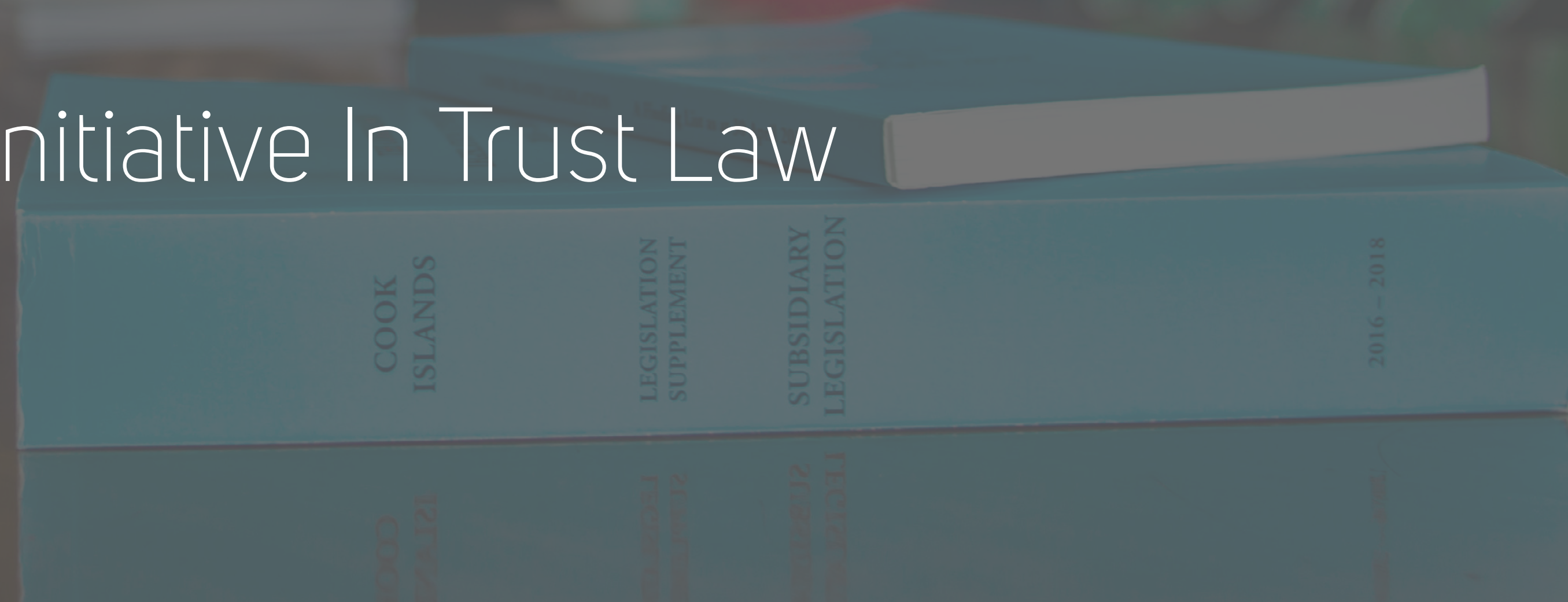




TRUSTEES & FIDUCIARIES  
(COOK ISLANDS) LTD

# COOK ISLANDS INTERNATIONAL RELATIONSHIP PROPERTY TRUST

A New Initiative In Trust Law





## Pioneering the Cook Islands International Relationship Property Trust Act 2021

Reuben Tylor, acted as advisor to a substantial trust for a large family for some 30 years. The settlor spouses divorced and several years of litigation followed consuming a large part of the trust assets and leading to the demise of an otherwise very successful business. The remaining trust assets were split up and distributed to the spouses.

Within 3 years one of the settlor spouses had lost everything and become destitute. The issue of the couple ended up with only a small portion of the previous estate to provide for their financial needs in the future.

