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An Act to provide for international relationship property trusts so that relationship property held on these types of trust is managed and administered during the settlors' relationship and is not available for division and distribution among beneficiaries if the settlors separate.

The Parliament of the Cook Islands enacts as follows—

(3 December 2021)

1 Title

This Act is the International Relationship Property Trusts Act 2021.

2 Commencement

This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.

3 Act binds the Crown

This Act binds the Crown.

Part 1

Preliminary provisions

4 Interpretation

In this Act, unless the context otherwise requires,—

beneficiary, in relation to an international relationship property trust, means a person described in **section 14**

controlling principal means a person who, immediately before settlement, has sufficient ownership of a commercial undertaking to be in effective control of the undertaking

court means the High Court of the Cook Islands

de facto relationship has the meaning in **section 5**

disposition and **dispose**, in relation to property, mean—

- (a) every form of conveyance, transfer, assignment, sale, gift, lease, licence, easement, profit, mortgage, charge, pledge, encumbrance, or other transaction absolute or limited, by which any legal or equitable interest in property is created, transferred, or extinguished:
- (b) the disposal of an interest in or right over property by the exercise of a power of appointment, a power of maintenance, a power of advancement, or another authority, including the conferring or variation or surrender of such powers or authority:
- (c) a contract to make a disposition referred to in **paragraph (a) or (b)**

foreign court means a court of competent jurisdiction outside the Cook Islands

independent legal advice includes independent legal advice that the court determines was available but not taken (*see section 75(3)*)

governing law has the same meaning as the expression “proper law”

interested party, in relation to a trust, means a settlor, donor, trustee, protector, or beneficiary, and includes a person claiming through any one of them

international relationship property trust has the meaning in **section 8**

power of appointment means a discretionary power in a trust instrument to transfer, grant, or create a beneficial interest in property, with or without the furnishing of valuable consideration by the beneficiary of the power, including a power the exercise of which is subject to the consent of a third party

property includes—

- (a) real property:
- (b) personal property:
- (c) any estate or interest in any real property or personal property:
- (d) any debt or thing in action:
- (e) any other right or interest

protector means a person who—

- (a) holds the office of protector under a trust instrument; or
- (b) directly or indirectly controls, whether by power of veto or otherwise, the trustees' exercise or performance of 1 or more of their powers, functions, or discretions under the trust; or
- (c) has the power to appoint or remove a trustee

Register of International Relationship Property Trusts means the register required to be maintained by the Registrar under **section 109**

Registrar means the person who is Registrar for the purposes of this Act under **section 108**, and includes a Deputy Registrar appointed under that section

relationship—

- (a) means a partnership of 2 persons existing through marriage, civil union, or a de facto relationship; and
- (b) includes 2 persons contemplating marriage, civil union, or a de facto relationship

relationship property means property owned by either or both of the persons who are in a relationship with each other

separation—

- (a) means the termination, dissolution, or annulment of a relationship; and
- (b) includes a decision not to cohabit with the effect that the relationship has ended

separation notice means a notice given under **section 36**

settle means to create an international relationship property trust by, clearly and with reasonable certainty (subject to the requirements in this Act and any regulations made under it),—

- (a) indicating an intention to create a trust; and
- (b) identifying the beneficiaries (or classes of beneficiaries); and
- (c) identifying the relationship property to be held on trust

settlor means a person who has settled property and includes that person's legal representative or successor in the event of incapacity or death, as the case may be

trust instrument means the deed, trust agreement, will, codicil, settlement, or instrument creating a trust, and includes any variation or amendment to the deed, trust agreement, will, codicil, settlement, or instrument.

5 Meaning of de facto relationship

- (1) For the purposes of this Act, a **de facto relationship** is a relationship between 2 persons—

- (a) who are both aged 18 years or older; and
- (b) who live together as a couple, and
- (c) who are not married to, or in a civil union with, one another.

- (2) In determining whether 2 persons live together as a couple, all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:

- (a) the duration of the relationship;

- (b) the nature and extent of common residence:
 - (c) whether or not a sexual relationship exists:
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties:
 - (e) the ownership, use, and acquisition of property:
 - (f) the degree of mutual commitment to a shared life:
 - (g) the care and support of children:
 - (h) the performance of household duties:
 - (i) the reputation and public aspects of the relationship.
- (3) In determining whether 2 persons live together as a couple,—
- (a) no finding in respect of any of the matters stated in **subsection (2)**, or in respect of any combination of them, is to be regarded as necessary; and
 - (b) a court is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (4) For the purposes of this Act, a de facto relationship ends if—
- (a) the de facto partners cease to live together as a couple; or
 - (b) one of the de facto partners dies.

6 Purpose of this Act

The purpose of this Act is to provide for international relationship property trusts to—

- (a) maintain and administer relationship property during a relationship; and
- (b) preserve and retain the value and benefit of relationship property after a relationship ends; and
- (c) ensure that relationship property can continue to provide support for the persons who settled the trust, and other beneficiaries, after a relationship ends.

Part 2

General provisions

7 Act applies to international relationship property trusts

This Act applies to international relationship property trusts.

8 Definition of international relationship property trust

An **international relationship property trust** is a trust in respect of which—

- (a) the settlors are in a relationship with each other at the time the trust is settled:
- (b) relationship property is settled on the trust:
- (c) each settlor has received separate and independent legal advice concerning their relationship agreement and the trust instrument:
- (d) the trust instrument complies with the requirements in **section 9**:
- (e) the trust is registered under this Act:

- (f) the settlors have ratified the trust instrument within the period specified in **section 10**.

9 Trust instrument

The trust instrument must—

- (a) declare that the trust is an international relationship property trust; and
- (b) identify the relationship of the settlors; and
- (c) include a relationship agreement that meets the requirements in **section 12**; and
- (d) identify the relationship property and the vested and contingent interests of each beneficiary in the relationship property; and
- (e) restrict the division and distribution of relationship property to beneficiaries; and
- (f) provide for the administration and management of relationship property before and after separation; and
- (g) include a record signed by each settlor confirming that they—
 - (i) received full disclosure of the property, income, and liabilities of the other settlor; or
 - (ii) after independent legal advice, waived disclosure beyond that provided; and
- (h) include a signed certificate, in the form set out in **Part 1 of Schedule 1**, from each settlor's legal adviser stating that the legal adviser has provided the settlor with independent legal advice; and
- (i) include a signed certificate, in the form set out in **Part 2 of Schedule 1**, from each settlor stating that they consent to the settlement and the terms of the trust instrument; and
- (j) specify that Cook Islands law is chosen as the governing law for parts, or all, of the trust.

10 Ratification of trust instrument

The settlors must ratify the trust instrument within the period between 14 days and 45 days after the date of their execution of the trust instrument.

11 Trust instrument conclusive evidence of settlors' relationship

The identification of a relationship by the settlors in the trust instrument as required by **section 9(b)** is conclusive evidence of their relationship unless it is proven to the contrary.

12 Relationship agreement

- (1) A relationship agreement required by **section 9(c)** is an agreement between 2 persons concerning relationship property, that affirms, modifies, or waives a right or an obligation in any or all of the following cases:

- (a) in contemplation of their marriage or civil union;
- (b) while the persons are in a relationship;
- (c) on their separation;
- (d) on the occurrence or non-occurrence of an event other than marriage, civil union, or separation.

- (2) A relationship agreement made in contemplation of marriage or civil union does not take effect until the marriage or civil union occurs.

13 Property of international relationship property trust

- (1) Property of an international relationship property trust comprises—
 - (a) relationship property settled on the trust; and
 - (b) any accumulations to the relationship property.
- (2) A settlement of relationship property on an international relationship property trust after the trust is created is invalid if it does not comply with **section 9(d) to (g)**.

14 Beneficiaries of international relationship property trust

The following persons are beneficiaries of an international relationship property trust:

- (a) each settlor, if identified as a beneficiary in the trust instrument;
- (b) a descendant of either or both settlors, if identified as a beneficiary in the trust instrument;
- (c) a person adopted as a child by either or both of the settlors, if identified as a beneficiary in the trust instrument;
- (d) a relative of either or both settlors, if identified as a beneficiary in the trust instrument;
- (e) a successor of a beneficiary referred to in any of **paragraphs (a) to (d)**, if identified as a beneficiary in the trust instrument;
- (f) a charity, if identified as a beneficiary in the trust instrument.

15 Obligations of trustees

A trustee of an international relationship property trust must hold or deal with the trust property for the benefit of the beneficiaries and must—

- (a) comply with this Act and any regulations made under it; and
- (b) act in accordance with the trust instrument.

16 Consequences of registration of international relationship property trust

The registration of an international relationship property trust under this Act has the following consequences:

- (a) the trusts declared must be administered and managed in accordance with the trust instrument;
- (b) if the settlors separate, the relationship property settled—
 - (i) must be held intact and remain upon the trusts declared; and
 - (ii) must not be divided and distributed among beneficiaries; and
 - (iii) must be administered and managed in accordance with the trust instrument for the benefit of the beneficiaries according to their respective beneficial shares.

