

PERPETUITIES AND ACCUMULATIONS ACT 2009



BERMUDA

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PERPETUITIES AND ACCUMULATIONS ACT 2009

[Date of Assent: 19 June 2009]

[Operative Date: 1 August 2009]

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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:

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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—

“commencement day” means the day on which this Act comes into operation;

“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.

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.

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(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.

Existing instruments

4 Nothing in section 3 is to be taken as limiting the power of the court to extend—

- (a) the duration of a trust,
- (b) the time within which an interest in property must vest or take effect, or
- (c) the time within which certain powers are exercisable,

under an instrument which takes effect before the commencement day.

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.

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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”.

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.