

Cyprus International Trusts

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Cypriot trust law has been shaped on the basis of UK law and the Cyprus Trustee Law Cap.193 emulates the English Trustee Act 1925. Concerning the current Cyprus legislative frame, Trust law is governed by **The Cyprus International Trusts Law 1992** (No.69(I)/1992) as that has been amended by the recent reforms of March 2012 (**International Trusts (Amending) Law of 2012**).

THEORETICAL BACKGROUND

Cyprus International Trusts very much follow the way UK trusts operate. A Trust is legally defined as a relationship by a person (the Settlor) who places assets under the control of the Trustee for the benefit of a third party (the Beneficiary). These assets are separate and do not form part of the Trustee's own estate. The title of the trust assets stands in the name of the Trustee and the Trustee is empowered to manage the assets held in trust in accordance with the terms of the trust agreement. The Trustee can also be a Beneficiary. A Trust could have fixed or unlimited duration.

A Cyprus International Trust is a Trust whereby the following are met:

- ✓ The Settlor, either a legal entity or a natural person, is a Cyprus non resident during the calendar year preceding the trust formation, and
- ✓ At least one of the Trustees during the Trust duration is a Cyprus resident, and
- ✓ None of the Beneficiaries, with exception of a Charitable Trust, is a Cyprus resident during the calendar year preceding the trust formation.

A "resident" has the meaning assigned to by the Income Tax Law, meaning either a person residing in the Republic for more than One Hundred Eighty Three (183) days a calendar year, or a legal entity that its management and control are exercised in the Republic.

A person wishing to establish a Cyprus based trust now has the following options:

- ✓ To create a trust, either by a trust deed or by will, and vest in trustees movable and immovable property situated in Cyprus or abroad, inclusive of shares in a Cyprus company;



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- ✓ to incorporate a Cyprus company or partnership to be the owner or the manager of property to be placed in trust in the Cypriot corporation or in an overseas company and managed by the Cyprus corporation;
- ✓ to incorporate in Cyprus a subsidiary company or a branch of an overseas corporation to hold or manage property placed in trust in the Cyprus subsidiary or branch of the overseas corporation;
- ✓ to set up an international trust in accordance with the provisions of the International Trusts Laws of 1992 and 2012.

The recent amendments have reinforced further the advantages offered by the formation of a Cyprus International Trust. The key features of the recent amendments relate to changes concerning residency provisions the Settlor's & the Trustee's powers (the trust's duration, the applicable law, charitable trusts and property ownership).

The new changes in more detail:

- ❖ Changes in relation to the definition of the Settlor's and the Beneficiary's residency, whereby both the Settlor and the Beneficiary may now be Cyprus residents, provided they are not Cyprus residents the calendar year preceding the formation of the trust. This lifts the prior restriction in relation to Cyprus residency.
- ❖ Changes in relation to the taxation of the trust income, whereby non Cyprus residents will only be taxed in Cyprus for their income that is sourced in Cyprus. Therefore, income that is sourced elsewhere is exempt from taxation in Cyprus.
- ❖ Changes in relation to the restrictions that existed in relation to both movable and immovable property ownership, whereby the trustees can now invest in immovable property both in Cyprus and outside Cyprus. In relation to the Cyprus movable property that can also be shares in a company incorporated in Cyprus.
- ❖ Changes in relation to the governing law, which in relation to International Trusts is the law chosen by the Settlor. Without limitation, all issues concerning the validity of a Cyprus International Trust or its administration or amendment of the Trust's functions will be governed by the Laws of the Republic of Cyprus. The prior provisions of the relevant law concerning the permission of changes to the applicable law have also been maintained.
- ❖ Changes in relation to the powers vested to the Settlor, whereby the Settlor can freely invest as if he/she was the beneficial owner and/or appoint and remove trustees and beneficiaries and directors at any of the



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companies that belong to the Trust, as well as decide on the applicable to the Trust law.

- ❖ Changes in relation to the duration of the trust, whereby in respect of trusts created after the Amendments, the prior duration of 100 years has been altered to an indefinite one, unless otherwise provided in the terms of the trust.
- ❖ Changes in relation to the definition of “charitable trust”, whereby the main purpose of a trust is broadened to include more aims, in line with the UK Charities Act 2006
- ❖ Introduction of the new term “Protector”, meaning a person other than the Trustee and who is vested with the powers to offer advise to the Trustee in relation to his/her powers, including the right to appoint or cancel the appointment of the Trustee.