17 Division and distribution allowed if provided for in trust instrument

- (1) Despite **section 16(b)**, the trustees of an international relationship property trust may divide and distribute relationship property between beneficiaries if the trust instrument expressly provides for division and distribution.

- (2) Nothing in this section prevents the trustees from dividing and holding relationship property on separate trusts for beneficiaries if the separate trusts are consistent with this Act and the trust instrument.

Part 3

Registration of international relationship property trust

Registration

18 Requirements for registration of trust

- (1) A trust may be registered under this Act if—

- (a) at least 1 of the trustees, including a custodian trustee, is—
 - (i) a foreign company registered under the International Companies Act 1981-82; or
 - (ii) an international company registered under the International Companies Act 1981-82; or
 - (iii) a foundation established under the Foundations Act 2012; or
 - (iv) a limited liability company registered under the Limited Liability Companies Act 2008; or
 - (v) a trustee company licensed under the Trustee Companies Act 2014; and
- (b) the settlors and beneficiaries are at all times non-resident; and
- (c) the trust instrument complies with the requirements in **sections 9 and 10**.

- (2) In this section, **non-resident** means—

- (a) an individual not domiciled in the Cook Islands; or
- (b) an individual not ordinarily resident in the Cook Islands; or
- (c) a foreign company registered under the International Companies Act 1981-82; or
- (d) a trustee company licensed under the Trustee Companies Act 2014; or
- (e) a subsidiary of a trustee company being either an international company or a foreign company; or
- (f) a foundation established under the Foundations Act 2012; or
- (g) a limited liability company registered under the Limited Liability Companies Act 2008; or
- (h) an international partnership registered under the International Partnership Act 1984.

19 Application for registration

- (1) An application for registration of a trust as an international relationship property trust must be made—

- (a) by a trustee company licensed under the Trustee Companies Act 2014; and
- (b) to the Registrar in the prescribed form, and be accompanied by the prescribed fee; and

- (c) within 45 days after the date upon which a trustee referred to in **section 18(1)(a)** becomes a trustee of the trust.
- (2) The application must be accompanied by—
 - (a) a certificate from a trustee company certifying that the requirements of **sections 9 and 10** have been complied with and the trust will, on registration, be an international relationship property trust as defined in **section 8**; and
 - (b) a notice of the name and registered office of the trust.
- (3) The period of 45 days in **subsection (1)(c)** may be extended by the Registrar if the Registrar is satisfied that the failure to register was a consequence of inadvertence on the part of an interested party to the trust.

20 Registration

- (1) If the requirements in **sections 18 and 19** are met, the Registrar must—
 - (a) register the trust on the Register of International Relationship Property Trusts; and
 - (b) issue a certificate of registration in the prescribed form.
- (2) A certificate of registration may be issued for a period not exceeding 1 year.
- (3) A certificate of registration signed by or on behalf of the Registrar is conclusive evidence that the international relationship property trust referred to is duly registered under this Act.
- (4) The registration of an international relationship property trust expires at the close of the date specified in the certificate of registration.
- (5) This section is subject to **section 22**.

21 Renewal of registration

- (1) An application for the renewal of the registration of a trust as an international relationship property trust must be made—
 - (a) to the Registrar in the prescribed form, and be accompanied by the prescribed fee; and
 - (b) before the end of the period of registration specified in the certificate of registration.
- (2) The Registrar must renew the trust's registration and issue an updated certificate of registration in the prescribed form if the requirements in **subsection (1)** are met.
- (3) A renewal of registration takes effect from the date of expiry of the last certificate of registration and may be for a period not exceeding 1 year.
- (4) This section is subject to **section 22**.

Deregistration

22 Deregistration

- (1) The Registrar must remove an international relationship property trust from the register if the Registrar—
 - (a) does not receive an application for the renewal of registration before the current certificate of registration expires; or

- (b) reasonably believes that the international relationship property trust did not qualify or no longer qualifies under **section 18** to be registered.
- (2) The Registrar must give 90 days' written notice at the registered office of an international relationship property trust before removing the trust from the register under **subsection (1)**.
- (3) The Registrar must not remove an international relationship property trust from the register under **subsection (1)** if, within the 90 days' notice period,—
 - (a) an application for renewal of registration under **section 21** is filed; or
 - (b) the Registrar is satisfied that the international relationship property trust qualifies under **section 18** to be registered.
- (4) A fee of US\$50 (or if a different fee is prescribed, that fee) must be paid in addition to any application fee payable if an international relationship property trust remains on the register under **subsection (3)(a)**.

23 Resignation of trustee after deregistration

- (1) Each trustee company (and any subsidiary of a trustee company) that acts as trustee of a trust removed from the register under **section 22** may resign, after the trust's removal from the register, in accordance with **subsection (2)**.
- (2) The trustee company must give notice of the resignation to the Registrar and to 1 or more of the following persons:
 - (a) a remaining trustee (if any);
 - (b) the settlor;
 - (c) a protector (if any);
 - (d) a beneficiary.
- (3) A trustee may resign—
 - (a) despite the terms of the trust instrument; and
 - (b) even if the resignation results in the trust having no remaining trustee.
- (4) A trustee who has resigned has no liability in respect of the trust for any subsequent loss or damage suffered by the trust as a result of either—
 - (a) the resignation; or
 - (b) a breach of trust occurring after the resignation.
- (5) **Subsection (4)** applies on and from the date on which a trustee company gives notice in accordance with **subsection (2)**.

Administrative requirements on registration

24 Registration of trust instrument with Registrar

A trustee may file with the Registrar a copy of the trust instrument and any amendment, which must be certified in the manner prescribed and registered as a true copy.

25 Registered office

- (1) The registered office of an international relationship property trust is the registered office of the trustee company that applied to register the trust under **section 19**.
- (2) The registered office is the address for service of the trust.

26 Trustee company must maintain register

- (1) A trustee company must maintain a register of all relationship property trusts it has registered under **section 20**.
- (2) The register must be kept, or be accessible, at the trustee company's principal place of business in the Cook Islands.
- (3) A trustee company must make the register available for inspection if requested by the Registrar.

*International trust may be registered***27 Trust registered under International Trusts Act 1984 may be registered under this Act**

- (1) An international trust registered under the International Trusts Act 1984 (before or after the commencement of this Act) may also be registered under this Act in accordance with the requirements in this Part.
- (2) A provision of the International Trusts Act 1984 applies to an international trust registered under this Act if an equivalent provision is not provided for in this Act—
 - (a) to the extent that the provision of the International Trusts Act 1984 is not inconsistent with an express provision of this Act; and
 - (b) with all necessary modifications to ensure consistency with this Act.
- (3) To avoid doubt, if there is a conflict between a provision of the International Trusts Act 1984 and a provision of this Act, the provision of this Act prevails.

Part 4

Trust instruments

28 Certain types of provisions may be included in trust instruments

- (1) A trust instrument may include provisions (without limitation) that do any or all of the following:
 - (a) prohibit capital distributions:
 - (b) direct that there will be capital distributions on the occurrence or non-occurrence of an event:
 - (c) direct that particular relationship property must not be sold or divided and distributed but retained for the trusts declared—
 - (i) indefinitely; or
 - (ii) for a period of time:
 - (d) direct that relationship property be sold and the proceeds—
 - (i) retained for the trusts declared; or
 - (ii) divided and distributed if the purpose for its retention ceases to exist or on the occurrence or non-occurrence of an event:
 - (e) designate specific relationship property in a schedule and direct how that property must be administered and managed by the trustees:
 - (f) designate a family business that is relationship property for the purposes of **Part 5**.

- (2) Provisions of the kind referred to in **subsection (1)** are valid, effective, and enforceable.
- (3) A settlement and transfer to trustees of relationship property for the trusts declared with a condition that trustees comply with a direction referred to in **subsection (1)(c)** is valid, effective, and enforceable despite statute or common law to the contrary.

29 Unenforceable provisions in trust instruments

A provision of a trust instrument is unenforceable to the extent that it purports to do any of the following things:

- (a) adversely affect a child's right to support from their parents;
- (b) limit or restrict a remedy available to a settlor other than the restrictions on court proceedings imposed by **section 76**;
- (c) modify the grounds for a separation ordered by a foreign court;
- (d) penalise a party to a relationship for initiating a separation;
- (e) determine child custody arrangements to the exclusion of the courts having jurisdiction to determine child custody matters.

30 Amendment of trust instrument

- (1) A trust instrument may be amended—

- (a) in the manner provided by the trust instrument; or
- (b) by the court.

- (2) However, a trust instrument must not be amended after a settlor gives a separation notice to the trustees except by the court.

31 Amendment in manner provided by trust instrument

- (1) Any amendment of a trust instrument under **section 30(1)(a)** must comply with the requirements in this section.

- (2) The amendment must be consistent with—

- (a) the purpose of this Act set out in **section 6**; or
- (b) terms and conditions of the trust instrument that restrict the division and distribution of relationship property.

- (3) The amendment must not permit the sale of relationship property contrary to the terms and conditions of the trust instrument that restrict the sale of relationship property.

