



The Cyprus International Trust and the Panamanian Foundation: each an advantageous model and together an unrivalled structure

Abstract

In this article, the structure and the features of both the Cyprus International Trust (following the amendments in 2012) and the Panamanian Foundation are discussed and examined as well as enlisting the basic characteristics of the Russian Federation's inheritance laws and the provision of a proposal for the implementation of a personal wealth management and inheritance plan for Very High Net Worth Individuals and Ultra High Net Worth Individuals as well as the practical implementation of such proposal.

Key points

- Both the Cyprus International Trust as well as the Panamanian Foundation offer flexibility and confidentiality regarding the settlor and founder, respectively as well as the beneficiaries and successors, respectively.
- Solely and collectively, these two models are widely used by Very High Net Worth Individuals and Ultra High Net Worth Individuals for purposes of their personal wealth management and inheritance planning.
- Both models when used together achieve the highest level of confidentiality and personal wealth management.
- A proposal is provided on how these two models may be adopted as well as the practical steps that should be considered when using such structure.

Introduction

As far as one can remember and for as long as tax laws have been in existence, there has been a lot of speculation about and examination of structures asking how these can best be implemented to provide its users with the best possible tax planning solutions, thus mitigating their tax liabilities while still remaining commercially feasible and plausible structures.

In recent years, Cyprus has played a paramount role in such solutions, in structures which predominantly involve the use of a trust and a foundation, mostly, but not exclusively, with respect to Very High and Ultra High Net Worth Individuals. The term Very High Net Worth Individuals (hereinafter both collectively referred to as 'VUNWIs') refers to those individuals with assets between \$5 and \$50 million, whereas Ultra High Net Worth Individuals are exclusively those individuals with assets above \$50 million. These types of structure though, should not be considered as the blanket solution for each and every situation in order to mitigate the tax liability of VUNWIs.

The trend, which involves making use of Cyprus as a jurisdiction, has demonstrated that the pattern followed by VUNWIs with a view to their group of trading companies, commercial and business activities is predominantly the use of a Cyprus Holding Company, which is a private limited liability company by shares, incorporated and governed under the Cyprus Companies Law, Chapter 113. Conversely, for their personal wealth management as well as inheritance planning, VUNWIs and especially VUNWIs being nationals of the Russian Federation, tend to use a Cyprus International Trust and a Panamanian Foundation.

Before, however, such structure is explored in detail, it is important to set out the basic information regarding both the Cyprus International Trust and the Panamanian Foundation.

Cyprus International Trusts

Background

In July 1992, Cyprus enacted the International Trusts Law (Law No 69/1992) (hereinafter referred to as the '1992 Law'). This was done to update and modernize the law and to establish Cyprus as an offshore and financial centre as well as a serious trusts jurisdiction.

There were a number of discussions and lobbying for the modernization of the 1992 which effectively came into fruition on the 9th March 2012, after the Republic of Cyprus' House of Representative approved the reform of the 1992 Law. Thus, the International Trust (Amending) Law of 2012 was passed (hereinafter referred to as 'IT Law'). The IT Law, as from the 23rd March 2012, shall apply to all newly established Cyprus International Trusts as well as to the administration of the existing international trusts.

The 1992 Law as with the IT Law provides for the formation and administration of international trusts, offering considerable incentives for the establishment of such trusts in Cyprus. The IT Law introduces certain novel provisions designed to make Cyprus a more attractive centre for international trusts.

The law applies only to 'international trusts' that are broadly defined as trusts whose settlor and beneficiaries were not residents of Cyprus in the calendar year preceding the year of creation of the international trust. The existing Trustees Law continues in force and applies to international trusts, except where it is inconsistent with or has been modified by the provisions of the new legislation.

The International Trusts Law:

a brief overview

When the law was being drafted the use of the word 'international' rather than 'offshore' was considered to be more appropriate, since the term 'offshore' denotes and attributes a certain tax haven status to the object it seeks to describe.

Interpretation

The conditions necessary for a trust to fall within the ambit of the IT Law and thus be considered as an international trust are the following:

- i. the settlor, being an individual or legal person, is not a resident of Cyprus in the calendar year which precedes the year in which the trust was created;
- ii. at least one of the trustees for the time being is, during the whole duration of the trust, a permanent resident in Cyprus; and
- iii. none of the beneficiaries, being individuals or legal persons, other than a charitable institution, is a resident of Cyprus in the calendar year which precedes the year in which the trust was created.

The criterion that at least one of the trustees for the duration of the trust, be a permanent resident in Cyprus, ensures that the Cyprus Courts have effective jurisdiction over the trust. It is noteworthy to mention that the IT Law allows a Cyprus corporate entity or a partnership to act as trustee, and the provision contained in Section 2 of the IT Law clearly states that a company or partnership can be the settlor or beneficiary of an international trust.

Validity of international trusts

A settlor who transfers or who in whatever manner endows assets to an international trust shall be deemed to have the capacity to do so, if at the time of such transfer such person is of full age and of sound mind, under the law of the country of which he is a permanent resident. All questions in relation to an international trust shall be determined in accordance with the applicable law of Cyprus, without reference to the laws of any other jurisdiction.

The law relating to inheritance or succession in force in Cyprus or in any other country shall not affect in any way the transfer or disposition referred to above or the validity of the international trust. Additionally, dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction or by reason that the other jurisdiction does not recognize the concept of trusts. These provisions further reinforce the asset protection features of the Cyprus International Trust.

An international trust shall not be void or voidable in the event of the settlor's bankruptcy or liquidation of his property or in any action or proceedings against the settlor at the suit of his creditors notwithstanding any provision of the law of Cyprus or of the law of any other country and notwithstanding further that the trust is voluntary and without consideration having been given for the same, or is made for the benefit of the settlor, the spouse or children of the settlor or any of them, unless and to the extent that it is proven to the satisfaction of the court that the international trust was made with the intent to defraud the creditors of the settlor at the time of the transfer of his assets to the trust. The onus of proof of such intent on the part of the settlor, lies with such creditors.

An action against a trustee of the international trust, pursuant to the provisions of the above paragraph should be brought within a period of 2 years from the date when the transfer or endowment of assets was made to the trust. Thereafter, no action may be brought against the trustee following the lapse of 2 years from the transfer date/endowment date of the assets.

Some civil law jurisdictions have rules of inheritance law that potentially conflict with the trust concept. The IT Law, therefore, provides that a Cyprus Court will not enforce the inheritance rules of any country so as to jeopardize the validity of an international trust, subject to the above observations regarding the validity of international trusts.

Duration of an international trust

For the purposes of the IT Law, there shall be no limitation regarding the duration of the continuation of the validity and enforceability of an international trust. It should be noted that no legal principle or rule that is contrary to the perpetuity or long-term investment or any equivalent principle or rule shall apply to an international trust or to any concession, distribution, payment, or disposition of property from the international trust. If it is a charitable or purpose trust then it may continue indefinitely.

Accumulation of income

A provision, which is included in an instrument creating an international trust for the accumulation of income, is valid for any period within the period of the duration of the trust. This provision in the IT Law merely reflects the existing law in Cyprus, which allows for trust income to be accumulated throughout the life of the trust.

Charitable trust and purpose trust

Section 7 of the IT Law contains a broad definition of charitable trusts and allows the creation of purpose trusts that are defined in Section 2, which is the interpretation section of the IT Law.

Purpose trusts can be a useful adjunct to corporate offshore planning and they are often used to accumulate corporate earnings for general corporate purposes, rather than for any defined group of individuals. However, to ensure that the trust funds are ultimately distributed to an identifiable person or entity suitable wording has been included. Under the IT Law, the term 'charitable purposes' was redefined in order to be in line with the definition that is contained in the UK's Charities Act 2006.

Authorised investments

Subject to the provisions of the instrument creating an international trust, a trustee may at any time invest the whole or any part of the trust funds. Some of the most important powers are to make capital distribution, to borrow, to guarantee, to mortgage, to employ, to invest/lend money, to make payments for and on behalf of beneficiaries as well as to advance money to another trust. Under Section 8 of the IT Law, the power of the trustees of an international trust have been extended even further; namely with the amendments, the trustee(s) of an international trust may hold, maintain, or invest in movable and immovable property in Cyprus and abroad, including shares in companies incorporated in Cyprus.

Moreover, the trustee may vary the investment or retain it in its original state, as long as he exercises the diligence and the prudence that a reasonable person would be expected to exercise when he makes investments.

