeal the full stop

Substitute a semicolon.

- (2) Section 2—

Add in alphabetical order

“2013 amending Ordinance (《2013 年修訂條例》) means the Trust Law (Amendment) Ordinance 2013 (of 2013);

body corporate (法人團體) means a body corporate incorporated or established in Hong Kong or elsewhere;

statutory duty of care (法定謹慎責任), in relation to a trustee, means the duty of care required to be exercised by the trustee under section 3A as read with the Third Schedule;

trust funds (信託基金) means any income or capital funds of a trust.”.

4. Section 3 amended (application)

Section 3—

Repeal subsections (1) and (2)

Substitute

“(1) This Ordinance applies to trusts (whenever created) including, so far as this Ordinance applies, executorships and administratorships whenever constituted.

- (2) Subject to subsection (2A), the powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument creating the trust or an enactment.

(2A) The powers conferred by this Ordinance on trustees—

- (a) apply if, and so far only as, a contrary intention is not expressed in the instrument creating the trust or an enactment; and
- (b) have effect subject to the terms of that instrument or enactment.

(2B) Subsections (1) and (2) have effect except as otherwise stated in this Ordinance.”.

5. Part IA added

After section 3—

Add

“Part IA**Statutory Duty of Care****3A. Statutory duty of care**

- (1) If the statutory duty of care applies to a trustee as provided in the Third Schedule, the trustee must exercise the care and skill that is reasonable in the circumstances, having regard to—

- (a) any special knowledge or experience that the trustee has or holds out as having; and

- (b) if the trustee is acting in that capacity in the course of a business or profession, any special knowledge or experience that is reasonably expected of a person acting in the course of that kind of business or profession.
- (2) If the statutory duty of care applies to a trustee when exercising a power or doing an act, that duty has effect in place of any common law rules and equitable principles regarding the duty and standard of care owed by the trustee to the beneficiaries of the trust when exercising the power or doing the act.
- (3) The statutory duty of care does not apply to a trustee if, or in so far as, it appears from the instrument creating the trust or an enactment that the duty is not meant to apply.
- (4) The statutory duty of care does not apply in relation to a trust created before the commencement date of this section in so far as provision to the effect that subsection (1) does not apply is made by a deed executed—
 - (a) if the trust was created by a person who is of full capacity, by that person;
 - (b) if the trust was created by more than one person, by all the persons who are of full capacity; or
 - (c) if none of the persons creating the trust is of full capacity, by—
 - (i) the sole beneficiary under the trust who is absolutely entitled to the property subject to the trust and—
 - (A) is an individual of full age and capacity; or

- (B) is a body corporate whose constitution does not prohibit it from exercising the power under this section; or
- (ii) all the beneficiaries under the trust who (taken together) are absolutely entitled to the property subject to the trust and each of whom is either—
 - (A) an individual of full age and capacity; or
 - (B) a body corporate whose constitution does not prohibit it from exercising the power under this section.”.

6. Section 4 amended (authorized investments)

Section 4(1)(a)—

Repeal the semicolon

Substitute

“subject to the compliance with any condition specified in relation to the investment in that Schedule;”.

7. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Retention of unauthorized investment

A trustee is not liable for a breach of trust only because of the trustee’s continuing to hold an investment which has ceased to be an investment authorized by the instrument creating the trust or the general law if the trustee has discharged the statutory duty of care in doing so.”.

8. Section 8 repealed (investment in bearer securities)

Section 8—

Repeal the section.**9. Section 11 amended (powers supplementary to powers of investment)**

(1) Section 11(3)—

Repeal

“and shall not be”

Substitute

“and if the trustees have discharged the statutory duty of care, the trustees are not”.

(2) Section 11(4)—

Repeal

everything after “first-mentioned”

Substitute

“securities.”.

(3) After section 11(4)—

Add

“(4A) The trustees are not responsible for any loss occasioned by an act or thing done under subsection (4) if they have discharged the statutory duty of care in doing so.

(4B) The trustees may retain any securities accepted under subsection (4) for a period for which they could have properly retained the original securities.”.

(4) Section 11—

Repeal subsection (5)**Substitute**

“(5) If a conditional or preferential right to subscribe for securities in a company is offered to trustees for any holding in the company, the trustees may, for all or any of the securities—

(a) exercise the right and apply the trust funds in payment of the consideration;

(b) renounce the right;

(c) assign for the best consideration that can be reasonably obtained the benefit of the right, or the title to the right, to any person, including a beneficiary under the trust.

(5A) The trustees are not responsible for any loss occasioned by an act or thing done under subsection (5) if they have discharged the statutory duty of care in doing so.”.

10. Section 12 amended (power to deposit at bank and to pay calls)

Section 12—

Repeal subsection (2)**Substitute**

“(2) Trustees may apply the trust funds of the trust in payment of a call on any shares subject to the trust.”.

11. Cross-heading before section 13 repealed

Cross-heading before section 13—

Repeal the cross-heading.**12. Part III, Division 1 heading added**

Before section 13—

Add

“Division 1—General Powers”.**13. Section 16 amended (power to do other acts)**

Section 16—

Repeal

everything after “other things as to”

Substitute

“the personal representative, trustees or sole acting trustee seem expedient, without being responsible for any loss occasioned by an act or thing done under this section if the personal representative, trustees or sole acting trustee has or have discharged the statutory duty of care in doing so.”.

14. Section 21 substituted

Section 21—

Repeal the section**Substitute****“21. Power to insure**

- (1) The trustee of a trust may—
 - (a) insure any property that is subject to the trust against loss or damage due to any event; and
 - (b) pay the premiums out of the trust funds.
- (2) If a property is held on a bare trust, the power to insure the property is subject to any direction given by the sole beneficiary or (if more than one beneficiary) each of the beneficiaries that—
 - (a) the property is not to be insured; or
 - (b) the property is not to be insured except on the conditions specified in the direction.

- (3) For the purpose of subsection (2), a property is held on a bare trust if it is held on trust for—
 - (a) the sole beneficiary under the trust who is absolutely entitled to the property subject to the trust and—
 - (i) is an individual of full age and capacity; or
 - (ii) is a body corporate whose constitution does not prohibit it from exercising the power under this section; or
 - (b) all the beneficiaries under the trust who (taken together) are absolutely entitled to the property subject to the trust and each of whom is either—
 - (i) an individual of full age and capacity; or
 - (ii) a body corporate whose constitution does not prohibit it from exercising the power under this section.
- (4) If a direction under subsection (2) is given, the power to insure, so far as it is subject to the direction, ceases to be a delegable function for the purpose of section 41B (power to appoint agents).”.

15. Section 22 amended (application of insurance money where policy kept up under any trust, power or obligation)

Section 22(1)—

Repeal

“whether by fire or otherwise.”.

16. Section 23 repealed (deposit of documents for safe custody)

Section 23—

Repeal the section.

17. Section 24 amended (reversionary interests, valuations, and audit)**(1) Section 24(1)—****Repeal**

“so done by them in good faith”

Substitute

“done by them under this section if the trustees have discharged the statutory duty of care in doing so”.

(2) Section 24(2)(a)—**Repeal**

“as aforesaid”

Substitute

“as referred to in subsection (1)”.

(3) Section 24(2)—**Repeal**

“to be taken:”

Substitute

“to be taken.”.

(4) Section 24(2)—**Repeal the proviso.****(5) After section 24(2)—****Add**

“(2A) Subsection (2) does not relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on its falling into possession.”.

(6) Section 24(3)—**Repeal**

“so made in good faith shall be binding upon all persons interested under the trust”

Substitute

“made by them under this section is binding on all persons interested under the trust if the trustees have discharged the statutory duty of care in making the valuation”.

(7) Section 24(4)—**Repeal**

everything after “give such information to”

Substitute

“the accountant as the accountant may require.”.

(8) After section 24(4)—**Add**

“(5) The costs of the examination or audit referred to in subsection (4), including the fee of an auditor, are to be paid out of the trust funds.”.

18. Section 25 repealed (power to employ agents)

Section 25—

Repeal the section.**19. Section 27 amended (power to delegate trusts)****(1) Section 27, heading—****Repeal**

“Power to delegate trusts”

Substitute

“Individual trustee’s delegation by power of attorney”.

- (2) Section 27(1)—

Repeal

“for a period not exceeding 12 months”.

- (3) After section 27(1)—

Add

“(1A) A delegation under this section—

- (a) commences as provided by the instrument creating the power of attorney or, if the instrument makes no provision as to commencement of the delegation, on the date of the execution of the instrument by the donor of the power; and
- (b) continues for a period of 12 months or, if a shorter period is provided by the instrument creating the power of attorney, the shorter period.”.

- (4) Section 27(2)—

Repeal

“but not (unless a trust corporation) the only other co-trustee of the donor of the power”.

- (5) After section 27(2)—

Add

“(2A) If a trust has more than one trustee, the exercise of the power of delegation must not result in the trust having only 1 donee under a power of attorney or 1 trustee administering the trust, unless the donee or trustee is a trust corporation.”.

- (6) Section 27(4), English text—

Repeal

“some only”

Substitute

“only some trusts, powers and discretions”.

- (7) After section 27(8)—

Add

“(9) This section as in force immediately before the commencement date of the 2013 amending Ordinance continues to apply to a power of attorney created before the commencement date, as if this section had not been amended.”.

20. Cross-heading before section 28 repealed

Cross-heading before section 28—

Repeal the cross-heading.**21. Part III, Division 2 heading added**

Before section 28—

Add**“Division 2—Indemnities”.****22. Section 32 repealed (implied indemnity of trustees)**

Section 32—

Repeal the section.**23. Cross-heading before section 33 repealed**

Cross-heading before section 33—

Repeal the cross-heading.**24. Part III, Division 3 heading added**

Before section 33—

Add

“Division 3—Maintenance, Advancement and Protective Trusts”.

25. Sections 40A to 40D added

After section 40—

Add

“40A. Appointment and retirement of trustees on beneficiaries’ directions

- (1) This section applies in relation to a trust if—
- (a) no person is nominated for the purpose of appointing new trustees by the instrument creating the trust or an enactment; and
 - (b) either—
 - (i) the sole beneficiary under the trust is absolutely entitled to the property subject to the trust and—
 - (A) is an individual of full age and capacity; or
 - (B) is a body corporate whose constitution does not prohibit it from exercising the power under this section; or
 - (ii) all the beneficiaries under the trust (taken together) are absolutely entitled to the property subject to the trust and each of whom is either—
 - (A) an individual of full age and capacity; or
 - (B) a body corporate whose constitution does not prohibit it from exercising the power under this section.

- (2) The sole beneficiary or all the beneficiaries may give either or both of the following directions—
 - (a) a written direction to a trustee directing the trustee to retire from the trust;
 - (b) a written direction to a sole trustee or all the trustees for the time being or, if there is none, to the personal representative of the last person who was a trustee, directing the sole trustee, trustees or the personal representative to appoint by writing a person specified in the direction as a trustee.
- (3) A trustee to whom a direction under subsection (2)(a) has been given must make a deed declaring the trustee’s retirement if—
 - (a) reasonable arrangements have been made for the protection of any rights of the trustee in connection with the trust;
 - (b) after the trustee has retired, there will be either a trust corporation or at least 2 persons to act as trustees of the trust; and
 - (c) either—
 - (i) another person is to be appointed as a new trustee on the trustee’s retirement (whether in compliance with a direction given under subsection (2)(b) or otherwise); or
 - (ii) the continuing trustees by deed consent to the retirement.
- (4) When the deed declaring the trustee’s retirement is made—
 - (a) the retirement takes effect and the trustee is discharged from the trust; and

- (b) the trustee and the continuing trustees (together with any new trustee) must (subject to any arrangement for the protection of the rights of the retiring trustee) do anything necessary to vest the property subject to the trust in—
 - (i) the continuing trustees; or
 - (ii) the continuing trustees and new trustees.
- (5) This section has effect subject to the restrictions imposed by section 36 on the number of trustees.

40B. Appointment of substitute for incapacitated trustee

- (1) This section applies in relation to a trust if—
 - (a) a trustee, because of mental incapacity as defined by section 2(1) of the Mental Health Ordinance (Cap. 136), is incapable of exercising the trustee's functions (*the incapacitated trustee*);
 - (b) no person is entitled, willing and able to appoint, under section 37(1), a new trustee in place of the incapacitated trustee; and
 - (c) either—
 - (i) the sole beneficiary under the trust is absolutely entitled to the property subject to the trust and—
 - (A) is an individual of full age and capacity; or
 - (B) is a body corporate whose constitution does not prohibit it from exercising the power under this section; or
 - (ii) all the beneficiaries under the trust (taken together) are absolutely entitled to the

- property subject to the trust and each of whom is either—
 - (A) an individual of full age and capacity; or
 - (B) a body corporate whose constitution does not prohibit it from exercising the power under this section.
- (2) Either the sole beneficiary or all the beneficiaries may give a written direction to the specified attorney or committee to appoint a person specified in the direction to be a new trustee in place of the incapacitated trustee.
- (3) In subsection (2)—
 - (a) the specified attorney is an attorney acting for the incapacitated trustee under an enduring power of attorney; and
 - (b) the specified committee is a committee of the estate or other person acting for the incapacitated trustee appointed or authorized by the court under Part II of the Mental Health Ordinance (Cap. 136).

40C. Provisions supplementary to sections 40A and 40B

- (1) For the purposes of sections 40A and 40B, a direction is given by all the beneficiaries if—
 - (a) a single direction is jointly given by all of them; or
 - (b) in compliance with subsection (2), a direction is given by each of them (whether solely or jointly with one or more, but not all, of the others), and none of them by writing withdraws the direction given before it has been complied with.
- (2) If more than one direction is given, each beneficiary must specify for the appointment or retirement the same person or persons.

- (3) Section 37(7) (providing for the powers, authorities and discretions of new trustees) applies to a trustee appointed under section 40A or 40B as if the trustee were appointed under section 37.

40D. Application of sections 40A and 40B

- (1) Sections 40A and 40B do not apply in relation to a trust if a contrary intention is expressed in the instrument creating the trust or an enactment.
- (2) Sections 40A and 40B do not apply in relation to a trust created before the commencement date of those sections in so far as provision to the effect that those sections do not apply is made by a deed executed—
- (a) if the trust was created by a person who is of full capacity, by that person; or
 - (b) if the trust was created by more than one person, by all the persons who are of full capacity.
- (3) A deed executed for the purpose of subsection (2) is irrevocable.
- (4) If a deed is executed for the purpose of subsection (2)—
- (a) the deed does not affect anything done before its execution to comply with a direction given under section 40A or 40B; but
 - (b) a direction given under section 40A or 40B that has not been complied with before the execution of the deed ceases to have effect.
- (5) Sections 40A and 40B do not apply to the appointment and retirement of a personal representative.”.

26. Section 41 amended (vesting of trust property in new or continuing trustees)

Section 41(2)—

Repeal

“the statutory power”

Substitute

“section 40 or 40A”.

