



BERMUDA

TRUSTEE AMENDMENT ACT 2014

2014 : 28

WHEREAS it is expedient to amend the Trustee Act 1975;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Trustee Amendment Act 2014.

Amends section 47A

2 After section 47 of the Trustee Act 1975 there shall be inserted—

“Jurisdiction of court to set aside flawed exercise of fiduciary power

47A (1) If the court, in relation to the exercise of a fiduciary power, is satisfied on an application by a person specified in subsection (5) that the conditions set out at subsection (2) are met, the court may—

- (a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the court may think fit; and
- (b) make such order consequent upon the setting aside of the exercise of the power as it thinks fit.

(2) The conditions referred to in subsection (1) are that—

- (a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law, or a combination of fact and law) that were relevant to the exercise of the power, or took into account one or more

considerations that were irrelevant to the exercise of the power;
and

- (b) but for his failure to take into account one or more such relevant considerations or his having taken into account one or more such irrelevant considerations, the person who holds the power—
 - (i) would not have exercised the power;
 - (ii) would have exercised the power, but on a different occasion to that on which it was exercised; or
 - (iii) would have exercised the power, but in a different manner to that in which it was exercised.

(3) If and to the extent that the exercise of a power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.

(4) The conditions set out in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any adviser to such person, acted in breach of trust or in breach of duty.

(5) An application to the court under this section may be made by—

- (a) the person who holds the power;
- (b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) by any person appointed by or under the trust for the purposes of section 12B(1) of the Trusts (Special Provisions) Act 1989;
- (c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney-General; or
- (d) with the leave of the court, any other person.

(6) No order may be made under subsection (1) which would prejudice a bona fide purchaser for value of any trust property without notice of the matters which allow the court to set aside the exercise of a power over or in relation thereto.

(7) The jurisdiction conferred upon the court by this section may be exercised by the court in respect of fiduciary powers, whether conferred or exercised before, on or after the commencement date of the Trustee Amendment Act 2014.

(8) In this section—

“fiduciary power” means any power that, when exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person who holds the power; and

“power” includes a discretion as to how an obligation is performed;

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“person who holds the power ” includes any person on whom a power has been conferred, whether or not that power is exercisable by that person alone, and any person to whom the exercise of a power has been delegated.”

[Assent Date: 29 July 2014]

[Operative Date: 29 July 2014]