



ANALYSIS

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1984; No. 14

An Act to provide for International Trusts

(27 December 1984)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and the authority of the same, as follows:

PART IPRELIMINARY

1. Short Title - (1) This Act may be cited as the International Trusts Act 1984.
2. Interpretation - In this Act, unless the context otherwise requires.

"Court" means the High Court of the Cook Islands;

"Disposition" includes the disposal of an interest in or right over property by the exercise of a power of appointment, power of maintenance, power of advancement or other authority and includes the conferring of such powers or authority;

"Foreign Company" means a foreign company under the International Companies Act 1981-82;

"Instrument" means any deed, will, codicil or document giving effect to a disposition;

"International Trust" means a trust or disposition which is registered under this Act and in respect of which:

- (a) at least one of the trustees, donors or holders of the power of appointment or power of maintenance or power of advancement is either:
 - (i) a registered foreign company; or
 - (ii) a international company; or
 - (iii) a trustee company; and
- (b) the beneficiaries are at all times non-resident;

"Minister" means the Minister of Finance;

"Monetary Board" means the Cook Islands Monetary Board established under the Cook Islands Monetary Board Act 1981;

"Non Resident" means:

- (a) an individual not domiciled in the Cook Islands
- (b) an individual not ordinarily resident in the Cook Islands;
- (c) an international company;
- (d) a foreign company;
- (e) a trustee company; or
- (f) a subsidiary of a trustee company being either an international company or a foreign company;

"Power of Appointment" - includes a discretionary power to transfer, grant or create a beneficial interest in property, with or without the furnishing of valuable consideration by the beneficiary of the power, including a power, the exercise of which is subject to the consent of a third party;

"Prescribed" means prescribed by regulation or in the absence of such regulation as may be determined by the Registrar;

"Property" includes an estate or interest in real or personal property and includes any thing in action;

"Registrar" means the Registrar of International Trust and includes a Deputy Registrar;

"Registrar Foreign Company" means a foreign company registered pursuant to Part X of the International Companies Act 1981-82;

"Trust" includes all trusts, settlements, dispositions of or in relation to property, powers in the nature of trusts or coupled with a trust and powers of appointment including a general power, whether testamentary or created *inter vivos* and the expressions "trust" and "trustee" shall extend to resulting, implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of personal representative; and "trustee" where the context admits, includes that personal representative and the donor or holder of a power, including a general power of appointment;

"Trustee Company" means a company registered as a trustee company under the provisions of the Trustee Companies Act 1981-82.

3. Saving of existing laws - The laws applicable to trusts in force in the Cook Islands immediately prior to the commencement of this Act shall continue in force and shall apply to international trusts except in so far as they are inconsistent with or have been modified by the provisions of this Act.

4. Registrar and Deputy Registrar - (1) The Registrar of International and Foreign Companies appointed pursuant to section 8 of the International Companies Act 1981-82 shall be the Registrar of International Trusts.

(2) A Deputy Registrar of International and Foreign Companies and any officer appointed pursuant to section 8 of the International Companies Act 1981-82 shall be a Deputy Registrar of International Trust, or officers as the case may be for the purposes of this Act.

(3) Anything authorised or required to be done by the Registrar under this Act may be authorised or done by a Deputy Registrar.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal and also the signature of the Registrar and any Deputy Registrar.

5. Application of this Act - (1) Unless the context otherwise requires the provisions of this Act shall apply to:

(a) international trusts; and

(b) all registered instruments whether they take effect on, before or after the commencement of this Act.

(2) A trust registered under this Act shall be a valid trust notwithstanding that it may be invalid according to the law of the settlor's domicile or residence or place of current incorporation.

(3) In determining the existence and validity of a trust registered under this Act the Court shall apply;

- (a) the provisions of this Act; and
- (b) any other law of the Cook Islands; and
- (c) any other law, which would be applied;

if to do so, would validate the trust.

