Article

Cayman Islands Perpetuity Periods and the “Royal Lives” Clause

Authors: Robert Lindley, Head of Cayman & BVI Private Client & Trust | **Wesley O’Brien,** Associate

As Downton Abbey captivates audiences worldwide with its portrayal of British aristocracy, it may be timely to consider some old English concepts which have an enduring effect on contemporary trusts practice.

The historical drama depicts the lives of the well-to-do Crawley family who reside at “*Downton Abbey*”, a fictional estate in the British countryside. While neither the television series nor the film provide sufficient details for how the Crawleys structure their wealth, it is fair to assume that trusts would be heavily utilised in holding the family’s assets, including perhaps Downton Abbey.

As the Downton Abbey estate has apparently been held by the family for over 300 hundred years, the film (which centres on a royal visit from King George V and Queen Mary) provides a fitting background to consider the *rule against perpetuities* and the peculiar *Royal Lives clause* which often feature in many existing Cayman Islands trust deeds.

The rule against perpetuities

The rule against perpetuities prevents people from using legal instruments (such as a trust deed or will) to exert control over the ownership of property for an extended or indefinite period of time. For example, it would not be permissible for the proprietor of Downton Abbey to establish a trust which failed to vest (i.e. by conferring someone ownership of the Estate) indefinitely or for countless generations into the future.

There is certainly logic in the origins of the rule in that it places limits on the extent to which someone can govern from the grave. It is not difficult to imagine an overbearing Lord of Downton Abbey trying unreasonably to exert control over the estate for many future generations. The rule in its traditional form provided that the maximum future interest which could be created was a life in being at the time of creation, plus 21 years.

The Royal Lives clause

As a result of the rule against perpetuities it became important for trust deeds to expressly specify the “perpetuity period” applicable to the trust, this being the period of time after which the trust would terminate and its assets vest. One manner of doing so (which was commonplace in years gone by and continues to feature in many existing trust deeds) was by reference to the British royal family. Until 31 July 1995, the Cayman Islands perpetuity period could only be defined by reference to lifetimes of persons alive when the trust was established. The typical perpetuity period being:

“21 years from the death of the survivor of the descendants now living on the date of this Settlement of His late Majesty King George V”.

Whether such clause refers to the current British monarch, her children or grandchildren will of course depend on who was alive at the date of the Trust’s creation. Setting aside the peculiarity of trust deeds referring to the British royal family, such a clause would necessitate the trustee keeping track of which members of the royal household the clause refers, when the last of such members dies, and calculating the termination date (otherwise referred to as the “vesting date”) accordingly. This led to a great deal of uncertainty.

Further, the Royal Lives clause gives rise to the risk that termination dates will be missed. Cases abound of trustees failing to realise that the trust has in fact terminated (even where perpetuity periods were stated in the much simpler format of a set number of years).

What happens when a trust vests?

Trust deeds typically have a default distribution mechanism such that on the vesting date, the trust is held for one or more specified beneficiaries (often referred to as the default or primary beneficiaries). On the vesting date, such persons will become absolutely entitled to the trust's assets and the powers of the trustee will change accordingly (for example the trustee of a discretionary trust will obviously lose the power to distribute income or capital to discretionary beneficiaries).

Where the vesting date is overlooked, this could give rise to a myriad of problems where it has acted on the basis of powers it no longer holds or has caused unwanted tax issues for the default beneficiaries (by failing to distribute assets to alternate beneficiaries prior to vesting).

Casting aside perpetuity periods?

Most jurisdictions have seen fit to alter the traditional rule against perpetuities by statute, often through setting a maximum number of years for which a trust can continue. Various jurisdictions (including Bermuda, Jersey and Guernsey) have gone one step further and abolished perpetuity periods altogether.

The current position in the Cayman Islands is:

a) Trusts established on or after 1 August 1995 are subject to a statutory maximum perpetuity period of 150 years plus a "*wait and see*" rule, whereby the rule does not affect an interest in property unless and until it becomes certain the interest will not vest within the perpetuity period (i.e. the trust will not fail because it neglected to specify an appropriate perpetuity period).

b) STAR trusts (a special statutory non-charitable purpose trust unique to the Cayman Islands) are not subject to any rule against perpetuities and so can exist in perpetuity.

The rule against perpetuities in the Cayman Islands has not yet been abolished, except for Cayman Islands STAR trusts, and also charitable trusts and pension funds. With that in mind, it is important to note that any fixed perpetuity period specified in a Cayman Islands trust deed will still apply irrespective of the maximum permissible under the law. Following the recent reforms of the Cayman Islands Trusts Law, it remains to be seen whether or not the Cayman Islands will follow suit with other offshore jurisdictions and implement further reform and abolish perpetuity periods for all types of Cayman Islands trusts.

Authors:

Robert Lindley
Head of Cayman & BVI
Private Client & Trust
robert.lindley@conyers.com
+1 345 814 7360

Wesley O'Brien
Associate, Cayman Islands
wesley.obrien@conyers.com
+1 345 814 7350

Other Contact:

Peter Ch'ng
Partner, Hong Kong
peter.chng@conyers.com
+852 2842 9593

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For further information please contact: media@conyers.com