27. Parts IVA to IVD added

After section 41—

Add

“Part IVA

**Appointment of Agents, Nominees and
Custodians**

Division 1—Application

41A. Application of Part IVA

- (1) Except as otherwise provided in section 41I(6)—
- (a) this Part applies in relation to a trust having a sole trustee in the same way as it applies to a trust that has more than one trustee; and
 - (b) references to trustees in this Part (except in sections 41C(1) and 41J(6)) include the sole trustee of a trust.
- (2) The powers conferred by this Part are only exercisable by trustees jointly if there is more than one trustee.

Division 2—Agents**41B. Power to appoint agents**

- (1) Subject to the provisions of this Division, the trustees of a trust may authorize a person to exercise one or more of their delegable functions as their agent.
- (2) For a trust that is not a charitable trust, the trustees' delegable functions are any functions of the trustees other than—
 - (a) a function relating to whether, or in what way, any assets of the trust are to be distributed;
 - (b) a power to decide whether any fees or other payment due to be made out of the trust funds is to be made out of income or capital of the trust;
 - (c) a power to appoint a person to be a trustee of the trust; or
 - (d) a power conferred by the instrument creating the trust or an enactment that permits the trustees to delegate any of their functions or to appoint a person to act as a nominee or custodian.
- (3) For a charitable trust, the trustees' delegable functions are—
 - (a) a function relating to carrying out a decision that the trustees have taken;
 - (b) a function relating to the investment of assets subject to the trust (including, in the case of land held as an investment, managing the land and creating or disposing of an interest in the land); and
 - (c) a function relating to the raising of funds for the trust (otherwise than by means of profits of a trade

which is an integral part of carrying out the trust's charitable purpose).

- (4) For the purposes of subsection (3)(c), a trade, whether carried on in Hong Kong or elsewhere, is an integral part of carrying out a trust's charitable purpose if the profits of the trade are applied solely for the purposes of the trust and either—
 - (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the trust; or
 - (b) the work in connection with the trade is mainly carried out by the beneficiaries of the trust.

41C. Persons who may act as agents

- (1) Subject to subsection (2), a person whom the trustees may under section 41B authorize to exercise functions as the trustees' agent includes one or more of the trustees.
- (2) The trustees may not authorize 2 or more persons to exercise the same function unless the persons are to exercise the function jointly.
- (3) The trustees may under section 41B authorize a person to exercise a function as their agent even though the person is also appointed to act as the trustees' nominee or custodian (whether under section 41G, 41H or 41I or any other power).

41D. Linked functions, etc.

- (1) Subject to subsection (2), a person who is authorized under section 41B to exercise a function as the trustees' agent is (whatever the terms of agency) subject to any specific duties or restrictions attached to the function.
- (2) A person who is authorized under section 41B to exercise a power which is subject to a requirement to

obtain advice is not subject to the requirement if the person is the kind of person from whom it would have been proper for the trustees, in compliance with the requirement, to obtain advice.

41E. Terms of agency

- (1) Subject to subsection (2), section 41F(2) and Part IVB (remuneration and expenses), the trustees may under section 41B authorize a person to exercise functions as their agent on the terms as to remuneration and other matters that the trustees may determine.
- (2) The trustees may not under section 41B authorize a person to exercise functions as their agent on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are—
 - (a) a term permitting the agent to sub-delegate the trustees' powers or functions to a delegate of the agent;
 - (b) a term restricting the liability of the agent, or a delegate of the agent, to the trustees or to any beneficiary; and
 - (c) a term permitting the agent to act in circumstances capable of giving rise to a conflict of interest.

41F. Special restrictions relating to asset management

- (1) The trustees may not under section 41B authorize a person to exercise any of their asset management functions as their agent except by an agreement made, or evidenced, in writing.

- (2) In addition, the trustees may not under section 41B authorize a person to exercise any of their asset management functions as their agent unless—
 - (a) the trustees have provided that person with a statement that gives guidance as to how the functions are to be exercised (*policy statement*); and
 - (b) the agreement under which the agent is to act includes a term to the effect that the agent will secure compliance with—
 - (i) the policy statement; or
 - (ii) if the policy statement is revised or replaced under section 41M (review of agents), the revised or replaced policy statement.
- (3) The trustees must formulate any guidance given in the policy statement with a view to ensuring that the functions will be exercised in the best interest of the trust.
- (4) A policy statement must be made, or evidenced, in writing.
- (5) The asset management functions of trustees are their functions relating to—
 - (a) the investment of assets subject to the trust;
 - (b) the acquisition of property which is to be subject to the trust; and
 - (c) the management of property which is subject to the trust and the disposal of, or creation or disposal of an interest in, the property.

Division 3—Nominees and Custodians**41G. Power to appoint nominees**

- (1) Subject to the provisions of this Division, the trustees of a trust may—
 - (a) appoint a person to act as the trustees' nominee in relation to any of the assets of the trust as they determine; and
 - (b) take the steps that are necessary to ensure that those assets are vested in a person so appointed.
- (2) An appointment under subsection (1)(a) must be made, or evidenced, in writing.
- (3) This section does not apply to any trust having a custodian trustee.

41H. Power to appoint custodians

- (1) Subject to the provisions of this Division, the trustees of a trust may appoint a person to act as a custodian in relation to any of the assets of the trust as they determine.
- (2) For the purposes of this Ordinance, a person is a custodian in relation to any assets if the person undertakes the safe custody of the assets or of any documents or records concerning the assets.
- (3) An appointment under subsection (1) must be made, or evidenced, in writing.
- (4) This section does not apply to any trust having a custodian trustee.

41I. Investment in bearer securities

- (1) Trustees may, unless expressly prohibited by the instrument creating the trust or an enactment, retain or invest in securities payable to bearer which, if not so payable, would have been authorized investments.
- (2) A direction that investments must be retained or made in the name of a trustee is not an express prohibition referred to in subsection (1).
- (3) If trustees retain or invest in securities payable to bearer, the trustees must appoint a person to act as a custodian of the securities.
- (4) 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.
- (5) An appointment under subsection (3) must be made, or evidenced, in writing.
- (6) Subsections (3), (4) and (5) do not impose a duty on a sole trustee if that trustee is a trust corporation.
- (7) Subsections (3), (4) and (5) do not apply to any trust having a custodian trustee.

41J. Persons who may be appointed as nominees or custodians

- (1) A person may not be appointed under section 41G as a nominee unless one of the conditions mentioned in subsection (2) is satisfied.
- (2) The conditions are—
 - (a) the person carries on a business that consists of, or includes, acting as a nominee;

- (b) the person is a body corporate that is controlled by the trustees.
- (3) A person may not be appointed under section 41H or 41I as a custodian to undertake the safe custody of the assets or of any documents of title concerning the assets unless one of the conditions mentioned in subsection (4) is satisfied.
- (4) The conditions are—
 - (a) the person carries on a business that consists of, or includes, acting as a custodian;
 - (b) the person is a body corporate that is controlled by the trustees.
- (5) For the purpose of subsections (2)(b) and (4)(b), a body corporate is controlled by the trustees if the trustees have the power to ensure that the affairs of the body corporate are conducted in accordance with the wishes of the trustees—
 - (a) by means of holding shares or possessing voting power in, or in relation to, that body corporate or any other body corporate; or
 - (b) because of any powers conferred by the articles of association or other document regulating that body corporate or any other body corporate.
- (6) Subject to subsections (1) and (3), the persons whom the trustees may under section 41G, 41H or 41I (as the case requires) appoint as a nominee or custodian—
 - (a) include one of the trustees, if that one is a trust corporation; or
 - (b) include 2 or more of the trustees, if they are to act as joint nominees or joint custodians.

- (7) The trustees may under section 41G appoint a person to act as their nominee even though the person is also—
 - (a) authorized to exercise functions as the trustees' agent (whether under section 41B or any other power); or
 - (b) appointed to act as the trustees' custodian (whether under section 41H or 41I or any other power).
- (8) The trustees may under section 41H or 41I appoint a person to act as their custodian even though the person is also—
 - (a) authorized to exercise functions as the trustees' agent (whether under section 41B or any other power); or
 - (b) appointed to act as the trustees' nominee (whether under section 41G or any other power).

41K. Terms of appointment of nominees and custodians

- (1) Subject to subsection (2) and Part IVB (remuneration and expenses), the trustees may under section 41G, 41H or 41I appoint a person to act as a nominee or custodian on the terms as to remuneration and other matters that the trustees may determine.
- (2) The trustees may not under section 41G, 41H or 41I appoint a person to act as a nominee or custodian on any of the terms mentioned in subsection (3) unless it is reasonably necessary for them to do so.
- (3) The terms are—
 - (a) a term permitting the nominee or custodian to sub-delegate the trustees' powers or functions to a delegate of the nominee or custodian;

- (b) a term restricting the liability of the nominee or custodian, or a delegate of the nominee or custodian, to the trustees or to any beneficiary; and
- (c) a term permitting the nominee or custodian to act in circumstances capable of giving rise to a conflict of interest.

Division 4—Review of and Liability for Agents, Nominees and Custodians

41L. Application of sections 41M, 41N and 41O

- (1) Sections 41M, 41N and 41O apply in a case where trustees have, under section 41B, 41G, 41H or 41I—
 - (a) authorized a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (2) Subject to subsection (3), sections 41M, 41N and 41O also apply in a case where trustees have, under a power conferred on them by the instrument creating the trust or an enactment—
 - (a) authorized a person to exercise functions as their agent; or
 - (b) appointed a person to act as a nominee or custodian.
- (3) If the application of section 41M, 41N or 41O in a case is inconsistent with the terms of the instrument creating the trust or an enactment, that section does not apply to that case.

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
 - (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.
- (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
 - (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.

41O. Liability for agents, nominees and custodians

- (1) A trustee of a trust is not liable for any act or omission of an agent, nominee or custodian acting for the trust

(each is a **representative**) if the trustee has discharged the statutory duty of care applicable to the trustee under Division 2 of the Third Schedule when—

- (a) entering into the arrangements under which a person acts as the representative; and
 - (b) carrying out the duties to review under section 41M or 41N.
- (2) If a trustee has agreed to a term under which a representative is permitted to sub-delegate the trustee's powers or functions to a delegate of the representative, the trustee is not liable for any act or omission of the delegate if the trustee has discharged the statutory duty of care applicable to the trustee under Division 2 of the Third Schedule when—
 - (a) agreeing to that term; and
 - (b) carrying out the duties to review under section 41M or 41N as far as the duties relate to the use of the delegate.

41P. Effect of trustees exceeding their powers

A failure by the trustees to act within the limits of the powers conferred by this Part does not invalidate—

- (a) the authorization of a person to exercise a function of the trustees as an agent; or
- (b) the appointment of a person to act as a nominee or custodian.

Part IVB**Remuneration and Expenses****41Q. Application of Part IVB**

This Part applies in respect of—

- (a) services provided to, or on behalf of, a trust (whenever created) on or after the commencement date of this Part; or
- (b) expenses incurred on behalf of a trust (whenever created) on or after the commencement date of this Part.

41R. Interpretation of Part IVB

- (1) For the purposes of this Part, a trustee acts in a professional capacity if—
 - (a) the trustee acts in the course of a profession or business that consists of, or includes, the provision of services in connection with—
 - (i) the management or administration of trusts generally or a particular kind of trust; or
 - (ii) any particular aspect of the management or administration of trusts generally or a particular kind of trust; and
 - (b) the services that the trustee provides to, or on behalf of, the trusts fall within the description of paragraph (a).
- (2) For the purposes of this Part, a person acts as a lay trustee if the person—
 - (a) is not a trust corporation; and

- (b) does not act in a professional capacity.

41S. Remuneration of trustees under instrument creating trust

- (1) Subject to subsection (2)—
 - (a) subsections (3) and (4) apply to a trustee who—
 - (i) is a trust corporation; or
 - (ii) is not a trust corporation, but is acting in a professional capacity as a trustee of a non-charitable trust; and
 - (b) subsections (3) and (4) apply to a trustee—
 - (i) if the trustee is not a trust corporation, but is acting in a professional capacity as a trustee, other than the sole trustee, of a charitable trust; but
 - (ii) only to the extent to which a majority of the other trustees of the charitable trust have agreed that those subsections apply to the trustee, subject to any inconsistent provision in the instrument creating the trust or an enactment.
- (2) Subsections (3) and (4) apply to a trustee—
 - (a) only if there is a provision in the instrument creating the trust or an enactment entitling the trustee to receive payment out of trust funds for services provided by the trustee to, or on behalf of, the trust; and
 - (b) except to the extent to which any inconsistent provision is made in the instrument creating the trust or an enactment.
- (3) A trustee is to be treated as being entitled under the instrument creating the trust to receive payment for

services provided even if the services are capable of being provided by a lay trustee.

- (4) Any payment to which a trustee is entitled for services provided is to be treated as remuneration for services (but not as a disposition of property) for the purposes of section 10 of the Wills Ordinance (Cap. 30) (avoidance of gifts to attesting witnesses and their spouses).

41T. Remuneration of trustees other than under instrument creating trust

- (1) Subject to subsection (2)—
- (a) subsections (3) and (4) apply to a trustee who is a trust corporation; and
 - (b) subsections (3) and (4) apply to a trustee who is not a trust corporation, but is acting in a professional capacity as a trustee, other than the sole trustee, of a trust if each of the other trustees of the trust has agreed in writing that the trustee may be remunerated for services provided by the trustee to, or on behalf of, the trust.
- (2) Subsections (3) and (4) apply to a trustee of a charitable or non-charitable trust only if the trustee's entitlement to remuneration—
- (a) is not provided by the instrument creating the trust or an enactment; and
 - (b) is not expressly prohibited by a term in the instrument or enactment.
- (3) A trustee is entitled to receive reasonable remuneration out of trust funds for services provided by the trustee to, or on behalf of, the trust.

- (4) A trustee is to be treated as being entitled under this section to receive remuneration for services provided even if the services are capable of being provided by a lay trustee.
- (5) This section applies to a trustee authorized to act in another capacity as it applies to any other trustee.
- (6) For the purpose of subsection (5), a trustee authorized to act in another capacity is a trustee who has been authorized, under a power conferred by Part IVA (appointment of agents, nominees and custodians), the instrument creating the trust or an enactment—
- (a) to exercise functions as a trustee's agent; or
 - (b) to act as a nominee or custodian.
- (7) For the purposes of this section—
- reasonable remuneration*** (合理酬金)—
- (a) means, in relation to the provision of services by a trustee of a trust, the remuneration that is reasonable in the circumstances for the provision of those services by the trustee to, or on behalf of, the trust; and
 - (b) includes, in relation to the provision of services by a trustee who is an authorized institution under the Banking Ordinance (Cap. 155) and provides those services in the course of, or incidental to, the exercise of its function as a trustee, the institution's reasonable charges for the provision of those services.

