

Cyprus International Trust

By Mr. Andreas Mylonas

Cyprus trust 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 Law does not provide a comprehensive definition of ‘trusts’. Trusts law was principally developed by Cyprus case law. Accordingly, a trust arrangement entails the following:

- 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”).

The legal title to the trust property is vested in the trustee by its previous owner (the “settlor”) and the trust property is managed by the trustee in accordance with the instructions of the settlor, which are usually given in writing or expressed in a trust deed (the “trust instrument”). The instructions may also be oral.

It is of utmost importance to note that although the trustee has legal ownership of the trust property, it does not belong to him. The beneficial owner/s of the trust property is/are the beneficiary/ies and the trust property is only available to them.

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 (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.

Perpetuity

Trusts may not exist indefinitely.

The general rule is that trusts may continue to exist for the lifetime of a life in being plus 21 years, or in the case that the life in being is not a natural person, merely for 21 years.

International trusts are exempt from this rule. Under the 1992 law, an International Trust could last for up to 100 years. If it is a charitable or purpose trust then it could continue indefinitely.

However, under the 2012 Law, 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.

The perpetuity rules do not apply in the case of charitable or purpose trusts which may continue indefinitely

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 or disposition of assets is made to the trust.

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.

The introduction of a new provision in the 2012 Law, namely section 4A reserves powers to the settlor. Accordingly, section 4A was added to the new Law, extending the powers of settlors of Cyprus international trusts.

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

1. 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.
2. The Trustee/s is the person/s (individual or company) who agree/s to hold the trust assets (the 'trust assets) in its/their name for the benefit of the Beneficiary/ies under the terms of the trust.
3. The Trustee has the legal title to the trust assets whereas the Beneficiary has beneficial or equitable title to the trust assets. Save in cases of bare trusts the Beneficiary is usually unable to have a say in the management of the trust property or the termination of the trust.
4. The Protector (is not compulsory but if appointed, it) is the person that has the power to restrict key powers of the trustee, such as the power to add beneficiaries to the trust.
5. 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 CIT law.

A trust may be created by the owner of property upon his death, by a testamentary disposition of the property into the trust accompanied by a letter or wishes but it is more appropriate and common that the trust is created during the lifetime of the owner of the property by a trust instrument/deed. A trust created through a testamentary disposition would not avoid inheritance laws or taxes where applicable, whereas a disposition of the trust property during the Settlor's lifetime avoids such problems.

Types of Trusts

Trusts are divided in the following main categories:

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 three certainties listed in paragraph 1 above must be present. The beneficiaries have enforcement powers in respect of the trust.

Express Private Trusts

Express trusts are, as their name suggests, expressly created by the settlor. They can be created by deed, in writing, by will and, with some exceptions, orally. The intention of the settlor must be made absolutely clear. The three certainties listed in paragraph 1 above must be present.

Resulting Trusts

Resulting trusts arise from the implied, rather than the express intention of the settlor. This intention can be inferred by the way the settlor acts or behaves.

Constructive Trusts

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.

Implied Trusts

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

Charitable Trusts

There is no legal definition of what constitutes a charity. Usually a trust that is set up for the relief of poverty, the advancement of education or religion or any other purpose that is beneficial to the community is considered to be a charitable trust. In particular they are set up for certain public purposes. They are enforced at the suit of 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.

Fixed Trusts

These are trusts where the share or interest of the beneficiaries in the trust property is specified by the settlor.

Discretionary Trusts

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.

What constitutes a Cyprus International Trust

The Cyprus International Trust is a trust:

- (a) whereby the Settlor is not a tax resident of Cyprus during the year preceding the year in which the trust was formed. There is no longer any prohibition on settlors relocating to Cyprus after the establishment of the CIT;
- (b) beneficiaries may also relocate to Cyprus after a year following the trust creation.
- (c) the trust property can include all kinds of assets situated anywhere in the world and it can comprise of real estate property located in Cyprus;
- (d) at least one of the trustees must be a resident of Cyprus;

Appointment and Discharge of Trustees

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 appoint new ones.

Trustees' 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 they may vary the trust is when all the beneficiaries are of full age and capacity. The beneficiaries can then authorise the trustees to deal with the trust property in a different manner 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.

