

INTERNATIONAL TRUSTS

A) Historical background

Trusts are governed and regulated by the Doctrines of Equity and Case Law as they were applied in England prior to the independence of Cyprus in 1960 and the Trustees Law, Cap. 193 enacted in 1955 and based on the English Trustees Act 1925.

The Cyprus Authorities in their effort to provide the necessary infrastructure for further promotion of Cyprus as an offshore and financial centre, have taken steps to introduce a new law headed "The International Trusts Law of 1992". This law has been recently amended by the House of Representatives with the ratification of the "International Trust (Amending) Law of 2011". The new Law aims to create a new situation which is required for foreign investors to establish international trusts in Cyprus and also to give freedom of movement of funds and remove ambiguities as to whether the existing legislation could cover set-ups, such as those which are common and popular in other jurisdictions.

B) The concept of trusts generally

The various types of trust vary in complexity but they have one common fundamental feature. A "person" being either an individual or a company ("the trustee") agrees to hold certain assets ("the trust fund") in its name for the benefit of another person ("the beneficiary") on certain terms and with certain powers (which are usually set out in the Trust Deed). The assets comprising the trust fund are legally held and registered as owned by the trustee and the trustee is under a duty, enforceable in the Courts, to hold those assets and the income arising from them for the benefit of the beneficiary (ies).

The above relationship can be summarised as follows: The trustee has legal title to the trust assets and the beneficiary has beneficial or equitable title (it is the beneficial title which is of value when one is considering asset ownership).

The other important parties of the trust are:

- The settlor. This is the person that creates the trust. In some jurisdictions the settlor could not act as trustee or beneficiary.
- The protector. This is the person(s) that has the power to restrict key powers (such as add beneficiaries, etc.) of the trustee so that they can only be exercised with the consent of suitable person.

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C) The Cyprus International trust

The international trust is a trust whereby:

- The settlor and/or a beneficiary were not Cyprus tax residents in the year preceding the year of creation of the trust;
- At least one trustee is resident in Cyprus (Cyprus International Business Company) (IBC) or partnership is considered as a resident trustee).

Under the law a settlor is deemed to have ability to dispose of his assets to an International Trust if at the time of such transfer is of full age and of sound mind under the law of the country in which he is a permanent resident.

The duration of an International Trust, notwithstanding any provision in the Law of Cyprus or of any other country, and subject to the terms of the trust, can be for unlimited period, and no rule against perpetuities or any analogous rule will apply to a trust or to any advancement, appointment, payment or application of property from a trust.

The nature of the Cyprus international trust could be “discretionary”.

As the name suggests the discretionary trust allows the trustee to exercise a large element of discretion with regard to distribution of income and assets, and to choose from a large “pool” of potential beneficiaries. The selection of beneficiaries from the “pool” could vary every year.

Subject to the provisions of the instrument creating an International Trust the trustee will be allowed at any time to invest the whole or any part of the trust funds in any kind of investment wherever the investment is situated and whether or not the funds have already been invested. Any investment made by the trustee may be varied or retain its original state as long as the trustee exercises diligence and prudence that a reasonable person would be expected to exercise in making such an investment.

The possibility to change the proper law of International Trust is expressly provided in the new law both as regards a change to the Law of the Republic of Cyprus as well as to a change from the Law

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of the Republic of Cyprus to any other jurisdiction. However, for such a change to be allowed under the law the following requirements must be met:-

(a) in case of a change from the law of the Republic the new proper law recognises the validity of the trust and the respective interest of the beneficiaries,

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D) Asset protection

An international trust shall not be void or voidable in the event of the settlor's bankruptcy or liquidation or in any action or proceedings against the settlor or at the suit of his creditors notwithstanding any provision of the law of Cyprus or any other country.

An International Trust may be set aside by the settlor's creditors to the extent that is proven to the satisfaction of the Cyprus Court that the International Trust was made by the settlor with the intent to defraud the creditors. The onus of proof of this intent shall be on the creditors.

Moreover, the Inheritance Law of the Republic of Cyprus or of any other country shall in no way affect any transfer or disposition made to a Cyprus International Trust and the validity of such transfer shall not be challenged. In the absence of any express provision to the contrary contained in the instrument creating the International Trust such a trust shall be deemed to be irrevocable by the settlor and his legal representatives notwithstanding that it is voluntary.

E) Confidentiality and non-disclosure

Confidentiality is of paramount importance and is imposed on the trustees and on any other person not authorised by law to have knowledge of information or documents which disclose any of the matters referred to hereinbelow. Thus no government or Central Bank of Cyprus official may disclose to anybody any information or documents in connection with:

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- (a) settlor
- (b) beneficiaries
- (c) trustees and exercise or performance of their discretion, duties and powers
- (d) accounts or property of the trust

However, a beneficiary is entitled to request from the trustees information about the accounts of the trust. Notwithstanding the above, the court may order the disclosure of information or documents in criminal or civil proceedings cases, if it is satisfied that the disclosure of the information or documents is of paramount importance to the outcome of the case.

F) Firewall Provisions

All matters relating to the validity or administration of an international trust or the transfer / disposal of trust property will be determined by the laws of Cyprus without reference to the law of any other jurisdiction. The dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction, for example regarding family and succession issues, or on the grounds that the other jurisdiction does not recognise the concept of trusts. Also the law relating to inheritance or succession in force in Cyprus or any other country will not in any way affect the validity of the international trust or any transfer or disposition of trust property.

Further, the trustees' fiduciary powers and duties and the powers and duties of any protectors of the trusts are exclusively governed by Cyprus law.

Finally an international trust containing a choice of law clause in favour of Cyprus law is fully protected from unfounded foreign judicial claims as a matter of public policy and order.

G) Settlor Reserved Powers

The settlor maintains extensive reserved powers, such as power to retain a beneficial interest in trust property, or to act as the protector or enforcer of the trust without affecting the validity of the trust. Such reserved powers also include the power to revoke, vary or amend the terms of the trust, to

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change the governing law of the trust, to act as a director or officer of any corporate entity wholly or partly owned by the trust, to give binding instructions to the trustee in connection with the trust property and to appoint or remove any trustee, enforcer, protector or beneficiary. The trust may also state that the trustees' powers are exercisable only with the consent of the settlor or any other person specified in the terms of the trust.

H) Stamp Duty

A Cyprus international trust is subject to stamp duty. If the trust deed is stamped more than 30 days after the date of creation of the trust a late payment fine is charged. The amount of the late payment fine depends on the length of the delay.

I) Registration

Each supervisory body for the purposes of the Fiduciaries Law (CySEC, the Cyprus Bar Association and the Institute of Certified Public Accountants of Cyprus) will maintain a register of trusts and as such Trustees will need to register the Trust to such supervisory body they fall under its regulations.

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained.