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## **Cyprus International Trusts: Use and Benefits**

### **1. Introduction**

- There are numerous domestic and offshore factors for the client to consider during the process of selecting an offshore jurisdiction for the creation of a Trust, including the purpose and term of the Trust; the reputation of the jurisdiction; and the laws and regulations of the jurisdiction.
- Generally, the legislation and fundamental requirements of Trusts in various offshore jurisdictions are similar, making it quite difficult for the client to select one jurisdiction over the other. However, there are circumstances where the client may base his/her decision on other factors, such as existing business activities in the offshore jurisdiction, the strength of the currency in the offshore jurisdiction compared to the strength of the currency in the domestic jurisdiction and the economic climate of the offshore jurisdiction compared to the climate of the domestic jurisdiction.
- The Cypriot international Trust regime is aligned with other leading Trust jurisdictions, meaning it is modern and designed for the sole purpose of making Cyprus more attractive to clients living outside the Republic of Cyprus. The Cypriot international Trust regime provides the client with significant tax planning and asset protection advantages and caters to the needs of current and future investors.

### **2. Legal Framework**

The principal Cypriot legislation governing Trusts is:

- International Trusts Law 69(I)/1992 as amended by Law 20(I)/2012; and
- The Trustees Law Cap. 193 which reflects the provisions of the United Kingdom Trustee Act of 1925.

#### *Definition of a Trust*

- The Law does not provide a comprehensive definition of 'Trusts', however, the Law has been developed by Cypriot case law.

- A Trust is a legal relationship created by a Settlor where assets are placed under the control of a Trustee for the benefit of a Beneficiary or for a specified purpose. The Trust can be created during the lifetime of the Settlor or on death of the Settlor. The terms of the Trust are usually set out in a written instrument, such as a deed.

A Trust has the following characteristics:

- Trust assets are separate from the assets of the Trustee.
- The Trustee holds the legal title to the Trust assets, or assets are held in the name of another person on behalf of the Trustee.
- The Trustee is authorised and holds the duty to manage the assets of the Trust in accordance with the terms of the Trust and the Law. Failure of the Trustee to fulfil his duties under the Trust may incur personal liability.
- The Settlor may reserve certain rights and powers or a Trustee may himself be a Beneficiary. Such cases do not necessarily affect the validity of the Trust.

Trusts can either be express Trusts, which are created intentionally by an act of the Settlor, or Trusts created by Law.

### *Cyprus International Trust*

The International Trusts Law provides that in order for a Trust to be a Cyprus International Trust, it must satisfy the following requirements:

- (a) The Settlor is either a natural or legal person that is not a resident of the Republic of Cyprus during the calendar year prior to the creation of the Trust;
- (b) At least one of the Trustees should be a resident of the Republic of Cyprus during the whole duration of the Trust; and
- (c) No Beneficiary, whether a natural or legal person, other than a charitable institution, is a resident of the Republic of Cyprus, during the calendar year prior to the creation of the Trust.

### *The Three Certainties*

In order to ascertain whether the Settlor has created a valid Trust under Cypriot Law, one must examine whether or not the following “three certainties” exist:

- (a) **Certainty of intention** to create a Trust: In order to establish that this certainty exists, evidence which shows the express intention of the Settlor to create the Trust is needed, such as a Trust instrument. However, it is possible to have orally created Trusts.

- (b) **Certainty of subject matter:** The assets which are to become the Trust property must be identified. Examples include money, immovable property and shares.
- (c) **Certainty of beneficiaries** (or objects): The identity of all the intended Beneficiaries of the Trust must be ascertained or ascertainable when the Trust comes into existence, if not, the Trust will fail.

### 3. Benefits

#### *Tax Benefits*

- Income, gains and profits sourced from outside the Republic of Cyprus are exempt from Income Tax, Capital Gains Tax, the Special Defence Contribution or any other tax in the Republic of Cyprus at the time of writing. These are only taxable when the beneficiary is a tax resident of the Republic of Cyprus. Where the beneficiaries are not tax residents of the Republic of Cyprus, they are taxed only on income sourced from within the Republic of Cyprus.
- Dividends, interest or royalties received by a Cyprus International Trust from a Cyprus company are not taxable and not subject to any withholding tax.
- There is no estate duty or inheritance tax in Cyprus.
- The extensive network of Double Tax Treaties the Republic of Cyprus has entered into, is an extremely useful tax planning tool which provides considerable tax advantages to natural and legal persons who have chosen to establish legal entities in the Republic of Cyprus. The purpose of these Double Tax Treaties is, as the name suggests, the avoidance of double taxation of the income earned in one of the two contracting states by both contracting states. In Cyprus and most of the other contracting states, the Double Tax Treaties supersede national tax legislation.

#### *Confidentiality*

- The Trustees (i.e. the persons managing the Trust) owe a duty of confidentiality to their beneficiaries and are not at liberty to disclose information or documents unless they are ordered to do so by a Cypriot Court or such disclosure is permitted by law in specific circumstances.
- Registration of the Cyprus International Trust in the Trusts Registry is mandatory. The Trusts Register is not available to the public, but is available for inspection by the Competent Authorities.
- There are no reporting requirements in the Republic of Cyprus for Cyprus International Trusts.