The new changes are envisaged to work positively for those seeking to invest in Cyprus both in relation to investing in a Cyprus company and in Cyprus real estate.

More specifically for those seeking advise on which type of trust is suitable for their investment, the following are provided as a guidance:

a. Discretionary Trust

A Discretionary Trust is a trust whereby the Trustees have “discretion” about how to use the trust's income and about how to distribute the trust's capital. A Discretionary Trust is used in those cases whereby there is a need to protect the beneficiaries from taxation, as in that case the beneficiaries have no legal right on the trust until the trust funds are distributed to them by the Trustees. Similarly, where there is a need to protect beneficiaries from any creditors in the event of bankruptcy, as through a Discretionary Trust the beneficiaries will have only contingent interest in the trust fund.

b. Fixed Trust

A Fixed Trust is usually set up as a way of preventing the Trustees from using their full powers in the way assets are distributed to the Beneficiaries as in that case the Trustees will have to follow the terms of the Trust.

c. Purpose Trust

A Purpose Trust is set up in order to advance a specific purpose. It is a trust that has no beneficiaries as it is usually set up for a charitable purpose. A purpose Trust can be executed by the Settlor, his personal representatives or by an enforcer.

d. Accumulation & Maintenance Trust

An Accumulation & Maintenance Trust is usually set up in those cases whereby assets are needed to be held on behalf of someone until a certain

future event will take place, such as a child reaching adulthood or a person getting married.

B. PRACTICAL CONSIDERATIONS

Requirements

There are no formalities in setting up a Cyprus International Trust and it can be done simply through a Deed or by a will.

Confidentiality

Confidentiality is important and is ensured in the formation of a Cyprus International Trust except by Court Order concerning the disclosure of information that is material to the outcome of civil or criminal proceedings.

The Deed of Trust is a document private to the individuals concerned. That means that the names of the persons referred to in the Trust are not disclosed to any state authority. Also, a will through a trust is not open to public for inspection. That offers a strong advantage in comparison to jurisdictions where a will becomes open to public for inspection.

Moreover, confidentiality is safeguarded by the fact that there is no requirement to publish the results of an International Trust.

Protection of assets

Trust assets are protected in the event of a bankruptcy or a liquidation by the Settlor, as no claim can be raised by the creditors, unless it is proven in Court that the Trust was created with intention to defraud. The burden of proof lies with the creditors.

Jurisdiction

Without prejudice to the provisions of Council Regulation (EC) No. 44/2001, Cyprus Courts have jurisdiction in relation to a Cyprus International Trust in the following cases:

- The applicable law stated in the trust deed is the law of the Republic of Cyprus,
- The Trustee of the Trust is a Cyprus resident,
- A company acting as a Trustee is a company incorporated in Cyprus,
- Any of the Trust assets are located in the Republic,
- The control of the Trust is exercised in the Republic,
- The parties accept the Cyprus Courts jurisdiction,
- The instrument of the Trust refers any disputes to the Cyprus Courts.

Where a choice as to the applicable law has not been made, the law with which the Trust has the closest link is applied. This is usually considered to be where the control of the Trust is exercised, where the Trust assets are located, the Trustee's place of residence, the purposes of the Trust are and where these will be implemented.

A Trust established in Cyprus can be transferred to another jurisdiction and vice versa. That is particularly beneficial in a case of a change of circumstances where for example tax reasons would demand such action.

Jurisdiction of the Cyprus Courts

The Trustee, the Beneficiary or the Protector can lodge to the Courts an application in relation to any matters concerning a Cyprus Trust and the Courts have powers to issue any order in relation to any aspect of the Trust.

Foreign Trusts

A foreign Trust is governed by the laws of the country where it has been set up. A foreign Trust is not enforceable in the Republic if it is deemed by the Courts to be against the public interest.

Applicable Law also on previously created trusts

The new amendments of 2012 apply to all International Trusts irrespectively of the time they were set up unless they are inconsistent with the provisions of the Amended law. Any previously valid transfer or disposal is not being affected by the new amendments.

Tax Advantages

i) Beneficiary being a non Cyprus resident

The Trust benefits from the excellent taxation regime of Cyprus and correspondingly is subject to tax on the maximum rate of 10%.

ii) Beneficiary being a Cyprus resident

Whereby the Beneficiary is a Cyprus resident, both income that is sourced within the Republic as well as from outside Cyprus is subject to tax.

There is no capital gains tax on the disposal of assets of a Cyprus International Trust and there is no withholding tax on dividends paid out by a Cyprus trust.

