

Cyprus International Trusts Law

Introduction

Cyprus International Trusts Law is essentially based on the English system. Trusts are mainly regulated by the Trustee Law, Chapter 193, enacted in 1955 and based on the English 1925 Trustees Act. This is supplemented by the English doctrine of equity and English case law prior to 1960. In 1992, Cyprus enacted the International Trusts Law. This was done to update and modernise the law and establish Cyprus as an offshore and financial centre and a serious trusts jurisdiction (the "1992 Law").

There were a number of discussions and lobbying for the modernization of the 1992 Law which effectively came into fruition on the 9th March 2012, after the Republic of Cyprus' House of Representatives approved the reform of the 1992 Law. Thus the International Trust (Amending) Law of 2012 (the "2012 Law") was passed.

The Law does not provide a comprehensive definition of 'trusts'. Trusts law was largely developed by the courts on a case-by-case basis, and it is through the development of case law which has provided us with a better understanding of what a trust arrangement entails. The basic structure is as follows:

- a) An obligation on the holder of property (the "trustee")
- b) To manage that property (the "trust property")
- c) For the benefit of another (the "beneficiary").

In simple terms, a Cyprus International Trust can be defined as the obligation which is placed upon a Trustee by the Settlor to manage the trust property for the benefit of the Beneficiary in accordance with the instructions of the settlor. These instructions are usually written and expressed in a trust deed or will (the "trust instrument"). They may also be oral.

The most important thing to note is that, even though the trustee has legal ownership of the trust property, it does not belong to him. Beneficial ownership of it belongs to the beneficiaries. So, the trust property, is an independent fund held by the trustee but available only to the beneficiaries.

For a valid trust to be created, the following three certainties must be present:

- a) **Certainty of intention** – there must be evidence of the express intention of the settlor to create the trust. This is usually evidenced by the trust instrument (although it is possible to have orally created trusts);
- b) **Certainty of subject matter** – the assets that are to become the trust property must be readily identifiable, i.e. money, property, shares etc.;
- c) **Certainty of objects** – the identity of all the intended beneficiaries of the trust must be ascertained or ascertainable at the time of setting up the trust.

Who can create a Cyprus International Trust and are there any restrictions?

A Cyprus International Trust can be created by anyone provided of course that the Settlor is of sound mind and of right age. The restrictions imposed by the International Trusts Law of 1992 to 2012 focus on the residency status of the Settlor, the Trustee and the Beneficiary are provided below:

- **The Settlor**

The Settlor is the person who sets the Cyprus International Trust and can be either a natural or legal person but must not be resident of the Republic of Cyprus during the calendar year immediately preceding the creation of the trust;

- **The Trustee**

The Trustee or at least one of the Trustees must be resident of the Republic of Cyprus for the whole duration of the Cyprus International Trust. This means that if the Settlor wants to appoint a Trustee who has his residency outside of Cyprus then he must appoint a second trustee.

- **The Beneficiary**

The Beneficiary or Beneficiaries must not be resident of the Republic of Cyprus during the calendar year immediately preceding the creation of the trust and that applies equally whether the beneficiary is a natural or legal person.

(The term "resident of the Republic of Cyprus" has the same meaning as under the Income Tax Laws of Cyprus i.e. a physical person is considered as a resident in Cyprus if he /she resides in Cyprus for a period which exceeds in aggregate 183 (One Hundred Eighty Three) days in any calendar year. A company is considered as resident of Cyprus provided its management and control is exercised in the Republic of Cyprus.)

Settlors

Power of Settlors

Following the new amendments the Law the Settlor is enabled to reserve for himself certain powers, rights over or in the trust property either in his capacity as a Settlor, as Protector or Enforcer of the Trust without this to adversely affect the validity nor the execution of the Trust. Such powers, as existing under section 4A of the Law, may include any of the following:

- The revocation, amendment of the terms of the trust or any trusts or powers arising wholly or partly from the trust;
- The allocation, distribution, payment or other disposition of income or capital from the trust property or issuance of directions for conducting such a concession, distribution, payment or disposal;
- The exercise of powers of a director or officer or the issuance of binding directions regarding the appointment or removal of any Board member or officer of any company, which is owned by the trust, either wholly or partially;
- The issuance of binding directions to the trustee in connection with the purchase, retention, sale, management, loan, pledge or charge over property of the trust or the exercise of any powers or rights

conferred on such property;

- the appointment or termination of any trustee, inspector for the application of the trust, protector or beneficiary;
- The appointment or termination of any investment manager or investment adviser;
- Changing the applicable law governing the trust or place (forum) of management of the trust;
- The restriction of the exercise of any power or the discretionary power of the trustee, requesting that these be exercised only with the approval of the settlor or any other person expressly mentioned in the terms of the trust.

