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CYPRUS INTERNATIONAL TRUSTS



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1. Introduction

The Law does not provide a comprehensive definition of ‘trusts’. Trusts law was largely developed by the courts on a case-by-case basis. It is the development of this case law which provides us with a better understanding of what a trust arrangement entails:

- 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”). The trust property is managed by the trustee in accordance with the instructions of the settlor. These instructions are usually written and expressed in a trust deed or will (the “trust instrument”). They may also be oral.

The most important thing to note is that, even though the trustee has legal ownership of the trust property, it does not belong to him. Beneficial ownership of it belongs to the beneficiaries. So, the trust property, is an independent fund held by the trustee but available only to the beneficiaries.

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 (although 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, ie 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.





Cyprus Trust Law

General

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.

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. They may exist for a period of 100 years from the date of their creation.

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

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 Trust

A resulting trust arises from the implied, rather than the express intention of the settlor. This intention can be inferred by the way that the settlor acts or behaves.

An example of a resulting trust would be where A gives money to B to buy an asset. If there is no evidence that A intended for B to keep the asset, then B is presumed to hold the asset on trust for A.

But if, in the above example, A was B's father and A had given money to B so that B could purchase books for school, then the presumption arises that A intended for B to keep the books and therefore there is no resulting trust.

Constructive Trust

They are imposed by law independently of what anyone intended.





Types of Trusts

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; and

Discretionary Trust

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.





Trustees

Appointment and Discharge

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 appointing 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. If so, then they 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.

Trustees

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.

Trustees' Liabilities

Unless the trust instrument expressly provides otherwise, trustees are not entitled to any payment for their services. They may, however, be reimbursed from the trust property for any expenses they incur in performing their duties.

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.

Trustee Services

Trustees in Cyprus manage the trust property and follow the settlor's wishes as expressed to them in the letter of wishes.

Costs

There are no stamp duties on the settlement of property in a Cyprus trust. A stamp duty of CYP 250 is payable on the creation of an international trust. A trust can be created within a few days and the cost of creation will vary, according to the complexities involved. The annual cost of administering the trust depends on the work involved and the time spent. The fee is not calculated as a percentage of the trust property.





Beneficiaries

The main right of the beneficiaries under a trust is their 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:

- a) They may pursue a personal action against the trustees;
- b) 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: a) no traceable product can be found, or b) where the trust is traced in a bona fide purchaser without notice of the trust, or c) they may be able to institute criminal proceedings against the trustees.

International Trusts Law

General

For the purpose of attracting foreign investors to create in international trusts in Cyprus, the International Trusts Law of 1992 has been passed and deals with the regularization of international trusts. This law is not a self-contained law on trust but it builds on the existing Cyprus Trust Law, which is based on the English Law. This Law offers freedom of movement of funds and it removes certain doubts as to whether the existing legislation could cover arrangements such as those, which are common in other jurisdictions.

An international trust may be described as a trust created by a non-resident settlor for the benefit of non-resident beneficiaries. 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.

In order to establish an international trust:

- a) The settler must not be a permanent resident of Cyprus.
- b) No beneficiary other than a charity is a permanent resident in Cyprus.
- c) The trust property does not include any real property situated in Cyprus.
- d) There must be at least one trustee resident in Cyprus at all times.

There is no longer a requirement to inform the Central Bank of Cyprus and get their respective permission in respect of the trustee of the International Trust since Cyprus's accession to the EU.

A trust will still qualify as an international trust even if the settlor or the local trustee or a beneficiary (or a combination of them) is a Cypriot international business company or partnership. The perpetuity rules do not apply to international trusts and they can remain in force for up to 100 years.

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

International Trusts Law

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.





Under section 7 of the Law, the trustees of an international trust have extensive investment powers, which must be exercised with the prudence and diligence of a reasonable person.

Cyprus courts may amend the terms of international trusts or the powers of the trustees to manage the trust property if satisfied that the proposed amendment will be in the interest of the beneficiaries and will not adversely prejudice their interests.

Section 9 of the Law allows for the applicable law of the international trusts to be any foreign law (other than Cyprus law) provided that the new law recognises the validity of the trust and the interests of the beneficiaries. In the same way, an international trust in a foreign jurisdiction may be subject to Cyprus law.

International Trusts do not have to be registered with any Cyprus authorities but there is a fixed stamp duty of CYP 250 payable on their creation.

International Trusts and Asset Protection Planning

The most important provision of the Law is found in section 3 that allows the Cyprus trust to be used as an asset protection vehicle.

Looking at Section 3 in more detail:

- 3 (a) A Cyprus non-resident of full age and capacity who sets-up a Cyprus international trust is deemed as having the capacity to transfer property. The section goes on to provide that no foreign law relating to inheritance or succession shall be capable to invalidate the trust or affect any transfer relating to the creation of the trust.