41U. Trustee's expenses

- (1) A trustee of a trust who has properly incurred expenses when acting on behalf of the trust—

- (a) is entitled to be reimbursed from the trust funds for those expenses; or
- (b) may pay for those expenses out of the trust funds.
- (2) This section applies to a trustee authorized to act in another capacity as it applies to any other trustee.
- (3) For the purpose of subsection (2), a trustee authorized to act in another capacity is a trustee who has been authorized, under a power conferred by Part IVA (appointment of agents, nominees and custodians), the instrument creating the trust or an enactment—
 - (a) to exercise functions as a trustee's agent; or
 - (b) to act as a nominee or custodian.

41V. Remuneration and expenses of agents, nominees and custodians

- (1) This section applies, if, under a power conferred by Part IVA (appointment of agents, nominees and custodians), the instrument creating the trust or an enactment, a person other than a trustee has been—
 - (a) authorized to exercise functions as a trustee's agent; or
 - (b) appointed to act as a nominee or custodian.
- (2) The trustees of the trust may remunerate the agent, nominee or custodian (each is a *representative*) out of trust funds for services if—
 - (a) the representative is engaged on terms entitling the representative to be remunerated for those services; and
 - (b) the amount does not exceed the remuneration that is reasonable in the circumstances for the provision

of those services by the representative to, or on behalf of, the trust.

- (3) The trustees may reimburse the representative out of trust funds for any expenses properly incurred in exercising the representative's functions.

Part IVC

Exemption from Liability

41W. Trustee is not exempted from liability for breach of trust

- (1) Subject to subsection (2), this section applies to a trustee who—
 - (a) acts in a professional capacity; and
 - (b) receives remuneration for the trustee's services provided to, or on behalf of, the trust.
- (2) This section does not apply to an approved trustee of a registered scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) The terms of a trust must not—
 - (a) relieve, release or exonerate a trustee from liability for a breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence; or
 - (b) grant the trustee any indemnity against the trust property for the liability.
- (4) A term of a trust is invalid to the extent to which it purports to—

- (a) relieve, release or exonerate a trustee from liability for a breach of trust arising from the trustee's own fraud, wilful misconduct or gross negligence; or
 - (b) grant the trustee any indemnity against the trust property for the liability.
- (5) This section has effect in respect of a trust created on or after the commencement date of the 2013 amending Ordinance.
- (6) For a trust created before the commencement date of the 2013 amending Ordinance, this section—
- (a) has effect in respect of the trust on the expiry of 1 year after that date; and
 - (b) does not affect the liability for anything done by a trustee of the trust within that 1-year period.
- (7) In this section, a reference to a trustee who acts in a professional capacity is to be construed in accordance with section 41R(1).

Part IVD

Reserve Power and Transfer of Movable Property

41X. Reserve power of settlor

- (1) A trust is not invalid only because of the person creating the trust (*the settlor*) reserving to the settlor any or all powers of investment or asset management functions under the trust.
- (2) If a power or function referred to in subsection (1) has been reserved by the settlor, a trustee who acts in

accordance with the exercise of the power or function is not in breach of the trust.

- (3) If a trust was declared invalid by the court before the commencement date of the 2013 amending Ordinance, subsection (1) does not operate to revive the invalid trust on or after that date.
- (4) Subject to subsection (3), if the validity of a trust (whenever created) is being questioned, the court may take into account subsection (1) in determining the validity.

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 the central 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.”.

28. Cross-heading before section 42 repealed

Cross-heading before section 42—

Repeal the cross-heading.**29. Part V, Division 1 heading added**

Before section 42—

Add**“Division 1—Appointment of New Trustees”.****30. Cross-heading before section 45 repealed**

Cross-heading before section 45—

Repeal the cross-heading.**31. Part V, Division 2 heading added**

Before section 45—

Add**“Division 2—Vesting Orders”.****32. Cross-heading before section 56 repealed**

Cross-heading before section 56—

Repeal the cross-heading.**33. Part V, Division 3 heading added**

Before section 56—

Add**“Division 3—Jurisdiction to Make Other Order”.****34. Cross-heading before section 62 repealed**

Cross-heading before section 62—

Repeal the cross-heading.**35. Part V, Division 4 heading added**

Before section 62—

Add**“Division 4—Payment into Court”.****36. Section 77 amended (application by company to be registered as a trust company)**

Section 77(2)(e)—

Repeal subparagraph (i)**Substitute**

- “(i) deposited in the name of the Director of Accounting Services with an authorized institution within the meaning of section 2 of the Banking Ordinance (Cap. 155) a sum not less than \$1,500,000 and lodged a receipt issued by the authorized institution for that amount with the Director of Accounting Services;”.

37. Section 81 amended (objects)

Section 81(1)(o), English text—

Repeal

“conductive”

Substitute

“conducive”.

38. Section 110 added

After section 109—

Add**“110. Transitional and savings for the purpose of 2013 amending Ordinance**

The transitional and saving provisions as set out in the Fourth Schedule have effect.”.

39. Second Schedule amended (authorized investments)

(1) Second Schedule—

Repeal

“[s. 4]”

Substitute

“[s. 4 & 3rd Sch.]”.

(2) Second Schedule, paragraph 1—

Repeal

“Any shares”

Substitute

“Subject to paragraph 7A, any shares”.

(3) Second Schedule, paragraph 1(a)(ii)—

Repeal

“\$10 billion (\$10,000,000,000)”

Substitute

“\$5 billion (\$5,000,000,000)”.

(4) Second Schedule, paragraph 1(a)(iii)—

Repeal

“in each of the 5 years immediately preceding the calendar year in which the investment is made, a dividend wholly in cash (except to the extent that any shareholder may have opted to accept it other than wholly in cash)”

Substitute

“in any 3 years out of the 5 years immediately preceding the calendar year in which the investment is made, a dividend, either wholly in cash or in kind or partly in cash and partly in kind”.

(5) Second Schedule, paragraph 2—

Repeal

“Any debt”

Substitute

“Subject to paragraph 7A, any debt”.

(6) Second Schedule, paragraph 4—

Repeal

“Any deposit”

Substitute

“Subject to paragraph 7A, any deposit”.

(7) Second Schedule, paragraph 5—

Repeal

“Certificates”

Substitute

“Subject to paragraph 7A, certificates”.

- (8) Second Schedule, paragraph 6—

Repeal

“First”

Substitute

“Subject to paragraph 7A, first”.

- (9) Second Schedule, paragraph 7—

Repeal

“Any derivatives”

Substitute

“Subject to paragraph 7A, any derivatives”.

- (10) Second Schedule, after paragraph 7—

Add

“7A. Paragraphs 1, 2, 4, 5, 6 and 7 do not include any structured product as defined by section 1A of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).”.

40. Third and Fourth Schedules added

After Second Schedule—

Add

“Third Schedule [ss. 2, 3A & 41O]

Application of Statutory Duty of Care

Division 1—Investment

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, 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.
2. For the purpose of section 1(a) of this Schedule, when investing any trust funds in any investment specified in the Second Schedule, the trustee must discharge the statutory duty of care in addition to complying with that Schedule.

Division 2—Agents, Nominees and Custodians

3. The statutory duty of care applies to a trustee when—
 - (a) entering into arrangements under which a person is authorized, under section 41B or any other power (however conferred), to exercise functions as an agent;

- (b) entering into arrangements under which a person is appointed, under section 41G or any other power (however conferred), to act as a nominee;
 - (c) entering into arrangements under which a person is appointed, under section 41H or any other power (however conferred), to act as a custodian; or
 - (d) carrying out a trustee's duty under section 41M (review of agents) or 41N (review of nominees and custodians).
4. For the purpose of section 3 of this Schedule, entering into arrangements under which a person is authorized to exercise functions as an agent or is appointed to act as a nominee or custodian includes—
- (a) selecting the person who is to act;
 - (b) determining the terms on which the person is to act; and
 - (c) if the person is being authorized to exercise asset management functions, the preparation of a policy statement under section 41F.

Division 3—Power to Do Other Things

5. The statutory duty of care applies to a trustee when—
- (a) exercising powers relating to trust properties conferred by section 16; or
 - (b) exercising any corresponding power, however conferred.

Division 4—Insurance

6. The statutory duty of care applies to a trustee when—

- (a) exercising the power under section 21 to insure property; or
- (b) exercising any corresponding power, however conferred.

Division 5—Reversionary Interests, Valuations and Audit

7. The statutory duty of care applies to a trustee when—
- (a) exercising the power under section 24(1) or (3); or
 - (b) exercising any corresponding power, however conferred.

Fourth Schedule [s. 110]

Transitional and Saving Provisions

1. **Savings for repeal of section 8 (investment in bearer securities)**

If, immediately before the commencement date of section 8 of the 2013 amending Ordinance, a banker or banking company holds any securities payable to bearer deposited with it under the repealed section 8, then on and after that date, the banker or banking company is to be treated as having been appointed as a custodian of the securities under section 41I.

2. Savings for repeal of section 23 (deposit of documents for safe custody)

If, immediately before the commencement date of section 16 of the 2013 amending Ordinance, a banker, banking company or any other company holds any documents deposited with it under the repealed section 23, then on and after that date, the banker, banking company or other company is to be treated as having been appointed as a custodian of the documents under section 41H.

3. Savings for repeal of section 25 (power to employ agents)

- (1) Subsection (2) applies if, before the commencement date of section 18 of the 2013 amending Ordinance, a person has been employed or appointed to act as an agent under the repealed section 25(1) or (3).
- (2) For any period for which the employment or appointment has left to run on or after the commencement date, the person is to be treated as having been authorized to exercise functions as an agent under section 41B (and, if appropriate, as also having been appointed under section 41G or 41H to act as a nominee or custodian).
- (3) Subsection (4) applies if, before the commencement date of section 18 of the 2013 amending Ordinance, a person has been appointed to act as an agent or attorney under the repealed section 25(2) (power to employ agents or attorney in respect of property outside Hong Kong).
- (4) For any period for which the appointment has left to run on or after the commencement date, the person is to be treated as having been authorized to exercise functions as an agent under section 41B (and, if appropriate, as

also having been appointed under section 41G or 41H to act as a nominee or custodian).

4. Transitional and savings provisions concerning Part 2 of 2013 amending Ordinance

Without affecting section 3 of this Ordinance, Part 2 of the 2013 amending Ordinance does not affect the legality and validity of anything done or omission made before the commencement date of that Part, except as otherwise expressly provided in the 2013 amending Ordinance.”.

Part 3**Amendments to Perpetuities and Accumulations Ordinance****41. Perpetuities and Accumulations Ordinance amended**

The Perpetuities and Accumulations Ordinance (Cap. 257) is amended as set out in this Part.

42. Cross-heading before section 1 repealed

Cross-heading before section 1—

Repeal the cross-heading.

43. Part 1 heading added

Before section 1—

Add

“Part 1**Preliminary and General”.****44. Section 2 amended (interpretation)**

Section 2(1), before definition of *disposition*—

Add

“**2013 amending Ordinance** (《2013 年修訂條例》) means the Trust Law (Amendment) Ordinance 2013 (of 2013);”.

45. Section 3 amended (application)

(1) Before section 3(1)—

Add

“(1A) Part 2 applies in relation to an instrument taking effect on or after the commencement date of the 2013 amending Ordinance, except that—

- (a) Part 2 does not apply in relation to a will executed before that date; and
- (b) Part 2 applies in relation to an instrument made in the exercise of a special power of appointment only if the instrument creating the power takes effect on or after that date.”.

(2) Section 3(1)—

Repeal

“Nothing in this Ordinance shall”

Substitute

“Part 3 does not”.

(3) Section 3(2)—

Repeal

“This Ordinance shall apply”

Substitute

“Subject to subsection (2A), Part 3 applies”.

(4) Section 3(2)—

Repeal

“after the commencement of this Ordinance”

Substitute

“on and after 13 March 1970”.

(5) Section 3(2), English text—

Repeal

“shall apply only”

Substitute

“applies only”.

- (6) Section 3(2)—

Repeal

“after that commencement”

Substitute

“on and after that date”.

- (7) Section 3(2), English text, proviso—

Repeal

“section 12 shall apply”

Substitute

“section 12 applies”.

- (8) After section 3(2)—

Add

“(2A) Part 3 does not apply in relation to an instrument taking effect on or after the commencement date of the 2013 amending Ordinance but Part 3 still applies in relation to an instrument so taking effect if—

- (a) it is a will executed before that date; or
- (b) it is an instrument made in the exercise of a special power of appointment, and the instrument creating the power took effect before that date.”.

- (9) Section 3(3), English text—

Repeal

“shall apply”

Substitute

“applies”.

46. Part 2 added

After section 3—

Add

“Part 2

**Provisions Applicable to Instruments Taking
Effect on or after Commencement Date of 2013
Amending Ordinance**

3A. Rule against perpetuities etc. have no effect

- (1) The rule against perpetuities (or remoteness of vesting) and the rule against excessive accumulations have no effect in relation to an instrument to which this Part applies (as provided in section 3(1A)).
- (2) A trust (whether created by an instrument or otherwise) may continue in existence for an unlimited period unless the terms of the trust provide to the contrary.

3B. Restriction on accumulations for charitable trusts

- (1) This section applies to an instrument to the extent to which its terms (other than a term of a court order) provide for property to be held on trust for charitable purposes.
- (2) If—
 - (a) the terms of the instrument impose or confer on the trustees a duty or power to accumulate income; and
 - (b) apart from this section the duty or power would last beyond the end of a period of 21 years beginning

on the first day when the income must or may be accumulated,

then subject to subsection (3), the duty or power ceases to have effect at the end of that 21-year period.

- (3) Subsection (2) does not have effect in relation to the instrument if its terms provide for the duty or power to accumulate income to cease to have effect—

- (a) on the death of the settlor; or
- (b) on the death of one of the settlors, as determined by name or by the order of their deaths.

- (4) If a duty or power to accumulate income ceases to have effect under subsection (2), the income to which the duty or power would have applied apart from this section must—

- (a) go to the person who would have been entitled to it if there had been no duty or power to accumulate income; or
- (b) be applied for the purposes for which it would have had to be applied if there had been no such duty or power to accumulate income.

- (5) This section applies whether or not the duty or power to accumulate income extends to income produced by the investment of income previously accumulated.

3C. Rule as to duration of non-charitable purpose trust not affected

This Part does not affect any rule of law that limits the duration of non-charitable purpose trusts.”.

47. Cross-heading before section 4 repealed

Cross-heading before section 4—

Repeal the cross-heading.

48. Part 3 heading and Division 1 heading added

Before section 4—

Add

“Part 3

**Provisions Applicable to Instruments Taking
Effect before Commencement Date of 2013
Amending Ordinance**

Division 1—Perpetuities”.

49. Section 13 amended (administrative powers of trustees)

- (1) Section 13(2)—

Repeal

“after the commencement of this Ordinance”

Substitute

“on or after 13 March 1970”.

- (2) Section 13(2)—

Repeal

“before that commencement”

Substitute

“before that date”.

50. Section 16 amended (possibilities of resulting trust, conditions subsequent, exceptions and reservations)

Section 16(2)—

Repeal

“Ordinance”

Substitute

“Part”.

