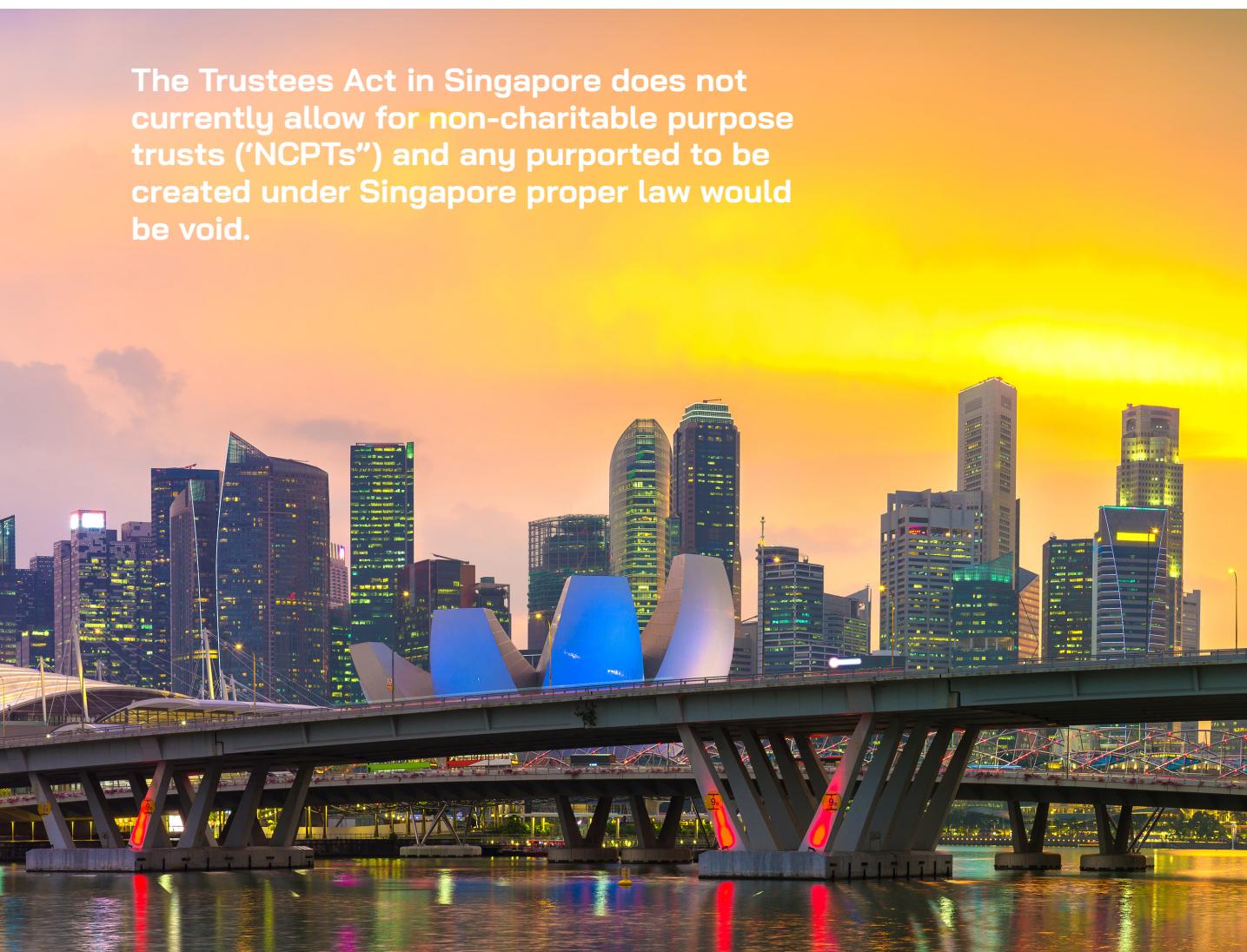


Will Singapore introduce Non-Charitable Purpose Trusts Legislation?

The Trustees Act in Singapore does not currently allow for non-charitable purpose trusts ('NCPTs') and any purported to be created under Singapore proper law would be void.



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However, in May 2021 the Singapore Academy of Law's Law Reform Committee published a *Report on the Enactment of Non-Charitable Purpose Trusts ('the Report'). The Report reviews the pros and cons of NCPTs and makes the recommendation that the creation of statutory NCPTs be permitted.

NCPTs are viewed by the professional community as an important component of wealth structuring toolkit, particularly for family businesses, and allowing their creation already exists in more than 20 onshore and offshore jurisdictions worldwide.

The Report highlights that Singapore should not neglect the wealth management needs of family businesses, and having comparable legislation enacted in Singapore would provide clients with another jurisdictional choice.

After a comparison of various jurisdictions' laws and scholarly opinion, the Report ultimately recommends the implementation of a standalone statute providing for Singapore NCPTs.

The recommendation is that the statute permit trusts to be created in relation to any public, social, religious, philanthropic, investment and management of assets or other business purposes or a mix of the aforementioned.

HOW ARE NCPTS USED

NCPTs can be used for business, social, or philanthropic purposes. They are a flexible way to hold assets in trust for a purpose (that is not charitable), without having to assign a beneficial interest in those assets to any person/s.