Where the powers set out above have been retained or assigned to the settlor whether in such capacity or in his capacity as inspector for the application of the trust, the trustee acting pursuant to the exercise of such powers shall not be deemed to be acting in breach of trust.

Moreover, where the powers set out above have been retained by the settlor or have been bestowed upon him as protector or inspector for the application of the trust, no intention to defraud can be attributed to the settlor for the purposes of Section 3(2) of the 2012 Law which relates to defrauding of creditors.

These new provisions are similar to the corresponding provision that exist in Jersey and Guernsey laws which bestow the plausibility to make the trust adaptable to any changes that it may be subject to regarding the circumstances surrounding it and the objectives that it seeks to attain.

Trustees

Appointment and discharge

Trustees are appointed by the settlor. There are no rules as to how many trustees should be appointed in respect of each trust although it is advisable to appoint more than one trustee.

A trustee does not have to accept the appointment and may refuse to act as trustee either expressly or by implication.

If none of the appointed trustees of a particular trust accept the appointment, then the trust property will revert by resulting trust back to the settlor or his personal representatives.

Under the 1955 Trustees Law, the courts may in certain cases discharge or replace trustees and appointing new ones.

Trustees' Main Duties

The Trustees' main duties are:

- a) To administer the trust property prudently; and
- b) To comply strictly with the terms of the trust.

The general rule is that the trustees do not have the power to vary the terms of the trust under any circumstances.

The only case when the trustees may vary the trust is when all the beneficiaries are of full age and capacity. If so, then the beneficiaries can together authorise the trustees to deal with the trust property in a manner different to that specified in the trust instrument.

In trusts where the beneficiaries belong to certain specific classes (i.e. unsound of mind, incapacitated, infant) the court may vary the terms of the trust if satisfied that the variation is in the best interests of the beneficiary. The trustees in their private lives may not act in any way that brings them in conflict with their duties as trustees. They are also not allowed to make any profit from their position as trustees unless they are expressly authorised by the trust instrument.

Also, with some limited exceptions, they may not delegate their duties. The exceptions provided for in the law include the right to employ a solicitor, a banker etc. they would be paid out of the trust property.

Power of Trustees

Under section 8 of the Law, the trustees of an International Trust have extensive investment powers, which ensure, that the Trustee is capable of performing his tasks. Some of the most important powers are: to make capital distribution, to borrow, to guarantee, to mortgage, to employ, to invest/lend money, to make payments for/on behalf of beneficiaries as well as to advance money to another trust.

Pursuant to the amended section 8, by virtue of the 2012 Law, the powers of trustees have been extended even further; namely with the amendments the Trustee may hold, maintain or invest in movable and immovable property in Cyprus and abroad, including shares in companies incorporated in Cyprus.

Trustees' Liabilities

Unless the trust instrument expressly provides otherwise, trustees are not entitled to any payment for their services. They may, however, be reimbursed from the trust property for any expenses they incur in performing their duties.

Any action taken by the trustee that is in excess of their powers or contravenes the terms of the trust instrument is a "breach of trust" and the trustee is personally liable for the full extent of any loss incurred as a result of such a breach.

Trustee Services

Trustees in Cyprus manage the trust property and follow the settlor's wishes as expressed to them in the letter of wishes.

Costs

There are no stamp duties on the settlement of property in a Cyprus trust. A stamp duty of EUR 430 is payable on the creation of an international trust. A trust can be created within a few days and the cost of creation will vary, according to the complexities involved. The annual cost of administering the trust depends on the work involved and the time spent.

The fee is not calculated as a percentage of the trust property.

