

VIRGIN ISLANDS

PROPERTY (MISCELLANEOUS PROVISIONS) (AMENDMENT) ACT, 2021

ARRANGEMENT OF SECTIONS

Section

- | | |
|------|-------------------------------------|
| 1... | Short title and commencement. |
| 2... | Section 3A inserted. |
| 3... | Section 4 repealed and substituted. |

No.	of 2021	Property (Miscellaneous Provisions) (Amendment) Act, 2021	Virgin Islands
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I Assent

Governor
, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

An Act to amend the Property (Miscellaneous Provisions) Act, 2003 (No. 12 of 2003) and to provide for other matters connected therewith.

[Gazetted _____, 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and commencement. 1. (1) This Act may be cited as the Property (Miscellaneous Provisions) (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Section 3A
inserted.
No. 12 of 2003

2. The Property (Miscellaneous Provisions) Act, 2003 (hereinafter referred to as “the principal Act”) is amended by inserting after section 3, the following new section –

“Exclusion of rule of law or policy in relation to unborn illegitimate issue.

3A. (1) Any rule of law or policy that a disposition in favour of an illegitimate issue not in being when the disposition takes effect is void as contrary to public policy, shall not apply to a disposition of property.

(3) In subsection (2), the expression “valid distribution of property” means any payment, transfer or distribution of property which could not have been impugned under the law in force at the time of such payment, transfer or distribution.”.

“Application.

(2) Section 3A (1) applies to any disposition created or made or purportedly created or made before, on or after the date on which this Act comes into force, and no such disposition shall be invalid by reason only of the fact that it was created or made or purportedly created or made prior to that date.”.

OBJECTS AND REASONS

This Bill seeks to amend the Property (Miscellaneous Provisions) Act, 2003 (Act No. 12 of 2003) to deal with essentially two related matters.

The first aims to abolish any rule of law or policy which provides that a disposition in favour of an illegitimate issue (child) who is not alive when the disposition takes effect is void. Prior to the enactment of the UK's Family Law Reform Act, 1969, the legal position was that where a person created a trust, through a deed, in respect of an illegitimate child that was not born as at the date of the deed, the trust thereby created was void as being contrary to public policy. It is not certain whether, and to what extent (if at all), this rule of law applies or was ever extended to the Virgin Islands. If the rule exists, then it means that any provision in a trust deed that expressly provides for an illegitimate child yet unborn will have no legal force. It is not unusual for settlors and testators to make wills and trust instruments in favour of their illegitimate children, including those that are yet to be born.

Furthermore, the recent enactment of the Status of Children Act, 2014 meant that children born out of wedlock were placed on the same footing (equal status) with those considered to be legitimate children. In view of this and of the fact that the freedom to dispose of personal property is a feature of Virgin Islands law, the Bill provides in clause 2 for the removal of any rule of law or policy that denies a person the freedom of creating a deed to provide for his or her unborn "illegitimate" child.

The second matter that the Bill seeks to address relates to the first. It simply gives retrospective effect to the provision in clause 2 and thus effectively recognises a disposition of property to an "illegitimate" child that is not born as at the date of the deed relative to the disposition. This will not affect a disposition of property that has already been executed prior to the coming into force of the Bill upon enactment.

It is considered that very few, if any, distributions will actually be affected by the retrospective abolition of the rule of law or policy relative to unborn children. It is nonetheless considered important that, just in case any distributions, payments or transfers have been made on the basis of the rule of law or policy, protection is provided to those who might have made such distributions, payments or transfers in accordance with what had been the law before now and that those to whom distributions, payments or transfers were made should not have to relinquish or return the property.

These new features contained in the Bill updates Virgin Islands laws relating to the disposition of property and strengthens the trusts law regime. Accordingly, Members of the House of Assembly are invited to consider and support the Bill.

Minister of Finance