

Cyprus International Trusts

June 2015

1. Development of the Cyprus Trust Legislation

The doctrines of equity have been inherited in Cyprus from England. The Trustees Law (Cap 193) was enacted in Cyprus in 1955. The trust law is therefore found in:

- i. Equity and case law in England.
- ii. The Trustees Law, (Cap 193) of 1955 (very similar to the English Trustee Act 1925).
- iii. The "International Trusts Law" 69/92 was enacted on the 24 July 1992, the Amending International Trusts Law, March 2012 and the International Trusts Law of 2013 (together "The International Trusts Law of 1992 to 2013").
- iv. The Prevention and Suppression of Money Laundering and Terrorist Financing Laws, (188(I)/2007 and 58(I)/2010) as amended from time to time.
- v. The Law Regulating Companies Providing Administrative Services and Related Matters of 2012 L.196(I)/2012 (the "Fiduciaries Law"), as amended in 2013.

Section 29 of the Cyprus Court of Justice Law 14 of 1960, provides that the Courts in the exercise of their civil or criminal jurisdiction should apply also the common law and the doctrines of equity, "save insofar as other provisions has been or shall be made by any law and so long as it is not inconsistent with the Constitution".

2. The Cyprus International Trust

The term "international trusts" refers to the trusts which are set up under the provisions of the International Trusts Law of 1992 to 2013.

An International Trust is a trust whereby:

- the settlor is not a resident of Cyprus during the calendar year preceding the year of creation of the trust
- the beneficiary is likewise not a resident of Cyprus during the calendar year preceding the year of creation of the trust (charitable institutions being an exception to this rule)
- a minimum of one trustee is resident in Cyprus

The 2012 amendment therefore, enables Settlers and Beneficiaries to take Cyprus residency after the creation of a CIT and also allows the CIT to own immovable property in Cyprus.

2.1 *The Legal Framework*

The legal framework to be found in the Cyprus trust legislation is summarised as follows:

2.1.1 *Asset protection*

An international trust shall not be void or voidable and no claim can be brought in respect of assets transferred to an International Trust 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 of any other country. An International Trust may be set aside by the settlor's creditors to the extent that it 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.

Any claim brought against pursuant to the (section 3(2) of the CIT Law) above can be brought only within a period of two (2) years from the date when the assets have been disposed of under the control of the Trustees of the Trust in question.

2.1.2 *Choice of proper law*

The trust instrument creating the trust expressly states the law under which the trust is established and the jurisdiction in which it will be administered.

The proper law will influence various aspects of the trust. These are, amongst other, the validity of the trust, rights and obligations of the trustee, settlor and beneficiaries. Therefore, the trust instrument must state the proper law clearly at the time of creation.

The proper law chosen and specified in the trust instrument will govern the trust. The forum for the administration of the settlement will be determined by the express provisions by the general rule that the forum will be the place where the trustees reside.

2.1.3 *Changing the proper law*

Likewise, a trust created in another country may change to the law of Cyprus provided that the foreign law recognises this change.

2.1.4 *Foreign laws – conflict*

The Cyprus International Trusts Law provides that no foreign law relating to inheritance or succession will invalidate the transfer or disposition relating to the creation of such trust.

2.1.5 *Settling of a trust*

A trust is established by an individual "the settlor" and is a means whereby property is held by one or more persons "the trustees" for the benefit of another or others "the beneficiaries" or for specific purposes. The settlor and the trustees or any of them can be beneficiaries.

A trust may be created by the owner of property during his lifetime by Deed or upon his death by will.

2.1.6 Trust property

The trust property can include all kinds of assets situated anywhere in the world provided the trustees have legal control and ownership of the assets according to the law governing the particular trust.

2.1.7 Duration of a trust

The perpetuity periods of Cyprus trusts are not governed by the English statutory provision of 1964 as they were enacted after independence.

The position therefore is that the old English equity principles are followed so that no trust, with the exception of a charitable trust, may continue in perpetuity. Trusts endure for either the period of the life or life in being plus 21 years or, where there is no life in being, merely for 21 years.

An International Trust established on or after the entry into force of the Amending International Trusts Law, 2012 and subject to the express provisions of the Trust Deed, may last forever. In addition to this, the rule against perpetuities and remoteness of vesting does not apply in the case of such CITs.

The period does not apply to charitable and purpose trusts.

2.2 Beneficiaries

2.2.1 Appointment

The beneficiaries may be defined by name or by reference to a class (i.e. the settlor's children or grandchildren).

The beneficiaries must be appointed at the time when the trust is formed. It is possible for additional beneficiaries to be appointed afterwards subject to the terms and provisions of the Trust Deed.

2.2.2 Removal

The beneficiaries may be removed any time after the creation of the trust in accordance with the provisions of the trust deed.

