



**COOK ISLANDS TRUST**  
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Cook Islands trust law has a number of advantages in several areas, the most obvious one being asset protection. Other areas that might benefit a client include repeal of perpetuities law (allowing dynasty trusts) and the negation of the principle in *Saunders v Vautier*.

To enjoy the benefits of Cook Islands law a trust must first be registered under the International Trusts Act 1984 (ITA). A prerequisite of registration is that one of the trustees of the trust must be either:

- (i) a Cook Islands trustee company; or
- (ii) a Cook Islands international company.

The standard structure is where Cook Islands Trust Corporation provides the sole trustee, or joint trustee, of a Cook Islands Trust. However in some cases the client's advisors, or the client themselves, prefer to keep control of their investment and trust activity, while also taking advantage of Cook Islands law. There are two specific structures that we can provide to cater for these situations.

### **Private Trustee Company**

In this structure the client purchases a Cook Islands international company, appointing its own nominees as directors. That international company acts as trustee of the client's trust, becoming a "private trust company" (PTC). The client can therefore exercise control over the PTC acting as trustee for the client's trust or trusts. Similarly, a foreign trust company can be appointed as a director (corporate directors are permitted) of the PTC, and can effectively administer the trust via the PTC.

A PTC may act as the trustee of up to 3 Cook Islands trusts without being required to hold a trustee company license. The PTC may not "carry on business" as a trustee company, so must not earn trustee fees. Any fees required where a trustee company is involved will need to be extracted in some other manner.

Our role in such a relationship is to undertake the following functions:

- (a) Complete the Incorporation of the PTC and the initial registration of the Trust;
- (b) Provide a Registered Office and Resident Secretary for the PTC, and act as the Registered Office for the Trust;

- (c) Process the annual renewals of registration for both the company and the trust;
- (d) File annual returns on behalf of the PTC, and lodge returns for any changes in company structure – such as changes in directors.

As a result of the above services, we are required to complete standard due diligence on the owners and directors of the PTC and the Settlor of the Trust. We must maintain copies of the basic company statutory records in the Cook Islands, along with a copy of the Trust Agreement.

### **Custodian/ Managing trustee structure**

Cook Islands law provides for delegation of duties between a custodian trustee, whose sole duty is to hold title to assets, and a managing trustee, who carries out all administration of the trust. Section 19F of the ITA also limits the liability of the custodian trustee.

We have therefore formed a number of trusts with other trust companies where we act as custodian trustee, and the other trust company acts as managing trustee. We charge a standard fee for this appointment, irrespective of the assets, and the managing trustee has flexibility to either charge a fixed fee also, or to charge on the basis of assets under management.

If this structure is used for an asset protection structure, the trust document normally provides for the removal of the managing trustee in the event of certain defined events, to avoid exposure to litigation. The custodian trustee in the Cook Islands then becomes the sole trustee with full powers and remains in control of the trust until the threat ends, at which stage the original structure can be restored.

In this structure, unless there are major changes in the composition of trust assets, we are typically only required to register and renew the trust annually. Of course we require standard due diligence on the Settlor and any co-trustees of the Trust.

### **Foreign Judgment Enforceability**

Perhaps a note on one of the asset protection features of Cook Islands law. Asset protection law is not just about escaping creditors, but about ensuring foreign court decisions do not over ride the laws of the trust jurisdiction. All English law jurisdictions have obligations to recognise and give effect to judgments of foreign courts. However the Cook Islands has special provisions in the ITA which restrict its courts from giving effect to or recognizing a decision of a foreign court in relation to an International Trust.