PART II

MODIFICATION OF THE LAWS APPLICABLE TO INTERNATIONAL TRUSTS

6. Power to specify perpetuity period - (1) For the purposes of this Act and notwithstanding any rule of law or statutory provision to the contrary, where the instrument by which any disposition is made or any trust is created so provides, the perpetuity period applicable to the disposition or trust under the rule against perpetuities, instead of being any other duration shall be such period not exceeding one hundred years as maybe specified in the instrument as the perpetuity period applicable to the disposition.

(2) Where a period is specified pursuant to subsection (1) of this section in an instrument creating a general or special power of appointment that period shall apply in relation to any disposition made or trust created in exercise of that power.

7. Necessity to wait and see - (1) Where apart from the provisions of this section, a disposition or trust would be invalid as infringing the rule against perpetuities, the disposition or trusts shall be treated until such time (if any) as it becomes certain that the vesting must occur, if at all, after the end of the perpetuity period and thereafter for a further period of 21 years as if the disposition or trust were not invalid as infringing the rule against perpetuities, and its becoming so certain shall not affect the validity of anything previously done in relation to the interest disposed of by way of advancement, application of intermediate income or otherwise.

(2) Where apart from the provisions of this section, a disposition consisting of the conferring of a general power of appointment would be invalid as infringing the rule against perpetuities the disposition shall be treated, until such time (if any) as it become certain that the power will not be exercisable within the perpetuity period and thereafter for a further period of 21 years, as if the disposition were not invalid as infringing the rule against perpetuities.

(3) Where apart from the provisions of this section a disposition consisting of the conferring of any power option or other right would be invalid as infringing the rule against perpetuities, the disposition shall be treated as regards any exercise of the right within a period of 100 years from the date upon which the instrument creating the power option or other right takes effect as if it were not so invalid and shall be treated as invalid only if and so far as the power option or right is not fully exercised within that period.

8. Abolition of the rule against double possibilities - The rule of law prohibiting the limitation, after a life interest of an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

9. Abolition of the rule against accumulations - (1) Where property is settled or disposed of in such manner that the income thereof may or shall be accumulated wholly or in part the power or direction to accumulate that income shall be valid if the disposition of the accumulated income is or may be valid but not otherwise.

(2) Nothing in this section shall affect the power of any person to terminate an accumulation that if for that persons benefit, or any jurisdiction or power of the Court to maintain or advance out of accumulations, or any powers of a trustee under any Act or law or under any instrument creating a trust or making a disposition.

(3) For the purposes of this Act the following enactments are repealed:

- (a) Sections 41 and 42 of the Property Law Act 1952;
- (b) Sections 2 of the Property Law Amendment Act 1963.

(4) The enactments repealed by subsection (3) of this section and the corresponding provisions of any former enactment, shall be deemed in connection with the law applicable to international trusts, never to have applied to any power to accumulate.

10. Application of the rule in Saunders v Vautier - (1) Where an instrument contains an express provision to accumulate income for a period, being a period not in excess of the maximum perpetuity period permitted by this Act, the trustee may, in his absolute discretion, but subject to the express terms of the instrument, give effect to that direction as he thinks fit notwithstanding that a beneficiary being a charity or otherwise entitled to that accumulation shall request the trustee to immediately distribute the accumulation and will give a valid discharge to the trustee for such distribution.

(2) Notwithstanding anything contained in any Act to the contrary or any rule of law or equity, the power to vary the terms of a trust or disposition so as to vary or remove the direction to accumulate income of the trust or to modify or remove the discretion of the trustee to accumulate income shall have no application where subsection (1) of this section applies.

11. Presumption against avoidance of trusts - (1) Unless a trust contains an express power of revocation it shall be deemed to be irrevocable by the settlor and his legal personal representatives notwithstanding that it is voluntary.

