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A Pioneering Financial Hub

Insights from Tony Fe'ao on the Cook Islands' Financial Services

By: Dominic Hale

In this interview, Tony Fe'ao, a key figure in the Cook Islands financial sector, discusses the evolution, current offerings, and future directions of the Cook Islands as a premier jurisdiction for wealth management and asset protection.

Over the past four decades, the Cook Islands has established itself as a well-regulated and highly regarded financial services hub, continually adapting to meet global best practices and the needs of its international clientele.

Dominic Hale: The Cook Islands has been a pioneering financial services jurisdiction for over four decades now. What has changed in that time in terms of its product and service offering?

Tony Fe’ao: The Cook Islands has evolved into a well-regulated, and highly regarded financial jurisdiction. We’ve aligned ourselves with global best practices, offer a comprehensive range of financial services and earned a reputation as a world leader in the protection of wealth.

We’ve built services and expertise around wealth management, and in particular the protection of wealth, developing a range of products and solutions, including trust administration, managed and private trust companies, international companies, limited liability companies and foundations. We also offer insurance, private banking and ship registry services.

Over the past 40 years, we have developed a network of highly skilled, and multi-disciplined professionals in legal, accounting, and fiduciary services. Many are internationally trained and bring decades of experience in wealth management, both locally and globally.

DH: What would you describe as the Cook Islands’ signature product today?

TF: The Cook Islands Asset Protection Trust (CIAPT) remains our signature product. Our world-leading asset protection legislation effectively safeguards assets from various legal and financial threats, providing a secure and stable solution for wealth preservation.

CIAPT features include:

• Foreign Judgments

Cook Islands courts do not recognise foreign judgments where they are based on law that is inconsistent with Cook Islands law. In these circumstances a judgment from a court in another country will not be enforceable in the Cook Islands and any claims against assets in a CIAPT must be re-litigated within our jurisdiction.

• Forced Heirship

The assets in a CIAPT are safeguarded from the forced heirship rules governing any person related to the settlor. The Cook Islands’ International Trusts Act 1984 (ITA) does not recognise such forced heirship rules.

• Bankruptcy

The integrity of a Cook Islands trust is maintained even if the trust’s settlor declares bankruptcy in another country.

• Spendthrift Beneficiaries

A beneficiary’s interest in the assets of a Cook Islands trust is safeguarded from creditors, bankruptcy, and legal claims for the duration of their lifetime.

• 2 Year Statute of limitation

Section 13B of ITA sets a two-year statute of limitations for challenging asset transfers into a CIAPT on grounds of fraudulent conveyance. Where a creditor’s cause of action arises within two years of the settlement being made, the creditor must file an action in a court of

“ The financial services industry gives our people the opportunity to have a rewarding and well-paying career, while living and raising their families in our little paradise. ”



We are constantly reviewing and revising laws and regulations where necessary to align with global standards and address international requirements.

competent jurisdiction within one year of the settlement taking place.

Once in the Cook Islands court, creditors must prove, beyond a reasonable doubt, that the specific transfer was intended to defraud them and made the Settlor insolvent.

The Cook Islands International Relationship Trust (IRPT) is our most recent trust product. Specified trust assets in an IRPT settled by a couple are safeguarded and kept intact for the trustee to administer if they separate or divorce - preserving the assets for the couple and, more importantly, their children.

DH: How has the Cook Islands managed to stay ahead of a complex and ever-evolving international regulatory landscape?

TF: We are constantly reviewing and revising laws and regulations where necessary to align with global standards and address international requirements. This ensures compliance with frameworks set out by international organisations such as the European Union (EU), OECD and FATF.

Active collaboration with the EU, OECD and FATF helps the Cook Islands adhere to glob-

al best practices and changes. The Financial Supervisory Commission, the Cook Islands' regulatory body, performs regular audits, monitoring, and compliance checks to ensure service providers are following both local and international requirements.

DH: Why the Cook Islands and not somewhere else for individuals and families looking to optimise management of their wealth?

TF: The Cook Islands is the ideal jurisdiction for wealth management due to our unique combination of legal, regulatory, and practical expertise.

• World Class Asset Protection

The Cook Islands has some of the world's strongest asset protection trust laws - which provide significant protection against creditors and legal claims. The asset protection provisions of the ITA, which are often referred to as the 'Gold Standard' in asset protection, have been applied and upheld by the Cook Islands courts since their enactment. Clients can establish tailored structures within our asset protection framework to meet specific



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wealth management needs, including asset protection, estate planning, and business and succession planning.

• Privacy Provisions

The Cook Islands does not have public registers for beneficial ownership of incorporated entities or trusts. Our laws contain privacy provisions and information will only be available on a court order or where requested by law enforcement or the regulator. Attempts to gather information without having specific grounds or evidence of wrongdoing (fishing expeditions) are not tolerated.

• Legal and Regulatory Stability

The Cook Islands has a stable legal system

based on common law principles, offering predictability and reliability. We have a High Court and a Court of Appeal, with the highest appellate court being the Privy Council in London. Judges in the High Court and Court of Appeal are experienced New Zealand judges who apply Cook Islands law.

