

In the Matter of the AB Settlement [2022] SC (Bda) 92 Civ

Briefing Summary: The recent judgment issued by the Supreme Court of Bermuda in the case of *In the Matter of the AB Settlement* [2022] SC (Bda) 92 Civ provides very helpful authority on the question of whether trust restructurings under Bermuda statute constitute resettlements.

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The case concerned a substantial English law trust, referred to in the judgment as the AB Settlement. The trustees of the AB Settlement considered that it would be advantageous to the beneficiaries for (1) the trust period of the AB Settlement to be extended beyond its termination date in 2047 and (2) the AB Settlement to be varied to modernise its terms, enable provision to be made for charity and increase flexibility in relation to the beneficiaries.

The trustees devised a restructuring plan by which they would exercise their power to change the governing law of the AB Settlement from the law of England & Wales to that of Bermuda and then apply to the Bermuda Court for an extension of the trust period under s.4 Perpetuities and Accumulations Act 2009 and a variation of the settlement's terms under s. 47 Trustee Act 1975.

The trustees were however mindful of UK tax implications if the restructuring were to amount to a resettlement of the AB Settlement. The Court was therefore asked to consider whether the change of governing law to Bermuda, subsequent extension of the trust period and variation under s.47 Trustee Act 1975 would create a new settlement. Chief Justice Hargun held that the changes were not sufficient to amount to a resettlement of the AB Settlement.

Whilst of course the judgment is not binding on onshore tax authorities, it will be of comfort to trustees and their advisors looking to take advantage of the restructuring opportunities presented by Bermuda statute.

The Court was also asked to confirm that the provisions in the Children Act 1998 abolishing the distinction between legitimate and illegitimate children would not apply to the AB Settlement following the change of governing law from England & Wales to Bermuda.

Key Contacts



Keith Robinson
PARTNER, BERMUDA
+1 441 542 4502

[EMAIL KEITH](#)



Laura Kearns
COUNSEL, BERMUDA
+1 441 542 4278

[EMAIL LAURA](#)

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY

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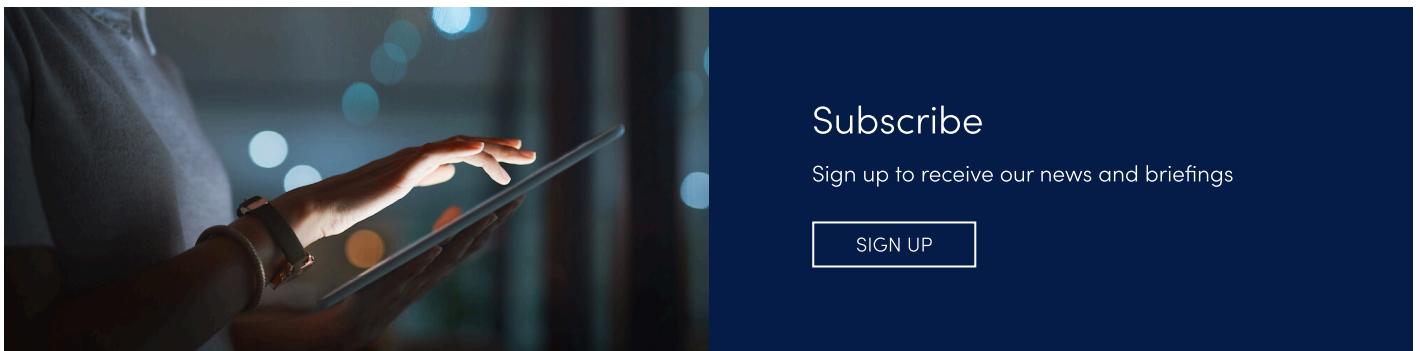
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The Court had previously held, both in *Re A Trust* [2017] SC (Bda) 38 Civ and *Re G Trusts* [2017] SC (Bda) 98 Civ, that sections 18A to D of the Children Act 1998 are not engaged where the governing law of a trust is changed from another jurisdiction to Bermuda. Following these judgments amendments had then been made to the Trusts (Special Provisions) Act 1989 and the Children Act 1998 in an attempt to clarify the statutory position but, in fact, these amendments created greater uncertainty.

The judgment in *In the Matter of the AB Settlement* helpfully now clarifies that where a contrary intention appears in a trust instrument, the instrument will prevail over the provisions in the Children Act 1998.

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