Trustees' Liabilities

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.

Beneficiaries

The beneficiaries have the right to enjoy their interest in the trust property. In the case of breach of a private trust, the beneficiaries may bring an action in 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:

1. They may pursue a personal action against the trustees;

2. 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, ii) or where the trust is traced in a bona fide purchaser without notice of the trust, iii) or they may be able to institute criminal proceedings against the trustees.

Some of the Cyprus International Trust benefits:

A. Tax benefits

- a. Income, gains and profits from non-Cyprus sources are exempt from income tax, capital gains tax, special defence contribution or any other taxes in Cyprus.
- b. Worldwide income, profit and gains are taxable in Cyprus only where the beneficiary is a Cyprus tax resident; beneficiaries who are non-residents of Cyprus are taxed only on Cyprus sourced income in accordance with the Cyprus income tax laws.
- c. Dividends, interest or royalties received by a CIT from a Cyprus international business company are not taxable and not subject to any withholding tax.
- d. Trust capital received in Cyprus by a foreigner resident or retired in Cyprus from trusts not resident in Cyprus is not taxable on the trustee.
- e. There is no estate duty or inheritance tax in Cyprus.
- f. The CIT may be used to distribute untaxed income in Cyprus to the beneficiaries, that is to say, family members.
- g. Pre-migration: persons who have the intention to migrate to a high tax jurisdiction may obtain tax advantages in their new country by protecting assets in a CIT in Cyprus.

B. Asset Protection

- a. The CIT may be used to protect assets from risks arising in tort, contract or otherwise in relation to transactions entered into by the Settlor. Types of claims may include negligence, breach of contract, claims of spouses or former spouses, expropriation, breach of statutory duty and so on.
- b. A CIT or a transfer of trust assets may only be set aside by the settlor's creditors to the extent that it is proven to the satisfaction of the court that it (the CIT) was made with the intent to defraud creditors. The burden of proof is on the creditors who must prove that the CIT was made with intent to defraud them and that they were creditors at the time of the making of the CIT. An action must be brought within a period of two years from the date when the transfer or disposal of assets was made by the settlor to the CIT and only with regard to those assets and not any assets transferred earlier.

C. Confidentiality and reporting

- a. Registration of the CIT is optional and therefore confidentiality is safeguarded.
- b. There are no reporting requirements in Cyprus for the CITs.
- c. The trust may hold shares of a Cyprus company with Cypriot nominee shareholders who will hold the shares of the company for the real owner, i.e. the trust.

D. Complicated family structures/managing family wealth/estate planning

- a. The CIT is ideal for high net-worth individuals with somehow complicated family structures, like for instance, divorced spouses and children from different weddings.
- b. Because of the economic crisis managing family wealth by means of a CIT has gained great importance because of the way families wish to distribute property.

E. No exchange control regulations are applicable to the CIT.

F. The CIT duration can be indefinite.

G. The Cyprus law is the proper law of the CIT.

a. If the chosen law of the CIT is the law of Cyprus, then Cyprus is under an obligation to protect that trust. All questions relating to CITs are to be determined in accordance with the laws of Cyprus without reference to the law of any other jurisdiction. This protects against the application of foreign laws such as forced heirship laws. It further provides for greater control, protection and security over the CIT.

b. The new legislation specifies that the CIT or the disposition of trust assets will not be void or voidable or capable of being set aside or be subject to any implied terms and in no circumstances will the capability of the settlor, the trustee, the protector or the beneficiary be subjected to any obligations or be questioned. When the CIT contains a choice of law clause in favour of Cyprus law, the provisions of the CIT law will be applicable irrespective of any other conflict of law provisions in force in Cyprus. This is a fundamental rule which must be abided by as a matter of public order.

H. The trust instrument is subject to stamp duty only in the amount of EUR430.

Settlor reserving powers to himself

When relinquishing control to the trustees while setting up a trust, the settlor may reserve for himself powers specifically drafted into the trust instrument. A new section (s.4A) was introduced in the CIT law this year clarifying that 'notwithstanding the provisions of any other law or regulation, the reservation or grant to a settlor of a trust of any right or interest in the trust assets or any of the powers

mentioned in subsection (2), whether reserved for the settlor or conferred on him in the capacity as protector or enforcer of the trust or otherwise, shall not in any way affect the validity of the trust nor delay the execution of the trust’.

