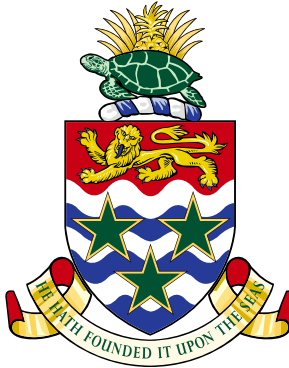


CAYMAN ISLANDS



PERPETUITIES LAW

(1999 Revision)

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PERPETUITIES LAW
(1999 Revision)

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CAYMAN ISLANDS



PERPETUITIES LAW

(1999 Revision)

Short title

1. This Law may be cited as the *Perpetuities Law (1999 Revision)*.

Definitions, interpretation and application

2. (1) In this Law —

“**disposition**” includes the conferring of a power of appointment and any other disposition of an interest in or right over property, and references to the interest disposed of shall be construed accordingly;

“**power of appointment**” includes a discretionary power to create or transfer a beneficial interest in property without the furnishing of valuable consideration, but not any power of a trustee of a charitable trust;

“**trust**” includes a trust created by will;

“**trustee**” includes a personal representative; and

“**will**” includes a codicil.

- (2) For the purposes of this Law —

(a) a will shall, in relation to a disposition contained in it, be deemed to take effect on the death of the testator; and

(b) a power of appointment shall be treated as a special power unless —

- (i) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (ii) it 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 the exercise of the power:

Provided that for the purpose of determining whether a disposition made under a power of appointment exercisable by will only is void for perpetuity, the power shall be treated as a general power where it would have fallen to be so treated if exercisable by deed.

- (3) This Law applies in relation to a disposition made otherwise than by an instrument as if the disposition had been contained in an instrument taking effect when the disposition was made.

Application of this Law

- 3. Except where it is otherwise expressly provided, this Law applies only in relation to dispositions made by instruments coming into effect on or after the 1st August 1995, other than dispositions made in exercise of special powers of appointment created before the 1st August, 1995.

Rule against perpetuities

- 4. (1) Subject to the other sections of this Law —
 - (a) a disposition creating a non-vested interest in property becomes void for perpetuity if the interest fails to vest by the end of the perpetuity period;
 - (b) where a disposition consists of the creation of a general power of appointment, the power becomes void for perpetuity if it does not become exercisable by the end of the perpetuity period;
 - (c) where a disposition consists of the creation of a special power of appointment, the power becomes void for perpetuity insofar as the power is not fully exercised by the end of the perpetuity period; and
 - (d) where a disposition is made of an interest in property subject to a provision for divesting or determination, the provision becomes void for perpetuity at the end of the perpetuity period unless it then is certain to take effect or its taking effect would serve only to accelerate possession of a vested interest, not being an interest by way of resulting trust.
- (2) Until the end of the perpetuity period, a disposition shall be treated as if it were not subject to the rule against perpetuities; and its becoming void for perpetuity shall not affect the validity of anything previously done in relation to the interest



disposed of by way of advancement, application of intermediate income or otherwise.

- (3) Save as provided in this Law, no disposition or any provision of a disposition is void for perpetuity or liable to become void for perpetuity.

Perpetuity period

5. (1) Subject to subsections (2) to (4), the perpetuity period applicable to a disposition is the period of one hundred and fifty years commencing at the effective date of the instrument by which the disposition is made.
- (2) In the case of a disposition of an interest which is unconditionally revocable (which is to say that the donor may, in his sole discretion, revoke the interest and vest it in himself) the perpetuity period commences when the interest ceases to be unconditionally revocable.
- (3) In the case of a disposition made in exercise of a special power of appointment, the perpetuity period does not extend beyond the perpetuity period applicable to the disposition which created the power.
- (4) In the case of a disposition upon existing trusts of further property to be administered as a single fund with property previously disposed of upon such trusts, the perpetuity period does not extend beyond the perpetuity period applicable to the previous disposition.

Accumulation of income

6. (1) Where property is disposed of in such manner that the income thereof may or must be accumulated wholly or in part, the power or direction to accumulate that income is valid if the disposition of the accumulated income is or may be valid but not otherwise.
- (2) Nothing in this section affects the rights of any person or persons to terminate an accumulation that is for his or their benefit of any jurisdiction or power of the court to direct payments from accumulations pursuant to any law.

Administrative powers

7. The rule against perpetuities does not operate, and the rules previously in effect shall be deemed never to have operated, to invalidate a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property for full consideration, or to do any other act in the administration of any property, and does not prevent the payment to trustees or other persons of remuneration for their services.

Leases

8. The rule against perpetuities does not apply, and the rules previously in effect shall be deemed never to have applied, to the grant or reservation of rights under a lease of property, including the grant of an option to renew a lease of the grant to a lessee of an option to acquire a reversionary interest in the property comprised in his lease.

