

OBJECTS AND REASONS

This Bill would amend the *Trustee Act*, Cap. 250 to make provision for the settlor to reserve certain powers under a trust and for other related matters.

Arrangement of Sections

1. Short title
2. Insertion of Part IA into Cap. 250
3. Commencement

BARBADOS

A Bill entitled

An Act to amend the *Trustee Act*, Cap. 250 to make provision for the settlor to reserve certain powers under a trust and for other related matters.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Trustee (Amendment) Bill, 2012*.

Insertion of Part IA into Cap. 250

2. *The Trustee Act is amended by inserting immediately after Part I the following:*

“PART IA

RESERVED POWERS OF THE SETTLOR

Definition

10A. In this Part, “settlor” means a person who directly or indirectly, on behalf of himself or on behalf of any others, as owner or as the holder of a power in that behalf, disposes of property to be held in a trust or declares or otherwise creates a trust.

Reserved Powers

10B. A settlor may reserve the following powers to himself:

- (a) any power to revoke, vary or amend the trust instrument or any trusts or powers arising thereunder in whole or in part;
- (b) a general or special power to appoint either income or capital of the trust property;
- (c) a power in respect of any beneficial interest in the trust property;
- (d) a power to act as a director or officer of any company wholly or partly owned by the trust;
- (e) a power to give binding directions to the trustee in connection with the purchase, holding or sale of the trust property;
- (f) a power to appoint, add or remove any trustee, protector or beneficiary;
- (g) a power to restrict the exercise of any powers or discretions of the trustee by requiring that they shall only be exercisable with the consent of the settlor or any other person specified in the trust instrument; or

(h) a power to provide advice on investment of the trust fund or the selection of investment advisors who may be required to act together with the trustee or to act independently of the trustee,

and this reservation shall not invalidate the trust or the trust instrument.

Indemnity of the trustees

10C. A trustee who has acted in compliance with, or as a result of an otherwise valid exercise of, any of the powers referred to in section 10B shall not be acting in breach of the trust.”

Commencement

3. This Act comes into operation on a date to be fixed by Proclamation.

TRUSTEE (AMENDMENT) BILL, 2012

EXPLANATORY MEMORANDUM

Barbados is exploring the development of mechanisms to assist persons with wealth and asset management. One such mechanism is the "reserved powers trust". The reserved powers trust refers to a trust under which the settlor has reserved to himself certain powers over trust assets which would normally be considered to be trustee powers. However the reservation of certain powers by the settlor has led the courts to conclude, in some cases, that in substance the settlor is retaining more control than he ought and the creature being created is not a trust but rather an agency or other entity, in which case, the court would invalidate the trust.

In an attempt to address the concerns surrounding the reservation of powers by the settlor, jurisdictions like the Bahamas and the Cayman Islands, have enacted legislation to clarify the law by specifically providing for the types of powers that can be reserved by the settlor without invalidating the trust. In so doing these jurisdictions have facilitated the operation of reserved powers trusts without attracting concerns about the validity of such trusts. The main advantage of a reserved powers trust from the perspective of the settlor is that it allows a degree of control to be maintained over the management of the assets. Reserved powers trusts are popular with settlors from civil law countries who are reluctant to transfer full control to offshore institutional trustees, and also with individuals for whom the primary objectives of the trust are neither mitigating tax nor asset protection.

The *Trustee (Amendment) Act, 2012* seeks to provide specifically for the settlor to retain certain powers under a trust without invalidating the trust and for matters connected thereto.

Clause 1: Clause 1 states that the Act should be cited as the *Trustee (Amendment) Act, 2012*.

Clause 2: Clause 2 amends the *Trustee Act*, Cap. 250 to insert a new Part IA to provide generally for a settlor to reserve certain powers under a trust. The content of the new sections being inserted by the new Part IA are summarised as follows:

The new section 10A defines the word “settlor” within the context of the new Part IA.

The new section 10B makes provision for the a settlor to reserve certain powers under a trust. The section makes it clear that the reservation of the powers by the settlor does not invalidate the trust or the trust instrument.

The new section 10C make provision for the indemnity of trustees that acted in compliance with or as a result of the valid exercise of the powers set out in the new section 10B.

Clause 3: Clause 3 states that the Act will come into operation on a date fixed by Proclamation.