- (4) An amendment that affirms, modifies, or waives a right or an obligation must include—

- (a) a signed certificate in the form set out in **Part 1 of Schedule 1** from each settlor's legal adviser that they have received independent legal advice; and
- (b) a signed certificate in the form set out in **Part 2 of Schedule 1** from each settlor that they consent to the amendment.

- (5) An amendment under **section 30(1)(a)** that is inconsistent with the requirements in this section is invalid, ineffective, and unenforceable.

32 Amendment by court

- (1) The court may make any amendment to a trust instrument under **section 30(1)(b) or (2)** provided that the amendment is not inconsistent with the purpose of this Act set out in **section 6**.
- (2) The court may amend the trust instrument to permit the sale or division and distribution of relationship property if—
 - (a) the trustee is of the opinion that the restriction on sale or division and distribution of relationship property no longer serves any useful purpose with respect to the trust; and
 - (b) it is in the best interests of the beneficiaries.
- (3) **Subsection (2)** applies despite **subsection (1), sections 6 and 15**, and any other inconsistent provision of the trust instrument.

Part 5**Relationship property comprising family business****33 Meaning of family business**

In this Part, unless the context otherwise requires, **family business** means a commercial undertaking—

- (a) that is relationship property; and
- (b) in which either or both settlors are a controlling principal; and
- (c) that has been designated in the trust instrument of an international relationship property trust as a family business for the purposes of this Part.

34 Trust instrument may include directions about family business

The trust instrument for an international relationship property trust may provide directions—

- (a) for the retention of a family business by trustees indefinitely or for a period of time;
- (b) prohibiting division or distribution of a family business or its ownership among beneficiaries.

35 Retention of family business

- (1) A settlement and transfer to trustees of a family business for the trusts declared with a condition that trustees comply with a direction referred to in **section 34** is valid, effective, and enforceable.
- (2) If a trust instrument contains a direction referred to in **section 34**, a trustee must not—
 - (a) dispose of any of the family business; or
 - (b) divide and distribute any of the family business between beneficiaries.
- (3) Despite **subsections (1) and (2)**, a court may, on the application of a trustee, order that—
 - (a) the family business be sold and the proceeds retained for the trusts declared; or
 - (b) the business or proceeds be divided and distributed to the beneficiaries.

- (4) The court may make an order under this section if it considers that—
 - (a) the purpose for its retention ceases to exist; or
 - (b) it is in the best interests of the beneficiaries.
- (5) An application for a court order under this section must include—
 - (a) a trustees' report describing the nature of the business; and
 - (b) audited financial statements for the business; and
 - (c) a fair market value of the business; and
 - (d) the reasons for sale.
- (6) In **subsection (5)**, **fair market value** means an independent valuation of property determined by a qualified person assuming a willing buyer and willing seller with neither under any compulsion to buy or sell.

Part 6 Separation

36 Separation notice must be given

- (1) A settlor who becomes separated from the other settlor must give notice in writing to the other settlor and the trustees that separation has occurred.
- (2) **Subsection (1)** is complied with if one of the settlors gives the notice.

37 Effect of separation notice

- (1) A trustee who receives a separation notice must—
 - (a) review the trust instrument for any directions relating to the administration, management, division, and distribution of relationship property following separation; and
 - (b) give effect to those directions.
- (2) If, in the opinion of the trustees, a trust instrument makes insufficient provision for directions relating to the administration, management, division, and distribution of relationship property following separation, the trustees may—
 - (a) have regard to the administration, management, division, and distribution of relationship property before separation for the purposes of administration, management, division, and distribution of relationship property after separation; and
 - (b) apply to the court for directions with recommendations regarding the appropriate directions, at any time.

38 Resumption of relationship after separation

- (1) Settlors who resume their relationship after separation may withdraw a separation notice by giving notice to the trustees that they have resumed their relationship.
- (2) A notice under **subsection (1)**—
 - (a) does not affect anything validly done in consequence of a separation notice; and
 - (b) is a direction to trustees to administer and manage relationship property from the date of receipt of the notice as if separation had not occurred.

39 Notices treated as received by all trustees

A notice under **section 36 or 38(1)** received by a trustee must be treated as received by all trustees.

Part 7

Operation of trust

40 Persons who may administer trust property

- (1) A trust instrument may provide for administration, management, conduct, and control of trust property by 1 or more of the following persons:
 - (a) the trustees, or one of them, before and after separation;
 - (b) agents appointed by the trustees to provide expertise;
 - (c) persons, including a controlling principal, delegated by the trustees to perform or exercise their duties, powers, and discretions.
- (2) The trust instrument may also specify the duties and liabilities of trustees in relation to administration, management, conduct, and control of trust property under **subsection (1)**.
- (3) Provisions in a trust instrument concerning the matters in **subsections (1) and (2)** are valid, effective, and enforceable if they are not inconsistent with **sections 41 and 45**.
- (4) Despite **subsection (1)(c) and (3)**, a trustee must not delegate other than to a co-trustee, any powers, duties, functions, or discretions involving the distribution or non-distribution of property of the trust to a beneficiary including, without limitation, distributions by way of payment, use, advancement, transfer, or assignment.

Trustees' duties

41 General duties of trustees

- (1) It is the duty of trustees to—
 - (a) act honestly; and
 - (b) act in good faith; and
 - (c) exercise care in the circumstances.
- (2) A term of a trust instrument is invalid to the extent that it is inconsistent with **subsection (1)**.
- (3) In this section,—

exercise care, in relation to a trustee, means that the trustee is not reckless in the circumstances

reckless, in relation to a trustee, means that the trustee—

 - (a) knows that there is a risk that an event may result from the conduct or that a circumstance may exist; and
 - (b) takes that risk, even though an honest and reasonable person would not in the circumstances take the risk.

42 Trust instrument may limit duties

- (1) A term of a trust instrument may—

- (a) limit a trustee's duty or power to supervise the administration, management, conduct, and control of trust property; or
 - (b) relieve a trustee from a duty or power to intervene in the administration, management, conduct, and control of trust property.
- (2) A term of a trust instrument giving effect to a duty or power described in **subsection (1)** is valid and effective if it is not inconsistent with **sections 43 and 44**.
- (3) Nothing in this section overrides **section 41 or 45**.

43 Trust instrument must not limit duties in certain circumstances

A term of a trust instrument must not exclude, limit, or relieve a trustee of the duty or power to supervise or intervene in the administration, management, conduct, and control of trust property in circumstances where—

- (a) the trustee becomes aware of dishonesty; or
- (b) the trustee becomes aware of wilful misconduct; or
- (c) it is necessary to protect the interests of beneficiaries.

44 Obligations when trustees receive separation notice

- (1) Trustees who receive a separation notice must—
- (a) review the administration, management, conduct, and control of trust property despite any terms of the trust instrument precluding, limiting, or relieving a trustee from doing so; and
 - (b) take the following action that is in the best interests of beneficiaries:
 - (i) engage professional expertise;
 - (ii) engage independent directors and officers;
 - (iii) cause accounts to be prepared by independent accountants;
 - (iv) cause audits to be undertaken.
- (2) Nothing in this section overrides **section 41 or 45**.

Liabilities of trustees

45 Liabilities of trustees

- (1) The terms of a trust instrument must not—
- (a) limit or exclude a trustee's liability for a breach of trust arising from the trustee's own dishonesty, wilful misconduct, or breach of a duty under **section 41(1)**; or
 - (b) grant any trustee an indemnity against the trust property in respect of liability for a breach of trust arising from the trustee's own dishonesty, wilful misconduct, or breach of a duty under **section 41(1)**.
- (2) A provision of a trust instrument is invalid to the extent that it includes a term described in **subsection (1)**.
- (3) This section is subject to **section 46**.

46 Certain terms that exclude liability or grant indemnity lawful

- (1) A trust instrument may include the following provisions:

- (a) a term excluding a trustee's liability for acts and omissions of an agent appointed by the trustees or a person to whom trustees have delegated their duties, powers, and discretions, that are—
 - (i) dishonest or constitute wilful misconduct; or
 - (ii) inconsistent with a duty under **section 41(1)**;
- (b) a term granting the trustees an indemnity against trust property in respect of liability for acts and omissions of an agent appointed by the trustees or a person to whom trustees have delegated their duties, powers, and discretions, that are—
 - (i) dishonest or constitute wilful misconduct; or
 - (ii) inconsistent with a duty under **section 41(1)**.
- (2) Terms in a trust instrument of the kind referred to in **subsection (1)** are valid, effective, and enforceable if the trustee, in appointing the agent or delegate, has exercised the duties of a trustee set out in **section 41(1)**.

Trustees' decisions

47 Trustees' majority decisions

- (1) A provision in a trust instrument of an international relationship property trust that provides for majority decisions of trustees is valid and effective according to its terms.
- (2) If there are more than 2 trustees,—
 - (a) every decision made, resolution passed, or power or discretion exercised by the trustees is valid if it is done by a majority of the trustees; and
 - (b) all things done and every deed or other instrument executed by the majority of trustees is valid and effective as if it were done or executed by all the trustees.
- (3) **Subsection (2)** is subject to any contrary provisions contained in the trust instrument.

