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ARTICLE: Cyprus International Trusts - Asset Protection

The Cyprus International Trust (“CIT”) continues to enjoy an increased momentum and demand, not only through the establishment of new trusts but also through having foreign trusts ‘redomiciled’ to Cyprus and becoming CIT’s.

CIT’s are governed by the International Trusts Law of 1992 (Law 69(I)/1992), as amended by Law 20(I)/2012 and Law 98(I)/2013 (the “Law”), which now has increased and reinforced dynamics following its major amendment in 2012.

One of the main and strongest aspects that differentiates CITs from many other international trusts and so often constitutes it to be the preferred choice, is that of asset protection.

Asset protection is a paramount consideration for many people. Generally speaking, asset protection planning involves the placement of one’s assets in a legal, practical and efficient manner, beyond the reach of future creditors or other claimants (of either the settlor or the beneficiaries), protecting them from potential misuse, claims from relatives as well as protection from other vulnerabilities, including the taking into account of forced heirship or matrimonial rules.

CITs are often used as an asset protection vehicle by becoming a ‘firewall’ for all its underlying assets.

This is because of Section 3(2) of the Law, which specifically provides that, notwithstanding any laws of Cyprus or any other country, the CIT shall not be void or voidable and no claim may be made whatsoever in respect of the transferred assets in the event of the settlor’s bankruptcy or liquidation or in any actions or proceedings against the settlor; by also covering cases where the trust is made for the benefit of the settlor, the spouse or children of the settlor or any of them.

Under Section 3(3) of the Law, it is further provided that there is a short limitation period of only two years from the date of the transfer or disposal of the assets into the trust for a creditor to challenge the trust, with the burden of proof lying on the creditor who has to prove to the satisfaction of Cyprus courts that the trust was created by the settlor with the intent to defraud the creditor.

Furthermore, under Section 3(4) of the Law, no disposition of property to such trust shall be void, voidable or liable to be set aside by reasons such as that the applicable laws of any jurisdiction may not recognize the concept of a trust, or prohibit, or make it contrary, or by way of any jurisdictional judicial or other judgment.

These specific sub-paragraph provisions under Section 3 of the Law are what mainly render CITs so attractive for asset protection purposes.

Notwithstanding any of the above, a trust arrangement that is successfully challenged and found by a relevant court to be a 'sham', 'illusory' or 'bare' trust, would not offer protection from creditors. This is not specifically a Cyprus law matter but rather a common consideration for all jurisdictional trusts based on facts, where, for example, the settlor's true intention is proven not to effectively vest beneficial ownership of the trust assets from himself and/or through certain actions which make it clear that the settlor continues to keep effective control of the assets.

Based on the 2017 UK landmark High Court case of *Pugachev (JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev, 11.10.17)* involving New Zealand trusts, these considerations now become more relevant than ever before. This case also adds that trustees may contribute to a common intention, together with the settlor, to 'defraud' creditors, even by simply showing 'reckless indifference' to the true facts of the case.

As such, regardless of how strong or solid the CIT domestic provision may be for asset protection, and even though there are no Cyprus court case precedents that successfully render a CIT void in any way, an increased due care is needed and should be exercised by professional trustees, so that a trust is properly established and run, taking into account various elements, including but not limited to the extent that various powers are vested to any persons other than the trustees themselves, including the settlor or even the protector.