(2) Notwithstanding any provision of the law of the settlor's domicile or place of ordinary residence or the current place of incorporation and notwithstanding further that the trust is voluntary and without valuable consideration being given for the same, or is made on or for the benefit of the spouse or children of the settlor or any of them, an international trust shall not be void or voidable in the event of the settlor's bankruptcy or liquidation or in any action or proceedings at the suit of creditors of the settlor unless it is proven to the satisfaction of the Court that the trust was made with the intent to defraud creditors of the settlor.

(3) For the purpose of this subsection the onus of proof of the settlor's intent to defraud his creditors lies on those creditors.

12. Charitable and Purpose Trusts - (1) Notwithstanding any rule of law to the contrary an international trust shall be deemed to be charitable or for purposes which are charitable where it is a trust substantially for one or more of the following objects or purposes, namely:

- (a) for the relief of poverty;
- (b) for the advancement of education;
- (c) for the advancement of religion;
- (d) for other purposes beneficial to the community;

notwithstanding that the object or purposes may not be of a public nature or for the benefit of the public, but may be for the benefit of a section of the public or members of the public, or that it may also benefit privately one or more persons or objects or persons within a class of persons or is liable to be defeated whether by the exercise of a power of appointment or disposition or that the trustee has the power to defer the enjoyment of any charity or other beneficiary of the trust for any period not exceeding the perpetuity period applying or expressed to apply to the trust, and notwithstanding further that the trust may be discretionary or contingent upon the happening of any event.

(2) Notwithstanding any rule of law or equity to the contrary a trust settled or established by a non-resident of the Cook Islands shall not be void or voidable by virtue of the fact that the trust fund shall be held for a purpose or purposes, whether charitable or not, provided that the trust must vest in natural persons within the perpetuity period applying or expressed to apply to the trust; and any trust so created shall be enforceable by the settlor or his personal representatives or by the person or persons named in the instrument establishing the trust as the person or persons appointed to enforce the trust and the trust shall be enforceable at the instance of the person or persons so named notwithstanding that such person or persons are not beneficiaries under the trust.

13. Investments - (1) A trustee shall not invest any of the trust funds in his or its hands other than in securities, assets or property authorized expressly or by necessary implication for the investment of the trust funds by and under the instrument by which the trust is established or created.

(2) Where the instrument by which the trust is created or established authorizes expressly or by necessary implication the investment of the trust funds in any investments authorized by the law of the Cook Islands for the investment of trust funds the instrument shall be deemed to authorize investment in such investments as may be expressed to be trustee investments by regulations made under this Act.

PART III

REGISTRATION OF TRUSTS

14. Application for registration - Application for registration of a trust as an international trust shall be made to the Registrar in the prescribed form and accompanied by the prescribed fee.

15. Registration - (1) No trust shall be registered as an international trust until there has been filed with the Registrar:

- (a) a certificate from a trustee company certifying that the trust upon registration will be an international trust; and
- (b) a notice of the name and registered office of the trust.

(2) Upon receipt of a certificate and notice referred to in subsection (1) of this section the Registrar shall register that trust upon the Register of International Trusts kept for that purpose and issue a certificate of registration in the prescribed form.

(3) A certificate of registration under the hand and seal of the Registrar shall be conclusive evidence that all the requirements of this Act in respect of registration and other matters precedent and incidental thereto have been complied with and that the international trust referred to therein was duly registered under this Act.

16. Annual certificate of registration - (1) A certificate of registration issued pursuant to section 15 (2) shall be valid and effective for one year from the date of registration specified in that certificate.

(2) Application for renewal of registration may be made upon:

- (a) Filing with the Registrar an application for renewal of registration in the prescribed form;
- (b) Payment of the prescribed fee.

(3) Subject to section 26 of this Act, no application for renewal of registration pursuant to subsection (2) of this section shall be granted where the application is filed or fee paid after the date of expiry of the last certificate of registration.

(4) Every renewal of registration shall be for a period of one year from the date of expiry of the last certificate of registration.

