Trust law reform and the Trust Companies Act

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Why trusts mattered

Private banking in the common law world rarely serves individuals alone. Wealthy families hold their assets through trusts, foundations and holding companies, which allow them to plan succession, protect assets and organise the management of a family business across generations. A centre that wanted to attract Asian family wealth needed a modern trust law and a reliable industry of professional trustees. In 2003 Singapore had neither in the form that competitors such as Jersey, Guernsey or the Cayman Islands offered. Its trust law still rested largely on the Trustees Act of 1967 and on the common law rules inherited from England. Its trust companies registered voluntarily under a statute that had not been substantially changed for two decades.[1]

The government addressed both shortcomings within eighteen months. The Trustees (Amendment) Act 2004 modernised the substantive law, while the Trust Companies Act 2005 introduced a new regulatory framework. MAS later

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summarised the sequence in one sentence: it had "updated the Singapore Trustees Act in 2004 and introduced the Trust Companies Act in 2006".[2] The reference to 2006 is to the commencement of the Act, which Parliament had passed in 2005.

The Trustees (Amendment) Act 2004

The Trustees (Amendment) Bill 2004, Bill No. 43 of 2004, received its second reading on 19 October 2004. The Act, No. 45 of 2004, came into force on 15 December 2004.[3] MAS described its effect as modernising trust law and bringing it broadly into line with the English Trustee Act 2000.[4] The reform covered the powers and duties of trustees, the investment of trust funds and the delegation of functions, which had been governed by rules suited to family settlements of the nineteenth century.

The reform also replaced the common law perpetuity period, which was measured by lives in being plus twenty-one years, with a fixed period. Introducing the Bill, the Deputy Prime Minister and Minister for Law, S. Jayakumar, explained that the old rule was complicated for lawyers and judges and could frustrate the intention of the person creating the trust. Consultations had shown "overwhelming support" for a fixed period.[5] The new section 32 of the Civil Law Act fixed the perpetuity period at a maximum of 100 years, while section 34 introduced a "wait and see" rule for dispositions taking effect on or after 15 December 2004.

The government was more cautious elsewhere. In the debate, a Nominated Member of Parliament, Fang Ai Lian, asked whether non-charitable purpose trusts and the reserved powers of settlors could be liberalised. The minister replied that these were matters requiring careful study and that the government needed to see how other jurisdictions handled them.[6] Singapore did not follow the offshore centres that had created purpose trusts and very broad reserved powers.

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Forced heirship and reserved powers

Two provisions of section 90 of the Trustees Act became central to the marketing of Singapore trusts. Section 90(2) provides that no rule relating to inheritance or succession affects the validity of a trust or the transfer of property to be held on trust, if the person creating the trust or transferring the property had the capacity to do so under the law of Singapore, the law of his domicile or nationality or the proper law of the transfer.[7] The provision protects trusts settled by clients from civil law countries, from the Middle East and from parts of Asia whose succession laws reserve fixed shares of an estate to children or spouses.

Section 90(5) provides that a trust is not invalid by reason only that the settlor reserves certain powers, in particular powers of investment and asset management functions.[89] The settlor of a Singapore trust could therefore keep control of the investment of the trust fund, a feature that Asian entrepreneurs often demanded. The limitation to investment powers reflected the caution expressed in Parliament. It also reduced the risk that a trust would be treated as a sham because the settlor had kept effective control.

The Trust Companies Act 2005

The second step concerned the trustees themselves. MAS published an explanatory brief on the Trust Companies Bill on 25 January 2005. It explained that trust companies were then regulated by the Accounting and Corporate Regulatory Authority (ACRA), that registration was voluntary and that the number of trust companies had grown significantly alongside private banking and wealth management. The new framework would make licensing mandatory, increase legal clarity and set high standards of conduct and competence, including measures against money laundering and the financing of terrorism.[10]

At the second reading on 18 February 2005, Tharman Shanmugaratnam, then Deputy Chairman of MAS, explained that regulation would move from ACRA to MAS so that a single regulator could oversee trust services, private banking and wealth management together. “Licensing will be mandatory for anyone engaging in

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trust business," he said. Private banks would be allowed to carry on certain trust business without an additional licence, provided they did not act as trustee, advise on trusts or take significant decisions affecting a trust. Lawyers, accountants and private trust companies acting for a single private group would be dealt with in regulations. The minister concluded that the Act would "position Singapore as a leading global trust domicile".[11]

The Trust Companies Act 2005 came into force on 1 February 2006.[1213] The exemption for private trust companies was significant. It allowed a wealthy family to establish its own company to act as trustee of the family's trusts within a lighter regime. In this way the Act combined regulation of the professional industry with flexibility for family structures.

Growth of the trust industry

The reforms produced results quickly. In October 2005 MAS reported that at least sixteen trustee businesses employed more than 250 people and acted as trustee for about S$80 billion of assets, twice the amount of two years earlier. MAS treated the development of trustee and custody services as a strategic initiative.[14] The same speech identified reputational risk as the main risk for the trust industry and announced a focus on the fitness and propriety of operators and their compliance with anti-money laundering requirements. The warning proved accurate. Trust structures and corporate vehicles later appeared in several of the integrity cases that Chapter VI of Part E examines.

