

Protection for Trusts Governed by Bahamian Law

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On 1st February 2017 The Bahamas bolstered its ‘firewall legislation’ by the coming into effect of the Trust (Choice of Governing Law) (Amendment) Act, 2016 (the “Amendment Act”) which amends Section 8 of the Trusts (Choice of Governing Law) Act, 1989 (“TCGLA”).

The purpose of Section 8 of the TCGLA is to act as a ‘firewall’ to protect Bahamian law governed trusts from attacks mounted on familial disputes or forced heirship claims emanating from jurisdictions outside of The Bahamas. A part of the protection offered by Section 8 is the insulation of Bahamian law governed trusts from the enforcement of foreign judgements based on claims or rights arising by virtue of a personal relationship between the asserter of such claims or rights and the settlor. However, it was realized that Section 8 could be enhanced to protect not only against claims or rights asserted by persons with a personal relationship with the settlor, but also against claims or rights asserted by persons with a personal relationship with any beneficiary.

Accordingly, the Amendment Act amends Section 8 by the inclusion of the words appearing in bold below:

“...no trust governed by the laws of The Bahamas and no property to be held on trust that is valid under the laws of The Bahamas is void, voidable or liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any

settlor to be questioned nor is the trustee or any beneficiary or any other person to be subjected to any liability or deprived of any right by reason that:

- a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a trust; or
- b) the trust or disposition avoids or defeats or **potentially** avoids or defeats any rights claims, interests, **obligations or liabilities** conferred or **imposed** by foreign law upon any person by reason of a **personal relationship with the settlor or any beneficiary** or by way of heirship rights or contravenes any rule of law or any foreign judicial or administrative order or action intended to recognize, protect, enforce or give [effect] to any such claims, rights, interests, **obligations or liabilities.**”

The amendments to the TCGLA which have been effected by the Amendment Act provide an added level of comfort to settlors and beneficiaries who may be affected by familial disputes and forced heirship rights. Such persons may now rest easy in the knowledge that Bahamian law governed trusts are now offered a wider remit of protection.

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