Pension funds

9. (1) The rule against perpetuities does not apply, and the rules previously in effect shall be deemed never to have applied, to a disposition upon trust if the main purpose of the trust is as specified in subsection (2).
- (2) The main purpose referred to in subsection (1) is to confer benefits (by way of pension benefits, sickness benefits, accident benefits, death benefits, profit-sharing, incentives or otherwise howsoever) upon persons by reason of their being, or having been —
- (a) directors, officers, servants or employees of one or more particular employers;
 - (b) engaged in a particular profession, trade, occupation or calling;
 - (c) members of a trades union or an amalgamation of unions; or
 - (d) spouses, children, grandchildren, parents, dependants or legal personal representatives of persons within paragraphs (a), (b), or (c).

Contractual rights

10. Where a disposition *inter vivos* would fall to be treated as void for perpetuity if the rights and duties thereunder were capable of transmission to persons other than the original parties and had been so transmitted, it shall be treated as void as between the person by whom it was made and the person to whom or in whose favour it was made or any successor of his, and no remedy shall lie in contract or otherwise for giving effect to it or making restitution for its lack of effect.

Charitable dispositions

11. The rule against perpetuities applies to a disposition upon a contingency for charitable purposes if the contingency does not occur by the end of the perpetuity period, but does not apply to a gift over from one charity to another.

Non-charitable purpose trusts

12. Non-charitable purpose trusts, unless subject to the *Special Trusts (Alternative Regime) Law, 1997 [Law 18 of 1997]* (if valid apart from the rule against perpetuities) become void for perpetuity at the end of the perpetuity period without prejudice to any interests in property which may be vested thereunder.



Non-application to certain trusts, etc.

13. (1) Notwithstanding anything contained in this Law, the rule against perpetuities does not apply to a trust or power subject to the *Special Trusts (Alternative Regime) Law, 1997*.
- (2) If a power subject to the *Special Trusts (Alternative Regime) Law, 1997* is exercised to create a trust or power not subject to the *Special Trusts (Alternative Regime) Law, 1997*, for the purpose of the rule against perpetuities as it applies to the trust or power so created, the first-mentioned power shall be deemed to be a general power of appointment.
- (3) A power which is not subject to the *Special Trusts (Alternative Regime) Law, 1997* but which is capable of being exercised to create a trust or power subject to the *Special Trusts (Alternative Regime) Law, 1997*, may not be so exercised for the purpose of avoiding the rule against perpetuities.

Reformation

14. (1) Where it has become apparent that, apart from this section, a disposition would be or becomes void on the ground that it infringes the rule against perpetuities, and where the general intention originally governing the disposition can be ascertained in accordance with the normal principles of interpretation of instruments and the rules of evidence, the disposition may, on application to the Court by an interested person, be reformed so as to give effect to such general intention within the limits, as nearly as circumstances permit, of the rule against perpetuities established by this Law.
- (2) Subsection (1) does not apply where the disposition has been the subject of a valid compromise.
- (3) An application to the Court under subsection (1) may not be made more than one year after the end of the perpetuity period except with the leave of the Court.
- (4) The Court may reform a disposition pursuant to subsection (1) before the end of the perpetuity period but only if satisfied that no significant prejudice would thereby be done to any interested person, other than a person consenting to the reformation.
- (5) A disposition may be reformed pursuant to this section though made before the 1st August, 1995, or made in exercise of a special power of appointment created before the 1st August, 1995, if it infringes a rule against perpetuities previously in effect, but in such cases —
- (a) the reference at the end of subsection (1) to “the rule against perpetuities established by this Law” shall be taken as a reference to the rules against perpetuities previously in effect; and
- (b) subsections (3) and (4) do not apply and the disposition may be reformed at any time, but not —

- (i) if the disposition has been declared invalid by any order declared invalid by any order or judgment made or given in any legal proceedings;
 - (ii) if the property comprised in the disposition has paid or transferred to, or applies for the benefit of, or set apart for, the person or persons entitled by reason of the invalidity of the disposition; or
 - (iii) if any person has reasonably so altered his position in reliance on the invalidity of the disposition that, in the opinion of the Court, having regard to all possible implications in respect of other persons, it would be inequitable to reform the disposition in the manner under consideration.
- (6) Subject to any contrary order of the Court, a reformation made under subsection (5) shall be deemed for all purposes to take effect from the date of the disposition.

Application to the Court

15. A trustee of any property or any person interested therein, or in the validity or invalidity of an interest in that property may, without the institution of suit, apply to the Court for a declaration as to any doubt or difficulty arising in regard to the application of the rule against perpetuities or this Law, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application or such of them as the Court shall think expedient.

Foreign element

16. A change of the governing law of a trust from the laws of the Islands is not invalidated by section 89(4) of the *Trusts Law (1998 Revision)* by reason of a possibility that the respective interests of the beneficiaries (including persons who may benefit from the operation of this Law) may be affected in consequence of the new governing law having a different rule against perpetuities or no such rule; but, unless authorised by the terms of the trust, no power to change the governing law may be exercised for the purpose of affecting such interests.

Abolition of the modern rule against perpetuities

17. Subject to section 3, the rule of the common law sometimes known as the modern rule against perpetuities and any rule of the common law prohibiting —
- (a) the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person; or
 - (b) a trust of excessive duration,
- are hereby abolished without prejudice to the other provisions of this Law.



**Publication in consolidated and revised form authorised by the Governor in Council
this 5th day of January, 1999.**

Carmena H. Parsons
Clerk of Executive Council

