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## TRUST LAW (AMENDMENT) ORDINANCE 2013 (THE 'AMENDMENT ORDINANCE') 2013 年信托法律(修订)条例 (“修订条例”)

Key Benefits of Trust Law Amendments in Hong Kong (香港信托法律修订的主要好处)

### A. *Enhancing trustee's default powers (提升受托人的预置权力)*

- Under the Trustee Ordinance (Cap 29) (“TO”), trustees’ default powers to appoint agents or custodians to manage the trust property are limited in that a general power is required to be conferred on the trustee to appoint agents, nominees and custodians to perform their non-delegable functions. The Amendment Ordinance now provides trustees with a default power to appoint agents to perform functions relating to investment of assets, raising of funds and implementing decisions of the trustees.
- Pursuant to Section 21 of TO, the default power of trustees to insure trust properties is limited to coverage of loss or damage suffered by fire and typhoon. Furthermore, it is not certain as to whether trustees may insure up to the market value or full replacement value of the trust property. The Amendment Ordinance allows trustees’ default power to insure trust properties against risk of loss or damage caused by any event and removing restrictions on amount of the insurance coverage the trustees may take out.

### B. *Imposition of Statutory Duty of Care for Trustees (向受托人增加的法定谨慎责任)*

- The statutory duty replaces the common law and equitable rules on duty and standard of care owed by a trustee to the beneficiaries of existing trusts and newly created trusts. However, it may be excluded by the trust instrument.
- More protection is given to the beneficiaries of trusts created in Hong Kong as the Amendment Ordinance imposes statutory duty of care on trustees to exercise the care and skill reasonable in the circumstances, having regard to any special knowledge or experience that the trustee has or holds itself out as having (subjective standard), and in the case of a professional trustee, any special knowledge or experience that is reasonably expected of a professional trustee (objective standard).

### C. *Statutory Controls on Trustees Exemption Clauses (就受托人的豁免条款)*

- Statutory controls are introduced under the Amendment Ordinance to govern the exemption clauses used by a remunerated professional trustee.
- The Amendment Ordinance provides that a trustee exemption clause will be invalid if it extends to give relief of a trustee from liability for a breach of trust arising from the trustee’s own fraud, wilful misconduct or gross negligence or if there is an exemption clause whereby the trustee can be indemnified for such liability.

**D. Remuneration and Reimbursement of Expenses (酬金及补偿开支)**

- To enhance the attractiveness of Hong Kong as an asset management centre, the new amendments provides statutory entitlement of trustees to receive reasonable remuneration out of the trust funds in respect of his services.
- This was previously not permitted under the common law unless the trustees are authorised by the trust instruments.

**E. Beneficiaries' Right to Remove/ Appoint a Trustee (受益人委任或罢免受托人)**

- The Amendment Ordinance introduces a court free process to enable beneficiaries to appoint and retire trustees expeditiously.
- However, the powers given to beneficiaries to direct the retirement or appointment of a trustee in the Amendment Ordinance do not apply if the trust instrument expresses a contrary arrangement.

**F. Reserved Powers by Settlers (财产授予人的保留权力)**

- The Amendment Ordinance introduces an attractive model to enable the settlor to reserve investment power or asset management function. A trustee who has acted in accordance with the exercise of the settlor's power is exempt from liability.
- This enables the settlor to continue managing trust assets during his lifetime if he so wishes.

**G. Rule against perpetuities is abolished (废除针对财产恒继规则)**

- A trust created in Hong Kong may now endure perpetuity to benefit beneficiaries in hundreds of years;
- This surpasses the competitiveness of setting up trusts in Singapore, which has imposed a restriction of 100 years and England, 125 years.

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(Website: www.wmleehk.com)*

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