The IT Law includes wider powers, which are essentially similar to the 'prudent man' rules found in similar laws of other jurisdictions.

Reserved powers of the settlor

The settlor may now revoke and modify terms of the international trust as well as instruct on the transfer, distribution, payment or transfer of income and/or capital from the trust property, or the adoption of directions in connection to the above as well as choose the applicable law which will govern the international trust.

Under the IT Law, the settlor is also given the power to appoint or terminate any trustee, inspector for the application of the trust, protector, or beneficiary as well as the international trust's investment manager or investment adviser. Particularly in connection to the trustees, the settlor may proceed with the issuance of binding directions to the trustee in connection with the purchase, retention, sale, management, lending, leasing, or charging over the property of the trust or the exercise of any powers or rights arising in respect of such property. The settlor may restrict the exercise of any power or the discretionary power of a trustee, requesting that these be exercised only with the approval of the settlor or any other person expressly mentioned in the terms of the international trust.

Accordingly, the settlor may also exercise of powers of a director or officer or the issuance of binding directions regarding the appointment or removal of director or officer of any company, which is owned by the trust, either wholly or partially. These are entirely new powers for settlors that have been introduced in the IT Law. These new provisions are similar to the corresponding provision that exist in Jersey and Guernsey laws and thus allow the settlors to adapt to changes in objectives sought to be attained as well as to the surrounding circumstances.

Changing the applicable law of an international trust

If the terms of an international trust so provide, the applicable law of the international trust may be changed to or from the law of Cyprus, provided that in the case of a change from the law of Cyprus to another law, the new applicable law would recognize the validity of the trust and the respective interests of the beneficiaries. In the case of a change from another law to the law of Cyprus, such change is recognized by the applicable law of the trust previously in effect.

This is a useful option, which is now to be found in most modern offshore trust laws. It allows the law of a Cyprus trust to be changed to a foreign law, and permits a foreign trust to adopt Cyprus law.

Variation of an international trust by the court

Variation rights are dealt with under Section 10 of the IT Law and this clause empowers the court to approve a variation of the terms of a trust. The wording follows closely that of the UK Variation of Trusts Act of 1958. Without prejudice to the powers of the court as per the above, an international trust may be varied in any way provided by its terms.

Confidentiality relating to international trusts

Subject to the terms of the instrument creating an international trust and where the court has not issued an order of disclosure, as per the below, the trustee or any other person shall not disclose to any person not legally entitled thereto any information or documents:

- which disclose the name of the settlor or any of the beneficiaries;
- which disclose the trustee's deliberations as to the manner in which a power or discretion was exercised or a duty conferred or imposed by law or by the terms of the international trust was performed;
- which disclose the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason had been or might have been based;
- which relate to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty; and
- which relate to or form part of the accounts of the international trust.

Provided that, where a request is submitted by a beneficiary to the trustee for the disclosure of the accounts of an international trust or of any documents or information relating to the by the trustees, which form part of the said accounts, the trustee shall have the power to disclose such accounts, documents, or information to the beneficiary, only if in his opinion such disclosure is necessary and ensures the bona fide interests of the trust.

Notwithstanding the provisions of any other law and subject to the provisions of the paragraph following immediately below, a court in any civil or criminal proceedings may by order allow the disclosure of information or documents referred to in the list on the application by a litigant or by a party in the above civil or criminal proceedings depending on the circumstances of the case. The court will issue an order if it is satisfied that the disclosure of the information or the document referred to in the above list is of paramount importance to the outcome of the case.

For purposes of Section 11 of the IT Law 'information or document' includes information or documents stored in a computer and in such a case an order for disclosure is executed with the disclosure or the supply of the information or the document in a visible, legible, and portable form.

Accordingly, Section 11 of the IT Law serves to remind settlors, trustees, and beneficiaries that a trust relationship is a highly confidential one, and information should not be disclosed to third parties, unless of course a Cyprus court orders the information to be disclosed.

Moreover, an individual who wishes to keep the ownership of a company anonymous and confidential, may accomplish this via the use of an international trust, which shall own the shares in the company.

Taxation and stamp duty of international trusts

The IT Law has replaced the old Section 12 of the 1992 Law regarding taxation and now provides that the income and gains of an international trust that are acquired or deemed to be acquired from sources within and outside Cyprus are subject to any taxation which is imposed in Cyprus, where the beneficiary is resident in Cyprus.

Accordingly, if the beneficiary is not resident in Cyprus, the income and gains of an international trust that are acquired or deemed to be acquired from sources within Cyprus are subject to any taxation which is imposed in Cyprus.

The above position should not cause any need for concern since it merely makes provisions to address the issue that the beneficiaries may now be Cyprus resident (provided that the year preceding the creation of the international trust of the beneficiary was not a Cyprus resident) as well as the fact that the international trust may now hold movable and immovable property situated in Cyprus as well as shares of companies incorporated in Cyprus.

It should be noted that the wording of Section 12 of the IT Law is such that the trust is liable to taxation in Cyprus (subject to the above observations), thus preserving the possibility of arguing that it is a resident for the purpose of the various tax treaties.

The instrument creating an international trust is subject to a stamp duty flat rate fee of approximately Euro 430.

Panamanian Foundations

Background information

The Panamanian Law No 25 of 12 June 1995, which governs Private Foundations, defines how foundations are established and how they operate. The provisions in this law are regulated through Executive Decree No 417 of 8 August 1995, which created the Private Foundation Section of the Public Registry and regulated the registration of the constitution, modifications, and revocation of such foundations.

Liechtenstein law was where the inspiration was taken from and the European foundation model was adapted in order to create a more flexible and modern instrument known as the 'Panamanian private foundation'. The Private Foundation has evident advantages for international asset planning and is qualified to conduct non-habitual 'commercial transactions'. The Panamanian Foundation includes certain interesting aspects that are predominantly found in Anglo-Saxon Law, for example, the institution of a protector or supervisory body.

Structure, establishment and use of Panamanian Foundations

A Panamanian foundation may serve private purposes (hereinafter referred to as a 'Foundation') and is created when either one or more natural persons or legal entities hereinafter referred to as 'Founder(s)' formalize a document, such document being known as the Foundation's charter (hereinafter referred to as a 'Foundation Charter'), which is registered at the Public Registry of Panama, whereby the parties undertake to make a donation, being not less than the equivalent of USD\$10,000 (hereinafter referred to as the 'Foundation's Assets'). This amount may thereafter be increased through further donations. The Foundation's Assets are managed by the council of the Foundation (hereinafter referred to as the 'Foundation Council') which is supervised by the protector(s) who act for the benefit of the beneficiaries of the Foundation. A protector is not required to be appointed and is in fact not always appointed. Whether or not a protector shall be instituted, depends solely on the founder, at the time that the Foundation is being set up.

The Panamanian private Foundation is predominantly used for the following purposes:

- to own family businesses and thus avoid inheritance taxes;
- to avoid political or economic instability;
- to act as a substitute for marriage or pre-nuptial agreements;
- to act as a substitute for a will, thus avoiding complicated inheritance procedures;
- for the avoidance of forced heirship rules;
- to act as a vehicle for owning real estate or valuable art work;
- to own shares, interests, and stocks of private companies while maintaining confidentiality of ownership;
- to act as a vehicle for investing in time deposit accounts, stocks, bonds, or other securities; and
- for any asset protection purposes.

In order to put things in a clearer perspective, a clear distinction needs to be drawn between what is contained in the Foundation's Charter and what is contained in the Foundation's regulations (hereinafter referred to as the 'Foundation's Regulations').

The information which is contained in a Foundation's Charter is information such as the name of the Foundation, its initial capital of USD\$10,000 or more, the identities of the Council members, the foundation's domicile or country of registration, the name and domicile of its resident agent, the purpose for its creation, the manner of appointing its beneficiaries, its duration and the destination and distribution of its corpus if the Panamanian Foundation is dissolved. Moreover, other provisions may be contained in the Foundation's Charter which the client feels are appropriate or necessary.

The Foundation's Regulations constitute a private and confidential document that complements the Foundation Charter. It does not require registration with any Registry or authority. As such it will not be available for inspection through the Registry or any other means. The information contained in the Regulations are the powers of the Foundation Council, the composition of the Foundation's Assets, the form of administration, the beneficiaries of the Foundation (at this stage, the actual names of the beneficiaries and not of the nominee beneficiaries may be stated), the benefits corresponding to each beneficiary, the rules on the distribution of benefits, the rules on the rendering of accounts, the class of the beneficiaries and how they may be varied, substituted, removed, or added, the rules relating to remunerations, the appointment of the protector and his powers (here also the name of the protector is stated), and how the Foundation Assets may be liquidated. Any other areas requiring to be regulated may also be provided for in the Regulations.