The powers referred to are the following:-

- (a) To revoke, vary or amend the terms of a trust;
- (b) To advance, appoint, pay or otherwise apply income or capital of the trust assets or to give directions therefor;
- (c) To act as, or to give binding directions as to the appointment or removal of a director or officer of any company wholly or partly owned by the trust;
- (d) To give binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust assets;
- (e) To appoint or remove any trustee, enforcer, protector or beneficiary;
- (f) To appoint or remove any investment manager or investment adviser;
- (g) To change the proper law of the trust or the forum of administration of the trust;
- (h) To restrict the exercise of any power or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor;

In exercising these powers, the settlor will not be deemed to be acting in breach of the trust.

Where a power as above has been reserved by the settlor or conferred on him in his capacity as protector or enforcer, no intention to defraud may be imputed to the settlor.

International Trusts are not taxed in Cyprus. In fact, they enjoy significant tax advantages and create important tax planning opportunities. These advantages provide foreign investors with the necessary freedom to move their funds.

Cyprus has become a popular trust jurisdiction because of the:

- Complete tax exemptions;
- Short limitation period (two years) for challenging a trust;
- No need for any kind of registration;
- Complete confidentiality;
- Low cost of establishment and administration;
- Availability of competent professional trustees;
- Flexibility in adopting foreign law.

Example of Cyprus International Trust uses

i) As a vehicle for management of funds

Investment Trust Funds, Banks etc may through the use of a Cyprus International Trust and a Cyprus International Business Company that acts as a Trustee manage funds on behalf of their Clients.

ii) As a vehicle of holding property which cannot personally be held

A minor may not be able to hold property in his own name but a Trustee can often hold and manage it on its behalf until its maturity in order to take the control.

iii) As a vehicle of establishing collective investment

A Cyprus International Trust can be used as a vehicle by several persons to make joint investments. The trust can provide the basis of their co-operation and can regulate their relationships and the sharing of the financial results of their joint venture.

iiii) As a vehicle of protection against high taxation

For Clients/Settlors residing in high taxation jurisdictions it is possible to minimize their taxation on income or wealth by transferring their property to a Cyprus International Trust in order to be able to take advantage – (as under a proper tax structure)- of the beneficial extensive double taxation network of Cyprus and the non-taxability of any income of the trust in Cyprus.

iv) As a vehicle of protection against spendthrift beneficiaries

The Cyprus International Trust can be used as vehicle of protecting family fortunes for future generations by safeguarding capital and avoid it being frittered away by spendthrift beneficiaries.

v) As a vehicle of managing profit sharing & pension schemes

Through the use of a Cyprus International Trust, Companies can provide pension schemes benefit plans and profit sharing arrangements declaring their employees as one class of beneficiaries. The Trust provides a most effective method of grouping and sharing benefits and it has also the additional advantage of being able to cover any specific circumstance.

vi) As a vehicle of investing in business overseas

A Client who wishes to invest in business overseas but wishes to ensure that the profits and dividends are not remitted to the country of his residence, may establish a Cyprus International trust in order to use it as a vehicle for his investment.

vii) As a vehicle of asset protection

By establishing a Cyprus International Trust, a Client/Settlor can protect his assets against possible expropriation laws, future claims of Governments, claims from creditors, law suits or international blocking or freezing regulations in his home country.

In addition assets can be transferred to a Cyprus International Trust to protect the interests of a beneficiary e.g. sheltering the Inheritance of a daughter from claims in case of divorce or from the disposal of same by the son in law.

viii) As a vehicle of promoting causes and charities

Through the establishment of a Cyprus International Trust a Client/Settlor can provide for a charity, promote a religious or artistic cause or establish a foundation to support a worthy project.

For further information on this topic please contact Mr. Andreas Mylonas at ANDREAS MYLONAS & Co LLC, by telephone +357 25 101080 or by e-mail amylonas@mylonaslawfirm.com

Disclaimer

This publication has been prepared only as a general guide and for information purposes. It does not constitute or should not be read as a legal advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.