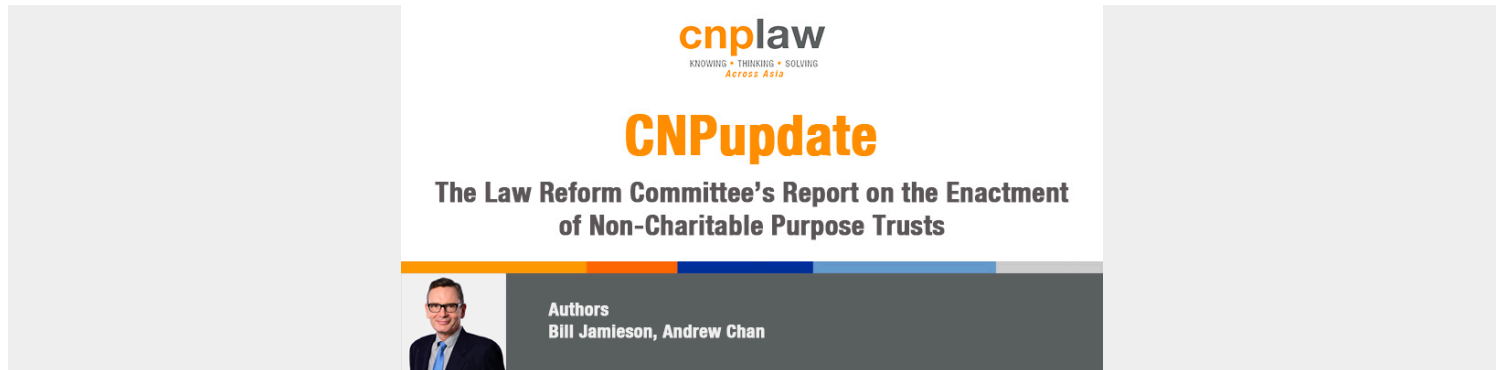


# THE LAW REFORM COMMITTEE'S REPORT ON THE ENACTMENT OF NON-CHARITABLE PURPOSE TRUSTS

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Category: [CNPupdates](#)

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## **Introduction**

On 31 May 2021, the Singapore Academy of Law's Law Reform Committee ("LRC") released a report recommending the creation of statutory Non-Charitable Purpose Trusts ("NCPTs") for certain purposes in Singapore. As Singapore currently follows the common law position, NCPTs are generally regarded as invalid for offending the beneficiary principle and the rule against perpetuities, as well as not having the requisite certainty to constitute a trust. However, the LRC was of the view that a standalone statute would meet the growing demand from businesses and families for additional means to manage and bequeath their assets as well as facilitating access to capital by social enterprises, without compromising public policy considerations.

## **Proposed Statutory NCPT Form**

The key features of the proposed statutory NCPT are as follows:

- *Definition.* Statutorily defined as a trust that is (1) sufficiently certain to allow the trust to be carried out; (2) not contrary to public policy; and (3) related to any public purpose, social purpose, religious purpose, philanthropic purpose, investment and management of assets purpose or other business purposes (or a mix of such purposes).
- *On-shored in Singapore.* The NCPT must be specified to be governed (expressly or impliedly) by Singapore law, have a trustee who 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. This is to distinguish the statutory NCPT from 'on-shored' offshore NCPTs.
- *Stipulation of specifically designated purposes.* Settlers are required to specifically designate purposes to which trust assets are dedicated; while both the mediate and ultimate purpose should be specified, settlors should also be free to specify the ultimate purpose and confer discretion on the trustee to provide the specificity of purpose that is missing. A purpose would be deemed valid if any given use of the fund can be said to fall either within or outside the designated purpose(s).
- *Variation.* The court would be empowered to vary NCPTs in appropriate circumstances (e.g., insufficient funds are dedicated to further the designated purpose(s) or a perpetual NCPT outliving its usefulness).
- *Enforcement.* To provide appropriate latitude, NCPTs may be enforced by a person nominated as enforcer in the trust instrument, or by the Attorney-General, settlor (or his/her personal representative), trustee, or such person as the court considers has sufficient interest in the matter. If an enforcer is appointed by the settlor, that person should be subject to replacement and removal by the court, just as trustees are.
- *Settlor control over assets.* Settlers should not be allowed to retain substantial control over assets that

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are permanently removed to the NCPT (e.g., through reserving the power to change the governing law, prolonging the trust or amending its purposes, or by removing or replacing the trustee).