Particularly Panamanian law regarding Foundations, does not contain restrictions or limitations other than those outlined the Foundation Charter, with respect to the contents of either document. The Regulations may also contain any other stipulations regarding the operation of the Foundation that has not been included in the Foundation Charter. Thus, either document can be structured according to the needs of the Founder.

Additional key elements

Assets of a Panamanian Foundation

Contributions made to as well as income received by a Foundation are not subject to attack or the object of any precautionary action or measure, unless they relate to obligations which have been incurred, or for damages which have been sustained, following the attainment of the Foundation's aims and objectives.

The Foundation's assets may not be used to address the obligations of the founders, of the beneficiaries or of any other person regardless of whether such person(s) are connected to the Foundation.

Limitation period against the Foundation's creditors

There is a 3-year limitation period, in accordance with the law whereby a creditor may attack the assets of a Foundation.

Corporate status

Due to the fact that Panama grants corporate existence to a Foundation, a Foundation may thus acquire and own property (not restricted to immovable property), incur obligations, and be a party in judicial proceedings.

Commercial objectives

A private interest Foundation must seek to fulfil non-profitable purposes; however, it may carry out activities of a commercial nature provided that the outcome of such activities is in line with the purposes of the Foundation. Accordingly, it may not engage directly in business but it may carry out its business in a non-habitual manner; thus, a Foundation may derive earnings from the sale of real property, hold cash deposits, lend money as well as invest (without limitation) in shares of private companies, public companies, bonds, but the Foundation may not trade.

Revocability and dissolution of Foundations

In the following circumstances, the Founder may revoke the creation of a Foundation or the transfer, namely if:

- the Foundation Charter is revocable;
- the Foundation has been created to enter into effect after the Founder's death;
- the Foundation Charter has not been registered at the Public Registry;
- Under the relevant provisions of the Civil Code of the Republic of Panama, there is just cause for the revocation of donations.

Regarding the dissolution of Foundation specific reasons are established by law.

Taxation

The acts of creation, modification and liquidation of a Foundation shall, just as acts of transfer, transmittal or encumbrance of a Foundation's assets and the income arising therefrom or any other act in connection therewith, shall be exempt from all taxes, contributions, rates, liens or imposts of any kind or description, provided that said assets consist of:

- Assets located abroad;
- Money deposited by natural or juridical persons whose income does not arise from a source in Panama or is not taxable in Panama for any reason;
- Shares or securities of any kind, issued by companies whose income does not arise from a source in Panama, or where their income is not taxable for any reason even though such shares or securities are deposited in the Republic of Panama.

The transfer of immovable property, titles, certificates of deposit, securities, monies, or shares made in pursuit of the objectives or purposes of a Foundation or due to the extinction of a Foundation, in favour of the founder's relatives within the first degree of consanguinity or to the founder's spouse, shall also be free from any taxes.

However, all Foundations are subject to the payment of registration fees and annual franchise tax with such annual franchise tax being approximately USD\$300.

Re-domiciliation of Foundations

Foundations constituted in accordance with a foreign law may submit to the provisions of the Panamanian Law No 25 of 12 June 1995.

When a foreign foundation elects to become subject to the provisions of Panamanian Law No 25 of 12 June 1995, it shall submit a Certificate of Continuation issued by the governing body according to their internal organization which shall contain:

- the name of the foundation and the date of its constitution;
- the data relating to its recording or deposit at the registry of its country of origin;
- the express declaration of its wish to continue its legal existence as a Panamanian Foundation;
- the new foundation charter or a transcription of the original charter; and
- minutes of the foreign foundation granting power to transfer/redomicile to the Republic of Panama.

As mentioned in the introductory section of this article, VUNWIs prefer the use of an international trust either solely or coupled with a Panamanian Foundation, not so much for commercial uses but for private wealth management purposes. Moreover, the confidentiality factor that is apparent in both structures is especially appealing and accordingly the fact that both types of structure offer a strong protection against the disclosure of the details and the identity of the settlor(s), founder(s), and beneficiaries, as such data are not disclosed without being accompanied by an appropriate request as described hereinabove.