International Trusts Law

This section, read together with section 9, set out above, has the effect of rendering a Cyprus international trust immune from forced heirship and 'claw-back' rules. This is especially useful in civil law jurisdictions that have forced heirship rules applicable on death

- 3 (b) provides that a Cyprus International Trust is not void or voidable in the case of the settlor becoming bankrupt or insolvent

This provision will not apply if the court is satisfied that the trust was set up specifically for the purpose of defrauding the creditors of the settlor at the time of setting up the trust. The law will also not apply where there were claims on the assets prior to the creation of the trust.

The key test is whether, at the time of setting up the trust, the settlor had sufficient property to meet all his liabilities, other than the trust property. If this test is met and provided that the settlor did not anticipate bankruptcy at the time of setting up the trust then the intention to defraud cannot be proven.

The burden of proof is on the person alleging the fraud and the standard is the balance of probabilities. For the trust to be set aside, it must be the creditor and not any other party that was defrauded.

No definition of 'creditor' is provided in the Law and this remains a question of fact and interpretation by the courts.

- 3 (c) provides that any claim under section 3(b) above must be filed within a two year period from the date of transfer of the property to the trust.

After the lapse of the two year period, no action can be brought against the trustees.





Shams

Parties to a trust which has been properly and validly created may successfully resist a claim that the trust is not really a trust but some other legal arrangement such as an agency or a nomination, or merely an empty pretence, on the basis that equity looks to substance, not form. This applies to both local and international trusts.

If an arrangement masquerading as a trust is found to be a sham, any transfer of property to the purported trustees will be rendered ineffective, no title will have been transferred and the transaction will be set aside. The purported trustees will have never been more than nominees or bare trustees, holding the property on a resulting trust for the settlor who will have remained the sole beneficial owner. Any action of the purported trustees inconsistent with the continued beneficial ownership of the settlor will have been unlawful and the trustees will have to make good any losses caused, unless they can demonstrate that they were not aware that the settlor lacked the necessary intent and they were not knowing participants in the sham.

1976 Convention on Recognitions and Enforcement of Foreign Judgements (Forced Heirship)

With regard to local trusts, there appears to be no legislative or common law provisions relating to forced heirship. It seems likely that a local trust would not be defeated by a forced heirship claim in the Cypriot Courts especially where the trust assets are situated in Cyprus.

For International Trusts, the International Trusts Law expressly provides that no foreign law relating to inheritance or succession shall invalidate such a trust or affect any transfer or disposition relating to the creation of such a trust in any way. Article 1 of the 1976 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which was ratified by Cyprus clearly states that the provisions of the Convention do not apply to decisions concerning the capacity of persons or questions of family law, including personal or financial rights and obligations between





parents and children or between spouses and questions of succession. It seems clear, therefore that international trusts are immune from forced heirship claims.

Taxation

Trusts, as such, are not taxable in Cyprus but the beneficiaries are taxable through the trustees.

Local Trust

Provided that there is no local profit then there is no taxation on the income, capital or distribution of Cyprus International trusts.

It should be noted that dividends and/or other income received from an underlying Cyprus international business company will not be regarded as Cyprus-source income for Income Tax purposes.

International Trusts

Cyprus International Trusts enjoy important tax advantages, providing significant tax planning possibilities. The following advantages are indicative of the possible options for tax minimization:

Taxation

- All income, whether trading or otherwise, of an International Trust (i.e. a Trust whose property is located and income is derived from outside Cyprus) is not taxable in Cyprus.

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





Gains on the disposal of the assets of an international Trust are not subject to capital gains tax in Cyprus.

An alien who creates an International Trust in Cyprus and retires in Cyprus is still exempt from tax if all the property settled and the income earned is abroad, even if he is a beneficiary.

The assets of an international trust are not subject to estate duty in Cyprus.

Trusts are usually used by wealthy individuals for the purpose of protecting their inheritance or capital gains 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.

Double Tax Treaties

It is possible for trusts to come under the scope 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 a Cyprus Trust

Trusts created in Cyprus 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.

Advantages of a Cyprus Trust

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.

Legal System

The legal system is a common law system with trust legislation and case law.

Stability

Cyprus offers both political and economic stability. In addition to the latter, Cyprus is full Member State of the European Union since 1st of May 2004.





Confidentiality

There are no registration or reporting requirements for trusts established in Cyprus nor are the names of trust or of the persons referred to in the trust deed disclosed. The only authority to be informed of the creation of an International Trust is the Central Bank of Cyprus and only in cases where bank accounts are opened in Cyprus. Again no names are disclosed.

Flexibility

Cyprus law allows the removal of a trust from its jurisdiction and vice versa. In this way it provides the necessary flexibility if such transfer would be advantageous because of change of circumstances.





Who to Contact

**Christodoulos Vassiliades**

Christodoulos Vassiliades is an Attorney-at-Law practising in the fields of corporate law, trust law, banking, tax law, shipping law and other commercial matters. He has extensive experience in the use of Cyprus Offshore Companies, double tax treaties and international tax planning.

Tel: +357 22 55 66 66

Fax: +357 22 55 67 67

E-mail: cyprus@ocra.com





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