Beneficiaries

The main right of the beneficiaries under a trust is their right to enjoy their interest in the trust property. In the case of breach of a private trust, the beneficiaries may bring an action to the court to force the trustees to administer the trust property in accordance with the terms of the trust. The following actions are available to them:

- a. They may pursue a personal action against the trustees;
- b. They may be able to follow the trust property itself or to claim anything into which it has been converted. This is an equitable claim and the beneficiaries may try to trace the trust moneys even where the trustee has mixed it with his own money. The beneficiaries are held to have a first charge on the traced assets. But there are limitations to this as the tracing must end where:
 - i. No traceable product can be found, or
 - ii. Where the trust is traced in a bona fide purchaser without notice of the trust, or
 - iii. They may be able to institute criminal proceedings against the trustees.

What are the formal requirements to create a Cyprus International Trust?

The formalities that need to be met for the creation of a Cyprus International Trust are:

- a) Comply with the residency requirements of the International Trusts law;
- b) Provide the information related to the Trustees to the relevant competent authority as per the September amendment to the law;
- c) If the Cyprus International Trust is created by a will, the formal requirements indicated in the relevant law on wills must be complied with;
- d) Payment of stamp duty of €430;
- e) Make sure that the Cyprus International Trust, in order to be valid, this satisfies the following three certainties requirement ("**Three Certainties**"):

- **Certainty of Intention** - we must be able to demonstrate the Settlor's express intention to create the trust;
- **Certainty of Subject Matter** - the assets which will form the trust property must be readily identifiable and tangible;
- **Certainty of Objects** - the identity of the beneficiaries must be clearly stated and sufficiently defined in cases where this involves as large group of people.

Types of Cyprus International Trusts

Trusts are divided in the following main categories:

1. Private Trusts

1.1. Express Private Trusts:

The most common form of a Trust which is created by the Settlor expressly either by using a deed, in writing, by will and in some exceptional circumstances an oral statement could be seen as sufficient.

The intention of the settlor must be made absolutely clear. The three certainties listed in the restrictions section must be present.

1.2. Resulting Trust:

A resulting trust arises from the implied, rather than the expressed intention of the settlor. This intention can be inferred by the way that the settlor acts or behaves.

An example of a resulting trust would be where A gives money to B to buy an asset. If there is no evidence that A intended for B to keep the asset, then B is presumed to hold the asset on trust for A.

But if, in the above example, A was B's father and A had given money to B so that B could purchase books for school, then the presumption arises that A intended for B to keep the books and therefore there is no resulting trust.

1.3. Constructive Trust:

They are imposed by law independently of what anyone intended. An example of a constructive trust would be where A gives money to B to hold for C. If B then gives the money to D and D knows that B was holding the money for C, then D will be construed as to also hold the money on trust for C.

These are trusts that arise from the implied intention of the settlor and will either be resulting or constructive trusts.

1.4. Implied Trusts:

These are trusts that arise from the implied intention of the settlor and will either be resulting or constructive trusts.

2. Charitable Trusts

There is no legal definition of what constitutes a charity. A Cyprus International Trust shall be deemed to be charitable if the **Three Certainties** listed above are present and if it falls under the provisions of s.7 of The International Trusts Law of 1992 and 2012 and the Trust must have as its main purpose the achievement of one or more of the following:

- a) The prevention or relief of poverty;
- b) The advancement of education;
- c) The advancement of religion;
- d) The advancement of health or the saving of lives;
- e) The advancement of citizenship or community development;
- f) The advancement of the arts, culture, heritage or science;
- g) The advancement of amateur sport;
- h) The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- i) The advancement of environmental protection or improvement;
- j) The relief of those in need by reason of youth, age, ill health, disability, financial hardship or other disadvantage;
- k) The advancement of animal welfare and protection of animals;
- l) Any other purposes beneficial to the public in general or which may reasonably be considered to be incidental to any purposes falling within any of the paragraphs above.

They are enforced by the Attorney General acting on behalf of the state.

It is possible to set up an international charitable trust in Cyprus under the International Trusts Law.

3. Fixed Trusts

These are trusts where the share or interest of the beneficiaries in the trust property is specified by the Settlor. In other words, Fixed Trusts provide that the Beneficiaries shall only be entitled to the specified trust property which is indicated by the Settlor upon the creation of the Trust.

4. Discretionary Trust

These are trusts where the trustees may, at their discretion, determine what share or interest of the trust property should go to each member of a class of beneficiaries. With discretionary Trusts the Settlor has vested to the Trustees a discretion in regards to the sum each Beneficiary shall be entitled from the trust property.

