

Fact Sheet

International Trusts Act: Section 13B

An explanation of section 13B of the International Trusts Act and when a Cook Islands International Trust may be challenged for fraud.



Background

In 1989 the International Trusts Act 1984 (the “Act”) was amended to include a number of provisions designed to enhance the protection given to assets held in a Cook Islands International Trust. The Cook Islands had made a conscientious decision to focus its international legislation on this essential aspect of wealth planning. The most significant of those provisions incorporated into the Act, and which generated great interest, were contained in section 13B.

Section 13B Explained

Section 13B provides certainty to all parties to a Cook Islands International Trust, and anyone who may consider laying claim to any assets in a Cook Islands International Trust, as to when a settlement of assets upon such a trust may be deemed not to be fraudulent.

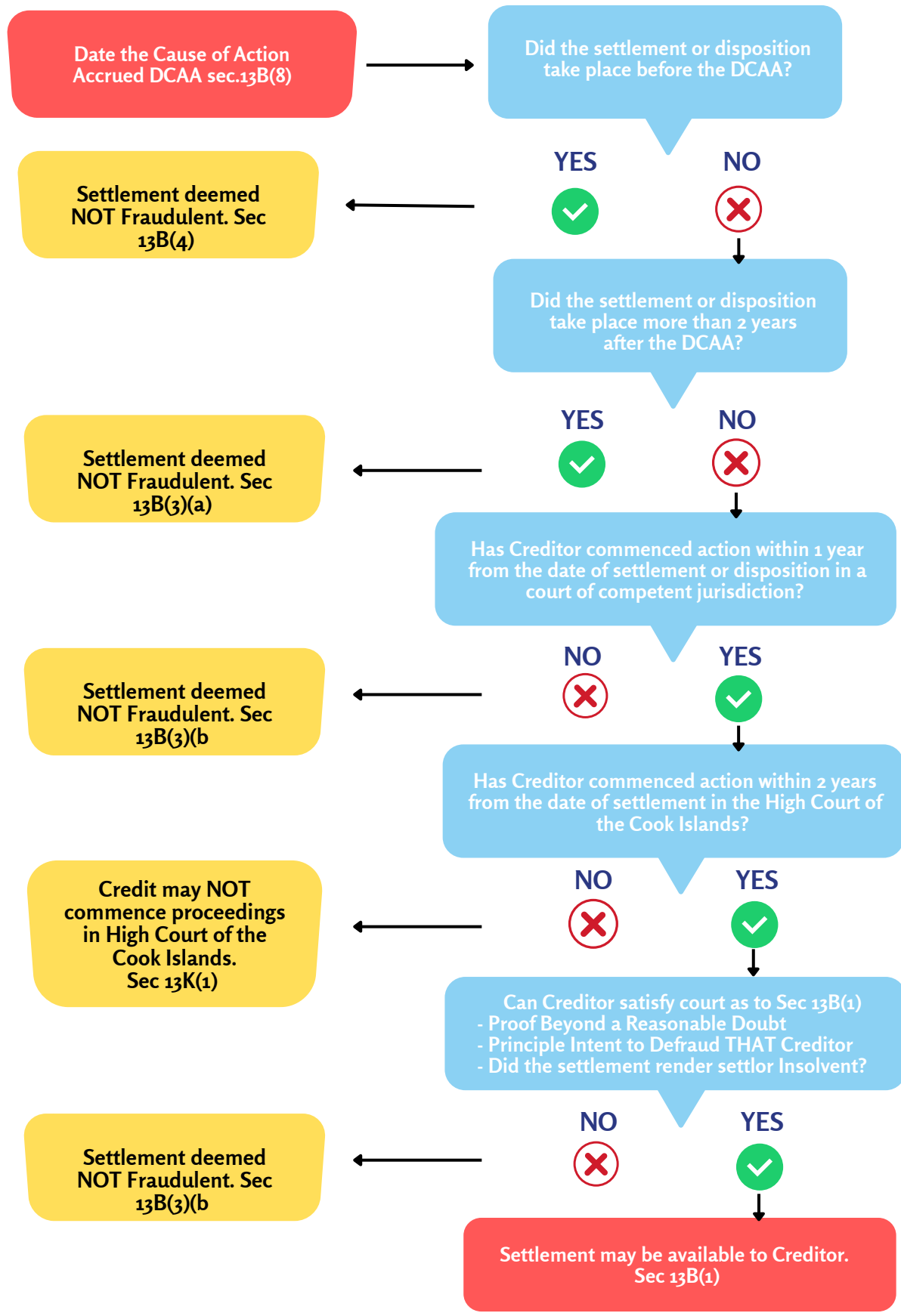
To summarise, a Cook Islands International Trust, or any settlement thereon, shall not be fraudulent against a creditor of the Settlor if the settlement occurs either prior to the creditor’s cause of action arising or more than two years after it arose. If, however, the cause of action arises within two years of the settlement taking place, the creditor must bring an action in a court of competent jurisdiction within one year of the settlement.

In addition to the limitation periods of section 13B, any action or proceeding to seek relief or remedy pursuant to section 13B, must be commenced in the High Court of the Cook Islands within two years from the date of the settlement upon the Cook Islands International Trust that is the subject of the creditor’s claim. Therefore, in the event a creditor can show that a settlement upon a Cook Islands International Trust was made within two years of the date the cause of action accrued and he/she commenced proceedings in a court of competent jurisdiction within one year of the date of the settlement, he/she must also have commenced proceedings in the High Court of the Cook Islands within two years of the settlement in question to enable his/her action to proceed further.

If the action is brought in time, the creditor must then prove beyond reasonable doubt that the settlement was made with the principal intent to defraud that particular creditor and that the settlement rendered the Settlor insolvent. The flow diagram on page 2 illustrates the pivotal provisions within section 13B.

Date of the Cause of Action

Determining the date the cause of action accrued is crucial when considering the potential success of a claim against a settlement of assets upon a Cook Islands International Trust. It is that date that sets the claim process in motion with the time frames emanating from it being specific to provide certainty. Section 13B(8) of the Act provides that the date of the cause of action “shall be, the date of that act or omission which shall be relied upon to partly or wholly establish the cause of action”. Where there is more than one act or a continuing omission, the date shall be the date of the very first act or when the omission commenced.



Flow Diagram: Applying Section 13B of the International Trusts Act