2.2.3 Rights of the Beneficiaries

The trust instrument sets out the rights of the beneficiaries and the trustees have to observe these rights otherwise they can be sued by the beneficiaries. The rights of the beneficiaries vary in accordance with the type of trust, i.e. whether the trust is discretionary or strict, as described above.

2.2.4 Liabilities of Beneficiaries

The beneficiaries of a discretionary trust will generally not be taxed until such time as the trustee has exercised his discretion. In the case of a strict trust the beneficiaries are taxed on their interest and the trust property is subject to estate duty.

2.2.5 Failure of interest

If the terms of the trust are contingent that the rights of the beneficiary will depend on the happening of one event, and that event does not materialise, then the Beneficiaries' interest under the trust will cease.

A protective trust may be created under which a beneficiary may be given a life interest which may become discretionary on certain defined events such as the bankruptcy of the beneficiary.

2.3 Trustees

The trust instrument defines the trustees as "the trustees herein specified or the trustee or trustees for the time being hereof".

In accordance with section 4(1) of the Fiduciaries Law, the management or administration of trusts including, without limitation, the undertaking or provision of trustee (commissioner), wherever these are set up or established, or the management or investment or marketing of the assets of a trust are considered to be administrative services and are subject to regulation in Cyprus.

2.3.1 Qualifications - Number

In general, any individual or corporation may be appointed as trustee. A minor cannot be expressly appointed a trustee or real or personal property. A corporation may be a trustee provided it falls within the definition of a "trust corporation".

Subject to the above, any person may be a trustee though certain categories of persons may be regarded as undesirable so that the court may remove them, e.g. bankrupts or those convicted for crimes involving dishonesty.

The minimum number is two (or one, if that one is a trust corporation) since two or more trustees (or a trust corporation) are required to give a valid receipt on the sale of land.

The restrictions do not apply in the case of property vested in trustees for charitable, religious or public purposes.

In the case of a CIT, at least one Trustee needs to be a resident of Cyprus.

2.3.2 Appointment

The trust instrument of a new trust will specify who the original trustees are. Provisions for new or additional trustees are again contained in the trust instrument.

If there are no provisions in the trust instrument in relation to the appointment of new trustee then the statutory provisions will apply giving power to the surviving or continuing trustee(s) for the time being, or the personal representatives of the last surviving or continuing trustee(s) to appoint one more other persons to be a trustee or trustees by deed.

2.3.3 Retirement

It is possible for a trust instrument to provide specially for retirement of trustees.

2.3.4 Removal

A trustee may be removed from office, by the court or under provisions contained in the trust instrument.

2.3.5 Powers

The Trustee Law contains various powers that can be exercised by the trustees. These powers include, powers of trustees for sale, to sell by auction, etc, power to sell subject to depreciatory conditions, power of trustees to give receipts, power to compound liabilities, power to raise money by sale, charge, etc, power to insure, power to deposit documents of safe custody, power to employ agents, power to concur with others, power to delegate trusts during absence abroad. A trustee intending to remain out of Cyprus for a period exceeding fourteen days may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person including a trust corporation the execution or exercise during his absence from Cyprus of all or any trusts, powers and discretion vested in him as such trustee, either alone or jointly with any other person or persons.

The trust instrument usually sets out and expands the powers of investment of trustees. A trustee may only invest trust money in an authorised investment. Authorised investments are defined in the Trustee Law. Trustees of a Cyprus International Trust are now also enabled to act as the absolute owners of the Trust Property in exercising the said powers.

2.3.6 Duties

These can be imposed by the trust instrument. In addition there are some which have been imposed by the judiciary or by statute. Their duties must be carried out with due diligence and care as an ordinary prudent man should use in the management of his own affairs.

2.3.7 Liabilities / Indemnities

The trustees are only accountable for their own acts, receipts, neglects or defaults, and not for those of any other trustee. The trust instrument usually provides for an indemnity for any losses incurred by reason of any mistake or omission made in good faith or of any other matter or thing except willful or individual fraud and wrongdoing on the part of the trustee who is sought to be made liable.

2.3.8 Remuneration

A trustee cannot receive remuneration unless the trust instrument so provides or the court so authorises. In general terms, the court will authorise remuneration only where the trust is onerous.

If the trustee is an advocate, solicitor, accountant or other individual acting in a professional capacity, it is usual for the trust instrument to provide that the trustee is entitled to charge and be paid all usual professional or other charges for business done and time spent and services rendered by him or his firm in relation to the trust.

2.4 *Protector*

It is common practice to oversee and where required restrict certain key powers of the trustees so they can only be exercised with consent of a suitable person who is well aware of the Settlor and can protect the best interests of the Beneficiaries. Such key powers can be those which may most fundamentally change the rights of beneficiaries under the settlement. These will include the power to add beneficiaries, overriding powers, power to change the proper law, power of advancement, power to confer additional administrative powers, power to appoint and dismiss trustees and powers to allow beneficiaries to use trust property etc.

