

**CHANGES,  
MADE AND PROPOSED, TO  
TRUST LAW AND  
FOUNDATIONS LAWS  
IN ASIA  
FROM 2004 TO 2013**

by

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# THE HISTORY AND SITUATION

<b>The Trustees (Amendment ) Act of Singapore</b>	<b>December 2004</b>
<b>The Labuan Trusts (Amendment) Act</b>	<b>January 2010</b>
<b>The Labuan Foundations Act</b>	<b>January 2010</b>
<b>The Cook Islands Foundations Act</b>	<b>2012</b>
<b>Trust Law (Amendment) Act of Hong Kong</b>	<b>December 2013</b>
<b>The Trusts Bill 2013 of Samoa</b>	<b>Proposed for December 2013</b>
<b>The Foundations Bill of Samoa</b>	<b>Proposed for February 2014</b>

# THE ATTITUDES

1. Not wishing to be seen as “offshore”: Only wanting to benchmark on major onshore jurisdictions – like UK: Therefore providing what they wish to:

## **SINGAPORE and HONG KONG**

2. Wanting to provide certainty by means of legislation to potential users: Wishing to look at all other available legislation:

## **LABUAN and SAMOA**

# TRUST LAW

1. **FORM:** Only **Samoa** will legislate for Trusts to be in any language, provided that, if that language is not English, there will be a notarially certified English translation.

## 2. **DURATION:** The trend is now towards perpetual trusts:

- **Singapore** Maximum period of 100 years
- **Hong Kong** Perpetual Trusts
- **Labuan and Samoa** Trusts can be perpetual or for a fixed period. If they are for a fixed period, then this can be shortened or lengthened. A fixed period can be converted to perpetual and vice versa

3. **ACCUMULATION OF INCOME:** Throughout the continuance of the Trust – **Singapore, Labuan, Hong Kong and Samoa.**

## 4. RESERVED POWERS TO A SETTLOR:

- Of investment and of investment management only – **Singapore** and **Hong Kong**
- Wide reserved powers – like Jersey – **Labuan** and **Samoa**

## 5. THE ROLE OF A PROTECTOR AND RESERVED POWERS TO A PROTECTOR:

- No legislation (must rely on common law) – **Singapore** and **Hong Kong**
- May have any proactive or reactive powers: If the Trust is silent, then useful default powers: **Labuan** and **Samoa**
- **Samoa** will legislate for “prescribed directions” and for the protection of Protectors



## 6. PRIVATE TRUST COMPANIES (“PTC”):

- Exemption from licensing regulations in **Singapore**
- Exemption from licensing available in **Labuan** but application for exemption necessary
- **Hong Kong** is presently has no licensing for Trust Companies
- Exemption from licensing regulations will apply in **Samoa**, which will also permit a Samoan Foundation to be an exempt PTC

## 7. OTHER METHODS OF RETENTION OF CONTROL:

- No other statutory methods in **Singapore** or **Hong Kong**
- The equivalent of VISTA: **Labuan** has “LST” and **Samoa** will have “SISTA”
- **Samoa** will be the first jurisdiction to legislate for the combination of a Trust with a Limited Partnership

## 8. OTHER TYPES OF TRUST:

- Protective Trusts: **Singapore, Labuan, Hong Kong and Samoa**
- Charitable Trusts – wide definition of “charitable” and enforceable by the Settlor: **Labuan and Samoa**
- Purpose Trusts: **Labuan and Samoa: Samoa** will provide for the protection of an Enforcer
- Business Trusts: **Singapore – Samoa** will later legislate for these

## 9. TRUSTEES POWERS AND DUTIES:

- Statutory duty of care (as in UK Trustees Act 2000): **Singapore, Hong Kong and Samoa. Labuan** has adopted the “prudent man” test
- In all cases these duties apply to the powers of investment, delegation (including the appointment of custodians and nominees), remuneration and insurance
- Trustees Duties: Not legislated for in Singapore and Hong Kong: **Labuan** defines these by reference to personal duties and duties as to property: **Samoa** defines these by reference to mandatory duties and discretionary duties.

## 10. **TRUSTEES PROTECTION:**

Note all four jurisdictions

## 11. RIGHTS TO INFORMATION:

- No legislative guidelines in **Singapore** or **Hong Kong**
- There are legislative guidelines in both **Labuan** and **Singapore**

# CONCLUSIONS:

- How necessary are the breadth of solutions?
- How important is the nature and infrastructure of the jurisdiction?
- Are there present or future factors which affect the choice of any of these jurisdictions?
- Is the ability to use the law of one jurisdiction but operate the Trustee from another attractive?