51. Cross-heading before section 17 repealed

Cross-heading before section 17—

Repeal the cross-heading.**52. Part 3, Division 2 heading added**

Before section 17—

Add**“Division 2—Accumulations”.****53. Section 18 amended (qualification of restrictions on accumulation)**

Section 18—

Repeal

“before or after the commencement of this Ordinance”

Substitute

“before, on or after 13 March 1970”.

Part 4**Related and Consequential Amendments****Division 1—Enactments Amended****54. Enactments amended**

The enactments specified in Divisions 2 and 3 are amended as set out in those Divisions.

Division 2—Amendments to Enduring Powers of Attorney Ordinance (Cap. 501)**55. Section 8 amended (scope of authority, etc. of attorney under enduring power)**

Section 8(3)—

Repeal paragraph (a).**56. Section 20 added**

After section 19—

Add**“20. Transitional and savings for repeal of section 8(3)(a)**

- (1) Subject to subsections (2) and (3), the repealed section 8(3)(a) continues to apply to an enduring power of attorney created before the commencement date (*pre-existing PA*) and is in force on that date for a period of one year from the commencement date as if that section had not been repealed.
- (2) If the instrument creating a pre-existing PA is registered as at the commencement date, the repealed section

8(3)(a) ceases to apply to the pre-existing PA when the registration of the instrument is cancelled.

- (3) If an application for the registration of an instrument creating a pre-existing PA is pending as at the commencement date, or is made during the period of one year from that date, then the repealed section 8(3)(a) ceases to apply to the pre-existing PA—

- (a) if the instrument is registered pursuant to the application, whether during or after that one-year period, when the registration of the instrument is cancelled; or
- (b) if the application is finally refused by the Registrar of the High Court or withdrawn by the applicant or otherwise finally disposed of, whether during or after that one-year period, when the application is finally refused, withdrawn or otherwise finally disposed of.

- (4) In this section—

cancelled (被取消) means cancelled under section 11(4);

commencement date (生效日期) means the date on which section 56 of the Trust Law (Amendment) Ordinance 2013 (of 2013) comes into operation.”.

Division 3—Amendments to Enduring Powers of Attorney (Prescribed Form) Regulation (Cap. 501 sub. leg. A)

57. **Section 5 amended (donor to specify decisions attorney may make)**

- (1) Section 5(3)(e)—

Repeal

“income;”

Substitute

“income; or”.

- (2) Section 5(3)(f)—

Repeal

“; or”

Substitute a full stop.

- (3) Section 5(3)—

Repeal paragraph (g).

58. Schedule 1 amended (Form 1)

- (1) Schedule 1, under heading “**Information you must read**”—

Repeal item 2.

- (2) Schedule 1, Part A, paragraph 2(1)(f)—

Repeal

“; or”

Substitute a full stop.

- (3) Schedule 1, Part A, paragraph 2(1)—

Repeal sub-subparagraph (g).

59. Schedule 2 amended (Form 2)

- (1) Schedule 2, under heading “**Information you must read**”—

Repeal item 2.

- (2) Schedule 2, Part A, paragraph 3(1)(f)—

Repeal

“; or”

Substitute a full stop.

- (3) Schedule 2, Part A, paragraph 3(1)—

Repeal sub-subparagraph (g).

Explanatory Memorandum

The object of this Bill is to modernize trust law by amending the Trustee Ordinance (Cap. 29) (*TO*) and the Perpetuities and Accumulations Ordinance (Cap. 257) (*PAO*) to—

- (a) introduce a trustees' statutory duty of care when trustees are exercising certain prescribed functions;
- (b) give trustees wider powers to insure trust properties against loss or damage due to any event;
- (c) provide trustees with a general power to appoint agents, nominees and custodians;
- (d) allow trustees acting in a professional capacity to receive remuneration for their services rendered for trusts;
- (e) regulate the exemption clauses for trustees acting in a professional capacity who receive remuneration for their services;
- (f) provide for a court-free mechanism for beneficiaries to retire and appoint trustees;
- (g) clarify that neither a limited reservation of a settlor's power nor the transfer of movable property under certain situation affects the validity of a trust;
- (h) abolish the rule against perpetuities with respect to new instruments; and
- (i) abolish the rule against excessive accumulations of income with respect to new instruments (except that, for charitable trusts, the restriction is retained to the effect that they may accumulate income up to 21 years).

The proposed amendments will facilitate more effective trust administration, provide appropriate checks and balances so that

trustees will exercise the new powers properly and modernize the trust law.

2. The Bill is preceded by the following papers published by the Financial Services and the Treasury Bureau (*FSTB*)—

- (a) Consultation Paper on the Review of the Trustee Ordinance and Related Matters (June 2009) and the Consultation Conclusions (February 2010); and
- (b) Consultation Paper on the Detailed Legislative Proposals on Trust Law Reform (March 2012) and the Consultation Conclusions (November 2012).

The papers are accessible at the FSTB's website at—
<http://www.fstb.gov.hk/fsb/ppr/consult/index.htm>

3. The Bill is divided into 4 Parts.

Part 1

4. Part 1 of the Bill contains preliminary provisions. Clause 1 sets out the short title and provides for commencement.

Part 2

5. Part 2 of the Bill contains amendments to the TO.
6. Clause 3 amends section 2 of the TO by adding the new definitions of *2013 amending Ordinance*, *body corporate*, *statutory duty of care* and *trust funds*.
7. Section 3 of the TO provides that the powers conferred by the TO on trustees apply only if no contrary intention is expressed in the instrument creating the trust and that the powers are subject to the terms of the instrument. Clause 4 amends section 3 to the effect that the terms of any enactment prevail over the application of the default powers conferred by the TO.

Statutory duty of care

8. Clause 5 adds a new section 3A to the TO providing for the new default statutory duty of care for trustees. The circumstances where the duty will apply are defined in the new Third Schedule (added by clause 40). Where the duty applies, it replaces the common law duty of care for trustees. To comply with the new duty a trustee must show a level of care and skill that is reasonable in the circumstances of the case having regard to the trustee's special knowledge, experience or professional status. The statutory duty of care does not apply if the instrument creating the trust or other enactment indicates that the duty of care is not meant to apply. In the case of an existing trust, the new section 3A provides a mechanism for settlors or beneficiaries to exclude the statutory duty of care by a subsequent deed.
9. The new Third Schedule specifies the circumstances in which a trustees' statutory duty of care applies, including when trustees invest trust property, appoint agents, nominees and custodians, insure trust property and deal with matters concerning reversionary interests, valuations and audit.
10. Under section 4 of the TO, the Financial Secretary may by order published in the Gazette amend the Second Schedule to the TO which sets out the investments in which a trustee may invest trust funds. Clause 6 amends section 4 to provide for the Second Schedule specifying conditions subject to which the investment may be made.
11. Clauses 7, 9, 13 and 17 amend sections 7, 11, 16 and 24 of the TO to make the protection of trustees under those sections conditional on the trustees discharging the statutory duty of care. The existing section 7 protects a trustee from liability for a breach of trust only because of continuing to hold an investment that has ceased to be authorized by the instrument creating the trust or by the general law. The existing sections 11, 16 and 24 further provide that the trustees are not responsible for any loss occasioned by an act done in good faith in exercising—

- (a) powers regarding securities held by the trustees such as concurring in a scheme or an arrangement for reconstruction of the company concerned;
 - (b) powers in accepting property, severing blended trust property, paying any debt or accepting any composition; and
 - (c) powers regarding trust properties that are not vested in the trustees.
12. Clause 8 repeals section 8 of the TO and the provision is re-enacted as the new section 41I.
13. Sections 12(2) and 24(4) of the TO provide for the circumstances in which payment may be made out of the capital or income of the trust property. To do away with the distinction between capital and income, clause 10 amends section 12(2), so that trustees may apply both capital money and income of the trust (i.e. trust funds), instead of capital money only, to pay the calls on any shares subject to the trust. Clause 17 amends section 24 by adding a new subsection (5) to stipulate that the costs of examining or auditing the accounts of trust property should be paid out of the trust funds.

Insurance

14. Clause 14 replaces section 21 of the TO with a new default provision that empowers a trustee to insure any trust property against loss or damage due to any event, without limit whether to its market value or full replacement value. Trustees will be able to pay the insurance premium out of the trust funds instead of the income of the trust only. But if a property is held on a bare trust, the sole beneficiary or all the beneficiaries may direct that a trust property is not to be insured or may only be insured on certain conditions. Trustees are subject to the statutory duty of care when exercising the power to insure under the new section 21.

15. Clause 15 makes a consequential amendment to section 22(1) of the TO to align with the power under the new section 21.
16. Section 27 of the TO concerns the delegation of powers of an individual trustee by a power of attorney. Clause 19 amends section 27 by clarifying that an instrument creating the power is valid for 12 months (or any shorter period as provided by the instrument creating the power) and commences on the date provided by the instrument or the date of execution of the instrument. To better protect the interests of beneficiaries from excessive delegation, the new section 27(2A) requires that the exercise of a trustee's power of delegation must not result in the trust having only 1 donee under a power of attorney or 1 trustee administering the trust if the trust has more than one trustee. The new section 27(9) provides for the savings of an existing power of attorney.
17. Clause 22 repeals section 32 (implied indemnity of trustees) of the TO because it is inconsistent with the proposed statutory duty of care when the trustees exercise specified functions.

Appointment and retirement of trustees

18. Under the common law, beneficiaries who wish to replace a trustee need an authority under the instrument creating the trust or they must resort to the court. Clause 25 adds new sections 40A to 40D to the TO enabling a sole beneficiary or all beneficiaries to appoint and retire trustees by way of a court-free procedure under specified circumstances. In essence—
- (a) The new section 40A provides that all beneficiaries of full age and capacity who are absolutely entitled to the trust property may replace a trustee by a written direction that directs the trustee to retire and all trustees to appoint another person as a trustee.
 - (b) The new section 40B allows the appointment of a substitute for a trustee who is incapable by reason of mental incapacity. All beneficiaries of full age and

capacity who are absolutely entitled to the trust property may by a written direction direct the appointment of a new trustee in place of the incapacitated trustee.

- (c) The new section 40C adds supplementary provisions relating to beneficiaries' directions.
- (d) The new section 40D specifies the application of the new sections 40A and 40B. The application of those sections is subject to contrary intention in the instrument creating the trust, an enactment or a subsequent deed.

Appointment of agents, nominees and custodians

- 19. Clauses 16 and 18 repeal sections 23 and 25 (which concerns deposit of documents for safe custody and power to employ agents) of the TO. Appointment of agents, nominees and custodians is covered in the new Part IVA (containing the new sections 41A to 41P (added by clause 27)). In essence—

Agents

- (a) The new section 41A provides for the application of the new Part IVA. Under section 41A, the default powers of delegation conferred by the new Part are exercisable by the trustees jointly if there is more than one trustee. With a minor exception this Part applies equally to a trust with a sole trustee in the same way as it applies to a trust with more than one trustee.
- (b) The new section 41B empowers trustees to delegate one or more of their “delegable functions” to an agent. The nature of the functions that may be delegated will in part be governed by whether the trust is charitable or not. For non-charitable trusts, the trustees may delegate any functions except the more important functions specified in section 41B(2), including the function to distribute trust assets. The new section 41B(3) sets out the functions that trustees of a charitable trust may delegate,

including carrying out trustees' decisions and investing assets.

- (c) The new section 41C defines the persons who may be appointed as agents for trustees under the new section 41B. Subject to the requirement that if 2 or more persons are appointed, they must exercise the functions jointly (new section 41C(2)), there are no restrictions on the persons whom the trustees may appoint as their agents. Thus, the trustees may delegate to one or more of their number or to their nominees or custodians (new section 41C(1) and (3)).
- (d) The new section 41D provides that an agent authorized under the new section 41B is subject to any specific duties or restrictions attached to the functions delegated.
- (e) The new section 41E sets out some restrictions on the terms of appointment of agents. Trustees may not appoint agents on terms that permit them to appoint a delegate, restrict the liability of agents or their delegates, or permit them to act even if a conflict of interest may arise. However, these restrictions will not apply if it is reasonably necessary to appoint on these terms.
- (f) The new section 41F places special requirements on trustees in relation to the delegation of asset management functions. These functions relate to the investment of trust assets and the acquisition, management and disposal of trust property (new section 41F(5)). The trustees must provide an agent with a policy statement on how the functions are to be exercised. The policy statement must be drawn up with a view to ensuring that the functions will be exercised in the best interest of the trust (new section 41F(3)).

Nominees and custodians

- (g) The new sections 41G and 41H provide trustees with default powers to appoint nominees and custodians in relation to any trust assets. The appointment must be made in writing.
- (h) The new section 41I (which replaces the repealed section 8 of the TO) provides for the appointment of a custodian for bearer securities unless the instrument creating the trust or an enactment permits the trustees to retain or invest bearer securities without the appointment.
- (i) The new section 41J describes the persons who may be appointed as nominees or custodians. To protect the beneficiaries, a person may be appointed as a nominee or custodian (for a custodian who undertakes the safe custody of the assets or of any documents of title concerning the assets) only if the person is either carrying on business as a nominee or custodian or is a body corporate controlled by the appointing trustees. The section also sets out the test for determining whether a body corporate is “controlled” by trustees. The new section 41J(7) provides that an agent or a custodian may also be appointed as a nominee by the trustees. The new section 41J(8) makes similar provision in relation to the appointment of a custodian.
- (j) The new section 41K sets out some restrictions on the terms of appointment of nominees and custodians. Trustees may not appoint nominees or custodians on terms that permit them to appoint a delegate, restrict the liability of nominees and custodians or their delegates, or permit them to act even if a conflict of interest may arise. However, these restrictions will not apply if it is reasonably necessary to appoint on these terms.

Duty to review and trustees' liability

- (k) The new section 41L provides for the application of the new sections 41M, 41N and 41O.
- (l) The new section 41M imposes duties on trustees to keep under review the terms of appointing agents and how the agents appointed are performing. If circumstances make it appropriate to do so, trustees must consider whether to exercise any power of intervention, for example, to give directions or to revoke the appointment.
- (m) The new section 41N imposes duties on trustees to keep under review the terms of appointing nominees and custodians and how the nominees and custodians appointed are performing. If circumstances make it appropriate to do so, trustees must consider whether to exercise any power of intervention, for example, to give directions or to revoke the appointment.
- (n) The new section 41O defines when a trustee is protected from liability for the acts or omissions of the agents, nominees or custodians or their permitted delegate. The section makes clear that a trustee who has discharged the statutory duty of care in relation to the appointment and review of the appointment of the agents, nominees or custodians is not liable for the acts and omissions of the appointees.
- (o) The new section 41P provides that the appointment of agents, nominees or custodians under the new Part IVA is not invalidated merely by any failure by the trustees to act within the limits of their powers.

