

BULLETIN

Higgs & Johnson Successful in RAPAA Application

In 2012, Higgs & Johnson advised you of the introduction of the Rule Against Perpetuities (Abolition) Act, 2011 (the “RAPAA”) which governs dispositions in trusts (whether created before or after the commencement date of the RAPAA i.e., 30th December, 2011) which are governed by the laws of The Bahamas. On May 21st, 2013 Higgs & Johnson appeared on a ground-breaking and successful application by a Trustee for an Order declaring that the RAPAA shall apply to a disposition created before 30th December, 2011 thereby abolishing the application of the applicable rule against perpetuities.

Upon hearing the application and considering the evidence and submissions of counsel, the Chief Justice of The Bahamas, Sir Michael Barnett ordered that the RAPAA applies to the disposition and that the disposition would no longer be subject to any rule against perpetuities.

The passing of the RAPAA has been hailed as a progressive and significant instrument in the legal landscape of the Commonwealth of The Bahamas. Together with the passing of the Executive Entities Act and the recent amendments to the Trustee Act and Purpose Trust Act, the RAPAA bolsters The Bahamas’ renowned brand as a competent, innovative, competitive and

relevant jurisdiction.

The rule against perpetuities has been affected by both the amendments to the Trustee Act and the passing of the RAPAA. These pieces of legislation have addressed the oftentimes inescapable restrictions caused by any applicable rule against perpetuities.

The Trustee Act confers upon the power holder of the power to amend and the courts (where there is no power to amend or such power is restrictive), on application by a Trustee, the power to extend the perpetuity up to 150 years.

The RAPAA, on the other hand, governs the abolishment of the application of any applicable rule against perpetuity altogether. For dispositions created on or after 30th December, 2011 the rule against perpetuity is abolished automatically, and for those dispositions created before 30th December, 2011, the Trustee shall make an application to the court for the court to declare that the rule shall be abolished by virtue of the application of the RAPAA to such disposition.

For further information on the RAPAA, feel free to read Higgs & Johnson’s Private Client & Wealth Management Update on the RAPAA and or contact Heather L. Thompson, firm Partner at hthompson@higgsjohnson.com.