• Tax-Neutral Jurisdiction

CIAPTS and Cook Islands international entities can be structured whereby local taxes will not be imposed, effectively making them tax neutral from a Cook Islands perspective.

• Compliance with International Standards

The Cook Islands complies with international standards on anti-money laundering (AML)

and counter-terrorism financing (CTF) and has an active and effective industry regulator.

• **Political and Economic Stability**

The Cook Islands offers a politically and economically stable environment, minimising risks associated with geopolitical factors. We also maintain very strong social and economic ties with New Zealand. Our special relationship is characterised by a unique free association, allowing us full self-governance while benefiting from New Zealand's economic support, diplomatic backing, and shared citizenship.

DH: What current or forthcoming developments are you most excited about and why?

TF: Given the increased interest and demand for captive insurance products and services around the world, we are looking to develop our captive insurance legislation to provide exciting opportunities for businesses seeking customised insurance solutions.

We're also excited about the work we are doing in our local community to raise awareness round the financial services industry.

This includes the benefits it brings to our economy, it's low environmental impact and the career opportunities that are available to our young professionals.

The financial services industry gives our people the opportunity to have a rewarding and well-paying career, while living and raising their families in our little paradise.

■ *Dominic Hale*





The Cook Islands Asset Protection Framework

By: Alan Taylor

The Cook Islands is recognised internationally as a leader in the protection of wealth. Over the past 40 years the Cook Islands has enacted a suite of legislation focused on enhancing the protection available to asset owners when structuring and managing their wealth.

Regardless of whether the protection is from those seeking to access that wealth by force, litigation or legislation, whether through illegal, unethical or immoral means, the Cook Islands asset protection framework is designed to provide security and peace of mind.

In 1989 the Cook Islands amended its International Trusts Act 1984 (“ITA”) to include provisions designed to provide certainty to the process for claiming against assets when held in trust by providing reference to specific dates and events.

These provisions gave rise to what is now commonly called the Cook Islands Asset Protection Trust (“CIAPT”). The CIAPT is well known in international wealth structuring circles as providing the gold standard in asset protection.



What is maybe not so well known is the other legislation enacted by the Cook Islands providing structures for holding, investing and protecting assets that may be integrated with a CIAPT, or stand alone, to produce or form part of an international wealth management plan.

Those structures include:

1. **International Companies incorporated pursuant to the International Companies Act 1981-82, as amended (“ICA”);**
2. **Foundations established pursuant to the Foundations Act 2012, as amended; and**
3. **Limited Liability Companies incorporated pursuant to the Limited Liability Companies Act 2008, as amended (“LLCA”).**



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These statutes each contain specific provisions designed to protect assets. The following highlights the most significant of those provisions:

International Companies

Section 228B of the ICA provides that upon the happening of a specified event a share held by any person affected by that event or any interest a person has in a share of the company, or any other interest that arises due to the fact the person is a member of the international company, shall automatically pass to a specified person. Such events and



The Cook Islands courts and legislature have assisted those looking for legal means to preserve wealth by developing and codifying the laws pertaining to trusts, companies and foundations

persons must be specified in the company's articles of association. This provision has obvious benefits for those whose assets may come under threat from unstable governments and other political regimes. For example, where a foreign government expropriates the membership interest of a member of the international company, the ownership of that share will automatically vest in the specified person.

Foundations

The Cook Islands has combined some of the technical and practical features of both its international trusts and international companies giving rise to the Cook Islands Foundation ("CIF"), a wealth planning vehicle that is recognised internationally, in both civil and common law jurisdictions, for its flexibility and ease of administration.

The Foundations Act provides very similar asset protection features as the ITA, including:

- Certainty as to timing and events for creditors to claim against assets of the CIF;
- The non-recognition of foreign judgments inconsistent with Cook Islands law;
- Forced heirship rights in a founder's home jurisdiction not invalidating the CIF or transfers to it;

- A CIF continuing to exist notwithstanding a founder may be declared bankrupt in his/her home jurisdiction;
- The only remedy available to a creditor successful in proving a transfer to a CIF was intended to defraud, being an award of damages from the assets of the CIF.

The flexibility offered by a CIF through carefully drafted Foundation Rules and the active involvement available to the founder and his/her family and associates in the operation of the CIF, makes it an attractive option when implementing a wealth management plan to hold, invest and transfer assets to the next generation. A CIF is functional, practical and easy to administer whether used as an alternative to or in conjunction with a trust, for succession, philanthropic or business objectives.

Limited Liability Companies

The Cook Islands Limited Liability Company ("CILLC") is an important component in the suite of wealth planning tools the Cook Islands offers to professional service providers and their clients. Whilst addressing concerns US attorneys face when using domestic US LLCs, the CILLC appeals to an international client base due to the flexibility, certainty and enhanced protection it provides when struc-

turing and managing wealth. It gives its members the opportunity to implement a management and ownership structure best suited to hold and invest both their liquid and illiquid assets.