Typical practical applications and uses, for both individuals and corporates, include:

1. Family-owned businesses

- » To prevent fragmentation of the ownership in the business
- » So that the family members may manage the business whilst the trustee's only duty is to retain the shares
- » To hold the family business on a long-term basis without shareholder pressure for short-term returns



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- » To have assurance of confidentiality, as trust information would only be available, if at all, to the enforcer
- » To partition assets that are to be devoted to a short-term venture (which may, for example, carry greater risk than an established family business)

2. Family Offices

- » As the central management core for a family office
- » To own the shares of a Private Trust Company ('PTC'). The PTC is commonly a limited company and so the shares may be owned by a NCPT. If the shares are owned personally by the client, the PTC would form a part of the client's estate on their passing. PTCs can be popular with high-net-worth families who wish to remain actively involved in the management of trust assets – for example a family office where the family business is held by the underlying trust. Family members can be appointed to the board of the PTC and future generations can be introduced over time too.

3. Commercial Transactions

To provide a more flexible way for corporate entities to mobilise, for example in the following situations:

- » The acquisition and ownership of higher risk assets for investment in asset securitisation.
- » The acquisition by mutual funds of investment funds including leveraged borrowing in active investment.
- » The acquisition and ownership of shares for the purposes of exercising voting control – to achieve the effect of voting trust legislation, of which there is none in Singapore, to enable the splitting of legal ownership rights.

There are significant commercial needs for more flexible capital mobilisation, which could be met by the introduction of a new NCPT statute.

"The benefits and uses are clear across a range of both personal and business areas, as explored above, and could further add to Singapore's strong reputation as a jurisdiction of choice for wealth structuring and business."

4. Grants / Funding

- » Public provision of grants or training funding to the private sector.

In particular an NCPT would ensure that neither the trustee nor the public body would have beneficial ownership of the trust assets once the funds had arrived at their destination.

At present, entities engaged in the delivery of social or public benefits are predominantly for-profit companies and sole proprietorships. Using an NCPT would ensure the trustee was obliged to ensure faithful furtherance of the social purpose.

THE FEATURES OF A NON-CHARITABLE PURPOSE TRUST

A non-charitable purpose trust does not need to have beneficiaries, but instead can exist solely for advancing a particular non-charitable purpose or purposes.

In other jurisdictions, NCPTs typically require an "enforcer" to be appointed. The enforcer takes on a role similar to that of a trust protector - a person separate from the trustee, whose duty it is to ensure the trustee carries out the trust's non-charitable purposes.

The Report recommends that Singapore's legislation should similarly require NCPTs to be enforced by an enforcer (and / or by the Attorney-General, the settlor or the trustee).

OVERVIEW OF SINGAPORE NCPTS

Whilst statutory legislation has not been enacted the recommendations include that Singapore NCPTs be required to:

- » Be governed by Singapore law;
- » Have a trustee that is a licensed trust company (or a Private Trust Company qualifying as a restricted licence trustee);
- » Carry on their purposes wholly or partly in Singapore;
- » Have some part of their assets held in Singapore; and
- » In the case of public, social, religious, and philanthropic trusts, substantially carry out the relevant public, social, religious, or philanthropic purpose(s) in Singapore.

The Report suggests that the settlor should not be able to retain control or reserve significant powers over the assets settled into an NCPT.

It is expected that the powers of the trustee (and also the enforcer) may be tailored within the trust deed to provide bespoke solutions.

Lastly, it is recommended that the settlor be required to specifically designate the purposes to which the assets are settled and that the trustee also be given discretion to specify purposes if they are missing.

SUPPORT FOR A NEW NCPT STATUTE IN SINGAPORE

Singapore is a well-regarded trust jurisdiction with a progressive financial regulatory framework, a robust legal system and an effective corporate governance framework that is complemented by a pro-business environment.

Singapore's stable government and political system, its commitment to stay relevant to the evolving economic environment and its consistent integrity are additional factors that have fostered the country's strong reputation across the globe.

The Report does not support permitting trusts with a mix of both business purposes and beneficiaries (such as with a Cayman STAR or BVI VISTA trust);

instead recommending that NCPTs should have business purposes only.

The Report concludes that the NCPT would be a meaningful addition to the available range of trusts and business entities in Singapore. The benefits and uses are clear across a range of both personal and business areas, as explored above, and could further add to Singapore's strong reputation as a jurisdiction of choice for wealth structuring and business.

We wait with anticipation for the possible enactment of a NCPT statute in Singapore. ■

How we can help

Our Singapore office can assist clients in the formation of sophisticated structures.

With a global footprint and deep jurisdictional experience, we offer fiduciary and wealth structuring services in over fifteen jurisdictions worldwide, forming and administering trusts, private trust companies and foundations on behalf of clients who seek the benefits of having an independent trustee.

Hannah Bisson, Director – Business Development

Hannah focuses on business development with Trident Trust's network of Wealth Planners, Private Bankers, Lawyers, Accountants, Family Offices, and other professional intermediaries. Hannah began her career in Guernsey with a bank trust company and relocated to Singapore in 2018. She has 12 years of industry experience. Hannah is a full member of the Society of Trust & Estate Practitioners and holds a Bachelor of Science (Honours) Degree in Management from the University of Manchester.

**Report on the Enactment of Non-Charitable Purpose Trusts | Singapore Academy of Law (sal.org.sg)*

