

Cyprus Trust (Cyprus International Trust)

Over the past twenty years, Cyprus has developed into one of the most favourable places for international business. The Cyprus low tax regime, its ability to offer sophisticated planning structures, its ability to set up and manage collective investments schemes, the enactment of the Cyprus Trusts Law which provided for the formation and administration of Cyprus international trusts combined with its excellent geographical position and infrastructure where the key factors for its success.

A foreigner wishing to establish a Cyprus trust has the following options:

- To create a Cyprus trust, either by a trust deed or by will;
- To incorporate a Cyprus International company to be the holder or the manager of movable property including securities and stock to be placed in Cyprus trust in the Cypriot corporation or in an overseas company and managed by the Cyprus International Company and vice versa;
- To incorporate a Cyprus subsidiary company or a branch of an overseas corporation to hold or manage movable property placed in trust in the Cyprus subsidiary or branch of the overseas corporation;
- To set up a Cyprus international trust under the provisions of the Cyprus International Trusts Law.

Purpose for setting up a Cyprus international trust under the provisions of the Cyprus international Trust Law

Trusts are usually used by wealthy individuals for the purpose of protecting their estate from inheritance or capital gain taxes in their home country. They can also be used by expatriates settling into a trust before repatriating assets acquired while working abroad, to protect such assets from the tax net of their home country.

Cyprus International Trust Law

Cyprus' Trust Law is based on the English Trustee Act of 1925. In July 1992, Cyprus enacted The International Trusts Law (Law No. 69/1992) which provided for the formation and administration of Cyprus international trusts. The Cyprus Trust law has been amended on 23 March 2012, the Cyprus International Trust (Amending) Law of 2012.

A Cyprus International Trust

A Cyprus International Trust is a complete set of guidelines for operation of the Cyprus trust. A person can be very flexible in the design of his/her trust.

The trust instrument may specify the:

- Powers,
- Responsibilities
- Latitude
- Direction of paying out of trust income to beneficiaries and lists instructions as to timing of final distribution and trust termination. Extreme care should be taken to design the trust so that it accomplishes the objectives of the individual setting up the trust.

Any type of property such as cash, personal property or real estate, can be placed in a Cyprus trust. The decision as to which assets you place in trust will depend upon your overall plan and objectives. Transferring assets to a trust is a formal process and title assets must be changed from individual ownership to trust ownership.

A Cyprus International Trust defines a senior, a trustee and a beneficiary.

- The senior who initiates the Cyprus trust.
- The trustee, who gets no benefit from the trust, who will hold property of which they are the legal owners for the benefit of other persons, known as 'the beneficiaries'.
- The beneficiaries, those who will ultimately be benefited from the trust.

It is necessary that the settlor and beneficiaries are not residents of Cyprus in the year preceding the creation of the trust and that at least one of the trustees is a resident of Cyprus. The term 'resident of Cyprus' is to be determined in accordance with the Cyprus Tax Laws. Therefore seniors or beneficiaries can now take up Residence in Cyprus.

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

One distinguishing element of a Cypriot trust is that in an international trust, the settlor, the trustee or any one or more of the beneficiaries can be a Cyprus Company. This facility can offer unique opportunities to investors. If for example the settlor wants to maintain full control over the management

of the trust, he can form a Cyprus Company with him as sole shareholder and sole director. The Cyprus company can then act as sole trustee of the trust.

Types of Cyprus Trusts

Some of the main types of Cyprus trusts are:

- Discretionary trust 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.
- Fixed trusts Where the share or interest of the beneficiaries in the trust property is specified by the settlor;
- Charitable Trusts 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. In particular they are set up for certain public purposes.

Taxation of Cyprus Trust

The Cyprus Tax Law exempt such trusts from income tax, capital gains tax and estate duty tax, making Cyprus International Trusts a very attractive Cyprus tax planning vehicle for the non-resident investor.