17. Registration of trust instrument - Any person who is a trustee may provide the Registrar with a copy of the trust instrument or any amendment thereto which shall be certified in the manner prescribed and the Registrar shall register that copy as a true copy and file the same.

18. Registered office - (1) The registered office of an international trust shall be the registered office of the registered foreign company, international company or trustee company which is a trustee.

(2) The address for service of any documents upon an international trust shall be the registered office of that trust.

(3) Every international trust shall have its name displayed on the outside of its registered office in a conspicuous position and in letters easily legible.

19. Proceedings by or against international trust - Where any proceedings are instituted by or against an international trust it shall be sufficient to name the international company, registered foreign company or trustee company that is a trustee and it shall not be necessary to join in the action any other trustee.

PART IV
APPLICATION OF OTHER ACTS

20. Interpretation - In this part of this Act, unless the context otherwise requires,-

"Enactment" means any Act of the Parliament of the Cook Islands, Ordinance, Act of the Parliament of New Zealand in force in the Cook Islands and any Proclamation, Order, Regulation or Rule of any Island Council, Ordinance or By-law and includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom being an Act in force in the Cook Islands, and any Regulations, Rule, Order, or other instrument made thereunder;

"Foreign Currency" includes notes, coins, postal notes, money orders, bills of exchange, promissory notes, drafts, cheques, negotiable instruments, letters of credit and travellers cheques payable or expressed other than in New Zealand currency, and also includes rights and instruments of title to New Zealand money;

"Securities" includes shares, stocks, bonds, debentures, debenture stock, treasury bills and notes, and units or sub-units of a unit trust, and also includes deposit receipts in respect of the deposit of securities and documents of title or securities but does not include bills of exchange or promissory notes.

21. Application of other Acts to international trusts - (1) Subject to subsections (2) and (3) of this section, no enactment, other than this Act, the Cook Islands Monetary Board Act 1981, the Offshore Banking Act 1981, the International Companies Act 1981-82 the Offshore Insurance Act 1981-82 and the Trustee Companies Act 1981-82 shall:

- (a) imposes-
- (i) any liability, duty, responsibility, obligation or restriction; or
 - (ii) any fee, impost, tax, levy, dues, duty, or exise; or
 - (iii) any fine or penalty
- on an international trust or
- (b) require-
- (i) the deposit of any moneys in any public account;
 - (ii) the filing of any accounts, returns, reports or records; or
 - (iii) the licensing or registration
- by an international trust.

(2) The restrictions imposed by regulation 5(1) of the Cook Islands Exchange Control Regulations 1948 shall have no application in respect of-

- (a) the taking or sending of any foreign currency or securities out of the Cook Islands by an international trust or by an officer or employee of an international trust for or on behalf of the trust other than -
- (i) where the security is payable in New Zealand money and was not issued by an international company; or

- (ii) where the security or foreign currency is owned or controlled by a natural person ordinarily resident in the Cook Islands or a domestic company;
- (b) the transfer of the interest of any person in any security by an international trust or by an officer or employee of international trust for or on behalf of the trust, other than -
 - (i) where the security is payable in New Zealand money and was not issued by an international company; or
 - (ii) where such person is a natural person ordinarily resident in the Cook Islands or a domestic company;
- (c) the drawing or negotiating of any bill of exchange or promissory note or the transfer of any security or the acknowledgement of any debt or the making of any payment, by an international trust or by an officer or employee of international trust for or on behalf of the trust -
 - (i) as consideration for receiving any payment or acquiring any property elsewhere than in the Cook Islands or in New Zealand; or
 - (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or to acquire any property elsewhere than in the Cook Islands or in New Zealand;
- (d) the creation or transfer of a right, whether actual or contingent, to receive any payment or acquire any property elsewhere than in the Cook Islands or New Zealand, or the disposal or otherwise dealing with any money, securities, or property held or payable elsewhere than in the Cook Islands or New Zealand, by an international trust or by an officer or employee of an international trust for or on behalf of the trust, other than -
 - (i) as consideration for receiving any payment or acquiring any property in the Cook Islands or New Zealand; or
 - (ii) as consideration for acquiring a right, whether actual or contingent, to receive any payment or acquire any property as aforesaid; or
 - (iii) as consideration for the discharge of a debt payable in the Cook Islands or New Zealand.
- (3) An international trust which wishes to -
 - (a) invest in a domestic company; or
 - (b) acquire assets from a person ordinarily resident in the Cook Islands or a domestic company; or
 - (c) carry on business within the meaning of that phrase in the Development Investment Act 1977,