The trust instrument usually provides details in relation to the appointment duties, powers etc of the protector.

2.5 *Enforcer* (applicable in relation to non-charitable purpose trusts)

The Enforcer is the person with the statutory power to enforce the terms of a non-charitable purpose trust against the trustees.

2.6 *The Trust Deed*

Essential Contents to Constitute a Valid Trust

There are two ways in which a trust may be created, namely by will or "inter vivos" by way of a written trust deed. The essentials for creation of these two types of trust are identical and are based on certain prerequisites which are fundamental to the nature of the trust concept. The four essential elements to constitute a valid trust are:

- The property or rights must be capable of being subjected to the trust;
- a declaration of, or disposition on trust by a person competent to create a trust or an obligation for valuable consideration to make the disposition;
- certainty of property or objects; and
- legality and compliance with statutory requirements regarding evidence.

2.6.1 *Invalid – Unenforceable Trusts*

The courts in Cyprus will not enforce a trust which is illegal or contrary to public policy.

2.6.2 *Amending a Trust*

The Trustee Law does not prohibit the amendment of the trust deed. The trust deed should contain powers to permit the trust instrument to be amended.

2.6.3 *Letters of wishes*

It is possible for the settlor of a discretionary trust by the use of a letter of wishes to set out to the trustees his recommendations and proposals concerning the investment of trust property and the distribution of income and assets to the beneficiaries, both during his lifetime and after his death.

Provided that the letter of wishes is not in contravention of the trust deed or the law, the trustees will accede to the wishes of the settlor without question. However, a letter of wishes is not legally, but only morally, binding on the trustees and should not add to the

contents of the Deed.

2.7 Formalities

2.7.1 Signature

There are no particular formalities for the creation of trusts and a trust need not be declared in writing. It is advisable, however, for trusts to be created in writing and be signed and witnessed.

2.7.2 Stamp duty

Stamp duty of €430 only is payable at the creation of an international trust.

2.7.3 Registration

With effect from September 2013, further to the deletion of section 15 of the International Trusts Law 1992 (as amended in 2012) Cyprus International Trusts are no longer exempt from the requirement of registration. All Trusts established, construed and governed by the Laws of Cyprus should be registered with one of the following three authorities pursuant to section 25A. (1) of the Fiduciaries Law, as amended in 2013:

(1) The Cyprus Bar Association establishes and keeps a Trust Register with respect to each trust governed by Cyprus law and where one of its trustees is an exempted person resident of Cyprus who is supervised by the Cyprus Bar Association in its capacity as a Competent Authority.

(2) The Institute of Certified Public Accountants of Cyprus (ICPAC) establishes and keeps a Trust Register with respect to every trust governed by Cyprus law and where one of its trustees is an exempted person resident of Cyprus who is supervised by the Institute of Certified Public Accountants of Cyprus in its capacity as a Competent Authority.

(3) The Cyprus Securities and Exchange Commission establishes and keeps a Register of Trusts with respect to every trust governed by Cyprus law which does not fall under the provisions of paragraphs (1) and (2) above.

(together the "Competent Authorities" each the "Competent Authority")

It is furthermore provided that the Competent Authorities may exchange information with each other for the purpose of carrying out their duties under the Fiduciaries Law and the Law on the Prevention and Suppression of Money Laundering and Terrorist Financing Law.

A trust is kept in the Trust Registers for as long as it is governed by Cyprus Law.

2.8 Administration

2.8.1 General management of trust

The trust instrument usually contains provisions relating to the powers of the trustees in respect of the management of the trust. This is more convenient than leaving this to the applicable legislation. It is common practice to give to the trustees wide discretionary powers which are of particular importance to individuals whose circumstances may change from time to time.

2.8.2 Distribution from trust

It is possible to make express provision from maintenance in a trust, but the statutory power in the Trustee Law is sufficiently wide to render such express terms unnecessary in most cases. The power of maintenance of minors (not adults) can be exercised where capital money has been left on trust for a minor to be paid to him at a future date and meantime there is income.

The trustees may during the minority pay to a parent or guardian or otherwise the whole or part of the income for the minor's maintenance education or benefit.

2.8.3 Trustees meetings and resolutions

It is advisable that all resolutions passed in trustee meetings to be properly minuted and all decisions/resolutions passed should be recorded in the form of a written resolution in lieu of holding a meeting.

2.8.4 Employing agents

The trust instrument gives power to the trustees to employ agents. The applicable legislation also makes provision for this to be done.

