In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025: No. 311

IN THE MATTER OF A SETTLEMENT ESTABLISHED

AND IN THE MATTER OF S.4 OF THE PERPETUITIES AND ACCUMULATIONS ACT 2009

AND IN THE MATTER OF S.47A OF THE TRUSTEE ACT 1975

AND IN THE MATTER OF ORDER 85 OF THE RULES OF THE SUPREME COURT 1985

IN THE MATTER OF THE L TRUSTS

JUDGMENT
(REASONS)

Administration Actions - Order 85 of the Rules of the Supreme Court - Discretionary Trust – Disapplication of the Common Law Rule against Perpetuities – Section 4 of the Perpetuities and Accumulations Act 2009 - Court's power to set aside a flawed exercise of fiduciary power- Section 47A of the Trustee Act 1975

Dates of Hearing: 16 January 2026

Date of Ruling: 11 February 2026

Plaintiff Trustees	Mr. Giles Richardson KC (Serle Court) of Counsel and Mr. Sam Rihiiluoma and Ms. Nicola Bruce (Appleby (Bermuda) Limited)
First Defendant Representative of The Adult Beneficiaries	Mr. Steven White and Mr. Luca del Panta (Walkers (Bermuda) Limited)
Guardian Ad Litem for Minor Beneficiaries and Unborn and Future Born and Remoter Issue	Ms. Hannah Tildesley and Mr. John McSweeney (Walkers (Bermuda) Limited)

JUDGMENT of Shade Subair Williams J

INTRODUCTION

1. By way of an Originating Summons filed on 12 December 2025 the Plaintiff Trustees (collectively, the "trustees"/ the "current trustees") sought relief under section 4(2) of the Perpetuities and Accumulations Act 2009 (the "2009 Act") for an Order:

   (i) disapplying the rule against perpetuities in respect of the trust settlement on terms which provide that the disapplication shall be deemed to have always applied to the trust, and extending the duration of trust by 100 years and

   (ii) declaring the continued validity of the trust settlement.

2. Alternatively, the trustees invited this Court to exercise its discretionary powers under section 47A of the Trustee Act 1975 (the "Trustee Act") by setting aside an exercise of power by which a change of the proper law of the trust from that of another jurisdiction ("Jurisdiction A") to Bermuda law was carried out by the execution of a trust deed made in 1987. Also in 1987, under the same instrument, the forum of the trust was moved to the Bermuda Court. However, under this alternative application, the trustees did not seek to disturb the exercise of power which migrated the forum of the trust to the Bermuda Court.

3. The Originating Summons was supported by affidavit evidence sworn by the fourth Plaintiff trustee ("PT4"). The supporting oral and written submissions made by Mr. Giles Richardson

KC for the trustees were underpinned by Mr. Richardson KC's Opinion dated 3 December 2025 and written expert opinion evidence from a senior lawyer qualified in the law of Jurisdiction A dated 2 December 2025 (the "Jurisdiction A Opinion").

4. The First Defendant ("D1") also filed affidavit evidence in these proceedings sworn on 15 December 2025. D1's evidence provides a detailed narrative of an extensive consultation process between the trustees and all the adult beneficiaries in relation to the application before the Court. Following that consultation process, the trustees' application was made with the support of all the various classes of beneficiaries who expressly confirmed their agreement with the submissions made by Mr. Richardson KC.

5. On 9 December 2025, Mussenden CJ made a Confidentiality Order providing for the sealing of the Court file and the hearing of the action *in camera*. Mussenden CJ further ordered the anonymisation of any judgment made in these proceedings. The evidence before the Court in support of the Confidentiality Order was sworn by Mr. Sam Riihiluoma. On his evidence, the Court was informed that the information and documents pertaining to the trust settlement had been kept out of the public domain since the establishment of the trust. The application for the Confidentiality Order was premised on the administrative nature of these proceedings and a "*legitimate desire for privacy on the part of the beneficiaries*[1]*…".* The evidence also raised questions as to the risk of personal security and or unjustified intrusion into the private and family lives of the beneficiaries, particularly the child and young adult beneficiaries. There was also a fear of spurious litigation.

6. Mussenden CJ also made a Representation Order pursuant to RSC Order 15/13(1) in respect of the representation of the various beneficiary classes. D1 was joined to the application in both a personal beneficiary capacity and as a representative of all adult beneficiaries. The non-adult classes of beneficiaries, comprising the minor beneficiaries and the unborn, future born and remoter issue of the settlor of the trust (the "Settlor") are, by Mussenden CJ's 9 December 2025 Order, all represented by a single guardian ad litem (the "Guardian Ad Litem"). Mr. Sam Riihiluoma's affidavit evidence was also relied on in support of the application for the Representation Order.