Amendments after 2013 affecting Cyprus International Trusts

As part of maintaining an attractive trust jurisdiction and at the same time remaining compliant with European Law and anti-money laundering laws and regulations the Cyprus Parliament has passed laws amending the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 and the International Trusts Law of 1992 to 2012.

Trust Registry

The main amendment which clients need to be aware of is the creation of a Trust Registries which will be maintained by 3 Cyprus regulatory authorities; namely the Cyprus Securities and Exchange Commission, the Cyprus Bar Association and the Cyprus Association of Certified Accountants. For the purposes of ensuring that such information contained in the Trust Registries remains confidential, only the 3 abovementioned authorities will have access to such information and will not be made publicly available in under any circumstance.

- **What information must be provided to the Trust Registry:**

1. The name of the Cyprus International Trust;
2. The name and the full address of the Trustee or Trustees of the Cyprus International Trust at all relevant times;
3. The date when the Cyprus International Trust was established;
4. The date of any change in the governing law to the Cyprus International Trust occurred;
5. The date of termination of the Cyprus International Trust.

- **What details need to be verified?**

As per Article 7 of the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 Persons providing services of management and administration to trusts are obliged to verify the details and the true identity of the beneficial owners of trusts, including the following categories:

1. Trustees;
2. Settlers;
3. Beneficiaries or class of beneficiaries;
4. Protectors, if any;
5. Investment consultants, accountants, tax consultants, if any;
6. Activities of the trust;
7. Any other person that exercises the effective control on the trust.

As the Cyprus International Trust must have at least one (1) Cyprus-resident Trustee, it will be the responsibility of that Trustee to notify the relevant competent authority fifteen (15) days after the creation of the Cyprus International Trust or in case where Cyprus law becomes the governing law of the Trust. Any amendment that follows must also be notified to the competent authority not later than fifteen (15) days of such amendment.

- **How long will the information be kept on the Trust Register after the termination of a Cyprus International Trust?**

The information will remain in the Trust Register for a term not exceeding 5 years after the termination of the Cyprus International Trust.

Validity – Irrevocability of Cyprus International Trusts

The Law confirms the validity of an International Trust created by the Settlor which is of full age of (18) and of sound mind in accordance with the law of the country which he is resident.

The amending law provides that any matter in relation to the validity or the administration of an International Trust or a disposition to an International Trust will be determined by the laws of Cyprus without any reference to the law of any other jurisdiction.

Moreover, the validity of the International Trust or any transfer or disposition of property to it will not in any way be affected by the law relating to inheritance or succession in force in Cyprus or any other country. Additionally, dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction or by reason that the other jurisdiction does not recognize the concept of trusts.

An international trust which was established during or after the entry into force of the 2012 Law has no limit on the period over which an international trust may continue to be valid and enforceable. Accordingly, the 2012 Law abolishes all restrictions on the duration of trusts.

Moreover, excluding express terms of the trust to the contrary, no concession, distribution, payment, holding or disposal of the income or capital of the trust to another trust is invalidated merely by reason that the other trust continues to be valid and enforceable after the date on which the first trust ceased to exist.

Further, the validity of the Cyprus International Trust is not adversely affected nor the eligibility of any Settlor, Trustee, Trust Enforcement Supervisor, Protector, or Beneficiary cannot be disputed nor can any of the aforementioned persons bear any liability or obligation or may be deprived of any right, claim or interest by virtue of the following:

- a) any provisions of any law in any jurisdiction which the creation of trust is prohibited or not recognized or
- b) because the trust or the disposal, cancels rights, claims or interests, arising from the legal provisions of any jurisdiction due to personal relations with the Settlor or any Beneficiary or due to rights in an estate or because the trust or the disposal is contrary to any law, judgment or order in any other jurisdiction.

The Trust is irrevocable unless a specific power of revocation is reserved in it and cannot be set aside (challenged at Court) by the Settlor's creditors unless and to the extent that the creditors can show that the Trust was made with intent to defraud them. The burden of proof of such intent lies with the creditors and an action against the trustees to avoid the trust, on grounds of fraud, must be brought within two years from the date when the relevant transfer or disposition of assets is made to the trust.

Moreover, Cyprus International Trusts are not subject to any registration.

Will these amendments affect existing Cyprus International Trusts?

These amendments will be retroactive, meaning that every Cyprus International Trust created in Cyprus (provided that it has not been terminated) will have to comply with the amendments to the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 and the requirement to provide the details of the existing International Trust by the 9th of March 2014.