Anti Money laundering Laws

The Trustee is always under the obligation to comply with Anti Money Laundering legislation, but the application of such legislation does not give rise

to any need for disclosure of the necessary documents to the authorities, save for when a court or administrative order is issued for this purpose.

Cyprus International Trusts: Who they may be suitable for

A Cyprus International Trust may be suitable in all those cases where a beneficial tax structure is required or where there is a need to safeguard assets.

Some practical examples include the following scenarios:

- For individuals that reside in jurisdictions with a high tax rates and that are seeking to make investments, as they will have the possibility of taking advantage of the various Double Tax treaties in place between Cyprus and a great number of other jurisdictions. Dividends, royalties and interest received by an International Trust from a Cyprus Company are tax exempt. Also, International Trusts are exempt from estate duty or inheritance tax.
- For individuals seeking to safeguard property from undesired claims, for example in divorce or litigation cases,
- For individuals that due to being minors are non able to hold property in their name or for individuals that due to a mental disability, are non capable of holding property directly,
- For individuals seeking confidentiality in relation to their assets and wealth for fiscal or other reasons and for purposes of wealth management,
- For individuals that own a holding company and are seeking better tax planning, whereby a Trust can be set up in one country to hold an investment holding company in another,
- For individuals seeking to manage effectively their pension or retirement funds,
- For individuals that own shares in a company and that are residing in a jurisdiction where the concept of a trust is not recognised and whereby a trust would assist them in keeping their anonymity,
- For financial institutions and banks whereby the formation of a trust together with an International business company as a Trustee can be used to manage more effectively the funds of their clients.

Revocation of an International Trust

A Cyprus International Trust is revocable only if that is specifically expressed in the instrument of the Trust.

Stamp Duty

Stamp duty is payable upon the set up of a Cyprus International Trust and that currently is set at EURO430. We need to emphasise that the Cyprus Trust is valid even if this fee is not paid and that the payment of this fee must be paid only if any person is intending to rely upon the contents of the Trust document in Court.

Advantages of a Cyprus International Trust

Trusts created in Cyprus can prove advantageous for a number of reasons. The following are examples:

DIVESTING OF PERSONAL ASSETS

An individual who wishes to divest himself of personal assets for fiscal or other reasons can achieve this by transferring them to an International Trust created in Cyprus.

PRE-MIGRATION ARRANGEMENT

Individuals moving to a high tax country may obtain fiscal advantages in their new country by placing funds in an International Trust created in Cyprus.

INVESTING IN BUSINESS OVERSEAS

An individual, who wishes to invest in business overseas but wishes to ensure that the profits and dividends received are not remitted to the country of his residence, may set up an International Trust in Cyprus to invest in overseas business.

INVESTMENT HOLDING COMPANY

A trust can be used in one country to own an underlying investment holding company in another. This type of tax planning device has many advantages in providing the maximum possible protection for both settlor and beneficially alike.

EXCHANGE CONTROL

An individual with assets outside his country of residence and whose country of residence may in future extend its exchange control restrictions to include remittance of overseas funds, may wish to retain the flexibility of overseas funds by transferring them to an International Trust created in Cyprus.

GLOBAL ESTATE PLANNING

An individual, through the use of a trust can arrange to be succeeded in inheritance by persons who due to the legislation of the individual's country would otherwise be excluded from the inheritance.

LEGAL SYSTEM

The legal system is a common law system with trust legislation and case law.

STABILITY

Cyprus offers both political and economic stability. In addition to the latter, Cyprus is full Member State of the European Union since 1st of May 2004.

DOUBLE TAX TREATIES

It is possible for trusts to come under the score of double taxation treaties. This will depend on whether the other signatory state recognizes trust structures and principles of equity and whether the trust itself meets the eligibility criteria set out in the given treaty.

CONFIDENTIALITY

There are no registration or reporting requirements for trusts established in Cyprus nor are the names of trust or of the persons referred to in the trust deed disclosed.

FLEXIBILITY

Cyprus law allows the removal of a trust from its jurisdiction and vice versa. In this way it provides the necessary flexibility if such transfer would be advantageous because of change of circumstances.

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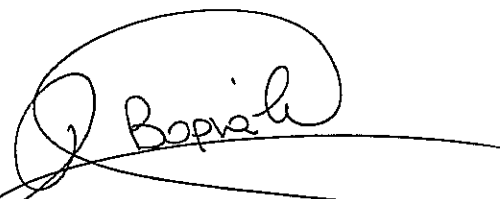
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