7. At the close of the hearing, having heard the careful and thorough submissions of Mr. Giles Richardson KC and the supporting arguments made by Mr. White and Ms. Tildesley, I made an Order under section 4(2) of the 2009 Act granting the trustees the primary declaratory relief prayed by retrospectively disapplying the rule against perpetuities in respect of the trust settlement in this case and extending the duration of the trust by 100 years. Further, I declared that the trust is continuing and valid, as governed by Bermuda law.

[1] Paragraph 8 of the affidavit of Mr. Sam Riihiluoma.

8. This Ruling sets out my reasons for having granted the trustees' application under section 4(2) of the 2009 Act. I also provide my reasons for having informed the parties that I would have also granted the alternative application grounded under section 47A of the Trustee Act.

THE TRUST SETTLEMENT

The Original Set up of the Trust

9. The subject of these proceedings is a discretionary trust (the "trust") which was established by a trust instrument (the "original trust instrument") many decades ago with an initial fund of US$100.00. The original trust instrument provided for the application of the law of Jurisdiction A as both the proper law and the forum for the administration of the trust. Also, under the original trust instrument, two trust companies were appointed to act as the trustees ("the original trustees"). One of the original trustees, was incorporated in Jurisdiction A and the other in Bermuda.

The Trust Today

10. The current trustees comprise three of the beneficiaries, one of whom is also the protector of the trust (the "Protector") and a corporate trustee domiciled in Bermuda.

11. The assets of the trust are currently worth a very substantial sum (of dynastic scale) (the "trust fund") and are held for the benefit of the Settlor's descendants and their spouses. This Court was made to understand that the trust fund, while very substantial, represents a minority of the family's overall wealth.

12. The beneficiaries consist of various branches of the family.

13. The trustees regard the trust assets as being held for the benefit of these branches of the family in equal shares. This is supported by the Settlor's final Letter of Wishes (the "Letter of Wishes") which, in its material expressions, replicate the Settlor's last will and testament (the "Will"), so far as it concerns his residuary estate. Similar to the position expressed in the Letter of Wishes, the provisions in the Will provide for the Settlor's residuary estate to be divided into equal shares for the equal benefit of the same branches of family which benefit from the trust.

14. On its termination, the trust provides for ultimate trusts for all the living beneficiaries of that future period in equal shares. Equally, should those discretionary trusts fail for any reason, the capital and income of the trust fund shall be held/distributed to all the living beneficiaries of

that period in equal shares per capita, failing which for the Settlor's children or their respective personal representatives. Failing that, the capital and income of the trust fund would be applied for charitable purposes generally.

Steps taken in 1987 to Migrate the Original Trust Settlement to Bermuda

15. The relevant clause in the original trust instrument (the "jurisdiction clause") provided that the trustees were empowered to declare a change of both the forum of administration of the trust and the governing law, so long as they had the consent of the Protector. To that extent, the trustees' powers were wide and unfettered.

16. The jurisdiction clause also empowered the trustees to make consequential amendments to give effect to any migration of the trust where the trustees considered it desirable or necessary to ensure that the trustees' powers and the provisions of the trust remained valid upon any such change of forum and or proper law of the trust.

17. Exercising their powers under the jurisdiction clause, in 1987 the original trustees decided to migrate the trust out of Jurisdiction A. They did this by way of deed (the "1987 Deed"). In so doing, the original trustees sought to move the forum of administration of the trust to the jurisdiction of the Bermuda Courts and to give effect to a change of the governing law to that of Bermuda.

18. The lawfulness of this migration of the trust, as a matter of the law of Jurisdiction A, was affirmed in the Jurisdiction A Opinion authored by a highly experienced and well reputed trust and estate law practitioner of over twenty-five years. The Jurisdiction A Opinion was produced by PT4 as an exhibit to his affidavit evidence before this Court. At paras [13]-[15] of the Jurisdiction A Opinion, it is stated (footnotes omitted):

"*[Jurisdiction A] trust law contains no explicit prohibition against changing the applicable law or the forum of administration of a trust, provided that such changes are consistent with the purpose of the trust, the interests of the beneficiaries and the express terms of the trust. Generally, it is acknowledged that foreign trusts may change their law to [Jurisdiction A] law, and vice versa…*

Further, the change of governing law and forum of administration of the Trust was permissible under [the jurisdiction clause]"

The Issue created by the 1987 Deed

19. The purpose of the 1987 Deed was to migrate both the proper law and the forum for the administration of the trust from the governance of the law and Courts of Jurisdiction A to that of Bermuda. Under the relevant clause of the original trust instrument (the "impugned duration clause"), the duration of the trust was set at a specified number of years with a power vested in the trustees to shorten or extend that period. So, the initial trust period of a specified number of years was capable of being extended indefinitely, meaning that the vesting of the trust assets could be perpetually delayed.