## Practical Applications

If accepted, the LRC's proposed statutory NCPT offers significant commercial uses for more flexible capital mobilisation under Singapore trust law. Some potential applications highlighted by the LRC include:

- Creating a new business entity to run and prolong family incorporated businesses without fear of asset fragmentation among members of the family. As the NCPT would own the family company, the settlor can retain management of the family business company without being saddled by trustee duties. Members of the family would not be able to terminate the trust and liquidate the family company as the NCPT trustee has no beneficiaries to whom duties are owed. Further, as the NCPT trustee's only duty is to retain the shares in the family company, the settlor and members of his/her family as directors of the family company are free to run its business, and to make business decisions for the sake of long-term growth or take on higher business risks. Lastly, the settlor and his/her family will be assured that the NCPT trustee must keep trust matters in relation to the family confidential and that such information will only be accessible, if at all, by the enforcer of the NCPT.
- Partition assets devoted to short-term ventures carrying greater risks than established family business. For instance, members of the family or family company can furnish funds for purchasing necessary equipment and create a NCPT to hold and retain the asset until it is sold to the family company if the project ultimately succeeds; if the project fails, the asset can also be sold without harming the family company's balance sheet, thereby protecting the company's overall assets.
- NCPTs have also been deployed in the growing family office business in some overseas jurisdictions. A family office is desirable for a family business that is sufficiently large to afford in-house management of all the financial and non-financial needs of members of the family. The NCPT performs the function of securing asset partitioning at each level of a hierarchy of trading and service entities, thus minimising the risk of fragmentation as well as segregating the differentiated risks of distinguishable components of the family businesses.
- NCPTs can also assist in asset securitisation. For example, a NCPT can hold land in a re-development project as security for present and unascertainable future participants, thus allowing financiers access to collateral to which they can have recourse if the project stalls or fails, as against interests that will be changing hands.
- NCPTs can play a niche role whenever there is a need in a structured finance or other commercial arrangement to achieve targeted asset partitioning and risk segregation in order to attract capital investment. For example, NCPTs can function like the generic business trust enabled by legislation in some American States like Delaware (such legislation is currently lacking in Singapore) to allow mutual funds to acquire investment funds, including leverage borrowing in active investment. The NCPT is also attractive as it is not constrained by the limitations of certain structures currently enabled under Singapore legislation like the Variable Capital Company (where segregated asset pools

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are statutorily deemed to be separate legal entities for the purposes of set-off and netting, unlike those in a trust), Business Trust (limited to conducting investment business for which it is registered), or Real Estate Investment Trusts (limited to making profits out of investments in income-producing real estate).

- NCPTs can mimic the stabilising effect of voting trusts which concentrate and entrench management in a few hands and are useful in a diverse range of contexts where strong centralised direction is critical to corporate success: (a) where diffuse ownership increases the prospects of unpopular but competent management being voted out from year to year, (b) in the initial years of corporate growth where immediate success has to be foregone, or (c) over a period of consolidation where management stability is essential. Voting trusts enabled by legislation exist in several US states and have proven to be effective in the scenarios mentioned above; however, such legislation is absent in Singapore. Through a NCPT, shareholders can transfer ownership to the NCPT for the purposes of collecting and distributing dividends and for the purposes of trustees exercising voting rights to maintain the existing management in control. Shareholders as settlors will have personal rights as interested persons to enforce performance of the purposes but will not have beneficial interests so as to entitle them to terminate the trust and destabilise management control.

## Conclusion

The LRC proposal makes a compelling case for the introduction of NCPTs in the recommended statutory form given Singapore's wider ambition to be a global wealth management centre. However, as the LRC noted in the report, the decision whether to statutorily provide for NCPTs is ultimately one of policy which has resulted in divergent positions in various jurisdictions. It remains to be seen if the LRC's proposal will be taken up.

Click here <[https://www.sal.org.sg/Resources-Tools/Law-Reform/Non-Charitable Purpose Trusts](https://www.sal.org.sg/Resources-Tools/Law-Reform/Non-Charitable-Purpose-Trusts)> for the LRC Report.

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