

Cook Islands International Relationship Property Trusts

A new and innovative tool for the protection
of relationship property





What is a Cook Islands International Relationship Property Trust?

A Cook Islands International Relationship Property Trust (“IRPT”) is a new and innovative tool designed to provide couples who are in a relationship with more certainty as to how their property is to be managed in the event that they separate.

The IRPT is intended to protect relationship property from the consequences of separation by requiring that the property be held for the benefit of a couple and their issue in accordance with the couple’s agreement as set out in the trust instrument.

Background

It is not uncommon that when a couple separates there is a division of their matrimonial property if they are married or their relationship property if they are in a civil union or de facto relationship. This can be and often is to the detriment of one spouse but more significantly to children of the relationship. Succession plans are ignored, long term investments are liquidated at reduced prices and assets originally intended for the future benefit of the couple's children are divided and transferred to new relationships and other children.

Even where a couple has settled matrimonial property on trust for their benefit and that of their children, the courts have not been precluded from altering such settlements, ranging from wholly excluding a beneficiary from a settlement to transferring some trust or other asset to a non-beneficiary free from all trusts.

The courts have however observed that it may be argued that the court should hesitate before overriding a decision or agreement made during a marriage to isolate funds in a separate legal structure for the formal benefit not only of the spouses but also of their children and remoter issue.

It is this argument, and that there is no clear legal premise that addresses the fundamental issue of keeping the assets of a family intact rather than being exposed to forced division and distribution upon the separation or divorce of the spouses, that has given rise to the International Relationship Property Trusts Act 2021 ("Act").



General Features of an International Relationship Property Trust

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Unique statutory regime

The Act is unique in that it provides a statutory regime under which couples in a relationship may settle an irrevocable trust and provide certainty as to how settled property is administered, managed and distributed during their relationship and in the event of their separation whilst protecting it from themselves as well as foreign courts where their circumstances change.

Trust instrument

The trust instrument declares and confirms the

- trust to be a IRPT
- couple to be in a “relationship”
- property settled as “relationship property”
- contingent interests of each beneficiary in that property.

Relationship property: Relationship property is defined as the property owned by each or both of the persons in the relationship and which is settled on the IRPT.

Relationship agreement

The trust instrument must contain a relationship agreement entered into by the couple which affirms, modifies or waives rights or obligations they have in regards to the relationship property settled whilst they are in the relationship and upon their separation.

Independent legal representation

Before entering into a relationship agreement and settling the IRPT, the couple must have independent legal representation and provide full disclosure of assets and income.

Legal effect

The legal effect of settlement and registration of a IRPT is that the trust must be administered in accordance with the trust instrument and, in the event of the couple’s separation, the relationship property must remain intact and remain on the trusts declared and must not be divided and distributed to the beneficiaries unless the trust instrument provides. The relationship property must be administered and managed in accordance with the trust instrument for the benefit of the beneficiaries according to their respective beneficial shares.

Family owned businesses

Special provision is made for settlement of family owned businesses onto the IRPT. The IRPT can prohibit the sale of a business or of ownership interests in a business indefinitely or for a period of time. The trustee may however apply to the High Court of the Cook Islands to have a family business sold or for the business or proceeds of sale to be divided and distributed to beneficiaries if the purpose for retention ceases to exist or it is in the best interests of the beneficiaries.

Rights restricted

The right of a party to challenge the terms of a relationship agreement or the trust instrument at a later date is restricted as are remedies available upon a successful challenge.

Alienation of property

The Act negates the common law rule that invalidates a prohibition on property being alienated by allowing the trust instrument to stipulate that trust property cannot be alienated either for a period of time or indefinitely.

Foreign judgements

Foreign judgements are unenforceable if they are inconsistent with the objectives or particular provisions of the Act or their effect is to deal with trust property contrary to the terms of the trust instrument. Despite this, the High Court of the Cook Islands can recognise a foreign judgment that equitably adjusts the shares of the beneficiaries, or provides for a child’s right of support or to the extent that it is not inconsistent.

Power to amend trust instrument

A trust instrument can only be amended pursuant to its terms or by the High Court of the Cook Islands. However, it can only be amended by the court once a settlor has given a separation notice to the trustee.

Administration and management of trust property

The administration and management of trust property can be carried out by a “controlling principal” (defined as a person who has sufficient ownership to be able to have effective control and direction of a commercial undertaking) as well as the trustee its agents and delegates.



Taxation

A IRPT is tax neutral in that it is not subject to any form of Cook Islands taxation. The settlors and beneficiaries, being non-resident in the Cook Islands for tax purposes, will however be subject to the tax laws in their home jurisdictions in so far as they apply to foreign trusts and assets transferred to and distributions made from such trusts.

Registration

An IRPT must be registered and remain registered in accordance with Part 3 of the Act. An application for registration of an IRPT must be made by a Cook Islands licensed trustee company in the prescribed form within 45 days of that trustee becoming trustee of the CIIRPT.

The trustee must confirm upon registration that the IRPT complies with the requirements of the Act. Both settlors are given a 30 day period after registration of the IRPT to ratify, or opt out of the relationship property agreement and the IRPT. The IRPT must be de-registered if there is a failure to ratify. There is no requirement to file the trust instrument or the name of the settlors or beneficiaries. Registration insulates the IRPT from general Common Law and Cook Islands statute law in so far as those laws are inconsistent with the Act.

Summary

The CIIRPT provides a practical solution to an ever common problem. It allows couples to overcome the uncertainties inherent in relationships and the impact that might have on their property but more significantly their children. The IRPT provides certainty as to how specific property set aside as "relationship property" will be administered, managed and distributed during the relationship and following the couple's separation. Assets remain intact and available for the benefit of both the couple and their children in accordance with the terms of the trust instrument providing stability and peace of mind.





For more information on Cook Islands International Relationship Property Trusts or any other products or services provided from the Cook Islands [contact our local trust companies.](#)

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