



Bermuda: The New Perpetuities and Accumulations Amendment Act 2015



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Bermuda has recently passed the *Perpetuities and Accumulations Amendment Act, 2015* (the “Amendment Act”), which is hoped to further strengthen Bermuda’s reputation as a premier jurisdiction in which to establish and administer trusts, and particularly also a jurisdiction to which trusts may easily and conveniently be migrated from other jurisdictions.

By way of background, pursuant to the *Perpetuities and Accumulations Act, 2009* (the “2009 Act”) (operative from 1 August 2009) Bermuda abolished (or dis-applied) the *Rule Against Perpetuities* (the “Rule”) for all trusts established after that date. While the Rule no longer applied to trusts established after 1 August 2009, it continued to apply to Bermuda law trusts established prior to that date and to any trusts, whenever established, which owned real property situated in Bermuda. In addition, the Rule would generally continue to apply to trusts established after 1 August 2009 that had been created under foreign law which applies a perpetuity limitation or because they originated out of a trust or trusts that were established prior to that date under the ‘relation back’ doctrine, unless they were created by way of a general power of appointment, in which case any application of the Rule would run from the date of the exercise of such general power.

It was contemplated under Section 4, of the 2009 Act, that it would be possible to make application to the Bermuda Courts to alter the application of the Rule to pre-2009 trusts and, absent express legislative provision, the natural way of achieving this was via Section 47 of the *Trustee Act, 1975* (“S.47”). While S.47 is certainly broad enough to enable trustees to, *inter alia*, apply to the Bermuda Courts to alter or amend most any provision of a trust, that breadth also meant that such applications were fairly complicated and expensive. By creating an express jurisdiction to make application to the Bermuda Courts under the Amendment Act, it is expected that trustees and their advisers will find the new procedure more streamlined and cost effective when compared to applications to achieve the same result under S.47.

The Amendment Act will enable trustees of pre-2009 trusts, and also trustees of trusts originally established in other jurisdictions, which had an applicable perpetuity period or similar limitation, but which are now governed by Bermuda law, to make a more simplified, cost effective application to the Bermuda Courts to dis-apply or alter the relevant Rule or similar limitations on duration.



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