

RULE AGAINST PERPETUITIES (ABOLITION) BILL, 2011

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RULE AGAINST PERPETUITIES (ABOLITION) BILL, 2011

A BILL FOR AN ACT TO ABOLISH THE RULE AGAINST PERPETUITIES IN CERTAIN CASES

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act may be cited as the Rules Against Perpetuities (Abolition) Act, 2011.
- (2) This Act shall come into operation on a date to be appointed by the Minister by notice published in the Gazette.

2. Interpretation.

- (1) In this Act—
 - “**Act**” means the Rule Against Perpetuities (Abolition) Act, 2010;
 - “**court**” means the Supreme Court;
 - “**disposition**” includes the conferring of a power of appointment, and any other disposition of, or creation of, an interest in or right over property;
 - “**power of appointment**” includes any discretionary power to create or transfer a beneficial interest in property without the furnishing of valuable consideration;

“the rule against perpetuities” includes the rule of law prohibiting trusts of excessive duration and any rule of law restricting the period during which income may be accumulated;

"will" includes a codicil and any other testamentary disposition.

- (2) For the purposes of this Act —
 - (a) a disposition contained in a will shall be deemed to be made at the death of the testator;
 - (b) a power of appointment shall be treated as a special power unless—
 - (i) the power is expressed to be exercisable by one person only; and
 - (ii) the power could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power;
 - (c) a disposition made in exercise of a special power of appointment shall be deemed to have been made on the date of the disposition under which that power was created.
- (3) A power of appointment exercisable by will only shall be treated as a general power where it would have been so treated if exercisable by deed.

3. Abolition of rule against perpetuities in certain cases.

Notwithstanding the Perpetuities Act¹, the rule against perpetuities is abolished in respect of —

- (a) every disposition of an interest in property made on or after the commencement of this Act; and
- (b) every disposition of an interest in property in trust made before the commencement of this Act, in respect of which an order is made under section 4.

4. Power of court to apply Act to pre-Act dispositions.

- (1) In relation to any disposition of an interest in property in trust made before the commencement of this Act, the Court may, on an application made by the trustee of the trust, make an order, on such terms as it thinks fit, declaring that the Act shall apply to the disposition.

¹Ch. 114.

- (2) The terms upon which an order under subsection (1) may be made include terms —
- (a) providing that anything done by any person before the order is made on the basis that the disposition was void by virtue of the application of the rule against perpetuities shall have effect as if the order had not been made;
 - (b) protecting or preserving the interest of any person in the property the subject of the disposition which interest will or may be defeated or its vesting in possession deferred by virtue or in consequence of the application of the Act to the disposition or of the terms of any order made under this section;
 - (c) varying or deleting any provision of the trust which in any way restricts (to or by reference to the perpetuity period applicable to the trust) the exercise of any power arising under or in consequence of the disposition;
 - (d) providing that this Act shall be deemed always to have applied the disposition.
- (3) An application under subsection (1) shall be made by petition which shall be served upon or notice thereof given to, and the hearing may be attended by, such persons, if any, (including a settlor) within or outside the jurisdiction of the court, as the court may direct.
- (4) In subsection (2)(b), “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.

5. Act binds the Crown.

This Act binds the Crown.

OBJECTS AND REASONS

This Bill seeks to abolish the rule against perpetuities in respect of—

- (a) every disposition of an interest in property made on or after the commencement of this Act; and
- (b) every disposition of an interest in property made before the commencement of this Act, in respect of which an order is made under section 4.

It means therefore that the prohibition of trusts of excessive duration has been abolished in such cases as well as the restrictions on the period during which income may be accumulated.