2.8.5 Change of administrators

The trust instrument invariably sets out specific procedures regarding the appointment of the first trustees and their resignation. It also sets out the procedures in relation to the appointment of new trustees instead of relying on the provisions in the applicable legislation.

3. The Law Regulating Companies Providing Administrative Services and Related Matter of 2012 (the so called "Fiduciaries Law") L.196(I)/2012, as amended in 2013.

The Cyprus House of Representatives has enacted the Law Regulating Companies Providing Administrative Services and Related Matter of 2012, which harmonises the national legislation with the provisions of Directive 2005/60/EC.

The Law applies to persons or companies who provide fiduciary and administrative services for trusts and/or corporate entities.

Other than regulating the Trustee and Protector services as described above, the Fiduciaries Law provides *inter alia*, that with reference to the provision of the services of management and administration of trusts by eligible persons and or persons who are exempted from the scope of application of the said law, any person providing these services must identify and verify the identity of the beneficial owners of the trust. This should include accurate and updated information on the following categories, where and if these are applicable:

- (a) Trustees,
- (b) Settlers,
- (c) Beneficiaries or information on the class of beneficiaries including the beneficiaries to whom any distributions have been made pursuant to the trust,
- (d) Protector, where applicable,
- (e) Investment advisor, accountant, tax consultant, where applicable,
- (f) The activities of the trust,
- (g) Any other person who exercises effective control over the trust.

The person providing the services of management and administration of trusts must keep this information in the Republic of Cyprus and make them available for disclosure to and inspection by the relevant Competent Authority, at all times.

3.1 Registration

The Fiduciaries Law imposes the obligation on Cyprus resident trustees to register all Cyprus Trusts with one of the three Competent Authorities.

By registering a trust, the trustees are obliged to disclose to the below information:

- i. The name of the trust;
- ii. The name and full address of every Trustee at all relevant times;
- iii. The date of establishment of the trust;
- iv. The date of any change in the law governing the trust to or from Cyprus Law (if applicable); and
- v. The date of termination of the trust (if applicable)

No other information will be disclosed revealing the identity of the Settlor, the Protector (*if any*) and/or the Beneficiaries of the trust.

The aforementioned register will not be available to the public but it will be subject to certain conditions available for inspections by the three Competent Authorities.

The Fiduciaries Law, imposes further an obligation on each trustee, resident of Cyprus, of a trust governed by Cyprus law, within fifteen (15) days from the establishment of the trust or the adoption of Cyprus law as the applicable law governing the trust, as applicable, to notify the Competent Authority that keeps the relevant Trust Register of the information detailed above.

It further imposes an obligation in case of a change in the information specified above, for any trustee, resident of Cyprus, of a trust governed by Cyprus law, to notify the Competent Authority that keeps the relevant Trust Register of the said change, within fifteen (15) days of such change.

Finally, every trustee, resident of Cyprus, in case of a change of the law governing the trusts that are registered in the Trust Registers to a law other than Cyprus law or in case of a termination of the trust which is in the Trust Registers, must within fifteen (15) days of the advent of the relevant event, notify the relevant Competent Authority that maintains the Trust Register of the said change. In such a case, the relevant Trust Register will indicate that the trust has been terminated or the law governing it has changed and this information on the trust will be kept for five (5) years in the relevant Trust Register.

With respect to trusts governed by Cyprus law which exist at the date that the Fiduciaries Law was enforced, the trustee who is a resident of Cyprus has a deadline of six (6) months (i.e. by the 9th of March, 2014) to comply with the provisions of the Fiduciaries Law.

4. Taxation and fiscal regulations

The following benefits relate to Cyprus International trusts:

- Income, gains and profits of a CIT deriving from non-Cyprus sources are exempted from income tax, capital gains tax, special contribution or any other taxes in Cyprus provided that the Beneficiaries are non-Cyprus residents
Note: Cyprus tax is imposed on worldwide income gains and profits when Cyprus tax resident beneficiaries are appointed. When Beneficiaries are non-Cyprus tax residents Cyprus taxation is imposed only on Cyprus sourced income.
- No estate duty or inheritance tax in Cyprus
- No exchange control regulations
- An International Trust may carry out business in Cyprus subject of course to the laws of the country which are imposed on the beneficiaries and not on the trust itself

There are no reporting requirements in Cyprus for the International Trusts provided that there are no Cyprus resident beneficiaries or Cyprus sourced income (i.e. rental income etc.)

5. Why Cyprus for Establishing a Trust

Cyprus has become a popular trust jurisdiction because of the following reasons:

- Short limitation period (of two years) for challenging a trust. Burden of proof is on the creditor;
- Flexibility in adopting a foreign law
- Low cost of establishment and administration
- Availability of competent professional trustees
- Ease of communication
- Favourable tax jurisdiction

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained prior to the implementation of any corporate actions in order to achieve the required result. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.