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GUIDELINES TO THE INTERNATIONAL RELATIONSHIP PROPERTY TRUST ACT (2021)

Introduction

The International Relationship Property Trust Act 2021 (the “Act”) is designed to address problems that arise when the founders of a HNW family divorce. Family trusts have been the traditional wealth protection vehicle for several centuries, effectively transferring wealth from one generation to another. However, in recent years both legislatures and matrimonial courts have extended their jurisdiction to include assets held by family trusts. More recently matrimonial courts have developed new doctrines which completely void a trust, to bring trust assets back into their jurisdiction. (e.g., “illusory trusts”). There is now considerable uncertainty in the law in this area. Although trusts still have a valuable part to play in wealth planning, it is difficult for families to plan for the financial security of future generations when the legal goal posts keep moving.

Once the trust assets fall within their jurisdiction, the Courts apply the “clean break” principle to divide and distribute the assets between the founders. This process can result in substantial losses following forced fire sales, and significant litigation costs. It also means the wealth creator in the family may lose control of more than 60% of the family assets.

Rather than challenge the extended jurisdiction and new doctrines, the Act takes a novel approach. The Act rebuts the clean break principle, and recognises the right of parties in a relationship to agree to keep chosen assets intact, rather than divide and distribute them, in the event they divorce or separate in the future.

The Act also addresses a number of issues in trust law which have caused the courts to take a critical approach to trusts. A number of provisions are designed to protect subordinate parties, particularly after a separation. While the Act contains firewall provisions to protect a Relationship Property Trust against foreign judgments, it balances these with provisions giving courts discretion to adjust the relative interests of parties in certain circumstances. Ultimately, the legislation is designed to be both “fair and reasonable” in order to qualify the Act and Cook Islands law for recognition by a foreign court.



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Parts of the Act

The Act consists of several parts.

PART 1

Definitions

The terms “relationship” (defined to include de facto partners), “relationship property” and “separation” are important, as is the definition of “defacto relationship” in S 5. See also definition of “relationship agreement” in S 12.

Purpose of Act

S 6 sets out the purpose of the Act which is to “preserve and retain the value and benefit of relationship property after a relationship ends”

PART 2

Preliminary Requirements

S 9 details the matters which must be contained in the trust deed. This includes identifying the relationship, the relationship property, the shares of each party in the relationship property, and confirmation that the relationship property is not to be divided and distributed upon separation or divorce. The Act applies to parties who identify themselves to be in a “relationship” (S 9(b).)

The trust deed must also be accompanied by certificates as to disclosure and independent legal advice (S 9 (g-i)).

The parties themselves identify the property (“relationship property”) which is to be held by the relationship property trust (S9 (d))

S 10 requires ratification of the trust deed by both parties within 45 days.

Clean Break

S 16 & 17 are key provisions. Under S 16, the relationship property **must** be held intact and remain upon the trusts declared, and **must** not be divided and distributed in the event the parties separate **unless** the trust instrument provides otherwise.

S 17 permits the trust deed to provide for exceptions to S 16.



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It is important therefore that the deed of trust set out the circumstances if any under which the trust assets might be distributed if the parties do separate and or divorce.

PART 3

deals with the technical aspects of registration of a RPT.

S 27 excludes the asset protection provisions of the International Trusts Act 1984 (ITA) from applying to a RPT unless the RPT is also registered under the ITA

PART 4

deals with the content of trust instruments.

S 28 states that provisions directing that relationship property not be sold, or divided and distributed, are valid, legitimate and enforceable.

S 30 & S31 limit the powers to amend a trust once the parties have separated.

S 32 gives the Court power to amend the trust in certain circumstances.

PART 5

introduces the concept of a family business.

S 33 defines a family business and refers to a “controlling principal” (as defined in S 4).

S 34 permits a trust instrument to retain assets indefinitely as well as prohibiting division or distribution.

S 35 confirms these provisions are valid, effective and enforceable.

S 35 (3) gives the Court power to amend these terms in certain circumstances and upon application by the trustee.

PART 6 .

S 36-39 set out the process for the parties and the trustee to follow when the parties separate.

PART 7

deals with trustee’s duties and liabilities.

S 42 allows a trust instrument to limit liability of a trustee, subject to S 43.

S 44 addresses trustee’s duties when the trustee receives notice the parties have separated.

The remainder of Part 7 deals with general provisions of Cook Islands trust law.



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PART 8

deals with challenges to a RPT.

S 75 sets out the grounds upon which a settlor can challenge a settlement of a relationship property trust or its terms, in a Cook Islands court. These are restricted to involuntary consent, inadequate disclosure, and lack of independent legal representation. *If proven* the Court has discretion to set the trust aside. (S76 (1)).

A settlor can also apply for relief where the agreement or its terms are unconscionable, although this is limited to the circumstances at the time the relationship agreement was entered into. (S75 (1) d). If proven, the Court must not set the trust aside, nor order the division and distribution of trust assets. (S76 (2,)) The likely remedy in these situations is for the Court to adjust the shares of the parties, (S 76 (3)).

S 77 provides for a trustee to apply to the Court to adjust the shares where a beneficiary who participates in the management of trust property has acted improperly to the disadvantage of another beneficiary.

PART 9

deals with the recognition of foreign judgments relating to a RPT.

S 82 (1) states that a foreign judgment will not be recognised if it is inconsistent with the purpose of the Act or its effect is to order the sale or division and distribution of relationship property.

S 82 (2) & (3) create exceptions to S 82 (1), as does S 83 in relation to injunctions.

S 86 permits a trustee of a RPT to appear in a foreign court without submitting to jurisdiction for the purposes of Cook Islands law.

PART 10

sets out general modifications to Cook Islands law relating to trusts.

PART 11

deals with privacy of information.

PART 12

sets out the administrative provisions of the Act.



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PART 13

includes miscellaneous provisions including the prohibition against imposing any taxes on a trust or beneficiaries of a trust (*S 112*).

RELEVANT LEGISLATION

The International Relationship Property Act 2021 (“the Act”)

The IRPT Regulations 2022 setting out forms for registration and fees

In addition, there is general trust legislation which may be applicable and includes:

The Trustee Act 1958 (New Zealand)

Cook Islands Trustee Companies Act 2015

Trustee Companies Due Diligence Regulations

And anti-money laundering legislation:

Financial Transactions Reporting Act 2017

Financial Transactions Reporting Regulations 2017.

END