20. The evidence before this Court was that the impugned duration clause was permissible under the law of Jurisdiction A. This Court was made to understand from the expert opinion evidence that when the trust was established, Jurisdiction A did not have a rule akin to the English common law rule against perpetuities. This was outlined in the Jurisdiction A Opinion at para [3]:

"*[T]he Trust Deed provided for a fixed trust period… with a power to extend this period indefinitely. It was entirely permissible for a settlement such as the Trust to have a fixed initial duration and for that duration to be extendable by an exercise of power on the part of the trustees.*."

21. However, the issue arising is that in 1987 the common law rule against perpetuities applied under Bermuda law. So, the impugned duration clause under the original trust instrument could not lawfully be included in a valid Bermuda trust instrument in 1987.

THE RELEVANT LAW

Administration Actions Generally

22. As I observed in *In the Matter of the B Trust* [2020] SC (Bda) 30 Com (23 July 2020), Order 85 of the Rules of the Supreme Court 1985 ("RSC") procedurally governs 'administration actions' which, in the context of trust actions, are defined as follows under Rule 1:

"*In this Order 'administration action' means an action…for the execution under the direction of the Court of a trust*."

23. Without prejudice to the generality of Rule 1, an action in trust proceedings may be brought for the determination of any of the following questions listed under Order 85/2(2):

(a) any question arising in … …the execution of a trust;

(b) any question as to the composition of any class of persons having a … …beneficial interest in … …any property subject to a trust;

(c) any question as to the rights or interests of a person claiming to be… …beneficially entitled under a trust.

24. Order 85/2(3) provides that an action may be brought for various forms of relief. In so far as it is relevant to the matters before this Court, an action for relief may take the form of an order under Order 85/2(3)(c) directing a trustee to do or abstain from doing a particular act and an order under Order 85/2(3)(d) approving any a transaction by trustee. An action may also be brought under Order 85/2(3)(e) for an order directing an act to be done in the execution of a trust, so long as it is an act which the Court would have the authority to order to be done if the trust was being administered or executed under the Court's direction.

25. The Court's statutory jurisdiction to make judgments and orders in administration actions is created under RSC Order 85/5. However, before any judgment or order may be made in an administration action, Rule 5(1) requires the Court take the view that the parties cannot properly resolve the issues between them without the assistance and intervention of the Court. Rule 5(1) provides:

"*A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order*."

The Common Law Rules against Perpetuities

Distinguishing between the Rules against Remoteness of Vesting, Perpetual Trusts and Restraints on Alienability

26. It is convenient, as a starting point, to mark the distinction between the rule against remoteness of vesting and the rule against perpetual trusts, as did the Bermuda Court of Appeal in *Grand View Private Trust Company Ltd v Wong, Wen-Young* BM 2020 CA 6 at para [238]. In that case Clarke P (as he then was) said:

235
There are two distinct rules which are not to be confused. One is the rule against perpetual trusts. The other is the rule against remoteness of vesting, otherwise known as the rule against perpetuities which requires the assets to vest within a particular time …. If property is appointed from trust A to trust B, both of them being discretionary, that is not vesting. Vesting requires that it be ascertained not only who will take the assets but also precisely what benefit they will take: Lewin 5 – 060.

236
The rule against perpetual trusts / inalienability requires trusts established for non-charitable purposes to have a duration and not be perpetual. At common law, non-charitable purpose trusts are usually void because there is no beneficiary to enforce them, but they are also objectionable because they may be perpetual.

27. Simply put, the rule against perpetuities comprises two separate common law rules: (i) the rule against remoteness of vesting and (ii) the rule against perpetual trusts.

28. The rule against remoteness of vesting restricts a settlor or donor from directing that an endowment or gift be set to vest too far into the future, such that the settlement is invalidated by the remoteness of the period when the interest would first arise. Reference to 'the rule against remoteness of vesting' is often interchangeably used with reference to 'the rule against perpetuities.

29. Often referred to as the rule against inalienability, the rule against perpetual trusts imposes a limit on the duration of continuous endowment trusts. However, caution is required for the pairing of those terms as one ought not to overlook the distinction between the rule against perpetual trusts and the rule against restraints on alienability. The latter operates to prevent the imposition of unreasonable restrictions on the alienation or transfer of trust property. More suitably, the rule against excessive duration is used to refer to the rule against perpetual trusts, which, as stated under section 12A (4) of the Trusts (Special Provisions) Act 1989[2], serves to limit the time during which the capital of a trust may remain unexpendable to the perpetuity period under the rule against perpetuities.

30. In summary, the rule against perpetuities does not signify a single common law rule, it refers to a class of rules aimed to regulate the vesting period of a trust. It is thus unsurprising that the Bermuda statutory reference given to the common law rule against perpetuities is not confined to any particular one of its component rules. It is given the broad and fulsome definition it merits under the Interpretation section of the 2009 Act as follows:

[2] Section 12A(4) of the Trusts (Special Provisions) Act 1989 states that the rule against perpetual trusts/excessive duration shall not apply to a Bermuda purpose trust.