More specifically:

- All income of a Cyprus international trust is not subject to Cyprus Taxation; dividends, interest or other income received by a trust from an International Cyprus business company is also neither taxable nor subject to withholding tax provided that the beneficiaries are not tax resident in Cyprus; and
- There is no capital gains tax on the disposal of the assets of a Cyprus international trust.
- Aliens who set up a Cyprus international trust and retire in Cyprus are exempt from Cyprus tax if all the property settled and the income earned is abroad, even when they are beneficiaries and an international trust created for estate duty planning purposes would not be subject to estate duty in Cyprus.

Ownership of Cyprus immovable property

There is no prohibition on Cyprus tax resident beneficiaries to own Cyprus immovable property

Overseas law and other related amendments (The International Trust (Amending) Law of 2012)

- Matters arising relating to the validity or administration of a Cyprus international trust will be determined by the laws of Cyprus, without the necessity to refer to any other jurisdiction.
- The validity of the Cyprus 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 in any other country
- Cyprus law governs exclusively the trustees' fiduciary powers and duties, and the powers and duties of any protectors of the trusts.
- Dispositions to a Cyprus trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction. This is particularly important if there is a challenge on the grounds that the other jurisdictions does not recognise the concept of trusts
- The international trust if contains a clause in favour of Cyprus law, is fully protected from unfounded foreign judicial claims as a matter of public policy and order.
- The provisions give power to the trustees to apply to the Cyprus court for directions and changes.

Senior's powers and interests and other related amendments (The International Trust (Amending) Law of 2012)

The Cyprus law allows the settlor of a trust of the following options:

- Reserve the powers of the trust
- Retain a beneficial interest in the trust owned by the property
- Act as the protector or enforcer of the trust
- Revoke, vary or amend the terms of the trust
- Apply any income or capital of the trust property
- Act as a director or officer of any corporation wholly or partly owned by the trust
- Give binding directions to the trustee in connection with the property owned by the trust
- Appoint or remove any trustee, enforcer, protector or beneficiary

Further the settlor may impose a general stipulation that the trustees' powers are exercisable only with the consent of the senior or any other person specified in the terms of the trust. The settlor may also reserve the power to change the governing law of the trust.

These new provisions give seniors the flexibility to adapt to changes and are similar to those of Jersey and Guernsey law.

Cyprus Trusts Duration

There is no maximum restriction on the duration of Cyprus trusts unless otherwise provided for in the terms of the trust. A Cyprus 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.

Powers of trustees on investments

The provisions on powers of trustees on investments are similar to those of a trustee in England and Wales, and to those that have followed the English law. The amending law clarifies further that trustees may now invest in Cyprus property both movable and immovable which is situated both in Cyprus and overseas, including shares in companies incorporated in Cyprus.

Transferability

A Cyprus trust can be transferred to another country's jurisdiction and at the same time a trust established in another jurisdiction may be transferred to Cyprus

Confidentiality

Cyprus International Trusts Law prohibits the disclosure of any information regarding the trust except by court order, where it is proved that the disclosure of information is crucial to the outcome of particular civil or criminal proceedings.

Cyprus Trust Asset protection

An important aspect is that the Cyprus trust 'shall not be void or voidable in the event of the Senior's bankruptcy or liquidation or in any action or proceedings against the senior...' The law goes on and states that consideration should not be given to the fact the Cyprus trust is being made for the benefit of the senior himself, his spouse or to his children.

The only situation where a Cyprus trust can be held void is when it is proven to the satisfaction of the Court that the Cyprus international trust was made

with the intent to defraud the creditors of the senior at the time when the payment or transfer of assets was made to the trust. The burden of proof to establish intent to defraud lies with any creditor seeking to annul the Trust. Section 3(3) of the Cyprus Law, states that such action must be initiated within two years following the transfer or disposal of assets to the Trust.

The above provision renders Cyprus as an 'asset protection trust heaven'. Trust assets are protected against creditors and also the legislation effectively limits the time period during which a claim can be taken in Court. The two year time frame for claims specified under section 3(3) provides for additional security with regard to the assets. From the moment the assets are transferred to the trust, this immediately triggers the two year limitation period.

Commentary

The clarity and removal of any ambiguities has given the seniors and beneficiaries the highest possible degree of protection and flexibility

For more information you may contact our director Mrs. Chrysanthi Varnava
Email: Chrysanthi.varnava@tls.com.cy