

CAYMAN ISLANDS



PERPETUITIES (AMENDMENT) BILL, 2024

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A BILL FOR AN ACT TO AMEND THE PERPETUITIES ACT (1999 REVISION) TO PROVIDE FOR THE DISAPPLICATION OF THE RULE AGAINST PERPETUITIES; TO CORRECT TYPOGRAPHICAL ERRORS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Commerce (FSC)



Memorandum of OBJECTS AND REASONS

This Bill amends the Perpetuities Act (1999 Revision) (“the principal Act”) to provide for the disapplication of the rule against perpetuities, to correct typographical errors, and for incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 provides for the amendment of the principal Act by inserting proposed new Part headings in the principal Act.

Clause 3 amends section 4 of the principal Act to correct a typographical error.

Clause 4 amends section 14 of the principal Act to clarify that references to the Court in that section are to the Grand Court.

Clause 5 amends section 15 of the principal Act to update the section heading to properly reflect the contents of the section. The clause also amends section 15 to clarify that references to the Court in that section are to the Grand Court.

Clause 6 provides for the amendment of the principal Act by inserting a proposed new Part 3 which provides for the disapplication of the rule against perpetuities.

The proposed new Part 3 contains proposed new sections 18 to 21.

Proposed new section 18 provides definitions for the words “enforcer” and “settlor”. It also provides for the interpretation of the reference to land in the Islands or an interest in land in the Islands.

Proposed new section 19 provides that where —

- (a) a disposition is made by an instrument which comes into effect on or after the commencement of this legislation; and
- (b) the disposition does not relate to a trust which holds land in the Islands or any interest in land in the Islands,

the instrument by which the disposition is made may by its terms provide that the rule against perpetuities does not apply to that disposition.

Proposed new section 20 provides that, among others, trustees, settlors, and enforcers of certain trusts may apply to the Grand Court to disapply the rule against perpetuities.

Proposed new section 21 provides that where a trust that is of unlimited duration and to which the rule against perpetuities does not apply under its governing law changes the governing law of the trust to the law of the Islands, a disposition made in respect of the trust shall not be subject to the rule against perpetuities under the law of the Islands.

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A BILL FOR AN ACT TO AMEND THE PERPETUITIES ACT (1999 REVISION) TO PROVIDE FOR THE DISAPPLICATION OF THE RULE AGAINST PERPETUITIES; TO CORRECT TYPOGRAPHICAL ERRORS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Perpetuities (Amendment) Act, 2024.

Insertion of new Part headings in the Perpetuities Act (1999 Revision) - preliminary; rule against perpetuities

2. The *Perpetuities Act (1999 Revision)*, in this Act referred to as the “principal Act”, is amended as follows —
 - (a) by inserting before section 1 the following Part heading —

“Part 1 - Preliminary”; and

- (b) by inserting after section 3 the following Part heading —

“Part 2 - Rule against perpetuities”.

Amendment of section 4 - rule against perpetuities

3. The principal Act is amended in section 4(1)(d) by deleting the word “vow” and substituting the word “void”.

Amendment of section 14 - reformation

4. The principal Act is amended in section 14 by deleting the word “Court” wherever it appears and substituting the words “Grand Court”.

Amendment of section 15 - application to the Court

5. The principal Act is amended in section 15 as follows —
- (a) by repealing the section heading and substituting the following section heading —
“Application for declaration regarding the rule against perpetuities”;
and
 - (b) by deleting the word “Court” wherever it appears and substituting the words “Grand Court”.

Insertion of new Part 3 - the disapplication of the rule against perpetuities

6. The principal Act is amended by inserting after section 17 the following Part —

“Part 3 - The disapplication of the rule against perpetuities

Definitions in this Part

18. (1) For the purposes of this Part —
- “**enforcer**” means a person who has standing to enforce a trust; and
 - “**settlor**” has the meaning assigned by section 87 of the *Trusts Act (2021 Revision)*.
- (2) A reference in this Part to land in the Islands or an interest in land in the Islands does not include —
- (a) the income from any land in the Islands; or
 - (b) the proceeds of sale of any land in the Islands.

Dispositions to which the rule against perpetuities does not apply

19. (1) Notwithstanding anything contained in this Act, where —



- (a) a disposition is made by an instrument which comes into effect on or after the commencement of the *Perpetuities (Amendment) Act, 2024*; and
 - (b) the disposition does not relate to a trust which holds land in the Islands or any interest in land in the Islands,
- the instrument by which the disposition is made may by its terms provide that the rule against perpetuities does not apply to that disposition.
- (2) Land in the Islands or an interest in land in the Islands shall not be subject, directly or indirectly, to a disposition in respect of which the rule against perpetuities does not apply.
 - (3) Notwithstanding subsection (2), a disposition in respect of which the rule against perpetuities does not apply may relate to a trust that holds an interest in a company, partnership or other entity which holds land in the Islands, or an interest in that land, for the purposes of its business.
 - (4) Subject to section 13(1), where an instrument referred to in subsection (1) does not provide that the rule against perpetuities does not apply to a disposition, the rule against perpetuities applies to the disposition.

Application to the Grand Court to disapply the rule against perpetuities

- 20.** (1) This section applies to any trust to which the rule against perpetuities applies —
- (a) other than a trust which relates to land in the Islands or an interest in land in the Islands; and
 - (b) in respect of which a disposition may be made by an instrument, whether the instrument was created prior to, or on or after, the commencement of the *Perpetuities (Amendment) Act, 2024*.
- (2) Without prejudice to a power of the Grand Court to vary the terms of a trust —
- (a) a trustee, settlor or enforcer of a trust referred to in subsection (1);
 - (b) a person on whom powers in relation to a trust referred to in subsection (1) are conferred by an instrument; or
 - (c) a person with a beneficial interest in a trust referred to in subsection (1),
- may apply to the Grand Court for an order declaring that the rule against perpetuities does not apply to a disposition in respect of the

trust and the property which is the subject of the disposition in respect of the trust.

- (3) An application under subsection (2) shall be served on —
 - (a) all persons interested in the application; and
 - (b) any other person the Grand Court considers relevant or expedient to the determination of the application.
- (4) The Grand Court may grant the order which is the subject of the application under subsection (2) where the Grand Court is satisfied that granting the order would not be to the detriment of the beneficiaries.
- (5) Land in the Islands or an interest in land in the Islands shall not be subject, directly or indirectly, to a disposition in respect of which the Grand Court grants an order under subsection (4).
- (6) Notwithstanding subsection (5), a disposition in respect of which the Grand Court grants an order under subsection (4) may relate to a trust that holds an interest in a company, partnership or other entity which holds land in the Islands, or an interest in that land, for the purposes of its business.

Change of governing law of a trust of unlimited duration

- 21.** (1) Subject to the terms of a trust, if the governing law of a trust —
- (a) that is of unlimited duration; and
 - (b) to which the rule against perpetuities does not apply under its governing law,
- is changed to the law of the Islands in accordance with section 89 of the *Trusts Act (2021 Revision)*, a disposition made in respect of the trust shall not be subject to the rule against perpetuities under the law of the Islands.
- (2) Land in the Islands or an interest in land in the Islands shall not be subject, directly or indirectly, to a disposition under subsection (1).



- (3) Notwithstanding subsection (2), a disposition under subsection (1) may relate to a trust that holds an interest in a company, partnership or other entity which holds land in the Islands, or an interest in that land, for the purposes of its business.”.

Passed by the Parliament the day of , 2024.

Speaker

Clerk of the Parliament