Custodian trustees

48 Meaning of key terms

In **sections 49 to 61**,—

custodian trustee means a trustee appointed under **section 49**

managing trustee means a trustee of the trust concerned, other than the custodian trustee.

49 Custodian trustee may be appointed

- (1) A person or group of persons may be appointed under this section to be custodian trustee of an international relationship property trust.
- (2) A custodian trustee is appointed in the same manner as a managing trustee.
- (3) **Subsections (1) and (2)** are subject to the terms of the trust instrument.
- (4) **Sections 50 to 61** apply when a custodian trustee is appointed.

50 Holding of, transfer to, and vesting of, trust property in custodian trustee
(1) If a custodian trustee is appointed, all of the trust property must be held by, transferred to, or vested in the custodian trustee as if the custodian trustee were the sole trustee.

(2) The court may make vesting orders, if necessary for the purposes of **subsection (1)**, on application by the custodian trustee or the managing trustees but without prejudice to the managing trustees' control of that property.

51 Management of trust property by custodian trustee

(1) If a custodian trustee is appointed, the management of the trust property and the exercise of all powers and discretions exercisable by the trustees under the trust remain vested in the managing trustees as fully and effectually as if there were no custodian trustee.

(2) The sole function of a custodian trustee is to hold the trust property, invest its funds, and dispose of the assets, as directed in writing by the managing trustees.

(3) A custodian trustee must execute all documents and perform all acts, for the purposes of **subsection (2)**, as directed by the managing trustees in writing.

(4) For the purposes of **subsections (2) and (3)**, a direction given by the majority of the managing trustees (if there are more than 2 trustees) is to be treated as given by all the managing trustees.

52 Liability of custodian trustee

(1) A custodian trustee is not liable to any interested party or third party for acting on any direction of the managing trustees.

(2) Despite **subsection (1)**, a custodian trustee may apply to the court for directions if the custodian trustee is of the opinion that a direction of the managing trustees—

- (a) conflicts with the trusts or the law; or
- (b) exposes the custodian trustee to any liability; or
- (c) is otherwise objectionable.

(3) **Subsection (2)** does not oblige a custodian trustee to apply to the court for directions.

(4) A custodian trustee is not liable to any interested party or third party for any act or default on the part of the managing trustees or any of the managing trustees.

53 Status of custodian trustee in actions and proceedings

(1) If a custodian trustee is appointed, all actions and proceedings touching or concerning the property of the trust must be brought or defended in the name of the custodian trustee.

(2) The custodian trustee is not liable for the costs of bringing or defending an action or proceeding concerning the property of the trust except to the extent of the property of the trust.

54 Person need not inquire about direction from managing trustee

A person dealing with a custodian trustee—

- (a) does not need to inquire about the existence of any direction from, or concurrence of, the managing trustees; and

- (b) is not affected by notice of the fact that the managing trustees have not issued a direction or concurred in relation to a particular matter.

55 Power of appointing new trustee when custodian trustee appointed

- (1) If a custodian trustee is appointed, any power of appointing a new trustee or trustees that is exercisable by trustees may only be exercised by the managing trustees.
- (2) A custodian trustee has the same power as any other trustee to apply to the court to appoint a new trustee.

56 Ending custodian trusteeship by court order

- (1) The court may, on the application of a custodian trustee or the managing trustees, make an order terminating the custodian trusteeship.
- (2) The court may make an order only if it is satisfied that—
 - (a) it is in the best interests of the beneficiaries; or
 - (b) it is expedient to terminate the custodian trusteeship for some other reason than that described in **paragraph (a)**, having regard to the trust instrument.
- (3) When making an order terminating the custodian trusteeship, the court may make vesting orders and give directions that the court considers necessary or expedient in the circumstances.

57 Trust instrument applies to custodian trustee

A custodian trustee may be appointed, resign, or be removed or replaced in the same manner as a trustee or as specified in the trust instrument.

58 End of custodian trustee's appointment

- (1) At the end of a custodian trustee's appointment and unless there is a simultaneous appointment of a new custodian trustee—
 - (a) any restrictions upon the powers of the managing trustees by virtue of the appointment of the custodian trustee lapse, and the managing trustees become the only trustees; and
 - (b) the title to the property of the trust vests in those trustees.
- (2) **Subsection (1)** is subject to the trust instrument.

59 Appointment as both managing trustee and custodian trustee

- (1) A trustee who accepts appointment as both a managing trustee and a custodian trustee must be treated as an ordinary trustee.
- (2) If a trustee is both a managing trustee and a custodian trustee,—
 - (a) the respective rights and obligations imposed on a custodian trustee and managing trustees under **sections 50 to 58, 60, and 61**, and the trust instrument have no further application to that trustee; and
 - (b) the trustee is not entitled to—
 - (i) rely on the limited liability of a custodian trustee; or
 - (ii) charge remuneration as both a managing trustee and a custodian trustee.

- (3) The powers, duties, functions, and discretions of the managing trustee, and the office of the managing trustee if vacant and not filled or replaced pursuant to **section 49 or 55(1)**, may be assumed by or appointed to a person or persons as prescribed in the trust instrument.
- (4) This section is subject to the trust instrument and **section 55(2)**.

60 Remuneration and compensation payable to custodian trustees

- (1) If remuneration or commission is payable to the trustee of trust property, remuneration or commission may be paid to both the custodian trustee and the managing trustees.
- (2) The amount of the remuneration or commission payable to the custodian trustee and the managing trustees may be determined by the managing trustees if the managing trustees are entitled to fix their own remuneration.
- (3) This section is subject to the trust instrument.

61 Application of Act to custodian trustees

- (1) The provisions of this Act relating to a trustee's powers, liabilities, functions, duties, and discretions apply equally to a custodian trustee.
- (2) Without limiting the generality of **subsection (1)**, the custodian trustee—
 - (a) has the powers of delegation conferred on trustees by the trust instrument and this Act; and
 - (b) may permit assets to be held by or in the name of the managing trustees to facilitate the managing trustees' management and administration of the trust assets, or as otherwise directed by the managing trustees.
- (3) **Subsections (1) and (2)** do not limit **sections 49 to 59**, and apply subject to any variation by the trust instrument.

Adviser to trustees

62 Trust instrument may provide for adviser

A trust instrument may provide for a person or group of persons to be appointed to advise the trustees of an international relationship property trust in respect of all or some of the matters relating to the property of the trust.

63 Role of adviser

- (1) If an adviser is appointed in accordance with **section 62**, the property and management of the trust and the exercise of all powers and discretions exercisable by the trustee under the trust remain vested in the trustees as fully and effectually as if no adviser were appointed.
- (2) However,—
 - (a) the trustees may consult the adviser, and the adviser may advise the trustees, on any matter relating to the property of the trust for which the adviser was appointed;
 - (b) the adviser is not liable as, or considered, a trustee of the trust in acting as an adviser;
 - (c) if any advice or direction is tendered or given by the adviser, or the majority of advisers if there is more than 1,—

- (i) the trustees may follow the advice and act accordingly, without being under any obligation to do so; and
 - (ii) the trustees are not liable for anything done or omitted by them by reason of the trustee following that advice or direction:
- (d) subject to the trust instrument, if remuneration or commission is payable to the trustees of a trust, remuneration or commission may be paid to the adviser, at the rate specified in the trust instrument or by the trustees in the absence of any specific direction in the trust instrument.
- (3) A person dealing with the trustees—
 - (a) does not need to inquire about the concurrence or otherwise of the adviser; and
 - (b) is not affected by notice of the fact that the adviser may not have concurred.

Protector

64 Trust may have protector

- (1) The terms of a trust instrument for an international relationship property trust may provide for the office of protector of the trust.
- (2) A protector has the powers, delegations, and functions that are conferred on the protector by the trust instrument or by this Act, or as prescribed in any regulations.
- (3) A protector of a trust may also be a settlor, a trustee, or a beneficiary of the trust.
- (4) Any powers or functions conferred by this Act on a protector have effect subject to the terms of the trust instrument.

65 Protector not liable as trustee

- (1) A protector of a trust is not liable or accountable as a trustee or other person having a fiduciary duty to any person in relation to any act or omission in performing the function of a protector under the trust instrument.
- (2) **Subsection (1)** is subject to the trust instrument.

66 Exercise or performance of powers and functions if multiple protectors

- (1) **Subsection (2)** applies if there are more than 2 protectors of a trust.
- (2) Any power or function conferred on the protectors may be exercised or performed if the majority of the protectors for the time being agree on its exercise or performance, subject to the trust instrument.
- (3) **Subsections (4) and (5)** apply if there are 2 or more protectors of a trust.
- (4) A protector who dissents from a decision of the protectors may require his or her dissent to be recorded in writing and filed at the registered office of the trust.
- (5) A protector who records his or her dissent to a decision under **subsection (4)** is not liable for the acts of the protectors done in accordance with the decision, subject to the trust instrument.

*Representation of beneficiaries***67 Nominated persons may represent beneficiaries**

- (1) A trust instrument may provide for the protector or any other person or persons to be a nominated person to represent all or any of the following beneficiaries:
- (a) minors;
 - (b) beneficiaries yet to be ascertained;
 - (c) beneficiaries not having legal capacity;
 - (d) beneficiaries who, after the best reasonable endeavours of the trustees, are unable to be contacted.
- (2) A nominated person may, on behalf of a represented beneficiary, consent to or ratify any act or omission on the part of a trustee.
- (3) A consent or ratification provided by a nominated person—
- (a) must be treated as the consent or ratification of the represented beneficiary; and
 - (b) may be construed by a court as the consent or ratification of the represented beneficiary to the act or omission consented to or ratified.
- (4) In this section,—
- nominated person** means a protector or other person who represents beneficiaries
- represented beneficiary** means a beneficiary represented by a nominated person.

*Holding and disposal of trust property by trustees***68 Holding of title to property by trustees**

- (1) A trust instrument of an international relationship property trust may include either or both of the following types of provisions:
- (a) a provision that the trustees may delegate among themselves the function of holding title to trust property;
 - (b) a provision that if property of the trust is situated in a jurisdiction in which a trustee or trustees reside, any 1 or more of those trustees may hold title to that property in 1 or all of their names, and not in the name of all trustees of the trust.
- (2) **Subsection (1)** applies despite any rule of law or equity to the contrary.

69 Transfer of title to property to 1 or some trustees

- (1) This section applies if title to property is transferred, whether before or after the coming into force of this Act, to a trustee or trustees of an international relationship property trust, other than to all of the trustees, and the intention is that it be held by that trustee, or those trustees, as trust property.
- (2) The transfer has the same effect as if the property had been transferred to all of the trustees to be held on the trusts set out in the trust instrument.

70 Property may be held in name of trust

- (1) The title and ownership of trust property may be recorded, registered, or held in the name of an international relationship property trust without reference to the names of the trustees.
- (2) If trust property is recorded or registered in the name of an international relationship property trust, the legal title to that property is held by the trustees.

71 Protection of trust property

Personal creditors of a trustee of an international relationship property trust have no right or claim against any of the trust property held by that trustee in the role of trustee.

72 Protection for third parties

- (1) If trust property is disposed of by trustees to a third party for value, the title of the third party to the property, and the enforceability of any related contract, is not affected except on the ground of fraud by, or with the knowledge of, that third party.
- (2) To avoid doubt, the disposition of property and the enforceability of contracts described in **subsection (1)** is not affected because the transaction—
 - (a) was unauthorised; or
 - (b) was not within the power of the trustee; or
 - (c) resulted from the improper or irregular exercise of a power.
- (3) A third party who pays money or consideration to trustees—
 - (a) is not required to see to its application; and
 - (b) is not responsible or liable for its misapplication.
- (4) In this section, **third party** means a person who is not—
 - (a) a settlor, trustee, protector, or beneficiary of the trust property; or
 - (b) a creditor of a settlor, trustee, protector, or beneficiary of the trust property.

*Trust records***73 Trustee must keep records**

- (1) A trustee referred to in **section 18(1)(a)** who is trustee of an international relationship property trust must ensure that records are kept in respect of the trust.
- (2) The records must be held, or be accessible, at the registered office of the trust.
- (3) The records must provide a true, accurate, and current record of the matters in **subsection (4)** that will at any time enable the financial position of the international relationship property trust to be determined with reasonable accuracy.
- (4) The matters are—
 - (a) income of the trust whether in cash or kind; and
 - (b) assets held by the trust; and
 - (c) assets made available for use by any beneficiary of the trust; and
 - (d) advances made by the trust; and

- (e) distributions made by the trust; and
- (f) all transactions of the trust affecting its assets or liabilities.

74 Requirements relating to trust records on termination of trust

- (1) This section applies with respect to an international relationship property trust if any of the following events occur:
 - (a) the trust is terminated;
 - (b) the trust ceases to be an international relationship property trust;
 - (c) the trustee referred to in **section 18(1)(a)** is removed or has resigned.
- (2) Each trustee must ensure that the records in the possession of that trustee are retained by that trustee for a period of 6 years after the date of the event occurring.
- (3) The Registrar may cause any records or registers in the Registrar's possession to be destroyed any time after the date that is 6 years after the date of—
 - (a) deregistration; or
 - (b) expiry of the last certificate of registration of the trust under this Act.

Part 8 Court proceedings

75 Commencement of court proceedings

- (1) A settlor may commence proceedings in court on any of the following grounds:
 - (a) the settlor's consent to the settlement and terms of the trust instrument was involuntary;
 - (b) the settlor did not receive full disclosure of the property, income, and liabilities that the settlor required the other settlor to provide;
 - (c) the settlor did not have independent legal advice regarding a waiver or regarding the settlement and terms of the trust instrument;
 - (d) the relationship agreement or a term of it was unconscionable at the date of settlement.
- (2) The grounds in **subsection (1)** are the only grounds on which a settlor can challenge a settlement or terms of an international relationship property trust in court.
- (3) The court may determine that independent legal advice was available to a settlor but was not taken and, in that case, the settlor must be treated as having had independent legal advice.
- (4) In determining whether independent legal advice was available to a settlor, the court may take into account that the settlor—
 - (a) had the financial ability to retain a lawyer, or the other settlor has agreed to pay the reasonable fees and expenses of retaining a lawyer; and
 - (b) had reasonable time to retain an independent lawyer; and
 - (c) had reasonable time to obtain advice and consider the advice provided.

76 Restrictions on remedies available to court

- (1) If a settlor proves a ground in **section 75(1)(a), (b), or (c)**, the court may declare the trust void.

- (2) If a settlor proves the ground in **section 75(1)(d)**, the court in providing a remedy—
- (a) must not declare the trust void or set aside the trust; and
 - (b) must have regard to the purpose of this Act set out in **section 6**; and
 - (c) must ensure that the remedy is not inconsistent with—
 - (i) **section 16(b)**; or
 - (ii) any terms and conditions of the trust instrument that restrict the division and distribution of relationship property; and
 - (d) must not direct or order the sale of relationship property contrary to the terms and conditions of the trust instrument that restrict the sale of relationship property.
- (3) **Subsections (1) and (2)** do not preclude the court from providing a remedy that—
- (a) adjusts the beneficial shares of beneficiaries; or
 - (b) is not inconsistent with the trust instrument; or
 - (c) directs the trustees in their administration and management of the trusts.

77 Adjustment of beneficial interests by court

- (1) A trustee may apply to the court to adjust the beneficial shares of beneficiaries if a beneficiary who participates in the administration or management of trust property—
- (a) acts or omits to act in the course of the administration or management of that trust property to his or her unfair advantage; and
 - (b) the act or omission disadvantages or prejudices another beneficiary.
- (2) On an application under **subsection (1)** the court may adjust the beneficial shares of beneficiaries having regard to the disadvantage or prejudice suffered.

78 Effect of invalid, unenforceable, or illegal provision

A trust instrument provision that is invalid, unenforceable, or illegal—

- (a) does not affect the validity, enforceability, or legality of any other provision in the trust instrument; and
- (b) may be modified to the extent necessary if to do so would—
 - (i) make the provision valid, enforceable, or legal; and
 - (ii) be consistent with the general intent of the trust instrument; and
- (c) may be severed from the trust instrument if—
 - (i) a modification under **paragraph (b)** is not possible; and
 - (ii) the general intent of the trust instrument remains intact.

79 Court may order status quo maintained

- (1) The court may, on application, order that the status quo in respect of an international relationship property trust be maintained to avoid prejudice to a party.
- (2) An application under **subsection (1)** may be made on notice or without notice and may be made at any time after the commencement of proceedings.

- 80 Sufficient to name trustee in court proceedings**
In any court proceeding by or against an international relationship property trust, it is sufficient to name the trustee appointed in accordance with **section 18(1)(a)** and it is not necessary to join any other trustee in the proceeding.
- 81 Other remedies, principles, and rules of law excluded**
- (1) The provisions of this Part operate to the exclusion of any other remedy, principle, or rule of law, whether provided for by statute, or founded in equity or in common law.
- (2) To avoid doubt, **subsection (1)** operates to exclude—
- (a) the imposition of a constructive trust on any interested party; and
 - (b) the recognition and enforcement of any constructive trust imposed or recognised by the laws of any other jurisdiction.

Part 9

Foreign law

- 82 Recognition of foreign judgments**
- (1) A foreign judgment affecting an international relationship property trust is unenforceable in the Cook Islands to the extent that—
- (a) it is inconsistent with the purpose of this Act set out in **section 6** or with **section 16(b)**; or
 - (b) its effect is to order the sale or division and distribution of relationship property contrary to the terms of the trust instrument.
- (2) A foreign judgment affecting an international relationship property trust is enforceable in the Cook Islands—
- (a) to the extent that it is not unenforceable under **subsection (1)**; or
 - (b) if its effect is to equitably adjust the beneficial shares of beneficiaries from those set out in the trust instrument; or
 - (c) if it provides for a child's right to support.
- (3) A foreign judgment is enforceable under **subsection (2)**—
- (a) on application to the High Court of the Cook Islands; and
 - (b) subject to any terms imposed by that court.
- 83 Injunctions and interlocutory directions from foreign courts**
- (1) An injunction restraining trustees from acting or an interlocutory direction pending final determination of substantive proceedings by a foreign court is unenforceable in the Cook Islands to the extent that—
- (a) it is inconsistent with the purpose of this Act set out in **section 6** or with **section 16(b)**; or
 - (b) its effect is to order the sale or division and distribution of relationship property contrary to the terms of the trust instrument.
- (2) An injunction or interlocutory direction is enforceable in the Cook Islands on application to the High Court of the Cook Islands—
- (a) to the extent that it is not unenforceable under **subsection (1)**; and
 - (b) subject to any terms imposed by that court.

- 84 International relationship property trust and any disposition of property not affected by laws of foreign jurisdiction**
- (1) This section applies to an international relationship property trust, and any disposition of property to be held on the trusts declared, that is governed by the laws of the Cook Islands.
- (2) The trust and any disposition of property is not void, voidable, liable to be set aside, or defective in any fashion, nor is the capacity of a settlor to be questioned, merely because—
- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a trust either in whole or in part; or
 - (b) the international relationship property trust or disposition—
 - (i) avoids or defeats rights, claims, or interests conferred by the law of a foreign jurisdiction on any person; or
 - (ii) contravenes any rules or foreign law or any foreign judicial administrative order or action intended to recognise, protect, enforce, or give effect to any such rights, claims, or interests; or
 - (c) the laws of the Cook Islands or this Act is inconsistent with any foreign law.
- 85 Application of provisions in this Act modifying trust laws in court proceedings**
- In every court proceeding, **Part 10** must be applied—
- (a) if the proceeding involves an international relationship property trust and requires a determination concerning a matter referred to in a provision in that Part; and
 - (b) as if the trust instrument expressly provides that the matters referred to in that Part must be governed exclusively by Cook Islands law regardless of any provision to the contrary; and
 - (c) to the settlement of, and disposition to, an international relationship property trust; and
 - (d) to the settlement of, and disposition to, a trust before registration as an international relationship property trust under this Act as if—
 - (i) the trust were registered under this Act; and
 - (ii) from the date of the settlement or disposition they were governed exclusively by Cook Islands law.
- 86 No submission to foreign jurisdiction**
- (1) A trustee who disputes the jurisdiction of a foreign court to determine proceedings involving an international relationship property trust may, at any time after becoming aware of the proceedings, give notice to the foreign court of that dispute.
- (2) A notice under **subsection (1)** precludes the trustee from having submitted to the jurisdiction of a foreign court despite the trustee—
- (a) being present within the territorial jurisdiction of the foreign court at the commencement of or during the proceedings; or
 - (b) asking the foreign court to dismiss or stay its proceedings; or

- (c) being a claimant or counter claimant in the proceedings before the foreign court; or
 - (d) making a voluntary appearance in the proceedings before the foreign court to prosecute or defend the proceedings; or
 - (e) agreeing to submit to the jurisdiction of the foreign court for the purposes of any particular matter in the proceedings; or
 - (f) being involved in appellate proceedings on a matter described in any of **paragraphs (b) to (e)**; or
 - (g) instructing legal representation to attend to any of the matters described in any of **paragraphs (b) to (f)**.
- (3) A judgment of a foreign court against a trustee who has given notice under **subsection (1)** is unenforceable—
- (a) to the extent that it is inconsistent with the purpose of this Act set out in **section 6**; or
 - (b) if its effect is to order the sale or division and distribution of relationship property contrary to the terms of the trust instrument.

Part 10

Modification of laws applicable to international relationship property trusts

General application of trust law

87 Relationship to existing law

The law applicable to trusts in force in the Cook Islands applies to an international relationship property trust except in so far as it is inconsistent with or has been modified by this Act.

Modified application of trust law

88 Perpetuity period

- (1) The following rules of law have no application to an international relationship property trust:
- (a) the rule against perpetuities;
 - (b) the rule against remoteness of vesting;
 - (c) the rule against perpetual trusts;
 - (d) the rule against inalienability.
- (2) A trust instrument may provide that—
- (a) trust property vests in a beneficiary—
 - (i) within or after a specified period; or
 - (ii) upon the occurrence or non-occurrence of an event; or
 - (b) trust property does not vest in any beneficiary; or
 - (c) the trust will not terminate.
- (3) The date that is 100 years after initial settlement of the trust is the date that trust property vests in a beneficiary if—

- (a) there is uncertainty about if or when trust property will vest or the trust will terminate; and
 - (b) imposing a date would remove that uncertainty.
- (4) A general or special power of appointment must be exercised in a manner that is consistent with—
 - (a) provisions of the trust instrument giving effect to the matters in **subsection (2)**; and
 - (b) a date imposed under **subsection (3)**.

89 Execution of trust instrument

- (1) A trust instrument may be executed by the parties—
 - (a) in counterparts; and
 - (b) at different times; and
 - (c) at different locations in and outside the Cook Islands.
- (2) A trust instrument executed in accordance with **subsection (1)** is valid, effective, and enforceable as if it were executed by the parties in each other's presence in the Cook Islands.

90 Accumulation of income

- (1) This section applies if a trust instrument for an international relationship property trust includes a power or direction that income arising from the trust may be accumulated in whole or part.
- (2) A power or direction to accumulate income in a trust instrument is valid and enforceable.
- (3) Nothing in this section affects any jurisdiction or power of the court to maintain or advance out of accumulations.
- (4) The following enactments do not apply to international relationship property trusts:
 - (a) section 41 of the Property Law Act 1952, as replaced by section 2 of the Property Law Act 1963 (Restrictions on accumulation);
 - (b) section 42 of the Property Law Act 1952 (Qualification of restrictions on accumulation).

91 Application of rule in *Saunders v Vautier*

- (1) The rule in *Saunders v Vautier* does not apply to an international relationship property trust.
- (2) A trust instrument may include provisions for trustees to—
 - (a) distribute income or capital on a specified date or event; or
 - (b) not distribute income or capital.
- (3) A trustee must give effect to provisions described in **subsection (2)**.
- (4) A trustee who receives a request from a beneficiary to distribute trust property in accordance with the rule in *Saunders v Vautier* must not comply with that request if to do so would be inconsistent with the trust instrument.

92 Presumption against avoidance of trusts

- (1) An international relationship property trust is irrevocable by the settlor and the settlor's legal personal representatives unless it includes an express power of revocation.
- (2) An international relationship property trust is not void or voidable—
 - (a) on the settlor's bankruptcy or liquidation; or
 - (b) in proceedings by creditors of the settlor.
- (3) **Subsection (2)** applies despite—
 - (a) any provision of the law of the settlor's domicile or place of ordinary residence; or
 - (b) the trust being voluntary and without valuable consideration being given for the relationship property settled on the trust.

93 Retention of control and benefits by settlor

An international relationship property trust and a registered trust instrument must not be declared invalid, and a disposition must not be declared void and is not affected in any way, because a settlor—

- (a) retains, possesses, or acquires—
 - (i) a power of disposition over property of the trust or the subject of the instrument; or
 - (ii) a power to amend the trust or instrument in a manner consistent with this Act; or
 - (iii) any benefit, interest, or property from the trust, from any disposition, or pursuant to the instrument; or
 - (iv) the power to remove or appoint a trustee or protector; or
 - (v) the power to direct a trustee or protector on any matter; or
- (b) is a beneficiary, trustee, or protector of the trust or instrument either solely or together with others.

94 Heirship rights

- (1) A settlement of and disposition to an international relationship property trust is valid despite the settlement or disposition defeating a person's right, claim, or interest arising out of—
 - (a) a personal relationship with the settlor; or
 - (b) heirship rights.
- (2) A settlement or disposition having the effect set out in **subsection (1)** must not—
 - (a) be declared void or voidable; or
 - (b) be set aside.
- (3) A settlor's capacity must not be questioned because a settlement or disposition has the effect set out in **subsection (1)**.
- (4) In this section,—
heirship rights—
 - (a) means any right, claim, or interest in, against, or to, property of a person arising or accruing in consequence of that person's death; but

- (b) does not include any right, claim, or interest described in **paragraph (a)** created by will or other voluntary disposition or resulting from an express limitation on the disposition of the property concerned

personal relationship—

- (a) means every form of relationship by blood or marriage, including former marriage; and
- (b) includes, without limitation, a relationship between 2 persons if—
 - (i) one is the child of the other, whether natural or adopted (whether or not the adoption is recognised by law), legitimate or illegitimate; or
 - (ii) one is married to the other (whether or not the marriage is recognised by law); or
 - (iii) one cohabits with the other or so conducts themselves in relation to the other so as to give rise in any jurisdiction to any rights, obligations, or responsibilities equivalent to those of parent and child or husband and wife; or
 - (iv) personal relationships exist between each of them and a third person.

95 Spendthrift beneficiary

- (1) A term of an international relationship property trust or disposition to an international relationship property trust may provide that property to be distributed to a beneficiary during the beneficiary's lifetime is subject to 1 or more of the following restrictions:
 - (a) the property cannot be alienated;
 - (b) the property cannot pass by bankruptcy, insolvency, or liquidation for the benefit of creditors;
 - (c) the property must not be seized, sold, attached, or taken in execution by process of law.
- (2) A restriction imposed under **subsection (1)** takes effect according to its terms despite any rule of law or equity to the contrary.
- (3) Where property is distributed subject to a restriction imposed under **subsection (1)**, income and the right to derive income from the property are subject to the same restriction for so long as the restriction remains in force.
- (4) A restriction described in this section may be removed at any time after the property has been distributed if the trust instrument or disposition provides for the restriction to be removed.

96 Community property

- (1) If relationship property is community property because of the law applicable to the property's location or the law of 1 or both of the settlors' domiciles, the trustees must—
 - (a) deal with the property and any accumulation to the property in a manner that is consistent with the law applicable to the property's location; and
 - (b) in every other respect, deal with the property and any accumulation to the property in accordance with the trust instrument.
- (2) A trustee, protector of an international relationship property trust, and the trust fund, are not liable for any debt or responsibility of a settlor because of this section.

*Governing law***97 Trust instrument may provide for governing law**

- (1) A trust instrument may provide for the governing law of the international relationship property trust—
- (a) to be Cook Islands law; or
 - (b) to change to or from Cook Islands law; or
 - (c) to be Cook Islands law for some aspects of the trust and the law of another jurisdiction for other aspects; or
 - (d) to change on a determination that an event or state of affairs has or has not occurred.
- (2) Provisions described in **subsection (1)** are valid and effective.
- (3) A determination made under a provision described in **subsection (1)(d)** is valid and effective if it is made in accordance with the trust instrument.

98 Governing law not affected by certain matters

The effect and validity of the choice of governing law for an international relationship property trust is not affected by—

- (a) the location of the interested parties; or
- (b) the selection or imposition of the jurisdiction of the trust; or
- (c) the place where the trust is administered; or
- (d) the place at which the property of the trust is situated.

99 Effect of change in governing law

- (1) A change in the governing law does not of itself—
- (a) affect the application, legality, or validity of anything done before the change; or
 - (b) render any person liable for anything done before the change; or
 - (c) interrupt the continuity of the relationships in equity or law established by the trust; or
 - (d) constitute a resettlement of the trust; or
 - (e) void or invalidate a disposition before the change.
- (2) The exercise by the donee of a power to change the governing law must be treated as properly exercised unless the contrary is shown.
- (3) If the governing law of a trust is changed, the trustees may make all consequential alterations or additions to the trust instrument that the trustees consider necessary or desirable to ensure that the provisions, rights, liabilities, powers, and obligations of and under the trust instrument will be as valid and effective under the new governing law as they were under the previous governing law.

100 Matters determined by governing law

- (1) All matters and questions regarding an international relationship property trust or any disposition of property on the trusts declared are to be determined—
- (a) according to Cook Islands law; and

- (b) without reference to the law of any other jurisdiction with which an international relationship property trust or disposition may be connected.
- (2) The matters and questions include—
 - (a) the capacity of a settlor; and
 - (b) any aspect of the validity of the trust or disposition; and
 - (c) the interpretation or effect to be given to a trust or disposition; and
 - (d) the administration of the trust, whether conducted in the Cook Islands or elsewhere, including questions as to powers, obligations, duties, liabilities, and rights of trustees and their appointment and removal; and
 - (e) the existence and extent of powers conferred or retained, including powers of variation or revocation of the trust and of appointment, and the validity of any exercise of the powers.

101 **Governing law subject to express term of trust or disposition**

Section 100 is subject to any express contrary term of the trust or disposition and does not—

- (a) validate any disposition of property that is neither owned by the settlor nor the subject of a power to dispose vested in the settlor; or
- (b) affect the recognition of foreign laws in determining whether the settlor is the owner of a property or the holder of a power described in **paragraph (a)**; or
- (c) affect the recognition of foreign laws in determining a corporation's capacity; or
- (d) affect the recognition of foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property; or
- (e) validate any trust of real property or disposition or transfer of real property situated in a jurisdiction other than the Cook Islands that is void ab initio according to the laws of that jurisdiction; or
- (f) validate any testamentary trust or testamentary disposition that is invalid according to the laws of the testator's domicile; or
- (g) invalidate a disposition of property to a trust that is or subsequently becomes an international relationship property trust if the disposition is valid according to the law of the jurisdiction where the property is located.

Part 11

Disclosure and publication provisions relating to international relationship property trusts

Disclosure of information

102 **Information relating to international relationship property trust must not be disclosed**

- (1) A person must not disclose to any other person information relating to the establishment, constitution, business undertaking, or affairs of an international relationship property trust.
- (2) A disclosure is not prohibited under **subsection (1)** if it is—

- (a) in accordance with **section 103** or otherwise made for the purpose of discharging any duty, performing any function, or exercising any power under this or any other Act; or
- (b) made in accordance with regulations made under this Act; or
- (c) required or authorised by the court; or
- (d) required by or under a search warrant.

103 Disclosure allowed for management of trust

- (1) A settlor, a trustee, an officer, or an employee of a trustee or trustee company may disclose information relating to the establishment, constitution, business undertakings, or affairs of an international relationship property trust in accordance with this section.
- (2) The information may be disclosed to any person or class of persons that the settlor, trustee, officer, or employee considers necessary from time to time.
- (3) The settlor, trustee, officer, or employee has complete discretion about what information is disclosed and to whom it is disclosed provided that the disclosure is in the ordinary course of managing and administering the trust.
- (4) Information may be disclosed under this section to a legal practitioner for the purpose of—
 - (a) obtaining legal advice relating to establishment, constitution, business undertakings, or affairs of an international relationship property trust; or
 - (b) prosecuting or defending any litigation relating to the establishment, constitution, business undertakings, or affairs of an international relationship property trust.

Court proceedings

104 Court proceedings must be heard in private

- (1) All court proceedings relating to an international relationship property trust must be heard in private unless the court orders otherwise.
- (2) **Subsection (1)** does not apply to criminal proceedings.

105 Publication of court decision

- (1) The decision of the court in any proceedings relating to an international relationship property trust may not be published unless the court orders otherwise for the whole or part of the decision.
- (2) Despite **subsection (1)**, a copy of every decision of the court relating to an international relationship property trust must be provided by the registrar of the court to the Financial Supervisory Commission established by the Financial Supervisory Commission Act 2003.

106 No proceedings may be brought against certain persons

No proceedings may be brought against the Government of the Cook Islands, any statutory body or authority, or a public or judicial officer in respect of any performance of its or their functions or duties under this Act.

107 Prohibition by ministerial order

- (1) The Minister has an absolute right, on the Minister's own initiative or otherwise, to make an order—

- (a) prohibiting the registration of any international relationship property trust; or
 - (b) directing any international relationship property trust to cease carrying on its business or part of its business immediately or within a time period specified in the order.
- (2) In making an order under this section the Minister is not required to—
 - (a) provide reasons; or
 - (b) act judicially.
- (3) An order made under this section is final.
- (4) An order made under this section may be revoked or varied by the Minister.
- (5) In this section, **Minister** means the Minister responsible for the administration of this Act.

Part 12

Administration

108 Registrar and Deputy Registrar appointed

- (1) The Registrar of International Trusts appointed under section 4 of the International Trusts Act 1984 is the Registrar for the purposes of this Act.
- (2) A Deputy Registrar of International Trusts appointed under section 4 of the International Trusts Act 1984 is a Deputy Registrar for the purposes of this Act.
- (3) Anything authorised or required to be done by the Registrar under this Act may be authorised or done by a Deputy Registrar.
- (4) All persons acting judicially must take judicial notice of the seal and signature of the Registrar and a Deputy Registrar.

109 Functions of Registrar

- (1) The functions of the Registrar are, in accordance with this Act and regulations made under it, to—
 - (a) deal with applications to register or reregister international relationship property trusts;
 - (b) maintain a Register of International Relationship Property Trusts;
 - (c) deregister international relationship property trusts;
 - (d) perform or exercise other functions, duties, and powers conferred on the Registrar by this Act or regulations made under it.
- (2) For the purpose of ascertaining whether trustees of an international relationship property trust are complying with this Act, the Registrar may inspect any registers or records required to be kept by the trustees.

110 Trust records not required to be in written form

- (1) Trust records may be established, kept, or recorded in written, magnetic, electronic, or any other data storage form provided that the records can be readily produced in written form.
- (2) In this section, **trust records** means any records, accounts, or documents relating to an international relationship property trust held by the Registrar or a trustee, including the trust instrument.

111 Translations

- (1) A document filed with the Registrar that is not in the English language must be accompanied by a certified translation.
- (2) A document that is not in the English language and that is not accompanied by a certified translation at the time of filing may not be accepted for registration by the Registrar.
- (3) In this section, **certified translation** means a translation in the English language certified as a correct translation by a translator to the satisfaction of the Registrar.

Part 13 Miscellaneous

112 General application of other enactments

- (1) No enactment other than this Act, regulations made under this Act, and the enactments set out in **Schedule 2** of this Act may—
 - (a) impose on an international relationship property trust—
 - (i) a liability, duty, responsibility, obligation, or restriction; or
 - (ii) a fee, impost, tax, levy, due, duty, or excise; or
 - (iii) a fine or penalty; or
 - (b) require an international relationship property trust—
 - (i) to deposit moneys in any public account; or
 - (ii) to file accounts, returns, reports or records; or
 - (iii) to license or register any document, act, matter, or thing pertaining to an international relationship property trust.
- (2) The Queen's Representative may by Order in Executive Council amend **Schedule 2** by omitting or adding any enactment.
- (3) To avoid doubt, in this section, **enactment** means an Act or regulations and includes a provision of an Act or regulations.

113 Application of Development Investment Act 1995-96

An international relationship property trust is not required to register as a foreign enterprise pursuant to the Development Investment Act 1995-96 and is not subject to that Act by reason only that it—

- (a) carries on business with another international relationship property trust or an international trust; or
- (b) carries on business with an international company registered under the International Companies Act 1981-82; or
- (c) carries on business with a foreign company registered under the International Companies Act 1981-82; or
- (d) carries on business with an international partnership registered under the International Partnership Act 1984; or
- (e) obtains legal advice or legal representation; or
- (f) obtains accounting advice or has its accounts prepared or audited; or

- (g) operates a bank account for the purpose of depositing, receiving, or transmitting money due or owed to the trust or undertakes a transaction with a bank for purposes principally associated with the objects of the trust; or
- (h) utilises the services of a trustee company or a subsidiary of a trustee company; or
- (i) undertakes an act, matter, or thing prescribed by regulations.

114 Offences

- (1) A person commits an offence if the person—
 - (a) fails to keep records in accordance with **section 73**; or
 - (b) fails to comply with trust record requirements on trust termination, in breach of **section 74**; or
 - (c) discloses information in breach of **section 102**; or
 - (d) registers an international relationship property trust, or enables an international relationship property trust to carry on trading, in breach of a ministerial order under **section 107**; or
 - (e) fails to provide the Registrar with copies of, or access to, a register or records if required under **section 109(2)**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding US\$10,000 or imprisonment for a term not exceeding 1 year, or both.

115 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, make regulations prescribing all matters and things required or authorised by this Act to be prescribed or that are necessary for carrying out or giving effect to this Act.
- (2) Without limiting **subsection (1)**, regulations may prescribe matters relating to any or all of the following with respect to international relationship property trusts:
 - (a) the duties and liabilities of trustees:
 - (b) the powers of trustees:
 - (c) the protection of trustees against liability:
 - (d) the investment of trust funds:
 - (e) the manner in which an instrument or a deed of trust may be executed:
 - (f) the appointment and discharge of trustees:
 - (g) the powers of the court in respect of an application by a trustee for directions:
 - (h) the rules of procedure in respect of judicial proceedings:
 - (i) the distribution of trust property:
 - (j) the manner in which a trustee may deal with property that is subject to any encumbrance or restriction, whether an encumbrance or a restriction is imposed or authorised by this Act or any other Act and the rights, interests, duties, and liabilities of persons in respect of property that is subject to an encumbrance or a restriction:

- (k) the fees payable for registration of an international relationship property trust and other matters for which a fee may be prescribed under this Act;
- (l) the requirements for disclosure under **section 102**;
- (m) the form and content of a standard trust instrument;
- (n) forms required for the purposes of this Act;
- (o) penalties for breach of the regulations.

116 Amendments to other Acts

The Acts listed in **Schedule 3** are amended in the manner set out in that Schedule.

Schedule 1 Certificates

Part 1

Legal adviser's certificate

Sections 9 and 31(4) of the International Relationship Property Trusts Act 2021

I certify that—

- I am a lawyer/an attorney at law* admitted/licensed* and entitled to practise in [*name of applicable jurisdiction*]; and
- I have been engaged by [*name of settlor*], who is a party to the attached trust instrument; and
- I have advised and consulted with [*name*], who is a settlor of the trust, about that person's property rights and have fully explained—
 - the legal effect of the attached trust instrument; and
 - the rights that person would otherwise have under applicable law; and

*Select one.

[*Name of settlor*], after being fully advised by me, acknowledged to me that [*he/she*] fully understood the legal effect of the attached trust instrument; and

[*Name of settlor*] executed the attached trust instrument freely and voluntarily.

Date:

Name:

Bar/Admission* ID No.:

Signature:
(Lawyer/Attorney*)

*Select one.

Part 2**Settlors' certificate of consent**

Sections 9 and 31(4) of the International Relationship Property Trusts Act 2021

We, the settlors,—

- consent to all of the provisions of the attached trust instrument; and
- express our intent that the provisions of the attached trust instrument be given full force and effect.

Settlor 1

Name of settlor 1:

Date:

Signature:

Lawyer or Attorney for settlor 1

This instrument was signed before me on *[date]* by *[name of settlor 1]*.

Date:

Name:

Bar/Admission* No.:

Signature:

(Lawyer/Attorney* for settlor 1)

*Select one.

Settlor 2

Name of settlor 2:

Date:

Signature:

Lawyer or Attorney for settlor 2

This instrument was signed before me on *[date]* by *[name of settlor 2]*.

Date:

Name:

Bar/Admission* No.:

Signature:

(Lawyer/Attorney* for settlor 2)

*Select one.

Schedule 2
Other enactments applying to international relationship property trusts

Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004
Crimes Act 1969
Criminal Procedure Act 1980-81
Development Investment Act 1995-96
Digital Registers Act 2011
Extradition Act 2003
Financial Intelligence Unit Act 2015
Financial Supervisory Commission Act 2003
Financial Transactions Reporting Act 2017
Part VIA of the Income Tax Act 1997 (in so far as Part VIA relates to the Common Reporting Standard)
Mutual Assistance in Criminal Matters Act 2003
Proceeds of Crime Act 2003
Trustee Companies Act 2014

Schedule 3 Amendments to other Acts

Digital Registers Act 2011

In section 3, definition of **offshore Act**, after paragraph (e), insert:

“(ea) **International Relationship Property Trusts Act 2021**”

In section 3, definition of **offshore Act**, paragraph (g)(i), replace “(e)” with “(ea)”.

Financial Supervisory Commission Act 2003

In Schedule 1, insert in its appropriate alphabetical order:

“**International Relationship Property Trusts Act 2021**”

International Trusts Act 1984

After section 15, insert:

“**15A Application of International Relationship Property Trusts Act 2021**

- “(1) An international relationship property trust registered under the **International Relationship Property Trusts Act 2021** may apply for registration as an international trust under this Act if it meets the requirements in paragraphs (a) and (b) of the definition of “International Trust” in section 2.
- “(2) A provision of this Act applies to an international relationship property trust registered as an international trust under this Act if an equivalent provision is not provided for in the **International Relationship Property Trusts Act 2021**—
 - “(a) to the extent that the provision of this Act is not inconsistent with an express provision of the **International Relationship Property Trusts Act 2021**; and
 - “(b) with all necessary modifications to ensure consistency with the **International Relationship Property Trusts Act 2021**.
- “(3) To avoid doubt, if there is a conflict between a provision of the **International Relationship Property Trusts Act 2021** and a provision of this Act the provision of the **International Relationship Property Trusts Act 2021** prevails.”

Limited Liability Companies Act 2008

In the Schedule, insert, in its appropriate alphabetical order, “**International Relationship Property Trusts Act 2021**”.

Trustee Companies Act 2014

In section 4, definition of **offshore entity**, after paragraph (k), insert:

“(l) a trust or disposition registered under the **International Relationship Property Trusts Act 2021**”.

In section 4, insert in their appropriate alphabetical order:

“Registrar of International Relationship Property Trusts means the Registrar of International Relationship Property Trusts under the **International Relationship Property Trusts Act 2021”**

“Registrar of International Trusts means the Registrar of International Trusts appointed under the International Trusts Act 1984”

Replace section 85(1) with:

- “(1) In the case of a deregistration described in **subsection (1A)**, each trustee company (and each subsidiary) that acts as its trustee may resign by the trust company giving notice of that resignation to the Registrar of International Trusts or the Registrar of International Relationship Property Trusts (as the case may be) and to 1 or more of the following:
 - “(a) a remaining trustee (if any);
 - “(b) the settlor;
 - “(c) a protector (if any);
 - “(d) a beneficiary.
- “(1A) A trustee company may resign under **subsection (1)** if—
 - “(a) an international trust is deregistered under the International Trusts Act 1984; or
 - “(b) an international relationship property trust is deregistered under the **International Relationship Property Trusts Act 2021.**”

This Act is administered by the Financial Supervisory Commission.
Printed under the authority of the Cook Islands Parliament—2021.
