

Zambia

Trusts Restriction Act, 1970

Chapter 63

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Trusts Restriction Act, 1970

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Zambia

Trusts Restriction Act, 1970

Chapter 63

Commenced on 24 December 1970

[This is the version of this document at 31 December 1996.]

An Act to restrict the creation of settlements, trusts and future interests.

1. Short title

This Act may be cited as the Trusts Restriction Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**Court**" means the High Court;

"**disposition**" includes the conferring of a power of appointment;

"**in being**" means living or *en ventre sa mere*;

"**minor**" means a person in being under the age of twenty-one years;

"**power of appointment**" includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration;

"**property**" includes real and personal property and any estate or interest therein;

"**settlement**" means any disposition whereunder any property stands for the time being limited to or in trust for any persons by way of succession, and "settle" and other cognate expressions shall be construed accordingly;

"**tenant for life**" has the meaning assigned thereto in the Settled Land Act, 1882, of the United Kingdom, and has the corresponding meaning in relation to personal property;

"**will**" includes a codicil.

(2) A disposition made pursuant to a power of appointment shall be deemed to have been made at the time when the power was conferred.

(3) A disposition contained in a will shall be deemed to have been made at the death of the testator.

3. Restriction on creation of settlements, trusts or future interests

Save as hereinafter provided, after the commencement of this Act person shall not—

(a) settle any property; or

(b) limit any property in trust for another; or

(c) make any disposition whereunder property vests in possession at a future date.

4. Exceptions

Nothing in this Act shall apply—

(a) a disposition whereunder property is limited to, or in trust for, a minor on his attaining a specified age not exceeding twenty-one years;

- (b) a disposition whereunder property is limited to, or in trust for, a widow, either for her life or for some other period, with a gift over in favour of children, if such disposition contains a provision that on the re-marriage of the widow the property shall forthwith vest beneficially in such children.

For the purposes of this paragraph, "child" means—

- (i) a child of the marriage; or
 - (ii) a child of either of the parties to the marriage; or
 - (iii) an adopted child, a step-child or an illegitimate child of the parties to the marriage or either of them;
- (c) a disposition in favour of a charity;
- (d) a trust in favour of or for the benefit of a person of unsound mind or a minor;
- (e) a trust for the purpose of the administration of the estate of a deceased person, to the extent that any will of such deceased person does not offend against the provisions of this Act;
- (f) a trust for the purpose of the administration of the property of a person adjudged bankrupt or a body corporate in liquidation or a person who has entered into a deed of arrangement for the benefit of his creditors;
- (g) a trust for the purpose of the administration of enemy property;
- (h) a trust for the purpose of the operation of a pension, superannuation or similar scheme;
- (i) a trust terminable at the will of the beneficiary.

5. Effect of dispositions in contravention of this Act

- (1) Subject to the provisions of section four, and notwithstanding anything to the contrary contained in any other law, after the commencement of this Act—
- (a) a settlement shall have effect as a disposition in fee simple or absolutely, as the case may be, to the tenant for life;
 - (b) a trust shall have effect as a disposition in fee simple or absolutely, as the case may be, to the beneficiary;
 - (c) a disposition whereunder property vests in possession at a future date shall be ineffective to create or vest any such interest.
- (2) Where the provisions of subsection (1) apply, the property shall vest in the person or persons in question either solely or as tenants in common, as the case may be, freed from and to the exclusion of any right, title, interest or estate, whether vested or contingent, previously held, or expressed to be held thereafter, in such property by any person who would, apart from this section, have been entitled under such settlement, trust or other disposition in succession or in future.

6. Existing settlements, etc.

- (1) Where at the commencement of this Act property is held under an existing settlement or trust, or a disposition is in existence whereunder property vests in possession at a future date, such settlement, trust or disposition shall be deemed to have been made after the commencement of this Act and accordingly the provisions of section five shall apply:

Provided that in any such case the persons, if any, whose future interests, whether vested or contingent, have been extinguished by virtue of this section shall be entitled to compensation as hereinafter provided.

- (2) Any person claiming compensation under subsection (1) may, in default of agreement between the interested parties, make application to the Court:

Provided that any such application shall be made within one year after the commencement of this Act.

- (3) Any compensation agreed upon or ordered by the Court to be paid shall be by way of periodic payments or a lump sum payment or a combination of such payments, and shall be made by the person in whom the property has been vested by virtue of the provisions of section five.
- (4) In determining the amount of compensation, the Court shall take into account all relevant circumstances including, but without derogating from the generality of the foregoing—
 - (a) the annual value of the interest extinguished;
 - (b) the probability of any contingency;
 - (c) the life expectancy of any interested person;
 - (d) the cost of purchasing an annuity for any relevant period.