Trustees' remuneration and expenses

20. Under the common law, trustees in general are not permitted to receive remuneration unless they are authorized to do so by the instrument creating the trust. Trustees acting in the course of business or profession are not permitted to receive remuneration in

respect of services that are capable of being provided by lay trustees unless they are expressly allowed to do so. The new sections 41Q to 41T in the new Part IVB enable trustees acting in a business or profession to receive remuneration under specific circumstances. In essence—

- (a) The new section 41Q sets out the application of the new Part IVB.
- (b) The new section 41R sets out the meaning of 2 expressions for use in this Part, namely, “a trustee acts in a professional capacity” and “a person acts as a lay trustee”.
- (c) The new section 41S provides for the remuneration of trustees acting in a professional capacity if the instrument creating the trust (whether charitable or non-charitable) contains a charging clause entitling the trustees to receive payment. The remuneration may be paid even if the services provided could be provided by a lay trustee. However, for a charitable trust, a trustee acting in a professional capacity other than a trust corporation is entitled to remuneration only to the extent to which a majority of the other trustees of the charitable trust have agreed that the trustee should be paid.
- (d) The new section 41T provides for the remuneration of trustees acting in a professional capacity if neither the instrument creating the trust (whether charitable or non-charitable) nor an enactment provides for the trustees’ entitlement. However, a trustee, other than a trust corporation, is entitled to receive reasonable remuneration only if each of the other trustees of the trust agrees.

21. The new section 41U provides that a trustee is entitled to be reimbursed from trust funds the proper expenses incurred by the trustee when acting on behalf of the trust.
22. The new section 41V provides that trustees may pay remuneration to agents, nominees and custodians for their services, or reimburse them, out of trust funds for any proper expenses incurred in exercising their functions.

Statutory control on trustees’ exemption clause

23. Under the common law, a trustees’ exemption clause can validly exempt trustees from liability of all breaches of trust except fraud. To better protect beneficiaries in the event of a breach of trust, the new section 41W provides that a remunerated trustee acting in a professional capacity is not exempted from liability for a breach of trust arising from the trustee’s own fraud, wilful misconduct or gross negligence. Other than a registered scheme under the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the section applies to all trusts whenever created. However, it will commence in phases (new section 41W(5) and (6)).

Reservation of power, etc.

24. A valid trust requires certainty of intention by the settlor to create a trust. It is generally acceptable for a settlor to reserve some (but not excessive) powers to control over the trust property. The new section 41X provides that a limited reservation of a settlor’s power relating to investment or asset management functions does not invalidate a trust. A trustee who has acted in accordance with the exercise of the reserved power is exempt from liability.
25. Forced heirship rules are mandatory rules found in some civil law jurisdictions to restrict the freedom of testators in determining how to pass their estate on death. The rules require a particular portion of the estate to be reserved for designated categories of heirs. If there is not enough left in the estate to satisfy the requirement,

property held in trust set up by the testator during lifetime may be clawed back to make up for the shortfall. The new section 41Y addresses these rules and provides certainty on the validity of a lifetime transfer of movable properties to a trust expressed to be governed by Hong Kong law by a settlor. A settlor has the requisite capacity to transfer the properties if the settlor has the capacity to do so under Hong Kong law, the law of domicile or the proper law of transfer.

26. A company making an application to be registered as a trust company must meet specified condition under section 77(2) of the TO. Clause 36 amends section 77(2)(e)(i) of the TO by requiring the deposit of certain sum in the name of the Director of Accounting Services with an authorized institution, as a condition for registration as a trust company, instead of a deposit of investments.

Authorized investment

27. In the absence of express provision in the instrument creating the trust or an enactment, the Second Schedule to the TO sets out the default range of authorized investments in which a trustee may invest. Clause 39 amends the Second Schedule to relax the market capitalization and dividend requirements concerning investment in shares. It also adds a provision to expressly stipulate that structured products are not default authorized investments under the Second Schedule.

Transitional and savings

28. Clause 38 adds a new section 110 to the TO which provides that the transitional and saving provisions set out in the new Fourth Schedule have effect.
29. The new Fourth Schedule contains the transitional and saving provisions on the repeal or amendment of certain provisions of the TO. In essence—

- (a) Section 1 of the new Fourth Schedule provides for the savings for a banker or banking company previously appointed under the repealed section 8 of the TO. The banker or banking company is to be treated as if it had been appointed under the new section 41I.
- (b) Section 2 of the new Fourth Schedule provides for the savings of the appointment of custodians after the repeal of section 23 of the TO. A banker, banking company or other company appointed to hold any documents under the repealed section 23 of the TO is to be treated as if it had been appointed as a custodian under the new section 41H.
- (c) Section 3 of the new Fourth Schedule provides for the savings on the repeal of the existing section 25 of the TO. An agent appointed under the repealed section 25(1), (2) or (3) is to be treated as if he or she had been authorized to exercise functions as an agent under the new section 41B.
- (d) Section 4 of the new Fourth Schedule provides that Part 2 of the Trust Law (Amendment) Ordinance 2013 does not affect the legality and validity of anything done or omission made before the commencement date of that Part.

Part 3

30. Part 3 of the Bill contains amendments to the PAO. In gist, the amendments seek to abolish, with prospective effect, the rule against perpetuities (*RAP*) and the rule against excessive accumulations of income (*REA*). The RAP specifies a time limit within which trust properties must vest in the beneficiaries. The REA prohibits a person from accumulating any income of a trust for a period longer than one of the 6 statutory periods specified in section 17 of the PAO.

31. Clause 44 amends section 2 of the PAO by adding the definition of *2013 amending Ordinance*.
32. Clause 45 adds new subsections (1A) and (2A) to section 3 of the PAO to provide for the application, in gist—
 - (a) under subsection (1A), the new Part 2 of the PAO applies in relation to new instruments;
 - (b) under subsections (2) and (2A), Part 3 (containing existing provisions of the PAO) of the PAO applies in relation to existing instruments.
33. Clause 46 adds a new Part 2 (containing new sections 3A, 3B and 3C) to the PAO.
34. The new section 3A—
 - (a) provides that the RAP and REA do not apply in relation to new instruments (creating new trusts and special powers of appointment) if the instruments take effect on or after the commencement of the Trust Law (Amendment) Ordinance 2013; and
 - (b) allows a trust to continue in existence for an unlimited period of time (the exception is a trust formed for non-charitable purposes as described in the new section 3C) unless the terms of the trust provide to the contrary.
35. The new section 3B maintains certain restrictions on accumulations of income of charitable trusts. The maximum accumulation period is 21 years unless the trust specifies that the duty or power to accumulate income is to cease to have effect on the death of the settlor or, where there are multiple settlors, the death of one of them determined by name or by the order of their deaths. The 21-year period begins on the first day when the duty or power to accumulate income must or may be exercised. If the duty or power ceases to have effect, the income obtained after the permitted accumulation

period is then applied as it would have been had there been no duty or power to accumulate in the terms of the trust.

36. Under the common law, trusts formed for non-charitable purpose without ascertainable beneficiaries are generally held to be void. There are only a few exceptions under case law, such as trusts for the caring of specific animals. The new section 3C clarifies that the rule of law against inalienability, as applied to trusts formed for non-charitable purpose will be retained. The rule restricts such trusts to the perpetuity period, that is life in being plus 21 years, or 21 years if there is no relevant life in being.

Part 4

37. Part 4 of the Bill contains related and consequential amendments to various enactments. Transitional and savings provisions are in place for the repeal of section 8(3)(a) of the Enduring Powers of Attorney Ordinance (Cap. 501) and its subsidiary legislation.

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Section:	2	Interpretation	25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

In this Ordinance, unless the context otherwise requires-

"authorized investments" (特准投資項目) means investments authorized by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

"contingent right" (待確定權利) as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent; (Amended L.N. 446 of 1994)

"convey" and "conveyance" (轉易) as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance;

"income" (收益) includes rents and profits;

"instrument" (文書) includes enactment;

"land" (土地) includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, or an undivided share in land; and in this definition "mines and minerals" (礦藏及礦物) includes any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, and an undivided share thereof;

"lunatic" (精神病人) means any person who has been found by due course of law to be of unsound mind and incapable of managing his affairs;

"mortgage" (按揭) and "mortgagee" (承按人) include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

"pay" and "payment" (繳存) as applied in relation to stocks and securities and in connection with the expression "into court" include the deposit or transfer of the same in or into court;

"person of unsound mind" (精神不健全的人) means any person, not a minor, who not having been found to be a lunatic is incapable from infirmity of mind of managing his own affairs;

"personal representative" (遺產代理人) means the executor, original or by representation, or administrator for the time being of a deceased person;

"possession" (管有) includes receipt of rents and profits or the right to receive the same, if any; and "possessed" (據有) applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

"property" (財產) includes movable and immovable property, and any estate, share and interest in any property, movable or immovable, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

"rights" (權利) includes estates and interests;

"sale" (售賣) includes an exchange;

"securities" (證券) includes stocks, funds and shares, and so far as relates to payments into court has the same meaning as in the enactments relating to funds in court and "securities payable to bearer" (須付款予持有人的證券) includes securities transferable by delivery or by delivery and endorsement;

"stock" (股票) includes fully paid up shares, and, so far as relates to vesting orders made by the court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any corporation, company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

"transfer" (轉讓、轉歸), in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

"trust" (信託) does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expression "trust" (信託) and "trustee" (受託人) extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" (受託人) where the context admits includes a personal representative, and "new trustee" (新受託人) includes an additional trustee;

"trust corporation" (信託法團) means a corporation appointed by the court in any particular case to be a trustee (if authorized by its constitution to act as trustee) or any trust company registered under Part VIII; (Amended 25 of 1998 s. 2)

"trust for sale" (售產信託), in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; and "trustees for sale" (售產受託人) means the persons (including a personal representative) holding land on trust for sale.

[cf. 1925 c. 19 s. 68 U.K.]

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Section:	3	Application		30/06/1997
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(1) This Ordinance, except where otherwise expressly provided, applies to trusts including, so far as this Ordinance applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Ordinance.

(2) The powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Ordinance does not affect the legality or validity of anything done before the commencement of this Ordinance, except as otherwise expressly provided.

[cf. 1925 c. 19 s. 69 U.K.]

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Section:	4	Authorized investments		30/06/1997
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(1) A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not-

- (a) in any investment specified in the Second Schedule;

(b) 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.
(Amended 9 of 1993 s. 7)

(2) Any application to the court made under subsection (1)(b) shall be made by the trustee ex parte and shall be supported by affidavit.

(3) The Financial Secretary may from time to time by order published in the Gazette amend the Second Schedule. (Amended 9 of 1993 s. 2)

(Replaced 48 of 1968 s. 2)

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Section:	7	Retention of unauthorized investment		30/06/1997
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A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the trust instrument or by the general law.

[cf. 1925 c. 19 s. 4 U.K.]

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Section:	8	Investment in bearer securities		30/06/1997
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(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorized investments.

(2) Securities payable to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this section, be deemed to be such an express prohibition as aforesaid.

(4) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

[cf. 1925 c. 19 s. 7 U.K.]

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Section:	11	Powers supplementary to powers of investment		30/06/1997
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(1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding 7 years from the time when the loan was made, provided interest be paid within a specified time not exceeding 30 days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale by trustees of land for a term having at least 60 years to run, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by mortgage of the land sold, with or without the security of any other property, but such mortgage, if any buildings are comprised therein, shall contain a covenant by the

mortgagor to keep such buildings insured against loss or damage by fire to the full value thereof.

(3) The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage.

(4) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement-

- (a) for the reconstruction of the company;
- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the amalgamation of the company with another company;
- (d) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them,

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(5) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(6) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(7) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), is made under the order of the court, the powers conferred by those subsections respectively shall apply only if and as far as the court may by order direct.

[cf. 1925 c. 19 s. 10 U.K.]

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Section:	12	Power to deposit at bank and to pay calls		30/06/1997
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(1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

[cf. 1925 c. 19 s. 11 U.K.]

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Section:	13	Power of trustees for sale to sell by auction, etc.		30/06/1997
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General Powers

(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

[cf. 1925 c. 19 s. 12 U.K.]

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Section:	16	Power to do other acts		30/06/1997
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A personal representative, or 2 or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorized to execute the trusts and powers reposed in him, may, if and as he or they think fit-

- (a) accept any property, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, for any debt, or for any property, claimed; or
- (e) allow any time for payment of any debt; or
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust,

and for any of those purposes may enter into, give, execute and do such agreements, instruments or composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

[cf. 1925 c. 19 s. 15 U.K.]

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Section:	21	Power to insure		30/06/1997
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(1) A trustee may insure against loss or damage by fire and typhoon any building or other insurable property to any amount, including the amount of any insurance already on foot, up to the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

[cf. 1925 c. 19 s. 19 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	22	Application of insurance money where policy kept up under any trust, power or obligation		30/06/1997
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(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purpose of the trust as the case may be.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof after discharging any costs of recovering and receiving it, to the trustees of the trust, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money-

- (a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;
- (b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the right of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Ordinance, but only to money received after such commencement.

[cf. 1925 c. 19 s. 20 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	23	Deposit of documents for safe custody		30/06/1997
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Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

[cf. 1925 c. 19 s. 21 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	24	Reversionary interests, valuations, and audit		30/06/1997
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(1) Where trust property includes any share or interest in property not vested in the trustees, or the

proceeds of sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may-

- (a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;
- (b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorized investments;
- (c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;
- (d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release,

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission-

- (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or
- (b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested,

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every year unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

[cf. 1925 c. 19 s. 22 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	25	Power to employ agents		30/06/1997
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(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering any property, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Hong Kong, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby. (Amended 9 of 1993 s. 7)

(3) Without prejudice to such general power of appointing agents as aforesaid-

- (a) a trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;
- (b) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;
- (c) a trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection shall exempt a trustee from any liability which he would have incurred if this Ordinance and any enactment replaced by this Ordinance had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee. This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Ordinance.

[cf. 1925 c. 19 s. 23 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	27	Power to delegate trusts		30/06/1997
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(1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding 12 months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.

(2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.

(3) An instrument creating a power of attorney under this section shall be attested by at least one witness.

(4) Before or within 7 days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to-

- (a) each person (other than himself) if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and

(b) each of the other trustees, if any,
but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

(5) The donor of a power of attorney given under this section shall be liable for acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(6) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(7) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

(8) This section applies-

- (a) to a personal representative as it applies to a trustee except that subsection (4) shall apply as if it required notice there mentioned to be given to each of the other personal representatives, if any, except any executor who has renounced probate;
- (b) whenever the trusts, powers or discretions in question arose.

(Replaced 51 of 1972 s. 8)

[cf. 1971 c. 27 s. 9 U.K.; cf. 1925 c.19 s. 25 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	28	Protection against liability in respect of rents and covenants		30/06/1997
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Indemnities

(1) Where a personal representative or trustee liable as such for-

- (a) any rent, covenant, or agreement reserved by or contained in any lease; or
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; or
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, and been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof and thereafter-

- (i) he may distribute the residuary estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust estate to meet any future liability under the said lease or grant;
- (ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving

title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this section "lease" (租約) includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" (批地) applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" (承租人) and "grantee" (獲批地人), include persons respectively deriving title under them.