The LLCA has incorporated several asset protection features consistent with the Cook Islands asset protection framework. The most notable of these being the provision of a charging order as the “sole and exclusive remedy available to a creditor in respect of a member’s Membership rights.”

The Cook Islands has made it clear that such charging orders will not operate as a lien over the member’s interest in the CILLC and the creditor will not become an assignee of any of the membership interests.

Any rights and obligations existing in relation to a membership interest, which is the subject of a charging order, shall apply to the member as if the charging order had not been issued.

Other asset protection features of the LLCA include:

- The person in whose favour a charging order has been issued shall have no right to interfere in the management of the CILLC, seize or liquidate its assets

or effect its dissolution;

- Contribution calls made by the CILLC on members can be paid by the company from capital or income otherwise payable to members as distributions. This is also the case where a charging order has been issued upon a member’s interest. In such circumstances as the distribution will never reach the member, the creditor has no claim to it;
- Foreign judgements seeking to deprive a member of a CILLC of any membership interest or rights will not be recognised in the Cook Islands courts.

Conclusion

For centuries people have been seeking and finding ways, both legal and otherwise, to protect and preserve their wealth. The Cook Islands courts and legislature have assisted those looking for legal means by developing and codifying the laws pertaining to trusts, companies and foundations.

The Cook Islands structures created provide an ideal platform from which wealth can be held, managed, invested, distributed and, most importantly, protected and preserved to ensure succession to the next generations.

■ Alan Taylor



Author Bio

Alan Taylor

Alan Taylor is the Legal Technical Advisor for Cook Islands Financial Services Development Authority (Cook Islands Finance). Alan graduated from Auckland University in New Zealand with degrees in law and economics and is admitted to the bar in New Zealand. Alan is a member of STEP, the Institute of Leadership and Management, and the New Zealand Institute of Directors. Alan has worked in the international financial services industry in the Cook Islands, Jersey, and Singapore. He has held legal, business development, and senior management positions in both public and private organisations.

The Cook Islands International Relationship Property Trust



The Cook Islands is internationally recognised for its international trust, particularly the enhanced asset protection provisions provided to settlors through those trusts. The most recent development, however, in CI trust law is not focused on protecting a settlor's assets from creditors, but protecting settlors from themselves!

The Cook Islands International Relationship Property Act 2021 ("Act") is a unique initiative allowing couples to settle assets on trust when they are in a relationship that are to be kept in trust when they are not.

The Act 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.

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 the 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.

Trusts generally enable assets to be retained and kept intact and managed for the benefit of the settlors' family, even where the settlors separate or divorce. However, over the past 20 years or so matrimonial courts have extended their jurisdiction to bring assets held in family trusts into matrimonial property disputes. 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 trust is treated as though it never existed.



The International Relationship Property Trust provides a solution whereby couples can choose to keep designated trust assets intact, in defined shares and under common management, in the event of their separation or divorce.

Couples in dispute will often forget the intentions and desires they had when settling assets onto the trust in the good times when things turn acrimonious. Lawyers are determined to get their client the best possible deal and courts want to be seen to be equitable. The long-term interests of beneficiaries, usually the settlor's children, and the settlors themselves, are overlooked for short-term solutions.

The International Retirement Property Trust ("IRPT") seeks to address this problem, providing settlors with a solution whereby couples can choose to keep designated trust assets intact, in defined shares and under common management, in the event of their separation or divorce.

One of the key features of the Act is how it

provides for the protection of family businesses. Family businesses are particularly susceptible to the separation or divorce of the shareholders. The forced sale of ownership interests in a family business can be catastrophic to both its value, and the interests of the beneficiaries, often resulting in the demise of the business.

Special provision is therefore made in the Act for the settlement of family-owned businesses onto the IRPT. The Act provides for the retention of a family business and its ownership indefinitely or for a specified 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. Provision is also made for the management of a family business by a controlling principal (being someone with sufficient ownership of the business to be able to exercise effective control) where it is seen as in the best interests of beneficiaries that the business continues following separation.

Other features of the Act include:

- **Rights restricted:** The right of a party to challenge the terms of the IRPT at a later date is restricted, as are the remedies available upon a successful challenge.
- **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 the 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.

- **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.
- **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
- **Legal effect:** The legal effect of settlement and registration of an 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.

CONCLUSION

The IRPT provides a practical solution to an increasingly common problem. It allows couples to overcome the uncertainties inherent in relationships and the impact that might have on their property and 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 under the terms of the trust instrument providing stability and peace of mind to all parties concerned.

■ Alan Taylor



Safeguarding Family Wealth.

Protect relationship property
from the consequences of
divorce and separation.

A Cook Islands International Relationship Property Trust (IRPT) provides certainty as to how specific property set aside as "relationship property" will be administered, managed, and distributed during the relationship and following a couple's separation.

Assets remain intact and available for the benefit of both the couple and their children - under the terms of the trust instrument - providing stability and peace of mind to all parties concerned.