Other points relevant to Cyprus International Trusts

Duration of Cyprus International Trust

As per the provisions of the amending Law a Trust may exist in perpetuity and thus the previous restriction of a maximum 100 years that existed is now abolished.

Confidentiality of Trust

The levels of confidentiality have been extended as the law prohibits the disclosure of any information or documents regarding the Trust by the Trustees or any other person. Only the Court may by an Order permit the disclosure of such information where the disclosure is of paramount importance for the administration of justice.

Moreover, the Trustees have the discretion (not obliged) whether to disclose any account of the Trust to the Beneficiaries.

Application to court for an Order for Directions

The law provides the procedure to be followed in the instances where the Trustee, Protector, Enforcer or any other person may file an application to the Court in order to receive directions for the settling of an outstanding matter.

Applicable law

According to the provisions of the Law the Settlor may elect the applicable law to govern the Trust. This may be done either explicitly or apparently and in the latter case it may be determined subject to the surrounding circumstances of the particular case. In the instances where no applicable law has been chosen then the Trust will be governed by the law which is more closely related to it. The law provides certain guidelines in order to determine the jurisdiction that is most closely connected with the Trust.

Jurisdiction of Cyprus Courts

The Cyprus Courts based on the provisions of the law shall have exclusive jurisdiction on a Cyprus International Trust in the instances where one of the following circumstances is satisfied, namely:

- a) where the applicable law of the Trust is the law of the Republic
- b) where the Trustee is a resident of the Republic
- c) where the company acting as a Trustee has been incorporated in Cyprus
- d) where any asset of the Trust is situated in Cyprus
- e) where the administration of the Trust is performed in Cyprus
- f) where the parties to the Trust accept the jurisdiction of the Cyprus courts
- g) where the Trust refers any dispute to the Courts of the Republic

In the instances where the Trust is governed by Cyprus law, the provisions of the amending law shall be applicable irrespectively of any provisions to the contrary by any other law in Cyprus dealing with conflicts of laws or public order.

Cyprus International Trust and Asset Protection Planning

The most important provision of the Law is found in Section 3 that allows the Cyprus trust to be used as an asset protection vehicle. In specific:

- **Section 3(a).** A Cyprus International Trust can be used as an asset protection vehicle as it is immune from forced heirship and claw back rules in other jurisdictions where the assets are located.
- **Section 3(b).** A Cyprus International Trust does not become void even where the Settlor becomes insolvent or bankrupt (*This provision will not apply if the court is satisfied that the trust was set up specifically for the purpose of defrauding the creditors of the settlor at the time of setting up the trust. The law will also not apply where there were claims on the assets prior to the creation of the trust.*)
- **Section 3(c).** When a creditor contemplates that the Settlor used the Cyprus International Trust to defraud him the burden of proof is upon the creditor to prove such a sham within 2 years of creation of the Cyprus International Trust. After the 2 year period the creditor will be barred from bringing an action against the trustees.

Taxation of a Cyprus International Trust

Income

- If the Beneficiary is not resident in Cyprus and the Cyprus International Trust receives income from outside of Cyprus this income will not be subject to tax;
- If the Beneficiary is not resident in Cyprus and the Cyprus International Trust receives income from Cyprus this income is subject to tax;
- If the Beneficiary is resident in Cyprus and the Cyprus International Trust receives income from outside of Cyprus or from Cyprus then this income will be subject to tax;

- A Cyprus International Trust does not pay any tax on income received from outside of Cyprus whereas a Cyprus Company pays income tax on its worldwide income;
- A Cyprus International Trust does not pay any tax on the interest received provided that the beneficiaries are not resident in Cyprus;
- Cyprus International Trusts are possible to come under the scope 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.

Dividends

- Dividends which are received by the Cyprus International Trust from a Cyprus company are not subject to tax.

Payments to beneficiaries

- There is no withholding tax on payments to beneficiaries provided that they are not resident in Cyprus.

Capital Gains

- Any gains from asset disposal, other than immovable property situated in Cyprus, made by the Cyprus International Trust are not subject to capital gains tax in Cyprus.

Estate Duty

- No estate duty is payable by a Cyprus International Trust that was formed for the purposes of estate duty planning.

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.

Double tax treaties

It is possible for trusts to come under the scope 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.

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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