

Cyprus Trust

Detailed Analysis

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The basic law that regulates international trusts in Cyprus is the International Trusts Law of 1992 (the "Law"). Originally trusts were (and in the case of trusts other than international trusts still are), regulated and governed by the Trustees Law. Cap. 193 enacted in 1955 and based on the English Trustees Act 1925 and by the Doctrines of Equity and Case Law as it was applied in England prior to the independence of Cyprus in 1960. This meant that Cyprus* trusts law was outdated since it was out of sync with the developments, which took place in England and in some other countries.

Therefore the then existing law on trusts, now applying solely to domestic trusts, had certain disadvantages and could not adequately serve all the needs and demands of those who wished to use an international trust as one of the available instruments in their international tax planning. With this in mind, the Government as part of a series of measures promoting Cyprus as a financial centre introduced a new bill headed "The International Trusts Law". The House of Representatives subsequently passed the "International Trusts Law of 1992". The Law endeavours to create the necessary environment for foreign investors to establish international trusts in Cyprus and it gives freedom of movement of funds and it also removes certain ambiguities as to whether the existing legislation could cover setups, such as those which are common in other jurisdictions.

Under the Law for a trust to qualify as an "International Trust" the following conditions need to be satisfied:

- 1) The settlor must not be a permanent resident of Cyprus;
- 2) At least one of the trustees must at all times be a permanent resident of Cyprus;
- 3) No beneficiary other than a charitable institution is a permanent resident of Cyprus;
- 4) The trust property does not include any immovable property situated in Cyprus.

One may envisage the possibility of an individual settlor forming a Cyprus Company, the shares of which vesting entirely to him and of whom he is the sole director, which will act as the sole trustee of the international trust to which the assets of this individual would be transferred.

A settlor is deemed to have ability to dispose of his assets to an International Trust if at the time of such transfer is of full age and of sound mind under the law of the country in which he is a permanent resident. The Inheritance Law of the Republic of Cyprus or of any other country shall in no way affect any transfer or disposition made to a Cyprus International Trust and the validity of such transfer shall not be challenged. In the absence of any express provision to the contrary contained in the instrument creating the International Trust such a trust shall be deemed to be irrevocable by the settlor and his legal representatives notwithstanding that it is voluntary.

Notwithstanding provisions of bankruptcy law in Cyprus or any other country, in the event of the settlor's bankruptcy, any transfer of assets made to the International Trust shall not be void or voidable, unless in the case of an International Trust which is voluntary and made without consideration or for the benefit of the settlor, their spouse or children and to the extent that it is proven to the satisfaction of the Court that the trust was set up with the intent to defraud persons who were, at the time the property was transferred to the Trust, the settlor's creditors. The burden of proof to establish intent to defraud lies with any creditors seeking to annul the Trust. Such action must be initiated within two years following any transfer or disposal of assets to the Trust.

The Trust can be valid for 100 years from the date of its creation, whence it will terminate if it has not hitherto been terminated pursuant to a relevant term in the instrument creating it. Charitable and Purpose Trusts are not subject to the rule and may exist in perpetuity.

Subject to the provisions of the instrument creating an International Trust the trustee will be allowed at any time to invest the whole or any part of the trust funds in any kind of investment wherever the investment is situated and whether or not the funds have already been invested. Any investment made by the trustee may be varied or retain its original state as long as the trustee exercises diligence and prudence that a reasonable person would be expected to exercise in making such an investment.

The applicable law of Trust may be changed to or from the Law of the Republic provided that:

- A. in case of a change from the Law of the Republic to another law, the new applicable law recognises the validity of the trust and the respective interest of the beneficiaries,
- B. in the case of a change from another law to the Law of the Republic such change is recognised by the applicable law of the trust previously in effect.

Any arrangement varying or revoking the terms of the International Trust or enlarging or modifying the powers of management or administration of the trustees shall not be approved unless the Court is satisfied that such change is for the benefit of the persons applying for it or those categories whose interests are expressly protected under the Law and of any other interested parties.

Subject to the terms of the instrument creating the Trust and absent a Court order mandating any disclosure of information, the trustees or any government officials may not disclose to any person not legally entitled thereto, any information or documents relating to the name of the settlor or beneficiaries, any deliberations pertaining to the manner of exercise of discretionary powers and the reasons for exercising those and also to those referring to trust accounts. Trust beneficiaries may request any documents relating to Trust accounts.

The income of the Trust that is derived from sources outside Cyprus shall be exempt from all taxes imposed in Cyprus and also exempt from Estate Tax which in any event, since the enactment of the Law has been abolished for all estates.. The stamp duty chargeable for the instrument creating an International Trust will be £250. International Trusts are exempted from the requirements of registration under any law.