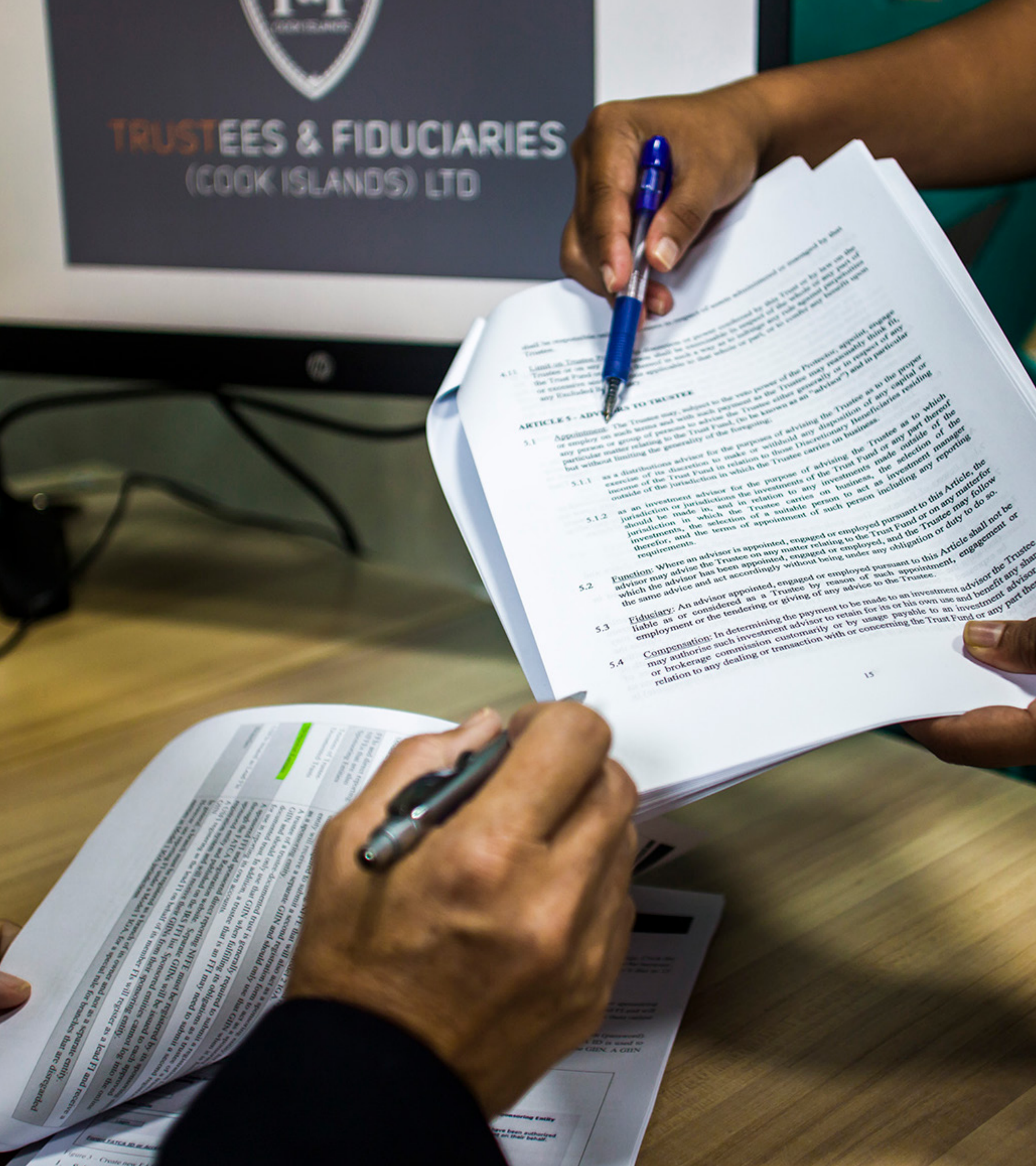
Because of this experience, Reuben decided to research possible solutions offered in various jurisdictions. He met with several trust specialists in the US, Europe and Asia, 2 notables being Barry Engel (Denver, Colorado) and Ben Bendelow (Jersey) and from these meetings came up with the concept of the Relationship Property Trust ("RPT").

To address the problem we had to create a legal regime with 3 key elements;

- a) It had to allow couples to choose to keep trust assets intact rather than allow them to be divided and distributed upon divorce, and
- b) It had to protect the interests of subordinate beneficiaries, and
- c) It had to limit the ability of foreign courts to interfere with the principle in para a)

The concept was approved by the Cook Islands government and the offshore industry.

The legislation was then drafted in conjunction with US lawyers, in particular Elizabeth Morgan of Elizabeth Morgan & Associates, and the New Zealand Parliamentary Counsel Office.



# The Cook Islands International Relationship Property Trust Act 2021 ("the Act")

The fundamental purpose of the Act is to allow parties to decide that in the event of divorce or separation, the property held by the RPT will not be divided and distributed by the court, but will be kept intact for the benefit of themselves and future generations.

The Cook Islands is a recognised jurisdiction for the establishment of international trusts. The emphasis in the past has been on protecting trust assets from frivolous and sometimes vexatious claims by third parties against settlors.

This Act does not protect assets from third parties but rather is designed to protect couples and their issue from themselves.



## COOK ISLANDS RELATIONSHIP PROPERTY TRUSTS

### The Mischief

The mischief addressed by the Act is well understood by trustees. Having carefully administered the assets of a family trust over several decades, a trustee suddenly finds all its work undone by a divorce court when the settlors separate or divorce.

Assets invested into long term investments are subject to a fire sale at a discount.

Family businesses are subject to forced sale, or retained subject to crippling refinancing obligations. Or an outside buyer may need to be found for the interest of a spouse.

Capital identified for the support of future generations may be suddenly distributed outright to a spouse with no experience of investment, and potentially exposed to gold diggers.

Contingency fees from lengthy litigation over competing claims amidst strong emotions may consume a substantial part of the assets.

Children with expectant interests under a succession plan, suddenly find themselves completely disinherited, or taking a secondary position behind new relationships and new issue.

Long term planning designed to minimise taxation is ignored.

“THERE IS NO OTHER” clear planning technique addressing the fundamental issue of keeping the assets of a family intact upon the separation or divorce of the spouses.



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THE ACT TAKES A NOVEL APPROACH TO  
RELATIONSHIP PROPERTY

The Act does not attempt to enter the fray as to what is and what is not matrimonial property, nor as to what entitlements the parties might have to that property.

The Act deals only with assets which the parties have agreed are matrimonial or relationship property.

It provides a statutory regime under which the parties may:

- a. settle property on a trust,
- b. for the benefit of themselves and their issue
- c. agree upon their respective shares in that property,
- d. agree that the property is NOT to be divided and distributed between them in the event of their future separation or divorce, and
- e. instead, be kept intact for the benefit of the parties and their issue.

What is unique about the Cook Islands is that it provides a statutory regime which;

- f. Reinforces the rights of parties in a relationship to set aside property which is NOT to be divided and distributed between them in the event of the separation or divorce and;
- g. Restricts foreign matrimonial courts from overruling or interfering with these arrangements.

COOK ISLANDS RELATIONSHIP PROPERTY TRUSTS

## Get in touch with the RPT pioneers

We are wholly owned and controlled by professionals residing in the Cook Islands who have more than 50 years combined experience in trustee company operations.

We have no association with any financial institution ensuring our advice and administration of trusts remains impartial and independent.

Contact Nadine Newnham for more details on this innovative trust product at:

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