

# Fact Sheet

## Cook Islands International Trusts

*Cook Islands International Trusts, a cornerstone for wealth protection structures.*

### Background

The cornerstone of the Cook Islands international financial services industry is the Cook Islands International Trust established pursuant to the International Trusts Act 1984 (the “Act”). The Cook Islands has, through amendments to the Act, made itself an industry leader in the preservation and protection of wealth and therefore the trust jurisdiction of choice for many high net worth individuals, their families and their professional advisors, when implementing a wealth management plan.

Cook Islands trust law is derived from the Common Law which has been enhanced by the Act allowing trustees to better carry out their duty to preserve and protect trust assets. The Act aims to simplify many of the difficult aspects of trust law whilst retaining the fundamentals of the trust concept. The Act overcomes a number of features of trust law that have existed for centuries but are no longer relevant to today’s society.

When the Cook Islands introduced provisions into the Act specific to asset protection it was described by many as innovative and ground breaking and by some as aggressive. But since that time global and regional economic and political uncertainties have seen Cook Islands asset protection become accepted as the standard required to ensure the best protection possible. Many jurisdictions have now followed the Cook Islands lead by enacting similar legislation.

### Technical Features

The Cook Islands International Trust is a familiar, flexible vehicle from which to administer, manage and distribute wealth. The Act contains many technical and practical features that can be obtained through the use of a Cook Islands International Trust.

**Perpetuity Period:** The Act abolishes the Common Law rule against perpetuities. A Cook Islands International Trust can exist indefinitely or terminate upon the happening of a specified event or date.

**Fraudulent Conveyance:** The Act has repealed the Statute of Elizabeth 1571, the English statute which provides that any transfer made with the intention to defraud creditors will be deemed fraudulent. In its place the Act provides rules that give certainty to the rights of those who might claim against trust assets by reference to specific dates and events.

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.

**Burden of Proof:** A creditor of the Settlor shall only have access to the assets of the particular settlement in question, and not the entire trust fund, where he/she can bring an action within the time limits prescribed, and prove beyond reasonable doubt that the particular settlement was made with the intention to defraud that creditor and once made rendered the Settlor insolvent.

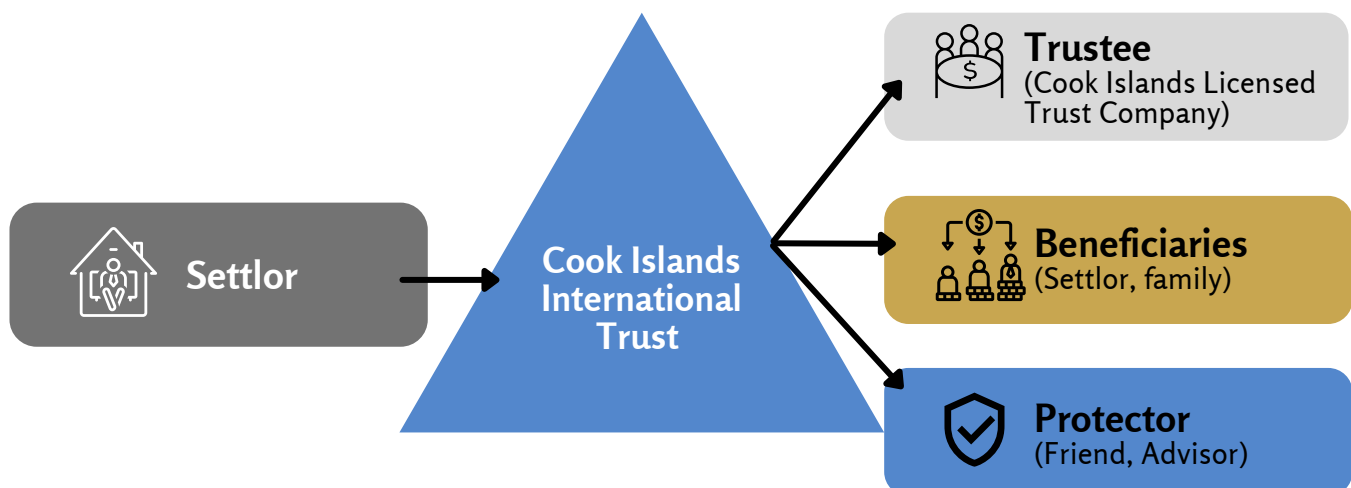
**Foreign Judgments:** A Cook Islands court will not recognise any judgement that is based upon any law inconsistent with the Act or relates to a matter governed by the law of the Cook Islands. Any claim against assets in a Cook Islands International Trust must therefore be commenced de novo in a Cook Islands court.

**Forced Heirship:** No Cook Islands International Trust or any settlement on it, shall be void or voidable, and nor shall the capacity of a Settlor be questioned, in the event such trust or settlement may defeat the heirship rights of any person related to the Settlor.

**Bankruptcy:** No Cook Islands International Trust or any settlement on it, shall be void or voidable in the event of the Settlor's bankruptcy in his/her home jurisdiction.

