



Cyprus International Trusts

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Cyprus International Trusts

In 1992 Cyprus enacted the International Trusts Law, which complements the Trustee Law that is based on the English Trustee Act 1925. On the 8th of March 2012 the House of Representatives enacted the long awaited International Trusts (Amending) Law of 2012 effecting various structural amendments to the International Trusts Law of 1992.

Under this law Cyprus International Trusts are defined as those where:

- The settlor is not permanent resident in the Republic of Cyprus
- At least one of the trustees during the whole duration of the trust is a permanent resident in the Republic of Cyprus
- No beneficiary other than a charitable institution is a permanent resident of the Republic of Cyprus
- The trust property does not include any immovable property situated in the Republic of Cyprus

A trust can still qualify as an international trust for the purposes of law even if the settlor, trustee or the beneficiaries are international business companies or international partnerships.

This is a distinguishing element of the definition, which can offer unique opportunities for a wide range of investors as compared to trusts in other international jurisdictions.

Duration of Trusts

The restriction of a maximum of 100 years that existed with the 1992 trust law is now abolished. The amending law provides that, unless otherwise provided for in the terms of the trust, there will be no limit on the period, for which a trust may continue to be valid and enforceable, and no rule against perpetuities or remoteness of vesting will apply to a trust or to any advancement, appointment, payment or application of income or capital from the trust.

Type of Trusts

Trusts are divided in the following main categories:

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.

Fixed Trust

Another type of trust is a Fixed Trust, which does not give the trustee any discretion when distributing the assets to the beneficiaries. 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.

Purpose/Charitable Trust

A Purpose/Charitable 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/charitable trust can be executed by the Settlor, his personal representatives or by an enforcer.

Private Trusts

- a. expressly created by the settlor.
- b. can be created by deed, in writing, by will and, with some exceptions, orally.
- c. The intention of the settlor must be made absolutely clear. The beneficiaries have enforcement powers in respect of the trust.

Basic Structure

Although the various types of trust vary in complexity, the common feature or basic structure is as follows:

Settlor

The **Settlor** is the person who creates the trust; he is the owner of the initial property placed under trust; he has the assets and places the same into the trust.

The Settlor has the right to reserve many powers including, the powers to revoke or amend the trust, to instruct the Trustee, to appoint and/or remove trustees, the protector or the enforcer, to change the law regulating the Trust or the place of its administration and others

Trustee

The **Trustee/s** is the person/s (legal or physical) who agree/s to hold the trust assets in its/their name for the benefit of the Beneficiary/ies under the terms of the trust irrespectively if the trustee is also a beneficiary of the trust; and/or for any purpose, not exclusively to the benefit of the trustee.

Trustee's Main Duties

- 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 (ie 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.

Beneficiary

The Trustee has the legal title to the trust assets whereas the **Beneficiary/ies** has beneficial or equitable title to the trust assets. The Beneficiaries can challenge the Trustee. Beneficiary/ies can be legal or natural person including a person not yet born on the date of the establishment of the trust.

The Beneficiaries can relocate to Cyprus and become tax resident as long as they were not Cyprus residents during the year preceding the year or establishment of the Trust.

Protector

The **Protector** is defined as a person other than the trustee to whom powers of any nature have been granted by the deed establishing the trust, including the power to advise the trustee regarding the exercise of his powers or with regards to the right of the protector to consent or to veto and includes also the power to appoint or cancel the appointment of the trustee.

Enforcer

The **Enforcer** (could be the Protector) is the person or persons whose duty is to enforce an international trust for a non-charitable purpose in accordance with the Cyprus International Trusts law.

Powers of a Trustee, Protector, Settlor and trust Enforcer

The powers and authorizations granted by the new law to a trustee, protector, settlor and enforcer respectively, are in addition to the powers and authorizations which may have been granted to them under the trust deed. The powers and authorizations granted by the law apply only if and to the extent that there is no contrary intention expressed in the terms of the trust and apply subject to its terms.

Validity of an International Trust

The law confirms the validity of a trust created by any person who is of full age and of sound mind, regardless of any provisions relating to inheritance or succession of the law of Cyprus, or the law of any other country.

The International Trust is irrevocable unless a specific power of revocation is reserved in it and cannot be set aside by the settlor's creditors; unless and to the extent that the creditors can show that the trust was made with the 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 of assets is made to the trust.

The terms of the Trust apply according to Cyprus law that prevails over that of any other jurisdiction, including provisions related to property inheritance. Furthermore, the validity of a Trust and the terms of the Trust cannot be challenged on the base that the law of any other jurisdiction does not recognise the notion of Trust, or that the terms of the Trust are contrary to the law of any other jurisdiction, or that it cancels rights arising from the law of any other jurisdiction.