7. Reduction of age

Where a settlement, trust or other disposition is limited by reference to the attainment by any person of a specified age exceeding twenty-one years and the disposition would, apart from this section, offend against this Act but would not so offend if the specified age were twenty-one years, the disposition shall be treated for all purposes as if it had been limited by reference to the age of twenty-one years.

8. Notices of proposed registration, and registration

- (1) The provisions of this section shall apply in any case where, in respect of the transfer of any property, any written law provides for registration, and, for the purposes of this section, "registrar" means the proper officer of the relevant registration authority.
- (2) Any person who claims that any property vests in him in fee simple or absolutely, as the case may be, by virtue of section five shall, as soon as may be practicable after the making of the instrument in question, cause to be published in the *Gazette* a notice in Form 1 in the Schedule.
- (3) Any person who claims that any property vests in him in fee simple or absolutely, as the case may be, by virtue of section six shall, as soon as may be practicable after the commencement of this Act, cause to be published in the *Gazette* a notice in Form 2 in the Schedule.
- (4) If, within two months after the publication of a notice under subsection (1) or (2), no objection to the proposed registration is received from any person claiming to be interested, the person claiming to be so entitled may apply to the registrar for registration of the property in question in his name.
- (5) If objection to the proposed registration is duly served on the person claiming to be entitled thereto, he may apply to the Court for an order declaring that the property in question is vested in him in fee simple or absolutely, as the case may be.
- (6) It shall be the duty of the registrar—
 - (a) after satisfying himself by affidavit or other evidence that a notice under subsection (1) or (2) was duly published and that no objection to the proposed registration was received within two months after the publication of such notice from any person claiming to be interested; or
 - (b) on production to him of an order of the Court under subsection (5);

to make such entries in the relevant register as shall give effect to such transfer and, where appropriate, to issue to the said person a Certificate of Title or a Provisional Certificate in respect of the said property or to make the necessary amendments to the register, as the case may be, and, if presented therefor, to make the appropriate endorsement on the deed or other document relating to the property in question.

9. Regulations

The Minister may, by statutory instrument, make regulations prescribing anything which is required or authorised by this Act to be prescribed.

Schedule (Section 8)

Prescribed forms

The Laws of Zambia

The Trusts Restriction Act

Form 1 Notice of intention to apply for registration of property

NOTICE IS HEREBY GIVEN, pursuant to section 8 of the Trusts Restriction Act that by virtue of section 5 of the said Act the property described in the Schedule has vested *in fee simple/absolutely

in _____

of _____

the *tenant for life/beneficiary under a *settlement/trust dated the _____ day of _____ and made between _____

and that on the expiration of a period of two months after the date of publication of this notice application will be made for the registration of the said property in the name of the *(1) tenant for life/beneficiary.

Any person claiming to be interested in the said property who objects to the proposed registration is required, within two months after the date of publication hereof, to serve written notice of such objection by registered post on the *(2) tenant for life/beneficiary at the undermentioned address for service.

*(3) Tenant for Life/Beneficiary

Address for Service _____

*Delete as applicable

The Laws of Zambia

The Trusts Restriction Act

Form 2 Notice of intention to apply for registration of property, and to claim compensation

NOTICE IS HEREBY GIVEN, pursuant to section 8 of the Trusts Restriction Act, that by virtue of section 6 of the said Act the property described in the Schedule has vested in *fee simple/absolutely

in _____

of _____

the *tenant for life/beneficiary under a *settlement/trust dated the _____ day of _____ and made between

and that on the expiration of a period of two months after the day of publication of this notice application will be made for the registration of the said property in the name of the *tenant for life/beneficiary.

Any person claiming to be interested in the said property who objects to the proposed registration is required, within two months after the date of publication hereof, to serve written notice of such objection by registered post on the tenant for life/beneficiary at the undermentioned address for service.

AND FURTHER TAKE NOTICE that any person claiming to be entitled to compensation by virtue of section 6 of the said Act is required to attempt to agree the amount of such compensation with the *(4) tenant for life/beneficiary, or, if in default of agreement he wishes to make application to the Court, to make such application within one year from the commencement of the said Act.

*(5) Tenant for Life/Beneficiary

Address for Service _____

*Delete as applicable