



BERMUDA

PERPETUITIES AND ACCUMULATIONS ACT 2009

2009 : 23

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WHEREAS it is expedient to limit the application of the rule against perpetuities, to codify the rule as it applies to charities, and to amend the law relating to accumulations of income:

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:

Short title

1 This Act may be cited as the Perpetuities and Accumulations Act 2009.

Interpretation

2 In this Act—

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“commencement day” means 1 August 2009;

“power of appointment” includes any discretionary power to create or transfer a beneficial interest in property without the provision of valuable consideration;

“the rule against perpetuities”—

- (a) means the rule of law by that name, also known as the rule against remoteness of vesting, which restricts the time within which future interests in property must either vest or take effect, or within which certain powers may be exercisable; and
- (b) includes any other rule of law which limits the period during which income may be accumulated or for which capital may remain unexpended or inalienable;

“will” includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and any other testamentary disposition.

[Section 2 definition “commencement day” deleted and substituted by 2015 : 45 s. 2 effective 11 December 2015]

Application of rule against perpetuities limited to land in Bermuda

3 (1) In relation to instruments taking effect on or after the commencement day, the rule against perpetuities applies (and applies only) as provided by this section.

(2) If an instrument limits property in trust so as to create successive estates or interests, the rule against perpetuities applies to each of the estates or interests only to the extent that the property is land in Bermuda.

(3) If an instrument limits property in trust so as to create an estate or interest which is subject to a condition precedent and which is not one of successive estates or interests, the rule against perpetuities applies to the estate or interest only to the extent that the property is land in Bermuda.

(4) If an instrument limits property in trust so as to create an estate or interest which is subject to a condition subsequent, the rule against perpetuities applies to any right of re-entry exercisable if the condition is broken only to the extent that the property is land in Bermuda.

(5) If an instrument creates a power of appointment, the rule against perpetuities applies to the power only to the extent that it is exercisable over land in Bermuda.

(6) In this section “instrument” does not include a will executed before the commencement day.

(7) For the avoidance of doubt, the reference to land in Bermuda does not include—

- (a) the income from any land in Bermuda, or
- (b) the proceeds of sale of any land in Bermuda.

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Court order declaring that rule against perpetuities does not apply to certain instruments

- 4 (1) This section applies in relation to an instrument which takes effect—
- (a) before the commencement day; or
 - (b) on or after the commencement day but to which section 3 does not apply to limit the application of the rule against perpetuities.
- (2) Subject to subsection (3), the Supreme Court may, on an application made by the trustee or trustees of an instrument to which this section applies, make an order on such terms as it thinks fit declaring that—
- (a) the rule against perpetuities; or
 - (b) any other similar rule of law that may limit or restrict the time under which property may be held in or subject to any trust,

shall not apply to such instrument and the property held thereunder.

(3) An order under subsection (2) may not be made to the extent that it would affect the residual application of the rule against perpetuities as provided by section 3 if the instrument had been one to which section 3 applies (so that the rule against perpetuities will continue to apply to all instruments to the extent that the property is land in Bermuda as provided by section 3).

- (4) The terms upon which an order under subsection (2) may be made include (but are not limited to), terms—
- (a) extending the duration of a trust;
 - (b) extending the time within which an interest in property must vest or take effect;
 - (c) extending the time within which certain powers are exercisable;
 - (d) providing that anything done by any person before the order is made on the basis that the instrument was void by virtue of the application of the rule against perpetuities or other similar rule of law shall have effect as if the order had not been made;
 - (e) protecting or preserving the interest of any person in trust property where such interest will or may be defeated or its vesting in possession deferred by virtue or in consequence of the terms of any order made under this section;
 - (f) varying or deleting any provision of the trust which restricts (to or by reference to the perpetuity period or limitation on duration applicable to the trust) the exercise of any power arising under or in consequence of the instrument;
 - (g) providing that the order shall be deemed always to have applied to the instrument.

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(5) An application under subsection (2) shall be made by originating summons and the Rules of the Supreme Court applicable to applications under the Trustee Act 1975 shall, so far as is appropriate, apply.

(6) In subsection (4)(e), “interest” includes an interest arising by virtue or in consequence of the disposition being void as a result of the application of the rule against perpetuities to that disposition.

[Section 4 repealed and replaced by 2015 : 45 s. 3 effective 11 December 2015]

Perpetuities: codification of rule relating to charities

5 For the avoidance of doubt, the rule against perpetuities does not apply—

- (a) to an estate or interest created so as to vest in a charity on the occurrence of an event, or
- (b) to a right exercisable by a charity on the occurrence of an event,

if, immediately before the occurrence of the event, an estate or interest in the property concerned is vested in another charity.

Accumulations: repeal of restrictions

6 Section 15 of the Perpetuities and Accumulations Act 1989 (accumulations of income) is repealed in relation to instruments taking effect on or after the commencement day.

Accumulations by charitable and purpose trusts

7 (1) This section applies to an instrument to the extent that it provides for property to be held on trust for charitable or non-charitable purposes.

(2) The instrument may impose on the trustees a duty, or confer on them a power, to accumulate income for any duration (including an unlimited duration), whether or not the duty or power extends to income produced by the investment of income previously accumulated.

(3) This section applies in relation to an instrument taking effect before, on or after the commencement day.

Provision made otherwise than by instrument

8 If provision is made in relation to property otherwise than by an instrument, this Act applies as if the provision were contained in an instrument taking effect on the making of the provision.

Crown application

9 This Act binds the Crown.

Consequential amendment

10 In the definition of “power of appointment” in section 2 of the Perpetuities and Accumulations Act 1989, delete “transfer” and substitute “create or transfer”.

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Repeal

11 Section 12A(5) of the Trusts (Special Provisions) Act 1989 (which applies the rule against perpetuities to a purpose trust) is repealed.

Commencement

12 This Act comes into operation on 1st August 2009.

[Assent Date: 19 June 2009]

[Operative Date: 1 August 2009]

[Amended by:

2015 : 45]