[cf. 1925 c. 19 s. 26 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	32	Implied indemnity of trustees		30/06/1997
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(1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, or of any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

[cf. 1925 c. 19 s. 30 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	33	Power to apply income for maintenance and to accumulate surplus income during a minority		30/06/1997
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Maintenance, Advancement and Protective Trusts

(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property-

- (a) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is-
 - (i) any other fund applicable to the same purpose; or
 - (ii) any person bound by law to provide for his maintenance or education; and
 - (b) if such person on attaining full age has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) to him, until he either attains a vested interest therein or dies, or until failure of his interest:
- (Amended 32 of 1990 s. 8)

Provided that, in deciding whether the whole or any part of the income of the property is during a

minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorized investments, and shall hold those accumulations as follows-

- (a) if any such person-
 - (i) attains full age, or marries before attaining full age, and his interest in such income during his infancy or until his marriage is a vested interest; or
 - (ii) on attaining full age or on marriage before attaining full age becomes entitled to the property from which such income arose absolutely,
 the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and (Amended 32 of 1990 s. 8)
- (b) in any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes,

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be \$5 per cent per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Ordinance.

[cf. 1925 c. 19 s. 31 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	41	Vesting of trust property in new or continuing trustees		30/06/1997
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- (1) Where by a deed a new trustee is appointed to perform any trust, then-
 - (a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and
 - (b) if the deed is made after the commencement of this Ordinance and does not contain such a

declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then-

- (a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest or right to which the declaration relates; and
- (b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such person as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Ordinance, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2), as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend-

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any enactment.

In this subsection "lease" (租約) includes an underlease and an agreement for a lease or underlease.

(5) For purposes of registration of the deed, the person or persons making the declaration, expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Ordinance.

(6) This section applies to deeds of appointment or discharge executed on or after 1 July 1901.

[cf. 1925 c. 19 s. 40 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	42	Power of court to appoint new trustees		30/06/1997
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Appointment of new Trustees

(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing

provision, the court may make an order appointing a new trustee in substitution for a trustee who is sentenced to a term of imprisonment or is a lunatic or a person of unsound mind or is a bankrupt or is a corporation which is in liquidation or has been dissolved.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section gives power to appoint an executor or administrator.

[cf. 1925 c.19 s.41 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
Section:	45	Vesting orders of land		30/06/1997

Vesting Orders

In any of the following cases, namely-

- (a) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (b) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person-
 - (i) is under disability; or
 - (ii) is out of the jurisdiction of the court; or
 - (iii) cannot be found, or, being a corporation, has been dissolved;
- (c) where it is uncertain who was the survivor of 2 or more trustees jointly entitled to or possessed of any interest in land;
- (d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (e) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (f) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for 28 days after the date of the requirement;
- (g) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient,

the court may make an order (in this Ordinance called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:

Provided that-

- (i) where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees; and
- (ii) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or

being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

[cf. 1925 c.19 s.44 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
Section:	56	Power of court to authorize dealing with trust property		30/06/1997

Jurisdiction to make other Order

(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

[cf. 1925 c.19 s.57 U.K.]

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
Section:	62	Payment into court by trustees		30/06/1997

Payment into Court

(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court, and the same shall, subject to the rules of court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where money or securities is or are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities is or are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	77	Application by company to be registered as a trust company		30/06/1997
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(1) Any company incorporated in Hong Kong (not being a private company within the meaning of section 29 of the Companies Ordinance (Cap 32)) may apply in writing to the Registrar of Companies to be registered as a trust company under this Part.

(2) A company which makes an application under subsection (1) shall be eligible to be registered under this Part if, but only if-

- (a) the objects of the company as set out in its memorandum and articles of association are restricted to some or all of the objects set out in section 81;
- (b) the issued share capital of the company is not less than \$3000000; (Amended 9 of 1993 s. 3)
- (c) in the case of a company having an issued share capital of \$3000000 that capital is bona fide fully paid up for a cash consideration and, in the case of a company having an issued share capital exceeding \$3000000 at least \$3000000 of that capital is bona fide paid up for a cash consideration; (Amended 9 of 1993 s. 3)
- (d) the board of directors has been duly appointed in accordance with the articles of association of the company;
- (e) the company has either-
 - (i) deposited with the Director of Accounting Services investments specified in the Second Schedule (other than those specified in paragraphs 7, 14, 15, 17 and 19) to the value of not less than \$1500000; or
 - (ii) deposited in the name of the Director of Accounting Services with a finance company that is a subsidiary of a bank within the meaning of section 2 of the Banking Ordinance (Cap 155) a sum not less than \$1500000 and lodged a receipt issued by the finance company for that amount with the Director of Accounting Services; or (Amended 27 of 1986 s. 137; 49 of 1995 s. 53)
 - (iii) deposited with the Director of Accounting Services a guarantee, in terms acceptable to the Director of Accounting Services, from a bank within the meaning of section 2 of the Banking Ordinance (Cap 155); and (Added 9 of 1993 s. 3. Amended 49 of 1995 s. 53)
- (f) the company is able to meet its obligations, apart from its liability to its shareholders, without taking into account the investments or sum deposited under paragraph (e). (Amended L.N. 16 of 1977)

(3) For the purposes of subsection (2)-

- (a) "finance company" (財務公司) means a company whose principal business involves the receiving on deposit of money, whether repayable to depositors with or without interest or other consideration, and the lending of that money, or a substantial part of that money, to borrowers on terms that the money is repayable to the company or its nominee with interest or at a premium or with consideration in money or money's worth, but does not include a bank within the meaning of section 2 of the Banking Ordinance (Cap 155); (Amended 49 of 1995 s. 53)
- (b) section 2(4), (5) and (6) of the Companies Ordinance (Cap 32) shall apply as if each reference in those subsections to "a company" or "first-mentioned company" were read as a reference to a finance company and as if each reference in those subsections to "another company" or "other company" were read as a reference to a bank within the meaning of section 2 of the Banking Ordinance (Cap 155). (Amended 27 of 1986 s. 137; 49 of 1995 s. 53)

(4) A trust company registered under this Ordinance before the date of commencement* of the Trustee (Amendment) Ordinance 1975 (23 of 1975) which has not previously complied with the requirements as to eligibility for registration as a trust company as set out in subsection (2) of this section shall, within 9 months after that date, comply with those requirements to the satisfaction of the Registrar of Companies. (Amended 90 of 1975 s. 2)

(4A) Subject to subsection (4B), a trust company registered under this Ordinance, whether before, on or after the date of commencement of the Trustee (Amendment) Ordinance 1993 (9 of 1993), shall after its registration and for so long as it carries on any business or executes any office included in the objects set out in section 81(1) comply with the requirements set out in subsection (2). (Added 9 of 1993 s. 3)

(4B) A trust company registered before the date of commencement of the Trustee (Amendment) Ordinance 1993 (9 of 1993) which at that date does not comply with one or more of the requirements set out in subsection (2) shall, within 9 months after that date, comply with those requirements to the satisfaction of the Registrar of Companies. (Added 9 of 1993 s. 3)

(5) Notwithstanding section 7 of the Companies Ordinance (Cap 32), a trust company to which subsection (4) or (4B) applies may, within the period of 9 months referred to in that subsection, alter any condition contained in its memorandum of association to such extent as may be required to enable it to comply with the requirements of subsection (2). (Added 90 of 1975 s. 2)

(Replaced 23 of 1975 s. 2. Amended 9 of 1993 s.)

Note:

* **Commencement date: 1 July 1975.**

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
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Section:	81	Objects		30/06/1997
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- (1) The objects of a trust company may be some or all of, but shall not exceed the following-
 - (a) to accept and execute the offices of executor, administrator, trustee, receiver, receiver and manager, assignee, liquidator, guardian of the property of infants, committee of the estates of lunatics, or other like office of a fiduciary nature;
 - (b) to act as attorney or agent for the collection, receipt and payment of money and for winding up estates and for the sale or purchase of any movable or immovable property;
 - (c) to act as agent for the management and control of movable and immovable property for and on behalf of the owners thereof or for or on behalf of executors, administrators or trustees;
 - (d) to act as investing and financial agent for and on behalf of executors, administrators, and trustees or any other persons whatsoever and to receive money in trust for investment and to allow interest thereon until invested; and to undertake for and on behalf of executors, administrators and trustees or any other persons whatsoever the negotiation of loans of all descriptions and the procuring and lending of money on the security of any description of property immovable or movable or without taking any security on such terms as may be arranged, and to advance and lend moneys to protect any estate, trust or property entrusted to the company as aforesaid and to charge interest upon any such advances:

Provided that nothing herein contained shall be held either to restrict or extend the powers of the company as trustee or agent under the terms of any trust or agency that may be conferred upon it;
 - (e) to take securities of such nature as are deemed expedient for any moneys owing to the company;
 - (f) to be the custodian on such terms as are agreed upon of any moneys, securities, jewellery, plate or other valuable property and of papers, documents, deeds, wills, debentures and other

- evidence of title or indebtedness;
- (g) to receive and manage any sinking, redemption, guarantee or any other special fund or deposit and to act as agent for countersigning, registering or otherwise ascertaining and certifying to the genuineness of any issue of shares, stocks, bonds, debentures or other securities for money of any government, municipal or other corporate body or of any association, whether incorporated or not, duly authorized to issue and make such issue and to hold any such securities as agent or trustee and to act generally as agent for any such government, municipal or corporate body or association;
 - (h) to acquire and hold immovable property for the actual use and occupation of the company or any of its officers and servants and to erect, construct, enlarge, alter and maintain any buildings necessary or convenient for the said purposes and to sell or otherwise dispose of any such immovable property if not required for the said purposes;
 - (i) to hold land which having been mortgaged to the company is acquired by it for the protection of its investments; and from time to time sell, mortgage, lease or otherwise dispose thereof;
 - (j) to deposit the moneys of the company not immediately required with any bank or banks at interest until such moneys can be more permanently invested and to invest the moneys of the company in accordance with the provisions of section 91;
 - (k) to borrow moneys and secure the repayment thereof with interest in accordance with the provisions of section 93;
 - (l) to receive and collect such remuneration for its services as is agreed upon or as fixed or allowed from time to time by law and all usual and customary charges, costs and expenses;
 - (m) to support and subscribe to any charitable or public object and any institution, society or club which may be for the benefit of the company or its employees or may be connected with any town or place where the company carries on business; to give pensions, gratuities or charitable aid to any person or persons who may serve or have served the company or to the wives, children or other relatives of such persons; to make payments towards insurance and to form and contribute to provident and benefit funds for the benefit of any persons employed by the company:

Provided that no such subscription, gift, payment or contribution shall be given or made, except out of profits of the company available for distribution as dividend;

- (n) to acquire and undertake the whole or any part of the business of any person or company of a like nature to any business which a trust company is authorized to carry on and in consideration for such acquisition to undertake all or any of the liabilities of such person or company and to issue shares to such person or company;
- (o) to do all such other things as are incidental or conducive to the attainment of the before mentioned objects or any of them;
- (p) to carry out all or any of the objects aforesaid either within or outside Hong Kong and by or through trustees, agents or otherwise and either alone or in conjunction with others. (Added 48 of 1968 s. 4. Amended 9 of 1993 s. 7)

(2) Nothing in this section shall be construed to authorize any trust company to engage in the business of banking or of insurance or the business of a deposit, provident or benefit society.

(3) No trust company shall carry on any business or execute any office other than the businesses or offices included in the objects set out in subsection (1).

(4) For the avoidance of doubt it is hereby declared that nothing in subsection (1) shall be construed so as to restrict, or at any time to have restricted, a trust company to carrying out its objects within Hong Kong only. (Added 48 of 1968 s. 4. Amended 9 of 1993 s. 7)

(Amended 24 of 1950 Schedule)

Chapter:	29	TRUSTEE ORDINANCE	Gazette Number	Version Date
Schedule:	2	AUTHORIZED INVESTMENTS	L.N. 12 of 2003	01/04/2003

[section 4]

1. Any shares or debentures which are issued or allotted by a company and which satisfy the following conditions at the date the investment is made-

(a) in the case of shares-

- (i) the shares are listed on a recognized stock market or specified stock exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); (Replaced 5 of 2002 s. 407)
- (ii) the market capitalization of the company issuing the shares is not less than \$10 billion (\$10000000000) or its equivalent in foreign currency; and
- (iii) the company has paid, in each of the 5 years immediately preceding the calendar year in which the investment is made, a dividend wholly in cash (except to the extent that any shareholder may have opted to accept it other than wholly in cash) on all the shares issued by the company, excluding any shares issued after the dividend was declared and any shares which by their terms of issue did not rank for the dividend in that year;

(b) in the case of debentures, the security meets the credit rating as specified in the Table.

For the purposes of subparagraph (a)(iii) a company formed-

- (i) to take over the business of another company or other companies; or
- (ii) to acquire the securities of, or control of, another company or other companies,

or for either of those purposes and for other purposes shall be deemed to have paid a dividend as mentioned in that subparagraph in any year in which such a dividend has been paid by the other company or all the other companies, as the case may be.

2. Any debt security which is issued by, or the payment of principal and interest on which is guaranteed by-

- (a) in Hong Kong, the Government of Hong Kong, the Exchange Fund established by the Exchange Fund Ordinance (Cap 66) or a company 100% of the shares in which are owned beneficially by the Government of Hong Kong; or
- (b) outside Hong Kong, the government, the central bank or an equivalent agency of a country which qualifies for the credit rating specified in the Table; or
- (c) any multilateral agency specified in Part 4 of Schedule 1 to the Securities and Futures Ordinance (Cap 571) which qualifies for the credit rating specified in the Table. (Amended 5 of 2002 s. 407)

3. Any unit trust or mutual fund authorized as a collective investment scheme under section 104 of the Securities and Futures Ordinance (Cap 571). (Replaced 5 of 2002 s. 407)

4. Any deposit (as defined in section 2 of the Banking Ordinance (Cap 55)) with an authorized institution.

5. Certificates of deposit, bills of exchange, promissory notes or short-term (i.e. less than 1 year) debt securities issued or guaranteed by an authorized institution or by an exempted body.

6. First legal mortgages of any property, including an undivided share in property, which is situated in Hong Kong and held under a Government lease of which the unexpired term at the time of investment is not less than 50 years, excluding any term for which the lease can be renewed. (Amended 29 of 1998 s. 105)

7. Any derivatives which are traded on a recognized stock market, specified stock exchange, recognized futures market or specified futures exchange as these terms are defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap 571); except that an investment under this paragraph-

- (a) shall be made for hedging purposes only, that is to say, the derivatives acquired shall be of a type and specification suitable for reducing the impact on the trust fund of a diminution in the

value of specific assets already held by the trust fund or which are to be acquired at the same time as the derivatives; and

- (b) shall not be made except in accordance with the written advice of a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in advising on securities, advising on futures contracts, advising on corporate finance or asset management under Part V of the Securities and Futures Ordinance (Cap 571) expressly obtained as to-
- (i) the nature and extent of the risk of diminution in the value of the assets in question, the type and specification of the derivatives suitable to reduce the impact of such diminution in value, and generally the strategy to be adopted in acquiring, holding and disposing of the derivatives;
 - (ii) the potential loss that could result from acquiring and holding the derivatives and the risk of such occurring; and
 - (iii) the nature and extent of the various risks of diminution in the value of the trust fund and the suitability of using derivatives to protect against those risks.