"*"the rule against perpetuities"—*

(a) means the rule of law by that name, also known as the rule against remoteness of vesting, which restricts the time within which future interests in property must either vest or take effect, or within which certain powers may be exercisable; and

(b) includes any other rule of law which limits the period during which income may be accumulated or for which capital may remain unexpended or inalienable;"

The Common Law Rule against Remoteness of Vesting

31. In this case, I am concerned with the rule against perpetuities in so far as it refers to its subsidiary rule against remoteness of vesting. That rule requires all future equitable interests to vest within the perpetuity period. The maximum period allowed under the *"traditional perpetuity period*" is "*a life or any number of lives in being at the creation of the trust, plus 21 years, plus any actual periods of gestation*" (see Lewin on Trusts (Nineteenth Edition) ("Lewin") para [5-048] citing *Duke of Norfolk's Case* (1683) 3 Cas. In Ch. 1 at 20, 28 and 48).

32. Also, at para [5-057] of Lewin (footnotes omitted):

"*At common law, the rule is applied once for all at the creation of the trust. If at that time there appears any possibility that a future interest might vest outside the perpetuity period, it is immediately void at common law, even though in the event it vests inside the period. Thus a gift to the issue of a named person who are living when certain gravel pits are worked out is void, even though in all probability they will be worked out in three or four years, because the issue to take might not be ascertained within the period*."

33. As Mr. Richardson KC put it, the effect of the common law rule was such that a trust settlement would be invalid if it lacked certainty of vesting of all interests under it within a period that could be calculated by reference to specified lives in being which were in existence at the time of the creation of the trust settlement.

Introduction of an Alternative Statutory Perpetuity Period

The Perpetuities and Accumulations Act 1989 (the "1989 Act")

34. The trust in this case is not governed by the 1989 Act, which only applies to trusts instruments taking effect after its commencement date – the trust in issue is not such a trust. (See sections 1 and 17(2) of the 1989 Act).

35. However, for full legal context, when the 1989 Act was passed by the Bermuda Legislator, an alternative perpetuity period to the period set by the common law became available. The 1989 Act offered a 100-year perpetuity period under section 3(1) of the 1989 Act which provides:

"*…where the instrument by which any disposition is made so provides, the perpetuity period applicable to the disposition under the rule against perpetuities, instead of being of any other duration, shall be of a duration equal to such number of years not exceeding one hundred as is specified in that behalf in the instrument*."

36. The purpose of section 3 is evident by its title: "*Power to specify perpetuity period*". So, where the instrument specifies a duration, that duration shall not exceed 100 years.

37. Section 5 of the 1989 Act, modelled after section 3(1) of the UK Perpetuities and Accumulations Act 1964, introduced the 'wait and see' rule for cases of uncertainty as to remoteness. The general effect of this rule is that the interest is not invalidated unless and until, during the perpetuity period, it becomes clear that it must vest, if at all, outside the period. (See Lewin para [5-058]).

38. Section 14 imposes various restrictions on the perpetuity rule, which need not be examined for present purposes.

39. While some parts of the 1989 Act were later amended and repealed by the 2009 Act, sections 3 and 5 of the 1989 Act remain in force.

Creation of Court Powers to Declare Non-Application of the Rule against Perpetuities

The 2009 Act

40. The 2009 Act did not introduce a new perpetuity period. To that extent it did not disturb the 100-year maximum perpetuity period which may be specified in an instrument in accordance with section 3(1) of the 1989 Act.

41. However, section 4(2) of the 2009 Act empowers the Court to declare that the rule against perpetuities has no application to a trust instrument which was created before or after the commencement day, being 1 August 2009, so long as the trust instrument is not one which is exempted from section 4 by reason of section 3[3].

[3] Section 3 applies to the application of the rule against perpetuities to land in Bermuda and trust instruments which took effect prior to the 1 August 2009 commencement day. (See Re G Trusts [2017] SC (Bda) 98 Civ where Kawaley CJ said at para [24]: "*Section 3 essentially provides that the rule against perpetuities only applies in relation to instruments taking effect after the commencement of the 2009 Act to the extent that they deal with land in Bermuda.*

42. Section 4(4) sets out some of the terms on which an order under section 4(2) may be made. That may include, *inter alia*, an order extending the trust, the vesting period and or the timeframe for the exercise of certain powers.