Practitioners still debate the limits of the 2004 reform. The 100-year perpetuity period, generous in 2004, appears short to families planning for many generations, particularly since several offshore centres have abolished the rule altogether. The detailed rules on trusts, private trust companies and holding structures as they stand today are set out in Chapter IV of Part E.

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Notes

1. MAS, “The Trust Companies Bill 2005”, second reading speech by Tharman Shanmugaratnam, Minister for Education and Deputy Chairman of MAS, 18 February 2005: “no major changes have been made to the Trust Companies Act over the last two decades”; registration of trust companies was voluntary. ↩

2. MAS, speech by Ng Nam Sin, Executive Director, at the opening ceremony of Daiwa Wealth Management, 19 January 2007: MAS “updated the Singapore Trustees Act in 2004 and introduced the Trust Companies Act in 2006”, followed by “a healthy pipeline of interest from trust service providers”; AUM of S$720 billion at end-2005. ↩

3. Barry C. Crown, “Private Purpose Trusts and the Rule Against Perpetuities”, [2009] *Singapore Journal of Legal Studies* 646–660, at 646 note 1 and 653 notes 40–41: the Trustees (Amendment) Act 2004 (No. 45 of 2004) came into effect on 15 December 2004; Bill No. 43 of 2004; second reading on 19 October 2004 (Singapore Parliamentary Debates, vol 78, col 852). ↩

4. MAS, STEP speech of 26 October 2005, cited above: the Trustees Act was updated with effect from December 2004 to modernise trust law, broadly in line with the UK Trustee Act 2000. ↩

5. Crown, [2009] SJLS 646, at 653, quoting S. Jayakumar, Singapore Parliamentary Debates, 19 October 2004, vol 78, col 852: the rule “is complicated for lawyers and judges, it can frustrate the intention of the person creating the trust”; “overwhelming support for the replacement of the common law perpetuity period with a fixed period”; a maximum fixed perpetuity period of 100 years for new trusts. Crown, [2009] SJLS 646, at 646 and 652–653: sections 32 to 34 of the Civil Law Act; perpetuity period of 100 years or such shorter period as the instrument specifies; references to lives in being or to a longer period deemed to be 100 years; “wait and see” under section 34. ↩

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6. Crown, [2009] SJLS 646, at 654, quoting the reply of S. Jayakumar to Mrs Fang Ai Lian in the second reading debate: "many issues that arise, especially from non-charitable purpose trusts and settlors' reserve powers, are matters which require careful study". ↩

7. Sim Bock Eng, Josephine Choo, Aw Wen Ni and Vincent Ho (WongPartnership LLP), "Singapore", in *Chambers Global Practice Guides: Private Wealth 2025*: Trustees Act 1967, s 90(2), "no rule relating to inheritance or succession affects the validity of a trust or the transfer of any property" where the person had capacity "under the law applicable in Singapore or the law of their domicile or nationality" "or the proper law of the transfer". ↩

8. WongPartnership, *Private Wealth 2025*, cited above: Trustees Act 1967, s 90(5), a trust or settlement is not invalid "by reason only of the person creating the trust or making the settlement" reserving investment or asset management powers; perpetuity period of 100 years for Singapore trusts. ↩

9. On the limitation of the reserved powers in s 90(5) to powers of investment and asset management functions, and on the absence of a corresponding power to reserve dispositive powers, see the commentary in the *Singapore Law Gazette*, August 2005 (feature article on the Trustees (Amendment) Act 2004). ↩

10. MAS, media release "Explanatory brief: Trust Companies Bill", 25 January 2005: trust companies regulated by ACRA under the existing Act; voluntary registration; mandatory licensing under the new framework; AML/CFT requirements; at least two resident managers for each licensed trust company; limited exemptions for banks and merchant banks, lawyers and accountants, private trust companies and overseas persons visiting Singapore. ↩

11. MAS, second reading speech on the Trust Companies Bill 2005, 18 February 2005, cited above: transfer of regulation from ACRA to MAS; "licensing will be mandatory for anyone engaging in trust business"; exemption for private banks; treatment of lawyers, accountants and private trust companies "which act as trustees for a single private group"; the Act "will position Singapore as a leading global trust domicile". ↩

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12. MAS, speech by Ng Nam Sin, 19 January 2007, cited above: MAS "introduced the Trust Companies Act in 2006". ↩
13. Commencement on 1 February 2006 according to the revised edition of the Trust Companies Act 2005 on Singapore Statutes Online. ↩
14. MAS, STEP speech of 26 October 2005, cited above: at least 16 trustee players employing over 250 people and providing trusteeship for about S$80 billion of assets, a twofold increase in two years; development of trustee and custody services as a strategic initiative; more than 200 fund managers in Singapore, including the largest private banks. MAS, STEP speech of 26 October 2005, cited above: reputational risk identified as the primary risk for the trust industry; focus on fitness and propriety and on "the industry's observance of anti-money laundering requirements". ↩

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