**Spendthrift Beneficiaries:** Any interest in trust assets given to a beneficiary during his/her lifetime shall not be alienated or pass by bankruptcy, insolvency or liquidation or be seized or taken in execution by process of law.

**Common Law Rules:** The Act specifically abolishes the rules against accumulations and double possibilities and gives the Trustee the discretion to avoid the rule in *Saunders v. Vautier*.



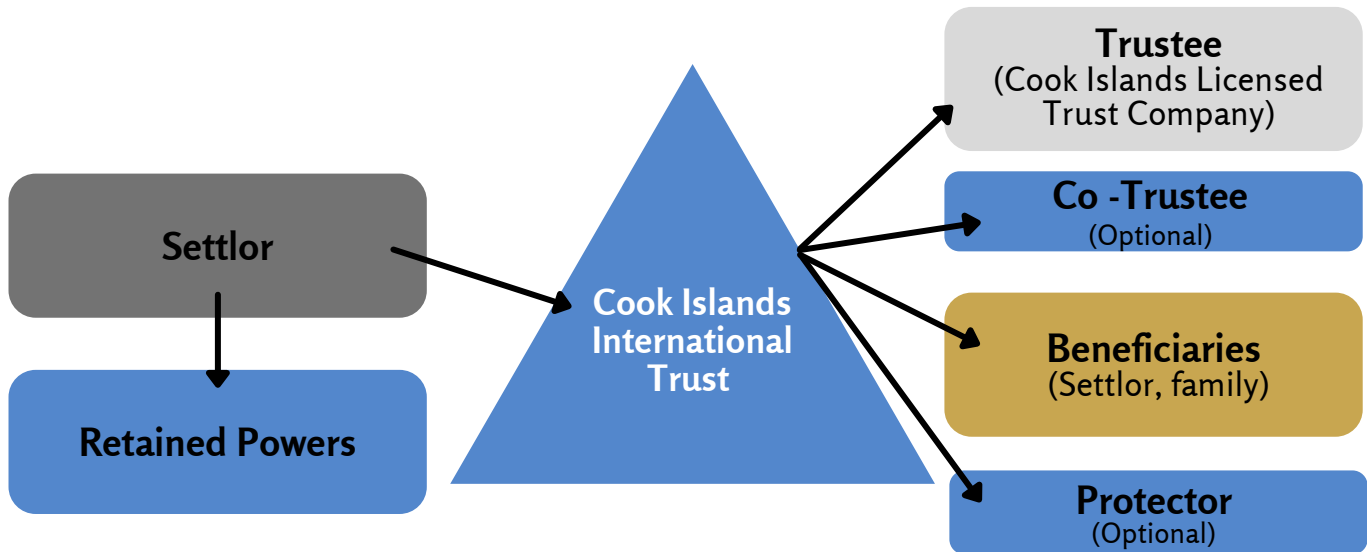
*Structure Diagram: Cook Islands International Trust*

## Practical Considerations

A Cook Islands International Trust can be structured as a purpose trust, whether for charitable or non-charitable purposes, a discretionary trust or one with fixed interest beneficiaries, or any combination of the same. The Settlor can retain elements of control over trust assets by using any one or more of the following:

**Protector:** A Protector may be appointed with such powers and functions as set out in the trust instrument and shall not be held liable as a fiduciary unless the trust instrument provides otherwise. The Protector can be the Settlor, a Trustee or Beneficiary if desired.

**Co-Trustee:** In addition to a licensed Cook Islands trust company, an individual or entity may be appointed as a co-trustee of the trust. The co-trustee does not need to be licensed in the Cook Islands to carry on trust company business.



**Structure Diagram: Retaining Elements of Control**

**Retention of Powers:** A Cook Islands International Trust shall not be declared invalid or a disposition declared void due to the Settlor retaining, possessing or acquiring certain powers including; the power to amend or revoke the trust, the power to dispose of trust assets, the power to remove or appoint a Trustee or Protector, and the power to direct the Trustee or Protector on any matter (see section 13C of the Act).

## Taxation

A Cook Islands International Trust is tax neutral in that it is not subject to any form of Cook Islands taxation. The Settlor and Beneficiaries, being non- resident in the Cook Islands for tax purposes, will however be subject to the tax laws in their home jurisdictions in so far as they apply to foreign trusts and assets transferred to and distributions made from such trusts.

## Registration

Each Cook Islands International Trust is registered by providing the Registrar with the names of the trust and the Trustee and the date the trust was established. There is no requirement to file the trust instrument or the names of the Settlor or Beneficiaries. Registration insulates the trust from general Common Law and Cook Islands statute law insofar as those laws are inconsistent with the Act.

**Important Information:** Cook Islands Finance does not provide advice, recommendations or opinions regarding legal and/or tax matters under any circumstances. To the extent that this communication, or anything referenced herein may concern tax matters, it is not intended to be used, and cannot be used, for the purpose of avoiding tax liabilities or penalties that may be imposed by law, foreign and domestic. Cook Islands Finance strongly recommends that before any person makes a decision to create a structure, professional legal and tax advice should be taken in his/her country of residence.