### *Asset Protection*

- With the creation of a Trust, the client can protect his assets against expropriation or other potential claims brought against him by governments or creditors.
- The Cyprus International Trust can be utilised to shield assets against claims arising in tort or contract as a result of transactions entered into by the previous owner of the Trust property.
- The Trust is also a means for high net worth individuals to shield property from their spouses or former spouses.
- Transfers of property to the Trustee of a Cyprus International Trust can only be set aside by a Court, provided the latter is satisfied that a creditor of the previous owner of the Trust property has been defrauded. The onus is on the creditor to prove that he has been defrauded by the transfer of property to the Trustee of the Cyprus International Trust.

### *Reservation of Powers*

- Section 4A of the International Trust Law provides that the Settlor may reserve powers to himself, retain a beneficial interest in the Trust property, or act as the protector or enforcer of the Trust.
- The Settlor may exercise the reserved powers without being deemed to be in breach of the Trust. Where the Settlor has reserved powers under his capacity as Enforcer or Protector of the Trust, he cannot be attributed with intention to defraud.
- The Enforcer is the person charged with the duty to enforce the Cyprus International Trust for a non-charitable purpose in accordance with the International Trusts Law. The concept is yet to be examined by the Cypriot Courts.
- The Protector is a person other than the Trustee, vested with the power to restrict key powers of the Trustee such as the power to add Beneficiaries of the Trust. Furthermore, the Protector may advise, dismiss or appoint a Trustee.

### *Perpetuity Period*

- The general rule is that a Trust may not exist indefinitely. Trusts may exist for the duration of a lifetime plus 21 years, or in the case where the Trust does not involve a natural person, it can exist for merely 21 years. This is known as the Perpetuity Rule.
- Cyprus International Trusts are exempt from the Perpetuity Rule. Section 5(1) of the International Trusts Law provides that:
  - (a) There is no limit on the period for which a Trust may continue to be valid and enforceable; and

(b) No rule against perpetuities or remoteness of vesting or any analogous rule applies to a Trust or to any advancement, appointment, payment or application of property from a Trust.

- Section 5(2) of the International Trusts Law provides that except where the terms of the Trust expressly provide to the contrary, no advancement, distribution, appointment, payment or application of income, or capital from the Trust to another Trust is invalidated solely by the reason that other Trusts continue to be valid and enforceable beyond the date on which the first Trust must terminate.
- Section 6 of the International Trusts Law provides that income can be accumulated for the duration of the Trust.

#### *Miscellaneous Other Benefits*

- Low cost of establishment and administration
- The limitation period for challenging a Trust is only two years
- No exchange control regulations apply

## **4. Uses**

A Cyprus International Trust is a useful tool which can be utilised in several ways:

#### *Managing Family Finances*

- A minor may be unable to hold property in his own name. The Cyprus International Trust allows the minor to benefit from the property via the Trustee who holds and manages the property until he reaches adulthood and is able to hold the property in his own name.
- Clients can utilise the Cyprus International Trust to preserve their family fortune for their descendants. The Trust will prevent family members from having direct access to their share of the Trust.
- The Cyprus International Trust is a means for high net worth individuals with unconventional family circumstances to provide for family members or blood relatives, such as ex-wives and children from previous marriages or children conceived outside of wedlock.

#### *Tax planning*

- The Cyprus International Trust may be used to distribute untaxed income in Cyprus to family members

- Individuals moving to a country with high tax rates may obtain tax advantages by placing their assets in a Cyprus International Trust taking advantage of the numerous double taxation treaties the Republic of Cyprus has entered into with other jurisdictions.

## 5. Jurisdiction & Choice of Law

### *Jurisdiction*

- Section 12B of the International Trust Law provides that all matters in relation to the Cyprus International Trust are determined before the Cypriot Courts in accordance with the laws and regulations of the Republic of Cyprus without reference to the law of any other jurisdiction. This protects the Cyprus International Trust from the application of foreign laws and provides additional control and security.
- The Law regulating a Cyprus International Trust may be changed to the laws and regulations of another jurisdiction under Section 12D of the International Trusts Law.

### *Choice of law*

- The choice of law provisions under Section 3(1A) of the International Trusts Law clarify that a choice of Cypriot Law to govern a Cyprus International Trust is valid and effective. The Choice of law provisions also establish rules by which the governing law of the Trust can be ascertained in the absence of choice.

## 6. Conclusion

Cyprus has become a popular Trust jurisdiction primarily due to the International Trusts Law which is on par with other leading jurisdictions. Other factors include:

- (a) The tax exemptions and the extensive network of Double Tax Treaties which the Republic of Cyprus has entered into with other contracting states;
- (b) The short limitation period of two years for a creditor to challenge the validity of the Trust;
- (c) The minimal registration requirements;
- (d) Confidentiality;
- (e) The low cost of establishing and administering a Trust;
- (f) The availability of competent & professional service providers in the Republic of Cyprus to assist with the establishment and administration of the Trust; and
- (g) The flexibility in adopting foreign law afforded by the International Trusts Law.

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