



COOK ISLANDS TRUST CORPORATION LTD

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Introduction to Cook Islands Asset Protection Trusts

CIT EXPERIENCE

Cook Islands Trust Corporation Ltd. (CIT) was incorporated in the Cook Islands in 1988, and is licensed as a trustee company. We have a wealth of experience to draw on in the administration of trusts and in managing difficult asset protection issues.

Antony Will, Managing Director. Antony joined CIT in 2000 as in-house counsel, having spent 3 years in London at a major investment bank. Antony is responsible for managing our client and legal services department, and overseeing the operation of the company.

Reuben Tylor, Director. Reuben has specialized in offshore work since 1982. In 1989, he pioneered and developed the first asset protection legislation for which the Cook Islands is the dominant international jurisdiction.

Iaveta Short, Director. Iaveta has had a distinguished international career as a lawyer, a Cabinet Minister, and foreign diplomat, and also played an important part in setting up the Cook Islands tax haven. In recognition of his services to the Cook Islands he was awarded an OBE from Her Majesty the Queen in 1998.

Paul Houghton, Financial Controller. Paul is a New Zealand qualified chartered accountant with over 16 years experience in a number of high quality roles.

COOK ISLANDS LAW

The Cook Islands is recognised as the world leader in formation of asset protection trusts, safeguarding the assets of high net worth clients. Cook Islands law contains a number of unique features that make the operation of an asset protection trust administratively friendly and highly protective.

There are four main features of Cook Islands law that provide effective barriers to creditors attacking an International Trust:

- **Practical Barriers** – including instructing local counsel and appearing in local Courts;
- **No Enforcement of Foreign Judgments** – Cook Islands courts will not recognise or give effect to judgments of foreign courts in relation to International Trusts;
- **Barriers to claims for fraudulent transfer** – including strict time limits on bringing an action; no action can be brought for ‘future fraud’ i.e.: if the transfer of assets to the trust occurs before a creditor’s cause of action arises; requirement of proof of fraud beyond a reasonable doubt (criminal standard).
- **Procedural law** – prevents ‘fishing expeditions’ by creditors, puts onus of proof on the creditor, and requires that all facts and circumstances be established at the outset of the case.

In addition to the protective aspects, there are numerous provisions that enable a Cook Islands trust to be administered without requiring the settlor to give up all control over the trust assets. 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*.

BASIC STRUCTURE OF THE ASSET PROTECTION TRUST

The trust structures that we recommend focus on ensuring that any challenge to the trust has little chance of succeeding. The way in which Cook Islands Trust Ltd (wholly owned subsidiary of CIT) operates and administers trusts in its role as trustee is also geared towards ensuring that the trust cannot be successfully challenged. A further, vital point is that CIT maintains no presence outside of the Cook Islands and thus is not exposed to the exercise of jurisdiction by foreign courts.

The Parties

Settlor:	The client, the person putting the assets into the trust.
Trustees:	Hold the title to the assets and administer the running of the trust.
Protector:	Oversees the operation of the trust, as well as removes and appoints the trustees. Often the settlor, but can be settlors attorney or family member.
Beneficiaries:	Those who are to receive the benefits (income and capital payments) from the trust. Usually settlor plus family members. Can include any person or class of people that the client chooses.

The trust itself can be structured to suit particular client needs. Some examples of the typical structures that we establish include the 'Foreign Asset Protection Trust' the 'Co-Trustee Structure' and the 'Private Trustee Company'.

The Foreign Asset Protection Trust

This structure is most commonly used for Nest Egg trusts and offers the best level of protection against threatened action by a creditor.

Cook Islands Trust Limited is appointed as the sole trustee. The trust has a protector who can veto any trustee actions and can remove the trustee at will. The trustee usually appoints an Investment Adviser, (often the settlor's existing financial planner), approved by the protector. A foreign custodian bank is also involved.

The best level of protection is offered if assets are custodied outside of the settlor's home country. For this reason assets are often held by a Swiss custodian bank, with an Investment Manager also being appointed to direct all transactions. For additional client control, the trustee may establish an underlying holding company or LLC in the Cook Islands to hold the assets. The client, or chosen advisors, may be appointed as the managers of the underlying company and as such can control the day to day investment operations.

The structure is designed to withstand litigation without further changes. Although with an underlying holding company, it may be prudent for the manager to be replaced if a threat of litigation occurs.

The Co-Trustee Structure

This is often adopted by a settlor who has no current concerns but is conscious that there may be some liability in the future and wishes to establish a basic structure as a

safeguard. They would like someone on their home jurisdiction, or their existing advisors, to be involved in the day to day administration of the trust.

Two or three trustees are appointed, Cook Islands Trust Ltd plus two co-trustees (can be settlor but preferably settlors attorney or family member), and a protector. The Cook Islands trustee normally delegates its operating powers to the co-trustees. The co-trustees can exercise all powers relating to investment of trust assets and distributions to the beneficiaries according to the settlors "wishes".

The protector oversees all decisions made by the trustees and retains the ability to veto any decision made by the trustees. The protector also has the power to remove and appoint trustees.

Assets may be owned by a domestic entity, such as a corporation or LLC, or may be held in offshore accounts.

If there is a threat to the settlor (e.g. a pending law suit) then the trust structure is changed to become more like that of a foreign asset protection trust. The co-trustees residing in the same country as the settlor are removed, the underlying entity may be liquidated, and any liquid assets placed with a Swiss custodian bank. Investment is then continued under the direction of an Investment Adviser. The Cook Islands trustee becomes responsible for any decisions to distribute to beneficiaries.

Private Trustee Company Structure

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.

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.

Special provisions can be included in the constitution of the PTC to change the shareholders, and therefore the directors and management of the PTC, upon certain specified events. Therefore in the case of litigation the client may be removed from the PTC and have a professional trustee company inserted to manage the litigation and protect the trust assets.

TAX IMPLICATIONS

Cook Islands International Trusts are exempt from tax in the Cook Islands. However, the settlor's of the trust must obtain specialist tax advice in their own country to determine their obligations. Often such trusts can be designed to be tax transparent for income tax purposes, with the settlor being personally liable for any income from the trust in their home country.