shall be subject to the provisions of the Development Investment Act 1977: Provided however, that nothing in this subsection shall bring into operation the provisions of the Development Investment Act 1977, in relation to an international trust where the only domestic company which the international trust is dealing with is a trustee company.

(4) It shall be an offence against this Act for an international trust or an officer or employee of an international trust to take or to send or to cause or permit to be taken or sent, any money or securities out of the Cook Islands which are owned or controlled by a natural person ordinarily resident in the Cook Islands or a domestic company other than a trustee company.

PART V
MISCELLANEOUS

22. Resident beneficiaries - The provisions of this Act shall not have any application to a beneficiary who is domiciled in the Cook Islands or who is ordinarily resident in the Cook Islands.

23. Secrecy - (1) Except where the provisions of this Act require and subject to subsection (2) of this section, it shall be an offence for a person to divulge or communicate to any other person information relating to the establishment, constitution, business undertaking or affairs of an international trust.

(2) All judicial proceedings, other than criminal proceedings relating to international trusts shall, unless ordered otherwise be heard in camera and no details of the proceedings shall be published by any person without leave of the Court or person presiding.

24. Translations - (1) Every document filed with the Registrar and not in the English language shall be accompanied by a certified translation.

(2) A document that is not in the English language and which is not accompanied by a certified translation at the time of filing shall not be accepted for registration by the Registrar.

(3) For the purpose of this section a certified translation is a translation into the English language, certified as a correct translation, by a translator to the satisfaction of the Registrar.

25. No action to lie against certain person - No action shall lie against the Government of the Cook Islands, any statutory body or authority, or a public or judicial officer in respect of any performance of its or his functions or duties under this Act.

26. Power of Exemption - (1) The Minister may on his own motion or pursuant to an application in writing lodged with the Registrar by an international trust or a trust, if it were registered would be an international trust, exempt that international trust or trust from all or any of the provisions of this Act and any regulations made under this Act and may impose such terms and conditions as he thinks fit as a condition under which that exemption is granted. An exemption so granted may be revoked or varied by the Minister at any time.

(2) In dealing with an application under this section the Minister shall not be required to act judicially and his decision shall in all cases be final.

(3) Any exemption or condition imposed pursuant to subsection (1) of this section, shall take effect as from the date to be decided by the Minister in his discretion.

27. Prohibitions by Minister - (1) The Minister shall have an absolute right of his own motion or otherwise and without assigning reasons to make an order:

(a) prohibiting the registration of any trust, or

(b) directing any international trust to cease carrying on its business or part of its business immediately or within such time as may be specified in the order.

(2) An order made under this section may be revoked or varied by the Minister.

(3) In making an order under this section the Minister shall not be required to get judicially and such order shall be final.

28. Penalties - (1) Any person who :

(a) does anything which is forbidden by or under this Act; or

(b) omits to do something required or directed by or fails to comply with any provisions of this Act,

shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding U.S\$10,000 or to imprisonment for a term not exceeding 1 year or to both.

29. Regulations - The Queens Representative may by order in Executive Council make regulations prescribing all matters and things required or authorised by this Act to be prescribed or which are necessary for carrying out or giving effect to this Act including the prescribing of penalties for breaches of such regulations.

This Act is administered by the Cook Islands Monetary Board.

