

CHAPTER 179
TRUSTS (CHOICE OF GOVERNING LAW)
ARRANGEMENT OF SECTIONS

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CHAPTER 179
TRUSTS (CHOICE OF GOVERNING LAW)

33 of 1989

20 of 1996

An Act to provide for a choice of governing law in the creation of trust and for matters connected therewith.

[Assent 29th December, 1989]

[Commencement 15th January, 1990]

Short title.

1. This Act may be cited as the Trusts (Choice of Governing Law) Act, 1989.

Interpretation.

2. In this Act-

"dispose" and "disposition", in relation to property, means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

"formalities" in relation to a disposition of property means any documentary or other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to-

- (a) the fact that the particular disposition is made in trust;
- (b) the terms of the trust;
- (c) the circumstances of the parties to the disposition; or
- (d) any other particular circumstances; but includes any special formalities required by reason that the party effecting the disposition is not of full age, is subject to a mental or bodily infirmity or is a corporation;

"governing law" means the law governing a trust executed in The Bahamas or elsewhere;

"heirship right" means any right, claim or interest in, against or to property of a person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property of such person;

"personal relationship" includes every form of relationship by blood or marriage, including former marriage and in particular a personal relationship between two persons which exists if-

- (a) one is the child of the other, natural or adopted, whether or not the adoption is recognised by law, legitimate or illegitimate;
- (b) one is married to the other, whether or not the marriage is recognised by law;
- (c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parents and child or husband and wife; or
- (d) personal relationships exist between each of them and a third person, but no change in circumstances cause personal relationship once established to terminate;

"property" means movable and immovable property;

"settlor" in relation to a trust, means each person who directly or indirectly, on behalf of himself or on behalf of any other, as owner or as the holder of a power in that behalf, disposes of property to be held in such trust or declares or otherwise creates such trust.

Application.

3. (1) This Act applies to every trust and disposition of property in trust.

(2) This Act shall not render any person liable for anything done prior to its commencement.

Declaration governing law.

4. (1) For the avoidance of doubt it is hereby stated that in the creation of trust, a settlor, whether or not he is resident in The Bahamas, may expressly declare in the trust instrument that the laws of The Bahamas shall be the governing law of the trust.

(2) A term of a trust expressly declaring that the laws of The Bahamas shall govern the trust is valid, effective and conclusive regardless of any other circumstance.

(3) A term of a trust that the laws of The Bahamas shall govern a particular aspect of a trust or that The Bahamas shall be the forum for the administration of the trust or any other like provision is conclusive evidence, subject to any contrary term of the trust, that the settlor intended the laws of The Bahamas to be the governing law of the trust and is valid and effective accordingly.

Provision for change of governing law.

5. (1) Where a term of a trust so provides, the governing law may be changed to or from the laws of The Bahamas if-

- (a) in the case of a change to the laws of The Bahamas, such change is recognised by the governing law previously in effect; and
- (b) in the case of a change from the laws of The Bahamas, the new governing law would recognise the validity of the trust and the respective interests of the beneficiaries.

(2) A change in the governing law shall not affect the legality or validity of, or render any person liable for anything done before the change.

Determination of governing law.

6. In determining the governing law of a trust consideration shall first be given to the terms of the trust in issue and to any evidence therein as to the intention of the parties; and the other circumstances of the trust shall be considered only if the terms of the trust fail to provide such evidence as to the intention of the parties.

Matters determined by governing law.

7. (1) Subject to subsection (2), all questions arising in regard to a trust which is for the time being governed by the laws of The Bahamas or in regard to any disposition of property upon the trust thereof including, without prejudice to the generality of the foregoing, questions as to-

- (a) the capacity of the settlor;
- (b) any aspect of the validity of the trust or disposition or the interpretation or effect

- thereof;
- (c) the administration of the trust, whether the administration be conducted in The Bahamas or elsewhere, including questions as to powers, obligations, liabilities and rights of trustees and their appointment and removal; or
- (d) the existence and extent of powers, conferred or retained; including powers of variation or revocation of the trust and powers of appointment, and validity of any exercise thereof,

shall be determined in accordance with the laws of The Bahamas, without reference to the laws of any other jurisdictions with which the trust or disposition may be connected.

(2) This section-

- (a) shall not validate-
 - (i) any disposition of property which is neither owned by the settlor nor the subject of a power in that behalf vested in the settlor;
 - (ii) any trust or disposition of immovable property situate in a jurisdiction other than The Bahamas in which such trust or disposition is invalid according to the laws of such jurisdiction;
 - (iii) any testamentary trust or disposition which is invalid according to the laws of the testator's domicile;
- (b) shall not affect the recognition of foreign laws in determining whether the settlor is the owner of the settled property or is the holder of a power to dispose of such property;
- (c) shall take effect subject to any express term of a trust or disposition to the contrary;
- (d) as regards the capacity of a corporation, shall not affect the recognition of the laws of its place of incorporation; and
- (e) shall not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the trust, the formalities for the disposition of property.

Limitations in foreign law.

8. Without limiting the generality of section 7, it is hereby expressly declared that no trust governed by the laws of The Bahamas and no disposition of property to be held on trust that is valid under the laws of The Bahamas is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any settlor to be questioned nor is the trustee or any beneficiary or any other person to be subjected to any liability or deprived of any right by reason that-

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust; or
- (b) the trust or disposition avoids or defeats rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognise, protect, enforce or give affect to any such rights, claims or interest.

Heirship rights.¹ 9. An heirship right conferred by foreign law in relation to the property of a living person shall not be recognised as-

- (a) affecting the ownership of immovable property in The Bahamas or movable property wherever situate for the purposes of paragraphs (a) and (b) of subsection (2) of section 7 or for any other purpose; or
- (b) constituting an obligation or liability for the purposes of the Fraudulent Dispositions Act, 1991 or for any other purpose.

Foreign judgments.² 10. A foreign judgment shall not be recognised or enforced or give rise to any estoppel insofar as it is inconsistent with section 8 or section 9.

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