

Trust Laws of the Bahamas

Constitution and Legal System

The Commonwealth of the Bahamas is a constitutional monarchy. It gained its independence from Britain in 1973 and is a self-governing member of the British Commonwealth. The Bahamas is a common law jurisdiction and generally follows English law. Appeals from local courts ultimately lie with the Privy Council in the United Kingdom.

Applicable Trust Laws

Bahamas trust law is based on the Trustee Act¹ and the Trustee Amendment Act,² and the Trusts (Choice of Governing Law) Act³ sets forth the relevant conflicts of laws rules. The asset protection laws of the Bahamas are set forth in the Fraudulent Dispositions Act.⁴

Trust Period

Trusts may be of unlimited duration. The perpetuity period has been abolished in the Bahamas, and trusts created after December 31, 2011, do not require a perpetuity date to be stated in the deed.⁵

Reserved Powers

The Bahamas trust law is codified in the Trustee Act and provides for broad reserved powers in favor of the settlor without invalidating the trust or causing a trust created *inter vivos* to be treated as a testamentary trust.⁶ Reserved powers are defined to include powers to revoke the trust, powers of appointment, powers to amend the trust, powers to appoint or remove any trustees, protectors or beneficiaries, powers to give directions to the trustees, provisions requiring the consent of the settlor, the appointment of the settlor as protector, retention by the settlor of a beneficial interest in the trust, etc.

Disclosure of Information to Beneficiaries

The trustee has a duty to inform beneficiaries with a vested interest in the trust of the existence of the trust and of the general nature of their interest. Discretionary beneficiaries, contingent beneficiaries, and objects of a power of appointment have no right to information⁷ but trustees have the power to provide if requested.⁸

Private Trust Companies

A PTC is authorized to act as trustees for members of a family group, and may not offer trust services to the public.⁹ The PTC does not require licensing or supervision, but must appoint a Bahamas Registered Representative, which must be a bank, trust company, or other licensed entity.

Purpose Trusts

¹ Trustee Act (1998)

² Trustee Amendment Act (2011).

³ Choice of Governing Law Act (2016).

⁴ Fraudulent Dispositions Act (1991).

⁵ The Rule Against Perpetuities Abolition Act (2011)

⁶ The Trustee Act 1998 as amended, Section 3

⁷ Id., Section 83(3)

⁸ Id., Section 83(3)&(4)

⁹ The Banks & Trust Companies Regulation (Amendment) Act 2006 and The Banks & Trust Companies (Private Trust Companies) Regulations 2007

Bahamas Legislation authorizes non-charitable Purpose Trusts, which may have purposes as well as individual beneficiaries as objects.¹⁰ Purpose Trusts are typically used to hold the shares of PTCs. The trustee of a Purpose Trust must be a bank or trust company, or licensed service provider.

Special Purpose Entities

Special Purpose Entities may be created to act as Investment Advisors and Protectors. They have limited liability, and no capital requirements. They cannot hold assets, but can perform executive functions, such as protectors and investment advisers of trusts.

Firewall Provisions

The Bahamas is not a signatory to the *Hague Convention on the Law Applicable to Trusts and their Recognition* (1986). The firewall legislation of the Bahamas is set-forth in the Trusts (Choice of Governing Law) Act 1989 as amended in 2016. A governing law provision requires all matters regarding trusts governed under the laws of the Bahamas, including the capacity of the settlor, the validity of the trust, the administration of the trust, etc., to be determined exclusively by Bahamas law.¹¹ However, the governing law provision does not affect the recognition of foreign law in determining whether the settlor owns the property transferred,¹² the disposition of immovable property located outside Bahamas which is invalid under foreign laws,¹³ and the recognition of foreign law on the *formalities* for transfer.¹⁴

The firewall legislation of the Bahamas contains a broad foreign law exclusion provision that precludes foreign law from invalidating trusts governed under Bahamas law where foreign law does not recognize trusts, or the trust defeats rights conferred by foreign law by reason of a *personal relationship* with the settlor or any beneficiary or by way of *heirship*, or contravenes foreign law or foreign judicial orders recognizing such rights.¹⁵ Heirship rights are expressly excluded from affecting immovable property in the Bahamas or moveable property wherever situated, and heirship rights do not constitute an obligation for purposes of the Fraudulent Dispositions Act 1991.¹⁶ Foreign judgements are not recognized where they conflict with the foreign law and foreign heirship exclusions.¹⁷

Asset Protection

The *asset protection* laws of the Bahamas are set-forth in the Fraudulent Dispositions Act,¹⁸ and provide that dispositions of property made with an intent to defraud the creditor and at an undervalue shall be voidable at the instance of the creditor.¹⁹ The creditor has the burden of proof to establish intent to defraud,²⁰ and must meet this burden “on the balance of the probabilities,” and must bring the claim within 2 years from the date of the disposition.²¹ If the claim succeeds,

¹⁰ The Purpose Trust Act 2004 and the Purpose Trust (Amendment) Act 2011

¹¹ The Trusts (Choice of Governing Law) Act 1989 as amended, Section 7

¹² *Id.*, Section 7(2)(b).

¹³ *Id.*, Section 7(2)(a)(ii)

¹⁴ *Id.*, Section 7(2)(e)

¹⁵ *Id.*, Section 8

¹⁶ *Id.*, Section 9

¹⁷ *Id.*, Section 10

¹⁸ The Fraudulent Dispositions Act (1991).

¹⁹ *Id.*, Section 4(1)

²⁰ *Id.*, Section 4(2)

²¹ *Id.*, Section 4(3)

the disposition shall be set-aside only to the extent necessary to satisfy the obligation owed to the creditor.²² The obligation must have existed on or prior to the date of the disposition and the transferor must have had notice.²³ Thus, claims not existing at the time of the transfer or disposition are barred. The Act recognizes that foreign law may be applied to determine whether the transferor owns the property or holds powers to transfer the property.²⁴

²² Id., Section 6

²³ Id., Section 2

²⁴ Id., Section 7