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Recent Changes to the Perpetuities and Accumulations Act

Introduction

In our recent article on Recent Changes to Trustee Perpetual Succession Act (accessible here) we had mentioned that we will provide an update once Parliament passes changes to the Perpetuities and Accumulations Act (the "Act").

Generally, the Act deals with the legal rules touching on perpetuities and excessive accumulations in trusts. Perpetuities or the rule against perpetuities (as it is referred to sometimes) is a concept in trust law that deals with remoteness of vesting.

A trust involves certain key parties i.e. a settlor, a beneficiary (or beneficiaries as the case may be) and trustees and recently an enforcer who is an optional fourth party introduced by recent amendments to the Trustee Perpetual Succession Act. Vesting is the distribution of trust assets to beneficiaries. The rule against perpetuities exist to ensure trust property ultimately gets passed on to its beneficiaries. The Act, as the title suggests, provides the legal framework on rules relating to accumulation of assets and the period they are accumulated.

On March 21, 2022, the Act was amended and the changes are discussed below:

Disposition of Property

Under the Act, disposition of trust property generally applied to both movable and immovable properties, however, this has now been changed to apply only to immovable property. The change now means moveable property (e.g. shares, cash etc.) are not subject to the rules on perpetuities and accumulations. This has provided some much needed wiggle room in the structuring of trusts and estates.

Family Trusts

Previously, family trusts were limited to one of the following perpetuity periods:

a) Where the trust had a fixed period of up to eighty (80) years; which failing
b) The lifetime of an individual living when the trust was created plus eighteen (18) years; which failing
c) Eighteen (18) years.

This has now been changed and the perpetuity periods above will no longer apply to family trusts. The change therefore allows multiple generations of the beneficiaries to benefit from the family trust, thereby preserving generational wealth. This is a welcome change and allows estate planning to beyond the eighty year limit that had been placed on trusts.

Accumulation of Income

The Act has abolished the general restriction on accumulation of income and has allowed for the terms of any instrument or a trust to direct or authorize the accumulation of all or part of the income of the trust property during its term.

Besides this, income that is not accumulated will only be distributed to the intended beneficiaries, except where there is special and general power of maintenance and advancement or as the trust terms predict or otherwise provide.

Previously, the rule against excessive accumulations required trustees accumulating income in a trust to restrict that accumulation to one of the following four permitted periods:

a) The lifetime of the grantor or settlor; or
b) Eighteen (18) years from the date of creation of the trust; or
c) The minority of a person who would be entitled to the income if of full age; or
d) The minority of a person living when the trust was created.

In addition, where an accumulation was directed contrary to the above accumulation periods, such

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direction was invalid and the resulting income was to be distributed to the beneficiary.

It is notable that the rule against excessive accumulations did not apply to provisions in a trust for payment of debts of the settlor, and for sums relating to up keep raising of any child or descendant of the settlor or beneficiary.

Conclusion

The changes provide clarity on the rules of perpetuity and accumulation of income of which for a long time were criticized for being complex, uncertain, inconsistent and frustrating the reasonable wishes of the settlor.

We view these changes as giving the much needed freedom in estate planning and allows for disposition of property to more generations of a settlor. The rules previously limited the ability of the settlor to control disposition of property "beyond the grave".