43. Section 4 (introduced by the Perpetuities and Accumulation Amendment Act 2015) provides:

> ***Court order declaring that rule against perpetuities does not apply to certain instruments***
>
> *4 (1) This section applies in relation to an instrument which takes effect—*
>
> *(a) before the commencement day; or*
>
> *(b) on or after the commencement day but to which section 3 does not apply to limit the application of the rule against perpetuities.*
>
> *(2) Subject to subsection (3), the Supreme Court may, on an application made by the trustee or trustees of an instrument to which this section applies, make an order on such terms as it thinks fit declaring that—*
>
> *(a) the rule against perpetuities; or*
>
> *(b) any other similar rule of law that may limit or restrict the time under which property may be held in or subject to any trust,*
>
> *shall not apply to such instrument and the property held thereunder.*
>
> *(3) An order under subsection (2) may not be made to the extent that it would affect the residual application of the rule against perpetuities as provided by section 3 if the instrument had been one to which section 3 applies (so that the rule against perpetuities will continue to apply to all instruments to the extent that the property is land in Bermuda as provided by section 3).*
>
> *(4) The terms upon which an order under subsection (2) may be made include (but are not limited to), terms—*
>
> *(a) extending the duration of a trust;*

The headnote ("Application of rule against perpetuities limited to land in Bermuda") misleadingly implies that the section only deals with land in Bermuda. On closer analysis, however, it appears that section 3, in a somewhat convoluted way, actually provides that the rule against perpetuities does apply to instruments taking effect before August 1, 2009. Section 3, so far as is material for present purposes, provides as follows: "*3(1) In relation to instruments taking effect on or* after the commencement day, the rule against perpetuities applies (and applies only) as provided by this section.""

(b) extending the time within which an interest in property must vest or take effect;

(c) extending the time within which certain powers are exercisable;

(d) providing that anything done by any person before the order is made on the basis that the instrument was void by virtue of the application of the rule against perpetuities or other similar rule of law shall have effect as if the order had not been made;

(e) protecting or preserving the interest of any person in trust property where such interest will or may be defeated or its vesting in possession deferred by virtue or in consequence of the terms of any order made under this section;

(f) varying or deleting any provision of the trust which restricts (to or by reference to the perpetuity period or limitation on duration applicable to the trust) the exercise of any power arising under or in consequence of the instrument;
(g) providing that the order shall be deemed always to have applied to the instrument.

(5) An application under subsection (2) shall be made by originating summons and the Rules of the Supreme Court applicable to applications under the Trustee Act 1975 shall, so far as is appropriate, apply.

(6) In subsection (4)(e), "interest" includes an interest arising by virtue or in consequence of the disposition being void as a result of the application of the rule against perpetuities to that disposition.

44. Guided by the roadmap created by Kawaley CJ (as he then was, now President of the Bermuda Court of Appeal) in *Re C Trusts* [2016] Bda LR 56, in *Re XYZ Trusts* [2022] SC (Bda) 10 Civ, this Court granted the trustees relief under section 4(2) of the 2009 Act. The relevant extract from my previous ruling in *Re XYZ Trusts* is at paras [102]-[107] where I stated as follows:

"*I was referred to Re C Trusts [2016] Bda LR 56, per Kawaley CJ which was the first reported case in which an Order under section 4 was made. The reasoning provided in that decision is instructive and stands as the leading authoritative judgment for applications to extend the duration of a trust beyond the period which would otherwise be prohibited by the rule against perpetuities. To the extent that the trust property is not land in Bermuda, a Court of this jurisdiction is empowered with a discretion to declare that the rule does not apply to the trust in question.*

Mr. Adamson, appearing before the Kawaley CJ in Re C Trusts, addressed the Court on the legislative history of the statutory provision which amended the use of the perpetuity rule. A list of Parliamentary objectives for the amendment is observed in the judgment as follows:

1 *lower costs to applicants;*
2 *allow the courts to exercise their discretion to act in the best interest of any applicant and any other interested party;*
3 *establish additional legal flexibility for trusts being governed under Bermuda law and*
4 *enhance Bermuda's competitiveness and reputation as a quality jurisdiction for international trust business*

I agree with Kawaley CJ's reasoning that in the absence of an expressed threshold for the exercise of the Court's discretion in granting an application under section 4, it is to be safely understood that the Court's power of discretion is unfettered and certainly less stringent than the 'expediency' test required for Orders made under section 47 of the Trustee Act 1975. Kawaley CJ rightly said, the Court should not act as a 'rubber stamp'.

In these proceedings I need not be concerned about the question of notice since the beneficiaries to which the new trust term would apply are all present. They are eminently represented by Counsel, none of whom have opposed the application. I would note, however, that the desired term during which the restructured settlement would be extended has not been made apparent to this Court.

That being the case, I would readily recognize that this is a most appropriate case to which an Order would be made to grant a new trust term unrestricted by the rule against perpetuities. In this case the trust assets are in the multi-million dollar range, consisting of land outside of Bermuda and shares in active companies registered outside of Bermuda which have been and will likely be profitable for many years to come. As was the case in C Trusts, the Settlor clearly intended for the structure to be dynastic in duration to benefit current and future generations of family. If the trust term were to be abruptly brought to an end, the Core companies would truly become analogous to the goose, which after its death, could no longer lay the golden eggs.

For all of these reasons, I find that an extension is clearly in the best interest of the interested parties."