Confidentiality

International Trusts Law prohibits any of the trustees, the protector, the enforcer or any other persons from disclosing to any person any information or information regarding the trust, the trustees or the beneficiaries. Only a court may by order allow the disclosure of information where the disclosure is of paramount importance to the outcome of the particular civil or criminal proceedings.

Investments by the Trustee

The trustees have the power to invest as if they were the absolute owners of the trust property and also give them express freedom to invest in any property, movable or immovable, situated anywhere in the world including Cyprus. The law makes specific reference as to the possibility of investments in shares of companies registered in Cyprus.

Taxation in relation to trust property and distributions to beneficiaries

The income and gains of a Cyprus International Trust which are acquired or deemed to be acquired from sources inside and outside of Cyprus, are subject to taxation imposed in Cyprus only in the case where the beneficiary is a tax resident of Cyprus. In the case where the beneficiary is not a tax resident of Cyprus, then, only the income and gains of the Cyprus International Trust which are acquired or are deemed to be acquired from sources inside Cyprus, are subject to taxation in Cyprus. Income and gains of Cyprus International Trusts acquired or deemed to be acquired outside Cyprus and provided the beneficiaries are not tax residents of Cyprus, are not subject to any tax in Cyprus.

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.

Advantages of Cyprus Trusts

Cyprus trusts 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.

Relocation of Cyprus International Trust

Cyprus International Trusts Law allows the removal on an international trust from Cyprus and vice versa, provided the following conditions exist:

- There must be a stipulation in the trust deed allowing such a change of jurisdiction
- When a trust moves to another jurisdiction from Cyprus, Cyprus law requires that the new jurisdiction recognizes the validity of the trust and the respective rights of the beneficiaries

When a trust is to be moved to Cyprus from another jurisdiction, the move must be recognized by the laws of the jurisdiction it intends to leave and which had governed the trust previously. This could be important in case where a change in circumstances may render such a transfer advantageous for fiscal or other reasons.

Uses of Cyprus International Trusts

Trusts are widely employed in what may be loosely termed 'family situations' but also in commercial and business transactions and as a vehicle for charitable and other purposes. For example a trust may be created:

- to hold for property for minors or successive generations of a family
- to protect property against spendthrift people
- to provide secretly for others
- to provide for a couple on their marriage whilst ensuring that the property so provided is 'tied up' in the event of that marriage failing

- to establish a fund for the benefit of family members according to future needs as and when they arise
- as an investment vehicle (typically via unit trusts)
- to provide pensions for employees and dependants
- to provide an incentive to the workforce: e.g. via employee trusts of various kinds
- to make provision for abstract purposes which are not charitable ('the purpose trust')
- to enable charitable objects to be carried out
- as part of commercial arrangements: e.g. to protect commercial lenders

Taxation Of Cyprus International Trusts

Cyprus International Trusts provide an extremely effective and flexible wealth holding structure with formidable asset protection features and are likely to attract high net worth individuals from around the world.

As a general rule Cyprus trusts are transparent in tax terms. The trustee is responsible for discharging the beneficiaries' tax liabilities on their behalf, but the income of the trust is not assessed on the trustee. Income and profits of an international trust, which are earned or deemed to be earned from sources within and outside Cyprus, are subject to every form of taxation imposed in Cyprus in the case of a beneficiary who is resident in Cyprus. In the case of a non-resident beneficiary only Cyprus source income and profits are subject to Cyprus tax.

If all the beneficiaries are Cyprus tax residents the trust will be treated as a domestic trust and will be subject to every form of taxation in Cyprus on all income regardless of the source. If all the beneficiaries are non-residents the trust will be deemed to be international trust and will be subject to taxation only on Cyprus source income. In cases where the trust has both resident and non-resident beneficiaries the tax treatment will be determined by reference to the scope of rights that the respective beneficiaries have in the trust.

Dividends, interest and other income received by a trust from a Cyprus international business company are neither taxable nor subject to withholding tax.

Services provided by LLPO Law Firm

LLPO Law Firm have extensive experience in international trusts related services and can provide the following services:

- Advises about the creation of a Cyprus International Trusts, including proposing structure ideas for creating, managing and dissolving a Cyprus International Trusts and draft all required legal documents
- Supporting and assistance in terms of logistics when setting up a Cyprus International Trust
- Advise the beneficiaries and trustees about issues arising in relation to a Cyprus International Trusts, trustee powers, beneficiary rights, interpretation of trust deeds and other trust related documentation

- Representation of the beneficiaries and trustees in court proceedings (contentious or not contentious)
- Providing trustee, administration, management and other related services

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