Update of the Trust Laws of Hong Kong

Background

In early 2007, the Joint Committee on Trust Law Reform (“JCTLR”) was established by the Hong Kong Trustees' Association Ltd (“HKTA”) and STEP HK Ltd (the Hong Kong Branch of the Society of Trust and Estate Practitioners) (“STEP”) with a view to urging the HKSAR Government to update the trust laws of Hong Kong.

In April 2007, the JCTLR sent a formal submission entitled “Trust Laws for the 21st Century” to the Secretary for Financial Services and the Treasury Bureau (“FSTB”).

The JCTLR and the FSTB had several subsequent meetings concerning the original submission and the JCTLR subsequently made lengthy and detailed submissions as to the way in which the trust law should be reformed. The FSTB proposed the outline of a Consultation Paper and in June 2008 the JCTLR responded formally to the outline paper addressing the various areas of law reform urged by the JCTLR.

On 22 June 2009, the FSTB produced a Consultation Paper entitled “Review of the Trustee Ordinance and Related Matters” the link to which is in this summary.

http://www.fstb.gov.hk/fsb/ppr/consult/to_review.htm

Brief Commentary on the Consultation Paper

The FSTB have clearly considered the JCTLR submissions with great care and in significant depth. This is obvious from a reading of the Consultation Paper. This paper divides the issues into six chapters and at the end proposes a list of questions under each section seeking the views of interested parties by asking them to answer various questions. All of the reform areas suggested by the JCTLR have been considered by the FSTB.

The JCTLR is delighted that the FSTB, as sponsor for this reform, has taken up so many of the suggestions that we made. Not all of the suggestions that we made for reform have been formally adopted as immediate policy to amend the law, but the Consultation Paper remains open-minded on these residual issues with the suggestion the FSTB might approach these issues later as part of a separate exercise. Also to be dealt with separately
is the important area of the proposed regulation of trustee services provision within Hong Kong, about which the JCTLR made broad submissions in which it urged this question be dealt with separately.

In summary, the proposal made by the FSTB is to reform the following areas of our trust law:

· trustees’ statutory duty of care
· short term delegation by a single trustee
· trustees’ power to employ nominees, custodians and to insure
· remuneration of professional trustees
· regulation of exemption clauses of professional trustees
· beneficiaries’ rights to trust information
· beneficiaries’ rights to remove trustees
· abolition or simplification of both the rule against perpetuities and the rule against excessive accumulation of income

The areas that the FSTB wishes to receive further views before agreeing to proceed are:

· defining the role of protector
· reserved powers of settlors
· governing law provisions
· forced heirship provisions
· recognition of non-charitable purpose trusts

We urge you to read the document and consider the questions posed.

Way Forward

The JCTLR will seek an early meeting (prior to 29 July, 2009) with the FSTB to discuss the Consultation Paper and to have a better understanding of their thinking.

The FSTB have invited numerous interested parties to a consultation forum on the reform proposals on 29 July 2009 which JCTLR representatives will attend.

Shortly after this consultation forum the JCTLR will formulate a detailed response to the Consultation Paper which will be circulated to all STEP and HKTA members for their consideration.
In mid-September a joint STEP/HKTA forum will be held to explain to members in detail the JCTLR response and to canvas members’ views so that we can present comments with wide industry support. The JCTLR will also liaise with other professional bodies to explain its position in detail and hopefully help develop consensus views of support for specific proposals. Comments on reform proposals close on 21 September 2009 (see website).

Whilst individual STEP/HKTA members are of course welcome to make their own private submissions to FSTB we ask that you copy us in, so that we are well-informed as to the range of views. Alternatively, you can participate in the process through the JCTLR forum process outlined above.

We expect legislation will be presented in 2010-2011.

This is a very important milestone for our industry and we encourage your full participation in the process.

Bill Ahern             Carolyn Butler
Joint Chair            Joint Chair
STEP                   HKTA