45. Following *Re C Trusts*, Kawaley CJ handed down another decision in which he granted relief under section 4(2) of the 2009 Act. In *Re G Trusts* [2017] SC (Bda) 98 Civ., commonly cited as the leading authority for Confidentiality Orders in Bermuda trust cases, the Court was

concerned with discretionary trusts established for the benefit of the settlor's three grandchildren. The governing law in respect of some of the trusts had been changed from Cayman Islands law to Bermuda law. Those trusts are referred to in Kawaley CJ's judgment as the Part I and Part II Trusts, both of which were settled prior to the 1 August 2009 commencement day under the 2009 Act.

46. Persuaded by the arguments advanced on behalf of the trustees, in *Re G Trusts* Kawaley CJ granted the declaratory relief sought. What may be distilled from *Re G Trusts* is that the below factors are relevant and of persuasive value to the Court's exercise of its discretionary powers under section 4(2) of the 2009 Act. So, where the disapplication of the rule against perpetuities would:

    a) accord or otherwise be consistent with the settlor's wishes and the objectives of the trusts;

    b) serve the best interests of those beneficially interested as a whole (e.g. in the case of a family discretionary trust where the assets of the trust delineate a dynastic family wealth intended to benefit multiple future generations and continue for as long as the family line continues);

    c) avoid an unwanted obligation to make enormous distributions at the end of the perpetuity period which would likely give way to either or both of the following harmful effects:

        - the premature dissipation of the trust assets to the detrimental exclusion of future generations of beneficiaries

        - the distribution of obscenely large sums of money to child or young adult beneficiaries

    d) eliminate the expense of restructuring the trusts necessitated only by the pursuit of an alternative to a forced distribution at the end of the perpetuity period; and

    e) facilitate the lawful preservation of existing and future tax benefits

    the Court will likely exercise its discretion in favour of granting the relief under section 4(2) of the 2009 Act.

47. Adopting these principles applied in *Re C Trusts*, *Re G Trusts* and the *Re XYZ Trusts* decisions, relief under section 4(2) of the 2009 Act was also granted in *Re the NP Trust* [2024] Bda LR 94, per Martin J.

REASONS FOR GRANTING RELIEF UNDER SECTION 4(2) OF THE 2009 ACT

48. Applications for relief under section 4(2) of the 2009 Act are no longer uncommon to the Court. An *ex parte* Originating Summons is ordinarily filed by the trustee(s) for a declaration by the Court directing that neither the rule against perpetuities nor any other similar common law rule imposing a like time restriction on the holding of the trust property shall apply to the trust in question nor be deemed to have ever applied to the trust. In such cases, the Court will ordinarily sanction specific terms for an extension of the vesting period of the trust assets.

49. In this case, it was clear that the impugned duration clause in the original trust instrument would have offended the Bermuda law position which was then governed by the common law rule against perpetuities. The issue for this Court was thus whether such a breach could be appropriately remedied by this Court's exercise of its statutory discretionary powers under section 4(2) of the 2009 Act by way of a declaration that neither the rule against perpetuities nor any other similar "rule of law" (common law rule) applied to the trust before or after 1 August 2009[4].

50. Mr. Richardson KC submitted that this Court can be reasonably satisfied that both the current trustees and the original trustees, at all times, since 1987, administered the trust in good faith and on the understanding that the trust was a valid settlement governed by Bermuda law. On Mr. Riihiluoma's affidavit evidence before the Court, he stated at para [6]: "…*the Trustees have recently been advised of a technical issue – which concerns the application of the rule against perpetuities- that could affect the validity of the Trust*…". Mr. Richardson KC pointed out that on the good faith understanding that the trust was a valid Bermuda law trust, significant borrowing liabilities were secured against the trust assets. Also, tax reporting and payments were made on that same belief. That evidence was provided by PT4. Having considered this evidence and the submissions before the Court, I was satisfied that this Court had no basis for any finding that the failure to remove the impugned duration clause from the original trust instrument imputed *mala fides* to the original or current administrators of the trust.

51. As was pointed out on the submissions eloquently advanced by Mr. Richardson KC, the current trustees have wide discretionary powers under the dispositive provisions of the trust. Those

[4] Noting that section 4(4)(g) of the 2009 Act permits orders to be made on terms "providing that the order shall be deemed always to have applied to the instrument".

powers are exercisable in favour of the beneficial class of living family members. It was made clear to this Court that both the Settlor's wishes and the objectives of the trust promoted the continuation of the trust for the benefit of as many future generations of the family as reasonably possible. In this case the trust assets undeniably signified dynastic family wealth intended to serve the best interests of not only the living beneficiaries and unborn issue, but also generations of future born and remoter issue of the Settlor, all of whom appeared before the Court through Counsel. In the end, I found that the disapplication of the rule against perpetuities was clearly in the best interests of all beneficiaries as it would avoid the premature dissipation of the trust fund and the unwanted risk of enormous sums of money forcibly distributed to young beneficiaries at the end of the perpetuity period.

