

Appendix B

	QLD/NSW	ACT/VIC	TAS/SA	WA/NT	Singapore	Hong Kong	New Zealand
The rule against perpetuities	<p>Property Law Act 1974 (QLD), s 209: Permits trust instrument to specify duration up to fixed term 80 years.</p> <p>Perpetuities Act 1984 (NSW), s 7: the perpetuity period applicable to an interest created by a settlement shall be 80 years from the date on which the settlement takes effect.</p>	<p>Perpetuities and Accumulations Act 1985 (ACT), s 8(1): the perpetuity period shall be 80 years from the date on which the settlement takes effect.</p> <p>Perpetuities and Accumulations Act 1968 (VIC), s 5: Permits trust instrument to specify duration up to fixed term of 80 years.</p>	<p>Perpetuities and Accumulations Act 1992 (TAS), s 6 (1): Permits trust instrument to specify duration up to fixed term 80 years.</p> <p>Law of Property Act 1936 (SA), s 61: Abolishes the rules against perpetuities and excessive accumulations.</p>	<p>Property Law Act 1969 (WA), s 101: the perpetuity period is, such period of years not exceeding 80 as may be specified in the instrument or, if no such period is specified, the period that is applicable under the rule at law.</p> <p>Law of Property Act (NT), s 187: A trust instrument may specify a perpetuity period of either (a) a life in being + 21 yrs or (b) 80 yrs from when the settlement takes effect. Where no period is specified in the instrument the perpetuity period is as per (b) above.</p>	<p>Trustees Act (31 July 2005), s 89: For the purposes of the rule against perpetuities, the provisions of sections 32, 33 and 34 of the Civil Law Act shall apply to trusts created on or after 15th December 2004.</p> <p>Civil Law Act (1 August 1999), s 32: The rule against perpetuities is a fixed period of 100 years (unless instrument specifies less) for trusts created on or after 15 December 2004. The 'wait and see' principle applies for all trusts taking effect on or after this date.</p>	<p>Trust Law (Amendment) Ordinance 2013: Abolishes the rule against perpetuities for trusts created on or after the passing of the Trust Law (Amendment) Ordinance 2013 on 31 December 2013.</p>	<p>NZLRC Review: recommends to replace the current Judge-made rules and the Perpetuities Act 1964 with a clear, simple maximum duration rule for trusts of 150 years.</p> <p>Existing trusts will continue to operate according to their own terms.</p>
Non-charitable/Private purpose trusts	<p>Common Law: A rule of law rendering non-charitable purpose trusts and trusts for the benefit of corporations which are not charities void for remoteness (Trustee v Nolan (1943) 43 State R. (NSW) 169).</p> <p>Property Law Act 1974 (QLD), s 221: Expressly preserves the common law rule.</p>	<p>Common Law: A rule of law rendering non-charitable purpose trusts and trusts for the benefit of corporations which are not charities void for remoteness (Trustee v Nolan (1943) 43 State R. (NSW) 169).</p>	<p>Common Law: A rule of law rendering non-charitable purpose trusts and trusts for the benefit of corporations which are not charities void for remoteness (Trustee v Nolan (1943) 43 State R. (NSW) 169).</p> <p>Law of Property Act (NT), s 198: Expressly preserves the common law rule.</p>	<p>Common Law: A rule of law rendering non-charitable purpose trusts and trusts for the benefit of corporations which are not charities void for remoteness (Trustee v Nolan (1943) 43 State R. (NSW) 169).</p> <p>Law of Property Act (NT), s 198: Expressly preserves the common law rule.</p>	<p>Singapore does not have legislation specifically authorising non-charitable purpose trusts. But Singapore law recognises the validity of and the courts will enforce foreign trusts, subject only to public policy considerations. Singaporean settlers can establish their trusts under the law of any lawful jurisdiction.</p>	<p>Hong Kong considered but did not adopt non-charitable purpose trusts within the new Trust Law Ordinance (2013). Currently the common law rule applies (Morice v Bishop of Durham (1804) 9 Ves 399).</p>	<p>NZLRC Review: The NZLRC will follow its recent Report on trust law with a review of charitable trusts and other purpose trusts (the charitable trusts (the charitable and purpose trusts review). Currently the common law rule applies (Morice v Bishop of Durham (1804) 9 Ves 399).</p>