(Amended 5 of 2002 s. 407)

8. In this Schedule-

"authorized institution" (認可機構) has the meaning assigned to it in section 2 of the Banking Ordinance (Cap 155);

"bill of exchange" (匯票) and "promissory note" (承付票) have the same meanings as in the Bills of Exchange Ordinance (Cap 19);

"certificate of deposit" (存款證) means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document-

- (a) which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest; and
- (b) by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable;

"company" (公司) means a body corporate-

- (a) incorporated under the Companies Ordinance (Cap 32);
- (b) incorporated under any other enactment; or
- (c) incorporated or established outside Hong Kong;

"debentures" (債權證) includes debenture stock, bonds and any other securities of a company whether or not constituting a charge on the assets of the company;

"debt security" (債務證券) means-

- (a) debenture or loan stock;
- (b) debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured;
- (c) options, warrants or similar rights to subscribe to or purchase any of the foregoing; and
- (d) convertible loan stock;

"derivative" (衍生工具) means any right in or to a financial contract or financial instrument the value of which is determined by reference to the value of or any fluctuation in the value of a share, index, rate of exchange or rate of interest either individually or in the aggregate;

"exempted body" (豁免團體) means a body specified in Part 3 of Schedule 4 to the Securities and Futures Ordinance (Cap 571) but does not include a body referred to in item 11 of that Part; (Replaced 5 of 2002 s. 407)

"shares" (股份) means shares in the capital of a company and includes the stock or any part of the stock of a company;

(Amended 5 of 2002 s. 407)

TABLE
CREDIT RATINGS

- (a) For long-term debt (one year or over)-
Given by
Moody's Investors Service Inc. A3
Standard & Poor's Corporation A-
or an equivalent rating given by any recognized credit rating agency approved by the Secretary for
Financial Services and the Treasury. (Amended L.N. 106 of 2002)
- (b) For short-term debt (less than one year)-
Given by
Moody's Investors Service Inc. Prime-1
Standard & Poor's Corporation A-1
or an equivalent rating given by any recognized credit rating agency approved by the Secretary for
Financial Services and the Treasury. (Amended L.N. 106 of 2002)
(Second Schedule replaced L.N. 177 of 1995)

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	1	Short title		30/06/1997
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PRELIMINARY AND GENERAL

This Ordinance may be cited as the Perpetuities and Accumulations Ordinance.

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation		30/06/1997
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(1) In this Ordinance, unless the context otherwise requires-
"disposition" (產權處置) includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;
"in being" (在世的) means living or en ventre sa mere;
"power of appointment" (指定受益的權力) includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;
"will" (遺囑) includes a codicil.

(2) For the purposes of this Ordinance a disposition contained in a will shall be deemed to be made at the death of the testator.

(3) For the purposes of this Ordinance a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time

be satisfied.

[cf. 1964 c.55 s.15(2) & (3) U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	3	Application		30/06/1997
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(1) Nothing in this Ordinance shall affect the operation of the rule of law rendering void for remoteness certain dispositions under which property is limited to be applied for purposes other than the benefit of any person or class of persons in cases where the property may be so applied after the end of the perpetuity period.

(2) This Ordinance shall apply (except as provided in subsection (2) of section 13 and section 18) only in relation to instruments taking effect after the commencement of this Ordinance, and in the case of an instrument made in the exercise of special power of appointment shall apply only where the instrument creating the power takes effect after that commencement:

Provided that section 12 shall apply in all cases for construing the foregoing reference to a special power of appointment.

(3) This Ordinance shall apply in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

(4) This Ordinance binds the Crown.

[cf. 1964 c.55 s.15(4)-(7) U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	4	Abolition of the double possibility rule		30/06/1997
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PERPETUITIES

The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

[cf. 1925 c.20 s.161 U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	13	Administrative powers of trustees		30/06/1997
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(1) The rule against perpetuities shall not operate to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration (as opposed to the distribution) of any property, and shall not prevent the payment to trustees or other persons of reasonable remuneration for their services.

(2) Subsection (1) shall apply for the purpose of enabling a power to be exercised at any time after the commencement of this Ordinance notwithstanding that the power is conferred by an instrument which took effect before that commencement.

[cf. 1964 c.55 s.8 U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	16	Possibilities of resulting trust, conditions subsequent, exceptions and reservations		30/06/1997
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(1) In the case of a possibility of a resulting trust on the determination of any determinable interest in property, the rule against perpetuities shall apply in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise, on breach thereof, to a right of re-entry or an equivalent right in the case of property other than land, and where the provision falls to be treated as void for remoteness the determinable interest shall become an absolute interest.

(2) Where a disposition is subject to any such provision, or to any such condition subsequent, or to any exception or reservation, the disposition shall be treated for the purposes of this Ordinance as including a separate disposition of any rights arising by virtue of the provision, condition subsequent, exception or reservation.

[cf. 1964 c.55 s.12 U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
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Section:	17	General restrictions on accumulations of income		30/06/1997
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ACCUMULATIONS

(1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following, namely-

- (a) the life of the grantor or settlor; or
- (b) a term of twenty-one years from the death of the grantor, settlor or testator; or
- (c) the duration of the minority or respective minorities of any person in being at the death of the grantor, settlor or testator; or
- (d) the duration of the minority or respective minorities only of any person who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated; or
- (e) a term of twenty-one years from the date of the making of the disposition; or
- (f) the duration of the minority or respective minorities of any person or persons in being at the date of the making of the disposition.

(2) In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person who would have been entitled thereto if such accumulation had not been directed.

(3) The restrictions imposed by subsection (1) apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and they apply whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.

(4) This section does not extend to any provision-

- (a) for payment of the debts of any grantor, settlor, testator or other person;
- (b) for raising portions for-
 - (i) any child or remoter issue of any grantor, settlor or testator; or
 - (ii) any child or remoter issue of a person taking any interest under any settlement or other

disposition directing the accumulations or to whom any interest is thereby limited, and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

[cf. 1925 c.20 s.164 U.K.; 1964 c.55 s.13 U.K.]

Chapter:	257	PERPETUITIES AND ACCUMULATIONS ORDINANCE	Gazette Number	Version Date
Section:	18	Qualification of restrictions on accumulation		30/06/1997

Where accumulations of surplus income are made during a minority under any Ordinance or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Ordinance) to be taken into account in determining the periods for which accumulations are permitted to be made by section 17, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

[cf. 1925 c.20 s.165 U.K.]

Chapter:	501	Enduring Powers of Attorney Ordinance	Gazette Number	Version Date
Section:	8	Scope of authority, etc. of attorney under enduring power	E.R. 2 of 2012	02/08/2012

- (1) An enduring power-
 - (a) must not confer on the attorney any authority other than authority to act in relation to the property of the donor and his financial affairs;
 - (b) subject to paragraph (a), must specify, in accordance with regulations made under section 18, the particular matters, property or affairs in relation to which the attorney has authority to act.
- (2) An instrument which purports to create an enduring power which does not comply with subsection (1) cannot take effect as an enduring power.
- (3) An attorney may, subject to any conditions and restrictions contained in the enduring power and without obtaining any consent-
 - (a) execute or exercise all or any of the trusts, powers or discretions vested in the donor as trustee and may, without the concurrence of any other person, give a valid receipt for capital or any other money paid;
 - (b) act under the power so as to benefit himself and other persons (not being the donor) to the following extent, but no further-
 - (i) he may so act in relation to himself or in relation to any other person if the donor might be expected to provide for his or that person's needs respectively; and
 - (ii) he may do whatever the donor might be expected to do to meet those needs; and
 - (c) without prejudice to paragraph (b) and subject to subsection (4), dispose of the property of the donor by way of gift to the following extent, but no further-
 - (i) he may make gifts of a seasonal nature or at a time or on an anniversary of a birth or marriage to persons (including himself) who are related to or connected with the donor; and
 - (ii) he may make gifts to any charity to which the donor made or might be expected to make gifts.
- (4) A gift under subsection (3)(c) must not be unreasonable having regard to all the circumstances, in particular, the donor's estate.

Chapter:	501A	Enduring Powers of Attorney (Prescribed Form) Regulation	Gazette Number	Version Date
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Section:	5	Donor to specify decisions attorney may make	E.R. 2 of 2012	02/08/2012
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- (1) This section applies for the purposes of section 8(1) of the Ordinance.
- (2) The donor must-
 - (a) specify, with reference to the list set out in subsection (3), the matters in which the attorney is given authority to act; or
 - (b) specify the particular property or financial affairs in respect of which the attorney is given such authority.
- (2A) To avoid doubt, subsection (2) is not to be construed as preventing the donor from specifying under both paragraphs of that subsection. (25 of 2011 s. 11)
- (3) The list for the purposes of subsection (2)(a) is as follows-
 - (a) to collect any income due to the donor;
 - (b) to collect any capital due to the donor;
 - (c) to sell any of the donor's movable property;
 - (d) to sell, lease or surrender the donor's home or any of the donor's immovable property; (25 of 2011 s. 11)
 - (e) to spend any of the donor's income;
 - (f) to spend any of the donor's capital; or
 - (g) to exercise any of the donor's powers as a trustee.

Chapter:	501A	Enduring Powers of Attorney (Prescribed Form) Regulation	Gazette Number	Version Date
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Schedule:	1	Form 1	L.N. 50 of 2012	03/07/2012
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[section 1A]

Information you must read

1. This form is a legal document that allows you to create an enduring power of attorney (**EPA**). An EPA enables you to authorize another person (**your attorney**) to act on your behalf in relation to your property and financial affairs. You must use this form if you intend to appoint only one attorney. If you become mentally incapable, your attorney will be able to make decisions for you after your attorney has registered this form with the Registrar of the High Court.
2. If you are a trustee, you should seek legal advice if you want your attorney to act as a trustee on your behalf.
3. You must complete Part A.
4. **Paragraph 1 of Part A:** You must include the name and address of the person you wish to appoint as your attorney at paragraph 1 of Part A. The person you appoint as your attorney must be over 18 years of age and must not be bankrupt or mentally incapable. Your attorney does not have to be a solicitor. Your attorney must complete Part B and sign this form in the presence of a witness.

5. **Paragraph 2 of Part A:** You cannot give your attorney a general authority over all your property and financial affairs. If you do, your EPA will not be valid. Instead, you must specify at paragraph 2 of Part A what you authorize your attorney to do with your property and financial affairs, or the particular property or financial affairs for which you have given your attorney authority to act. For example, you may decide to give your attorney authority only for a particular bank account, or a particular piece of property.

6. **Paragraph 3 of Part A:** You may include any restrictions you like on the authority you give to your attorney. For example, you may include a restriction that your attorney must not act on your behalf until your attorney has reason to believe that you are becoming mentally incapable, or that your attorney must not enter into a contract without first seeking legal advice if its value exceeds a specified amount. You should set out these restrictions at paragraph 3 of Part A.

7. Unless you include a restriction preventing it, your attorney will be able to use any of your money or property to make any provision which you might be expected to make yourself for the needs of your attorney or the needs of other persons. Your attorney will be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

8. Your attorney may recover out-of-pocket expenses for acting as your attorney. If your attorney is a professional person, such as an accountant or a solicitor, your attorney may charge for any professional services provided when acting as your attorney.

9. If your attorney has reason to believe that you are, or are becoming, mentally incapable of managing your affairs, your attorney must apply to the Registrar of the High Court to register this EPA. Registration will allow your attorney to make decisions for you after you have become mentally incapable.

10. **Paragraph 4 of Part A:** If you would like to be notified before your attorney applies to the Registrar of the High Court to register this EPA, or if you would like other persons to be notified, you must include the names and addresses of the persons to be notified at paragraph 4 of Part A. You can include up to 2 persons to be notified in addition to yourself. If your attorney does not notify you or the persons you have nominated, that does not prevent the registration of your EPA or make it invalid. However, in any legal proceedings relating to the EPA the court may, if it considers it appropriate, draw an adverse inference from the failure to notify you or the nominated persons.

11. **Paragraphs 7, 9 and 10 of Part A:** You must sign this form at paragraph 7 of Part A and fill in the names and addresses of the registered medical practitioner and the solicitor who are present when you sign. If you do not sign in the presence of both the registered medical practitioner and the solicitor at the same time, you must sign the form in the presence of the solicitor no later than 28 days after the date on which you sign in the presence of the registered medical practitioner. The registered medical practitioner and the solicitor will need to complete the certificates at paragraphs 9 and 10 of Part A respectively to certify that you are mentally capable when you sign this form.

12. **Paragraph 8 of Part A:** If you are physically incapable of signing this form yourself, you can direct someone else to sign on your behalf. In this case, paragraph 8 of Part A must be completed and that person must sign at that paragraph in your presence and in the presence of the registered medical practitioner and the solicitor. The person signing on your behalf must not be your attorney, the spouse of your attorney, the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor.

13. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap 501) when it is signed by you or the person signing on your behalf and under your direction

before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney. However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 5 of Part A.

Form of enduring power of attorney (for appointment of only one attorney)

Part A

*[This Part must be completed by the person appointing the attorney (**the donor**), except for paragraphs 9 and 10, which must be completed by a registered medical practitioner and a solicitor respectively. You should read the explanatory information given under the heading “**Information you must read**” before you fill it in. Do not sign this form unless you understand what it means.]*

1. Appointment of attorney by donor

I, [your name here] ,
holder of [your identification document here]..... ,
of [your address here]
.....
appoint [your attorney’ s name here]
holder of [identification document here] ,
of [your attorney’ s address here]
.....

to be my attorney under the Enduring Powers of Attorney Ordinance (Cap 501).

2. Attorney’ s authority

*[You must specify what you authorize your attorney to do. You cannot give a general authority over all your property and financial affairs. **If you do, your EPA will not be valid.** You can **either** specify at subparagraph (1) what you authorize your attorney to do by ticking any or all of the appropriate boxes, **or** tick no box, in which case you must list at subparagraph (2) the particular property or financial affairs for which you have given your attorney authority to act. If you have ticked any or all the boxes at subparagraph (1), you may still list at subparagraph (2) any particular property or financial affairs in relation to which you have given your attorney authority to act. You must not make no ticks at subparagraph (1) **and** list no property at subparagraph (2).]*

(1) My attorney has authority to act on my behalf:

- ☐ (a) to collect any income due to me;
- ☐ (b) to collect any capital due to me;
- ☐ (c) to sell any of my movable property;
- ☐ (d) to sell, lease or surrender my home or any of my immovable property;
- ☐ (e) to spend any of my income;
- ☐ (f) to spend any of my capital; or
- ☐ (g) to exercise any of my powers as a trustee.

(2) My attorney has authority to act on my behalf in respect of the following property or financial affairs: *[If you want your attorney to act for you only in relation to some of your property or*

financial affairs, you must list them here.]

.....
.....
.....
.....