52. On the subject of tax and other liability related burdens, the evidence before the Court was that the consequences of the trust being deemed void would be profoundly severe. This would have brought into question liability and penalties for flawed historical tax filings and other commercial liabilities, plausibly disrupting third-party financing and borrowings against the trust assets.

53. I was also satisfied on the expert evidence before the Court that the impugned duration clause, was not an affront to the governing law as it stood in Jurisdiction A when the trust was established. I found that the trustees were empowered under the jurisdiction clause to change the duration of the trust to give effect to the new governing Bermuda law.

54. I also considered whether any of the beneficiaries would be unfairly prejudiced between themselves by the granting of the section 4(2) relief which by extension would have been tantamount to a refusal to declare the trust settlement void. If the trust were to be declared void, the trust assets, by way of a resulting trust, would revert to the Settlor's estate forming part of his residuary estate. As already noted, the Will provided for the allocation of the Settlor's residuary estate in equal shares to the same branches of family which benefit from the trust. That is consistent with the Settlor's wishes for the administration of the trust to the extent that under the trust, the Settlor intended for each of the relevant family branches to be beneficially interested in equal shares of the trust fund. So, in sanctioning the trust as a continuing valid trust under Bermuda law, the beneficiaries are given no greater entitlement between themselves than they would have if the trust assets reverted to the Settlor's residuary estate. That is because once the duration of the trust is drawn to an end, ultimate trusts are to be established for all the living beneficiaries of the relevant family branches of that concluding period in equal shares.

55. Having satisfied myself of these points favouring the application, all of which were reinforced on the submissions of Counsel for the different classes of beneficiaries, I granted the application made under section 4(2) of the 2009 Act which was the primary relief prayed under the Originating Summons.

THE ALTERNATIVE RELIEF: SECTION 47A OF THE TRUSTEE ACT 1975

56. The alternative basis for relief sought entailed an exercise of this Court's statutory powers under section 47A of the Trustee Act as a means of setting aside the change of proper law by the 1987 Deed. On this alternative route, the Bermuda Court would remain the forum for the administration of the trust allowing the Bermuda Court to validate the appointment of the current trustees and sanction their steps to properly migrate the proper law of the trust to Bermuda in exercise of the consequential amendment powers conferred by the jurisdiction clause.

    The Court's statutory powers under the Trustee Act are contained in Part IV. Section 47 empowers the Court to authorise transactions relating to trust property. Section 47A, the provision with which I am concerned, gives the Court jurisdiction to set aside a flawed exercise of fiduciary power on the terms and conditions it thinks fit, whether or not breach of trust or duty is alleged or proved. The section also expressly permits the Court to make consequential orders upon setting aside the exercise of the power.

57. An application under section 47A may be brought by any of the persons specified under subsection (5). That includes a trustee, the Attorney General in respect of a charitable trust and 'any person who holds the power' or to whom leave is otherwise granted by the Court.

58. Section 47A provides:

    "***Jurisdiction of court to set aside flawed exercise of fiduciary power***
    47A (1) If the court, in relation to the exercise of a fiduciary power, is satisfied on an application by a person specified in subsection (5) that the conditions set out at subsection (2) are met, the court may—

    (a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the court may think fit; and

    (b) make such order consequent upon the setting aside of the exercise of the power as it thinks fit.

    (2) The conditions referred to in subsection (1) are that—

    (a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law, or a combination of fact and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power; and

(b) but for his failure to take into account one or more such relevant considerations or his having taken into account one or more such irrelevant considerations, the person who holds the power—

(i) would not have exercised the power;

(ii) would have exercised the power, but on a different occasion to that on which it was exercised; or

(iii) would have exercised the power, but in a different manner to that in which it was exercised.

(3) If and to the extent that the exercise of a power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.

(4) The conditions set out in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any adviser to such person, acted in breach of trust or in breach of duty.

(5) An application to the court under this section may be made by—

(a) the person who holds the power;

(b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) by any person appointed by or under the trust for the purposes of section 12B(1) of the Trusts (Special Provisions) Act 1989;

(c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney-General; or

(d) with the leave of the court, any other person.

(6) No order may be made under subsection (1) which would prejudice a bona fide purchaser for value of any trust property without notice of the matters which allow the court to set aside the exercise of a power over or in relation thereto.

(7) The jurisdiction conferred upon the court by this section may be exercised by the court in respect of fiduciary powers, whether conferred or exercised before, on or after the commencement date of the Trustee Amendment Act 2014.

(8) In this section—

'fiduciary power' means any power that, when exercised, must be exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person who holds the power; and

'power' includes a discretion as to how an obligation is performed;

'person who holds the power' includes any person on whom a power has been conferred, whether or not that power is exercisable by that person alone, and any person to whom the exercise of a power has been delegated."

