



BERMUDA

TRUSTS (SPECIAL PROVISIONS) AMENDMENT ACT 2014

2014 : 22

WHEREAS it is expedient to amend the Trusts (Special Provisions) Act 1989:

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, which amends the Trusts (Special Provisions) Act 1989 (the “principal Act”), may be cited as the Trusts (Special Provisions) Amendment Act 2014.

Amends section 2

2 Section 2(3) of the principal Act is amended by inserting after the words “the reservation”, the words “or grant”.

Inserts section 2A

3 The principal Act is amended by inserting after section 2 the following—

“Reserved powers

2A (1) Without prejudice to the generality of section 2(3), the reservation by the settlor to himself or grant to any other person in a trust instrument governed by the laws of Bermuda of any limited beneficial interest in the trust property whether of income or capital, or any or all of the powers specified in subsection (2) (or both such an interest and any or all of such powers) shall not —

- (a) invalidate the trust; or
- (b) prevent the trust taking effect according to its terms; or

TRUSTS (SPECIAL PROVISIONS) AMENDMENT ACT 2014

- (c) cause any or all of the trust property to be part of the real estate or personal estate of the settlor for the purposes of the Wills Act 1988.
- (2) The powers referred to in subsection (1) are—
- (a) in the case of a reservation to the settlor or other donor of trust property, power to revoke the trusts in whole or in part;
 - (b) power to vary or amend the terms of a trust instrument or any of the trusts, purposes or powers arising thereunder in whole or in part;
 - (c) a general, intermediate or special power to advance, appoint, pay, apply, distribute or transfer trust property (whether income or capital or both) or to give directions for the making of any such advancement, appointment, payment, application, distribution or transfer;
 - (d) power to act as, or give binding directions as to the appointment or removal of, a director or an officer of any company wholly or partly owned by the trust or to direct the trustee as to the manner of exercising voting rights attaching to any of the shares held in such company;
 - (e) power to give binding directions in connection with the purchase, retention, holding, sale or other commercial or investment dealings with trust property or any investment or reinvestment thereof or the exercise of any powers or rights arising from such trust property;
 - (f) power to appoint, add, remove or replace any trustee, protector, enforcer or any other office holder or any advisor including any investment advisor or any investment manager;
 - (g) power to add, remove or exclude any beneficiary, class of beneficiaries or purpose;
 - (h) power to change the governing law and the forum for administration of the trust; and
 - (i) power to restrict the exercise of any powers, discretions or functions of a trustee by requiring that they shall only be exercisable with the consent, or at the direction of, any person specified in the trust instrument.
- (3) A trustee who—
- (a) has acted, or refrained from acting, in compliance with, or as a result of, a valid exercise of any of the powers set out in subsection (2), shall not, by reason only of such compliance, commit a breach of trust or other fiduciary or equitable duty; or

(b) is or has been prevented from acting in accordance with any of the powers specified in subsection (2), or any exercise of those powers by reason of the provisions of any applicable law or because insufficient rights or powers are exercisable by the trustee in relation to the trust property, shall not, by reason only of such non-compliance or failure to act, commit a breach of trust or other fiduciary or equitable duty.

(4) Where a power to revoke, a general power of appointment or the present beneficial interest in respect of all or part of the trust property is reserved or granted to a person, a trust instrument may provide that for so long as the settlor, beneficiary or other holder of the power is not the sole trustee, the trustee shall owe no duty to any other person in relation to all or such part of the trust property and accordingly shall have no responsibility to any other person for acts or omissions occurring during that person's lifetime in respect of that property.

(5) No person other than a person in whom trust property or an interest in trust property is vested and who is formally appointed as a trustee, shall be or become a trustee by reason only of the reservation or grant of any of the powers set out in subsection (2).

(6) A trust instrument governed by the laws of Bermuda may provide that the reservation or grant of any of the powers set out in subsection (2) shall not impose a fiduciary duty on the holder of such powers.

(7) In relation to any trust governed by the laws of Bermuda created after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, in the absence of any contrary provision of the trust—

(a) in the case of the reservation by a settlor or the grant to a beneficiary of any of the powers specified in subsection (2), where so long as the holder of the power is not the sole trustee, such powers shall be personal and non-fiduciary; and

(b) in any other case, such powers shall be fiduciary.

(8) Subject to any contrary provision herein, this section and section 2(3) apply to any trusts governed by the laws of Bermuda, whether created before, on or after the commencement date of the Trusts (Special Provisions) Amendment Act 2014, and to acts and omissions occurring while the trust was governed by the laws of Bermuda.

(9) In this Part, “settlor” includes—

(a) a testator who grants powers under a testamentary trust by the terms of his last will and testament; and

(b) a person who by a declaration of trust declares that assets held by him beneficially shall be held by him on the terms of the trust so declared.”

TRUSTS (SPECIAL PROVISIONS) AMENDMENT ACT 2014

[Operative Date: 16 July 2014]