	QLD/NSW	ACT/VIC	TAS/SA	WA/NT	Singapore	Hong Kong	New Zealand
Firewall provisions	Family Law Act 1975 (Cth) and Succession Act 1981 (QLD): applies. Family Law Act 1975 (Cth) and Succession Act 2006 (NSW): applies	Family Law Act 1975 (Cth) and Family Provision Act 1969 (ACT): applies. Family Law Act 1975 (Cth) and Administration and Probate Act 1958 (VIC): applies.	Family Law Act 1975 (Cth) and Testator's Family Maintenance Act 1912 (TAS): applies. Family Law Act 1975 (Cth) and Inheritance (Family Provision) Act 1972 (SA): applies.	Family Law Act 1975 (Cth) and Family Provision Act 1972 (WA): applies. Family Law Act 1975 (Cth) and Family Provision Act (NT): applies.	None: Inheritance (Family Provision) Act 1966 (Act 28 of 1966) applies save for the estates of deceased Muslims	Trust Law (Amendment) Ordinance 2013, s 41Y: foreign heirship rules will not affect the validity of a lifetime transfer of movable assets to a trust governed by HK law.	Testator's Family Maintenance Act 1900 (NZ): applies.
Reserve powers for settlors	Common Law rule: once a trust is created by a settlor all the powers vis-a-vis the trust property become vested in the trustee. If the settlor reserves to himself excessive powers the court may consider that there is insufficient certainty as to the settlor's intention to create the trust and may treat the trust as a sham.	Common Law rule: applies.	Common Law rule: applies.	Common Law rule: applies.	Trustees Act 2004, s 90(5): No trust shall be invalid by reason only of the person creating the trust or making reserving to himself any or all powers of investment or asset management functions under the trust.	Trust Law (Amendment) Ordinance 2013, s 41X: a trust is not invalidated because the settlor has reserved to himself the power of investment or some other asset management function.	NZIRC: did not recommend granting reserve powers to settlors.
Insolvency schemes for commercial unit trusts (not REITs)	Corporations Act 2001 (Cth), Ch 5C: there is no insolvency scheme for managed investment schemes. Insolvency outcomes are based on common law principles.	Corporations Act 2001 (Cth), Ch 5C: there is no insolvency scheme for managed investment schemes. Insolvency outcomes are based on common law principles.	Corporations Act 2001 (Cth), Ch 5C: there is no insolvency scheme for managed investment schemes. Insolvency outcomes are based on common law principles.	Corporations Act 2001 (Cth), Ch 5C: there is no insolvency scheme for managed investment schemes. Insolvency outcomes are based on common law principles.	Business Trusts Act (2004): The Trustee-Manager is personally liable for trust debts but may limit its liability to the assets of the trust. Liability of the Trustee-Manager is not limited where the Trustee-Manager has a right of indemnity out of the trust assets.	Companies Ordinance (HK), s 166: Provides for a scheme of arrangement but does not include a moratorium (an authorised period of delay in the performance of an obligation).	NZIRC: will follow its recent Report on trust law with a review of charitable trusts and other purpose trusts (the charitable and purpose trusts review) and a review of statutory trustee companies and other corporate trustees (the corporate trustee review).

	QLD/NSW	ACT/VIC	TAS/SA	WA/NT	Singapore	Hong Kong	New Zealand
Limited liability for unit holders (not REITs).	Corporations Act 2001 (Cth), Ch 5C: the chapter does not provide to unitholders limited liability.	Corporations Act 2001 (Cth), Ch 5C: the chapter does not provide to unitholders limited liability.	Corporations Act 2001 (Cth), Ch 5C: the chapter does not provide to unitholders limited liability.	Corporations Act 2001 (Cth), Ch 5C: the chapter does not provide to unitholders limited liability.	Business Trusts Act (2004), s 32: liability of unitholders is limited in insolvency and otherwise and notwithstanding any provision to the contrary in the trust deed.	Hong Kong uses share-stapled unit trust structures for commercial purposes and unitholders in stapled entities are afforded limited liability by virtue of the fact that their units are stapled to shares in a limited liability company.	Unit Trusts Act 1960 (NZ): collective investment schemes are still governed by the Unit Trusts Act, which does not provide to unitholders limited liability.
Abolition of the rule in <i>Saunders v Vautier</i>	Common law, the rule in <i>Saunders v Vautier</i> : where beneficiaries of full capacity consent to terminate the trust the trustee must pay over to the beneficiaries their interest in the trust.	Common law: the rule in <i>Saunders v Vautier</i> applies.	Common law: the rule in <i>Saunders v Vautier</i> applies.	Common law: the rule in <i>Saunders v Vautier</i> applies.	Common law: the rule in <i>Saunders v Vautier</i> applies, however, foreign trusts that exclude the rule may still be recognised and enforced in Singapore	Common law: the rule in <i>Saunders v Vautier</i> applies.	NZLRC recommends that the New Trusts Act include statutory provisions restating (and clarifying the breadth of) the rule in <i>Saunders v Vautier</i> ; a power of the court to waive the requirement for consent of any person and approve a revocation, variation or resettlement or change to the scope of trustees' powers
Legislated default deed provisions on trustee powers	State/Territory Trustee Act: contains some mandatory and default provisions.	State/Territory Trustee Act: contains some mandatory and default provisions.	State/Territory Trustee Act: contains some mandatory and default provisions.	State/Territory Trustee Act: contains some mandatory and default provisions.	Trustees Act 2004: introduced enhanced trustees' default powers, such as the power to keep trust property in the names of nominees and custodians as well as widening trustees' power to insure.	Trust Law (Amendment) Ordinance 2013: introduced enhanced trustees' default powers, such as a general power to appoint agents, nominees and custodians, and widening trustees' default power to insure.	NZLRC: recommended expressly providing for six mandatory duties that are essential to the existence of a trust. These duties must be present in every trust and cannot be modified by the trust deed.