59. The Court's powers under section 47A(1) are only exercisable when the Court is satisfied that any one of the subsection (2) conditions are met. In summary, the Court would have been required to find that the trustee did not consider one or more relevant factual and or legal considerations, or that the trustee factored (an) irrelevant matter(s) in the exercise of the power. Further, the Court would have also been required to have found that the power exercised would not have been exercised (or would have been exercised differently) but for such relevant factors having been erroneously considered or overlooked.

60. In this case, the original trustees failed to consider a relevant legal issue. They did not take into account the governance of the rule against perpetuities under Bermuda law and that was crucially relevant to the exercise of the original trustees' powers in seeking to change the proper law of the trust to Bermuda in 1987. I was also satisfied, on a balance of probabilities, that the impugned duration clause would have been amended or removed by the original trustees had they in fact taken account of the application of the rule against perpetuities in Bermuda in 1987.

61. That is not the end of the section 47A analysis. RSC Order 85/5(1) also required me to conclude that the parties were unable to determine this issue between themselves. In the context of this application, I had to be satisfied that the trustees were unable to exercise the consequential amendment powers without the sanction of the Court.

62. As already explained, the power to make consequential amendments to give lawful effect to the 1987 change of governing law was conferred on the original trustees under the jurisdiction clause. However, once the original trustees exercised their powers to change both the governing law and forum of the trust, the person acting as the protector at the relevant time removed them as trustees and replaced them with new trustees. PT4's evidence was that the original trustees no longer exist in any event. As the power to make consequential amendments would only be exercisable by the original trustees, the current trustees leaned on the Court to

exercise its discretionary powers under section 47A. Against this background, I would have found that the Court's intervention was necessary.

63. The next question for my consideration was whether this Court has sufficient jurisdiction to sanction the trustees' exercise of the power to make consequential amendments on the premise of the 1987 Deed being set aside in respect of the change of proper law only. At paras [48]-[50] of Mr. Richardson KC's Opinion he convincingly submitted:

"*The Supreme Court has jurisdiction to entertain an application pursuant to s. 47A, in my opinion, because the change of the Forum of Administration effected by the 1987 Deed was clearly an effective and severable exercise of power from the change of the proper law to that of Bermuda. Whilst both were effected by… the 1987 Deed, they are, as set out above, clearly distinct powers within [the jurisdiction clause], with, indeed, the power to change the proper law being dependant on an exercise of the power to change the Forum of Administration, but not vice-versa.*

Moreover, even were that not the case, the change of proper law itself was also, plainly, an effective exercise of power – and indeed one which cannot, it appears, be set aside under [the law of Jurisdiction A] – so that Bermuda was constituted the Forum of Administration and Bermuda law made the applicable law by the 1987 Deed.

Accordingly, in my opinion, the Bermuda court clearly had jurisdiction to hear an application under s. 47A, with the appropriate application being one for an order to set aside the exercise of power to change the proper law of the Settlement to that of Bermuda, such that it reverts to being governed by [the law of Jurisdiction A], in which event, as noted above, no issue will arise with regard to its duration / any perpetuities rules."

64. Another important question raised on this alternative application for relief under section 47A was whether the exercise of a consequential amendment to change the proper law and the duration clause, some 40 years after the execution of the 1987 Deed, could be made to have retroactive effect. To this Mr. Richardson KC made another compelling submission. At paras [20c.] - [20d.] of Mr. Richardson KC's Opinion, he stated:

"*That does, admittedly, raise something of a metaphysical question – which is, if the change of applicable law has rendered a settlement prima facie void because it immediately infringes the perpetuities rules of the new proper law, how can the power of consequential amendment be exercised? The proper answer to that, however, in my opinion, is likely to be that, although the power to change the proper law and the power to make consequential amendments can be exercised separately by separate instruments, they are to be understood in law as forming one composite exercise of power when the latter power is exercised- not least since, expressly on*

the terms of [the jurisdiction clause] the "alterations or additions" are defined in terms as ones "consequential" on the declaration of a new proper law and as "necessary or desirable so that the trusts… shall then…be as valid and effective as they now are" (emphasis added).

It is thus, in my opinion, likely on its proper construction and approach to be a power which can be exercised after and consequentially to the change of proper law so as to secure that, from the date of such an exercise of the power of amendment, the trusts of the Settlement shall then, i.e. from that date forward, be as valid and effective as they were before the change of proper law was effected.

65. For all of these reasons, I accepted that relief under section 47A would have been an appropriate remedy, had I not granted the application made under section 4(2) of the 2009 Act.

CONCLUSION

66. The application for relief pursuant to section 4(2) of the 2009 Act was granted. In that regard, I declared that the common law rule against perpetuities did not apply to the trust and shall be deemed to have never applied to the trust. I also declared the continuing validity of the trust and extended the duration of trust by 100 years.

67. The remaining terms of the Order of this Court was formalised in an Order signed by me at the close of the hearing on 16 January 2026.

Dated this 11th day of February 2026

THE HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT