



ANALYSIS

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| Title | |
| 1. Short Title | 4. Community property |
| 2. Fraud | 5. Commencement of proceedings |
| 3. Matters determined by governing law | 6. Repeals |

1991, No. 32

An Act to amend the International Trusts Act 1984

(19 December 1991)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows.

1. Short Title - This act may be cited as the International Trusts Amendment Act 1991 and shall be read with and deemed part of the International Trusts Act 1984 (herein referred to as the "principal Act").

2. Fraud - Section 13B of the principal Act (as inserted by section 6 of the International Trusts Amendment Act 1989 and amended by section 3 of the International Trusts Amendment (No.2) Act 1989) is amended by adding after subsection (7) the following subsections -

- "(8) For the purposes of this section,-
- (a) the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon to either partly or wholly establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued.
 - (b) in the case of an action upon a judgment, the date of the cause of action accruing shall be, the date of that act or omission or where

there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the omission shall have first occurred, as the case may be, which gave rise to the judgment itself.

(9) The provisions of this section shall apply to all proceedings by every creditor alleging fraud against a settlor of an international trust, or against any person who shall settle property upon, or dispose of property to, or establish an international trust on behalf of that settlor, to the exclusion of any other remedy, principle or rule of law whether provided by statute or founded in equity or common law.

(10) In this section the term "creditor" includes any person who alleges a cause of action."

3. Matters determined by governing law - Section 13H of the principal Act (as inserted by section 6 of the International Trusts Amendment Act 1989) is amended by adding after subsection (2) the following subsection -

"(3) A disposition of property located at a place beyond the Cook Islands to an international trust or a trust that shall subsequently become an international trust shall if made in accordance with the law of that place governing such disposition be deemed to be a valid disposition notwithstanding any law of the Cook Islands to the contrary."

4. Community property - The principal Act is amended by inserting after Section 13I (as inserted by section 6 of the International Trusts Amendment Act 1989) the following section -

"13J Community property - (1) Where a husband and wife transfer property to an international trust or a trust that subsequently becomes an international trust and, immediately before being transferred, such property or any part or any accumulation thereto is, pursuant to the law of its location or the law of either of the transferors' domicile or residence, determined to be community property, then notwithstanding such transfer and except where the provisions of the trust deed may provide to the contrary, that property and any accumulation thereto shall, for the purposes of giving effect to that law, be deemed to be community property and be dealt with in a manner consistent with that law but in every other respect shall be dealt with in accordance with the trust deed and the governing law of that deed.

(2) Notwithstanding anything to the contrary herein contained, nothing herein shall be construed so as to cause the trust, the trust fund, the trustees or any of them, the protectors or any of them, to be liable or obligated for any debt or responsibility of the settlor merely by reason of this section."

5. Commencement of proceedings - The principal Act is amended by inserting after section 13J (as inserted by section 4 of this Act) the following section -

"13K Commencement of proceedings - (1) No action or proceedings whether pursuant to this Act or at common law or in equity to, -

- (a) set aside the settlement of an international trust; or
- (b) set aside any disposition to any international trust,

shall be commenced, unless such action or proceedings is commenced, -

- (c) in the High Court of the Cook Islands; and
- (d) before the expiration of 2 years from the date of, -
 - (i) the settlement of the international trust that is sought to be set aside; or
 - (ii) the disposition to the international trust that is sought to be set aside, as the case may be.

(2) No action or proceedings whether pursuant to this Act or at common law or in equity shall be commenced by any person, -

- (a) claiming to have had an interest in property before that property was settled upon or disposed to an international trust; and
- (b) seeking to derive a legal or equitable interest in that property,

unless such action or proceedings is commenced, -

- (c) in the High Court of the Cook Islands; and
- (d) before the expiration of 2 years from the date that the property referred to in paragraphs (a) and (b) was settled upon or disposed to an international trust.

(3) No action or proceeding to which subsections (1) or (2) of this section or section 13B shall apply, whether substantive or interlocutory in nature, shall be determined and no order shall be made or granted by the High Court (including any injunction that shall have the effect of preventing the exercise of, or restoring to a person any rights, duties, obligations or powers or preserving, granting custody of, detaining or inspecting any property) unless, the applicant shall first satisfy the High Court by affidavit, filed therein, that, -

- (a) the action or proceeding has been commenced in accordance with subsections (1) or (2) of this section; and
- (b) where the action or proceeding shall allege fraud or be founded upon some other action or proceedings alleging fraud, the determination or order sought would not be contrary to the provisions of section 13B;

(4) Every affidavit required to be filed pursuant to subsection (2) shall be made by the person on whose behalf the action or proceedings is brought or, in the case of a body corporate, an officer thereof, and every such person or officer as the case may be, shall depose as to, -

- (a) the circumstances of the cause of action in respect of which the action or proceedings are brought;

- (b) the date upon which the cause of action shall have accrued;
- (c) the date upon which the property, in respect of which the action or proceedings is brought, was settled upon or disposed to the international trust;
- (d) whether an action or proceedings have been commenced in respect of the cause of action and if so, the date upon which that action or those proceedings were commenced.

(5) The provisions of this section shall apply to every international trust expressed to be governed by the law of the Cook Islands and, in the event that a trust shall be registered as an international trust, and shall change the law by which it shall be governed to that of the Cook Islands, then every proceeding after the date of registration by a person claiming to be interested in, or to be prejudiced by, the settlement of property upon such trust, or any disposition of property to such trust before registration, shall be commenced subject to subsections (1) and (2) and every determination and order shall be made subject to subsection (3) as if upon the date that such settlement or disposition was made the trust was an international trust governed by the law of the Cook Islands."

6. Repeals - The enactment titled, 13 Elizabeth I Ch 5 (1571) shall have no application to any settlement upon or disposition to an international trust.

This Act is administered by the Cook Islands Monetary Board