3. **Restrictions on attorney**

This enduring power of attorney is subject to the following conditions and restrictions: *[If you want to put conditions or restrictions on the way your attorney exercises any powers, you must list them here. For example, you may include a restriction that your attorney must not act on your behalf until your attorney has reason to believe that you are becoming mentally incapable. If you do not want to impose any conditions or restrictions, you must delete this paragraph.]*

.....
.....
.....

4. **Notification of named persons**

*[If you do not want anyone (including yourself) to be notified of the application for the registration of this EPA, you must delete subparagraphs (1) **and** (2).]*

(1) My attorney must notify me before applying for the registration of this enduring power of attorney. *[If you do not want to be notified, you must delete this subparagraph.]*

(2) My attorney must notify the following persons before applying for the registration of this enduring power of attorney. *[Fill in the names and addresses of up to 2 persons (other than yourself) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

Name:

Address:

Name:

Address:

5. **Commencement of EPA**

[This EPA takes effect on the date it is signed before the solicitor in paragraph 7 or 8 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on
..... (insert a later date or event).

6. **Power to continue**

I intend this enduring power of attorney to continue even if I become mentally incapable.

7. **Signatures**

Signed by me as a deed *[sign here]*

on [date]
in the presence of [name and address of registered medical practitioner]
.....
.....

Signed by me as a deed [sign here].....
on [date]
in the presence of [name and address of solicitor]
.....
.....

8. *[If you are physically incapable of signing this form and you direct someone else to sign on your behalf, that person must sign here and paragraph 7 must be deleted.]*

This enduring power of attorney has been signed by [name of person signing on your behalf]
.....
holder of [identification document] ,
of [address of person signing on your behalf]
.....
under the direction and in the presence of the donor.

Signed as a deed [signature of person signing on your behalf]
.....
on [date]
in the presence of the donor and [name and address of registered medical practitioner]
.....
.....

Signed as a deed [signature of person signing on your behalf]
.....
on [date]
in the presence of the donor and [name and address of solicitor]
.....
.....

9. **Certificate by registered medical practitioner**

I certify that:

- (a) I am satisfied that the donor is mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by [name of person signing on donor's behalf]
.....
on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by registered medical practitioner

on [date]

10. Certificate by solicitor

I certify that:

- (a) the donor appears to be mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on donor's behalf]*

.....
on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by solicitor
on [date]

Part B

[This Part must be completed by the attorney.]

- 1. I understand that I have a duty to apply to the Registrar of the High Court to register this form under the Enduring Powers of Attorney Ordinance (Cap 501) when the donor is, or is becoming, mentally incapable.
- 2. I also understand my limited power to use the donor's property to benefit persons other than the donor as provided in section 8(3) and (4) of that Ordinance and also my duties and liabilities under section 12 of that Ordinance.
- 3. Signed by me as a deed *[signature of attorney]*
on [date]
in the presence of *[signature and name and address of witness, who must not be the donor]*
.....
.....
.....

(Schedule 1 replaced 25 of 2011 s. 13)

Chapter:	501A	Enduring Powers of Attorney (Prescribed Form) Regulation	Gazette Number	Version Date
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Schedule:	2	Form 2	L.N. 50 of 2012	03/07/2012
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[section 1A]

Information you must read

- 1. This form is a legal document that allows you to create an enduring power of attorney (**EPA**). An EPA enables you to authorize another person to act on your behalf in relation to your property and financial

affairs. You must use this form if you intend to appoint more than one person to act on your behalf. If you become mentally incapable, the persons you have appointed (***your attorneys***) will be able to make decisions for you after they have registered this form with the Registrar of the High Court.

2. If you are a trustee, you should seek legal advice if you want your attorneys to act as trustees on your behalf.

3. **Paragraph 2 of Part A:** You must decide whether your attorneys are to act—

- (a) jointly (that is, they must all act together and cannot act separately); or
- (b) jointly and severally (that is, they can all act together but they can also act separately if they wish).

You must indicate your decision at paragraph 2 of Part A. You should note that if your attorneys are to act jointly, on the bankruptcy or death of any one of them this power of attorney becomes revoked under law.

4. You must complete Part A.

5. **Paragraph 1 of Part A:** You must include the names and addresses of the persons you wish to appoint as your attorneys at paragraph 1 of Part A. The persons you appoint as your attorneys must be over 18 years of age and must not be bankrupt or mentally incapable. Your attorneys do not have to be solicitors. Your attorneys must complete Part B and each of them must sign this form in the presence of a witness.

6. **Paragraph 3 of Part A:** You cannot give your attorneys a general authority over all your property and financial affairs. If you do, your EPA will not be valid. Instead, you must specify at paragraph 3 of Part A what you authorize your attorneys to do with your property and financial affairs, or the particular property or financial affairs for which you have given your attorneys authority to act. For example, you may decide to give your attorneys authority only for a particular bank account, or a particular piece of property.

7. **Paragraph 4 of Part A:** You may include any restrictions you like on the authority you give to your attorneys. For example, you may include a restriction that your attorneys must not act on your behalf until they have reason to believe that you are becoming mentally incapable, or that your attorneys must not enter into a contract without first seeking legal advice if its value exceeds a specified amount. You should set out these restrictions at paragraph 4 of Part A.

8. Unless you include a restriction preventing it, your attorneys will be able to use any of your money or property to make any provision which you might be expected to make yourself for the needs of your attorneys or the needs of other persons. Your attorneys will be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

9. Your attorneys may recover out-of-pocket expenses for acting as your attorneys. If any of your attorneys is a professional person, such as an accountant or a solicitor, that attorney may charge for any professional services provided when acting as your attorney.

10. If your attorneys have reason to believe that you are, or are becoming, mentally incapable of managing your affairs, they must apply to the Registrar of the High Court to register this EPA. Registration will allow your attorneys to make decisions for you after you have become mentally incapable.

11. **Paragraph 5 of Part A:** If you would like to be notified before your attorneys apply to the Registrar of the High Court to register this EPA, or if you would like other persons to be notified, you must include the names and addresses of the persons to be notified at paragraph 5 of Part A. If you have decided that your

attorneys may act separately, you may also nominate any of your attorneys not joining in the application to be notified. You can include up to 2 persons to be notified in addition to yourself and any attorney not joining in the application. If your attorneys do not notify you or the persons you have nominated, that does not prevent the registration of your EPA or make it invalid. However, in any legal proceedings relating to the EPA the court may, if it considers it appropriate, draw an adverse inference from the failure to notify you or the nominated persons.

12. Paragraphs 8, 10 and 11 of Part A: You must sign this form at paragraph 8 of Part A and fill in the names and addresses of the registered medical practitioner and the solicitor who are present when you sign. If you do not sign in the presence of both the registered medical practitioner and the solicitor at the same time, you must sign the form in the presence of the solicitor no later than 28 days after the date on which you sign in the presence of the registered medical practitioner. The registered medical practitioner and the solicitor will need to complete the certificates at paragraphs 10 and 11 of Part A respectively to certify that you are mentally capable when you sign this form.

13. Paragraph 9 of Part A: If you are physically incapable of signing this form yourself, you can direct someone else to sign on your behalf. In this case, paragraph 9 of Part A must be completed and that person must sign at that paragraph in your presence and in the presence of the registered medical practitioner and the solicitor. The person signing on your behalf must not be one of your attorneys, the spouse of any one of your attorneys, the registered medical practitioner or the solicitor before whom the instrument is signed or the spouse of the registered medical practitioner or the solicitor.

14. This form takes effect as an EPA in accordance with section 10 of the Enduring Powers of Attorney Ordinance (Cap 501) when it is signed by you or the person signing on your behalf and under your direction before the solicitor. You should note that unless and until this form is so signed, it has no effect either as an EPA or an ordinary power of attorney.

However, if you wish, you may choose a later date or later event, on which the EPA will take effect. In such case you must specify this later date or event in paragraph 6 of Part A.

Form of enduring power of attorney (for appointment of more than one attorney)

Part A

*[This Part must be completed by the person appointing the attorneys (**the donor**), except for paragraphs 10 and 11, which must be completed by a registered medical practitioner and a solicitor respectively. You should read the explanatory information given under the heading “**Information you must read**” before you fill it in. Do not sign this form unless you understand what it means.]*

1. Appointment of attorneys by donor

I, [your name here] ,
holder of [your identification document here] ,
of [your address here]
.....
appoint

(a) [your attorney’ s name here]
holder of [identification document here] ,
of [your attorney’ s address here]
..... ;

and

- (b) *[your attorney' s name here]*
holder of *[identification document here]* ,
of *[your attorney' s address here]*
.....

[If you appoint more than 2 attorneys, please add additional subparagraph(s) similar to subparagraphs (a) and (b).]

to be my attorneys under the Enduring Powers of Attorney Ordinance (Cap 501).

2. Whether attorneys must act jointly

*[You must decide whether your attorneys are to act (a) jointly; **or** (b) jointly and severally. See paragraph 3 under the heading “Information you must read” and delete either (a) or (b) from the statement below. **If you do not, your EPA will not be valid.**]*

My attorneys appointed under paragraph 1 are to act—

(a) jointly.

or

(b) jointly and severally.

3. Attorneys' authority

*[You must specify what you authorize your attorneys to do. You cannot give a general authority over all your property and financial affairs. **If you do, your EPA will not be valid.** You can **either** specify at subparagraph (1) what you authorize your attorneys to do by ticking any or all of the appropriate boxes, **or** tick no box, in which case you must list at subparagraph (2) the particular property or financial affairs for which you have given your attorneys authority to act. If you have ticked any or all the boxes at subparagraph (1), you may still list at subparagraph (2) any particular property or financial affairs in relation to which you have given your attorneys authority to act. You must not make no ticks at subparagraph (1) **and** list no property at subparagraph (2).]*

(1) My attorneys have authority to act on my behalf:

- ☐ (a) to collect any income due to me;
- ☐ (b) to collect any capital due to me;
- ☐ (c) to sell any of my movable property;
- ☐ (d) to sell, lease or surrender my home or any of my immovable property;
- ☐ (e) to spend any of my income;
- ☐ (f) to spend any of my capital; or
- ☐ (g) to exercise any of my powers as a trustee.

(2) My attorneys have authority to act on my behalf in respect of the following property or financial affairs: *[If you want your attorneys to act for you only in relation to some of your property or*

financial affairs, you must list them here.]

.....
.....
.....
.....

4. **Restrictions on attorneys**

This enduring power of attorney is subject to the following conditions and restrictions: *[If you want to put conditions or restrictions on the way your attorneys exercise any powers, you must list them here. For example, you may include a restriction that your attorneys must not act on your behalf until they have reason to believe that you are becoming mentally incapable. If you do not want to impose any conditions or restrictions, you must delete this paragraph.]*

.....
.....
.....

5. **Notification of named persons**

[If you do not want anyone (including yourself) to be notified of the application for the registration of this EPA, you must delete subparagraphs (1), (2) and (3).]

- (1) My attorneys must notify me before applying for the registration of this enduring power of attorney. *[If you do not want to be notified, you must delete this subparagraph.]*
- (2) Any attorney applying for the registration of this enduring power of attorney must, before the application is made, notify any attorney not joining in the application. *[If you decide that your attorneys may act separately and you do not require any attorney applying for the registration of this EPA to notify any attorney not joining in the application, you must delete this subparagraph.]*
- (3) My attorneys must notify the following persons before applying for the registration of this enduring power of attorney. *[Fill in the names and addresses of up to 2 persons (other than yourself or any of your attorneys) to be notified. If you do not want other persons to be notified, you must delete this subparagraph.]*

Name:

Address:

Name:

Address:

6. **Commencement of EPA**

[This EPA takes effect on the date it is signed before the solicitor in paragraph 8 or 9 below. If you want to specify a later date or later event on which this EPA will take effect, please fill in the gap in the sentence marked with an asterisk below. Delete that sentence if you wish this EPA to take effect on the date it is signed before the solicitor.]

*This EPA takes effect on

..... (insert a later date or event).

7. **Power to continue**

I intend this enduring power of attorney to continue even if I become mentally incapable.

8. Signatures

Signed by me as a deed *[sign here]*
on *[date]*
in the presence of *[name and address of registered medical practitioner]*
.....
.....

Signed by me as a deed *[sign here]*
on *[date]*
in the presence of *[name and address of solicitor]*
.....
.....

9. *[If you are physically incapable of signing this form and you direct someone else to sign on your behalf, that person must sign here and paragraph 8 must be deleted.]*

This enduring power of attorney has been signed by *[name of person signing on your behalf]*
holder of *[identification document here]* ,
of *[address of person signing on your behalf]*
.....
under the direction and in the presence of the donor.

Signed as a deed *[signature of person signing on your behalf]*
.....
on *[date]*
in the presence of the donor and *[name and address of registered medical practitioner]*
.....
.....

Signed as a deed *[signature of person signing on your behalf]*
.....
on *[date]*
in the presence of the donor and *[name and address of solicitor]*
.....
.....

10. Certificate by registered medical practitioner

I certify that:

- (a) I am satisfied that the donor is mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor's behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by *[name of person signing on*

donor' s behalf]

on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by registered medical practitioner
on [date]

11. Certificate by solicitor

I certify that:

- (a) the donor appears to be mentally capable in terms of section 2 of the Enduring Powers of Attorney Ordinance (Cap 501); and
- (b) this form was signed by the donor in my presence and the donor acknowledged signing it voluntarily. *[If someone else signs this form on the donor' s behalf, this statement must be deleted.]*
- (c) this form was signed, in the presence of the donor and me, by [name of person signing on donor' s behalf]

on behalf and under the direction of the donor. *[If the donor signs this form, this statement must be deleted.]*

Signed by solicitor
on [date]

Part B

[This Part must be completed by the attorneys. If you decide that your attorneys may act separately, then at least one of the attorneys appointed must sign this form for it to take effect as an EPA. An attorney will have the functions of an attorney under this EPA only if that attorney has signed this form.]

- 1. We understand that we have a duty to apply to the Registrar of the High Court to register this form under the Enduring Powers of Attorney Ordinance (Cap 501) when the donor is, or is becoming, mentally incapable.
- 2. We also understand our limited power to use the donor' s property to benefit persons other than the donor as provided in section 8(3) and (4) of that Ordinance and also our duties and liabilities under section 12 of that Ordinance.

- 3. Signed as a deed—

- (a) by [signature and name of attorney]
.....
on [date]
in the presence of [signature and name and address of witness, who must not be the donor or another attorney of the donor]
.....
.....
..... ;

and

(b) by *[signature and name of attorney]*
.....
on *[date]*
in the presence of *[signature and name and address of witness, who must not be the donor or another attorney of the donor]*
.....
.....
.....

[If you appoint more than 2 attorneys, please add additional subparagraph(s) similar to subparagraphs (a) and (b).]

(Schedule 2 added 25 of 2011 s. 14)

IMPLICATIONS OF THE PROPOSAL

Economic Implications

By providing trustees with wider default powers and introducing checks and balances to ensure the proper exercises of these new powers, the proposals would facilitate effective administration of trusts, and help strengthen the competitiveness of our trust service industry, thereby enhancing Hong Kong's status as an international asset management centre.