Russian Federation VUNWIs

Russian Federation inheritance laws - a brief overview

The use of the Cyprus International Trust in combination with a Panamanian Foundation is a very popular arrangement for VUNWIs coming from the Russian Federation, due to the systematic concept underlying inheritance laws, which is very briefly outlined herein below.

The use of the above structures, especially by Russian VUNWIs, is mostly due to the special nature of the inheritance laws of Russia, coupled together with the legal characteristics, tax advantages, and flexibility of the Cyprus International Trust and the Panamanian Foundation. The Russian inheritance laws affect everyone who has his/her usual place of living, but not necessarily his/her nationality (ie domicile) in the Russian Federation; this also affects foreigners who own property in the Russian Federation.

The core laws connected to inheritance matters are as follows:

- the Civil Code of the Russian Federation;
- the Civil Procedure Code of the Russian Federation; and
- the Fundamental Legislation of the Russian Federation on the Notarial System.

The Russian Federation is also a participant to a number of international treaties on international legal assistance, which among others include:

- convention on the Service Abroad of the Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention);
- convention on the Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (Kishinev Convention); and
- convention on the Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (Minsk Convention).

The general principle that governs inheritance relations in the Russian Federation is the law of the last place of residence of the deceased. However, the inheritance of immovable property is regulated by the law of the country where the real estate is situated. Immovable property registered in the Russian Federation is governed by the inheritance law of the Russian Federation. Where the asset does not relate to immovable property, but to movable property as a general principle, the inheritance law of the last place of residence of the deceased applies.

Thus, the sophisticated character of Russian inheritance law becomes evident which leads to some kind of uncertainty and confusion with a view to the connecting factor in the inheritance law of the Russian Federation concerning the different types of property. On the contrary, the use of the Cyprus International Trust and the Panamanian Foundation in one single scheme is an advantageous solution to avoid the uncertainties created by the aforementioned provisions of the Russian inheritance law.

Therefore, the main advantages of making use of this combined structure can be highlighted as follows:

- confidentiality of property management in regard of inheritance issues;
- exclusion of mandatory inheritance provisions, such as forced heirship rights;
- tax mitigation and exclusion of taxation in the settlor's country of residence, if possible;
- the ability of the settlor to manage and control the property; and
- overcoming of currency restrictions, etc.

The structure preferred by VUNWIs: a proposal and its practical approach

Step one: the Cyprus angle

When setting up a Cyprus International Trust, the contributor of the assets must determine whether he/she would like to appear as settlor or not in the instrument creating the Cyprus International Trust. If the contributor wishes to remain confidential, then this can be achieved by having as settlor a corporate entity, which will endow the assets to the Cyprus International Trust (whereby the actual founder has already at a previous stage endowed the assets to this very entity now endowing the assets). It should be noted that in such instances the corporate settlor should not be a Cyprus resident in the year preceding the year of creation of the international trust; thus, it is recommended that such settlor be an offshore corporate body in the case of a legal entity. The offshore corporate entity may have as its registered shareholder a nominee individual or entity (preferably also located offshore), which would hold the shares on trust in such non-Cypriot corporate entity for the benefit of the actual contributor.

Thereafter, the choice of who shall be acting as trustee of the Cyprus International Trust should be resolved. The trustee may also be a corporate entity; however, it should be noted that at least one of the trustees must be a Cyprus resident, as per the requirements of the IT Law. Accordingly, where more than one trustee shall be appointed, it is important to mention that the majority of trustees should be Cypriot residents in order to maintain the tax residency of the International Trust within Cyprus.

Although it is not necessary that the Cyprus International Trust appoints a protector and/or a supervisor of the performance of a trust, this may be done, the additional governance and oversight on the administration of the international trust and its assets. It should be noted that the concept of a supervisor of the performance of a trust has only been introduced into the Cyprus International Trust concept via the IT Law; this concept did not previously exist in the 1992 Law. The appointment of a protector and/or a supervisor of the performance of a trust adds an additional layer of protection and is usually an entity controlled by an individual or individual who is most familiar with the settlor's long-term financial and personal goals. Practise has shown that the protector is usually the balance of power between the instrument creating the international trust, the settlor, the trustee(s), and the beneficiaries. However, where the settlor vests any of the powers that may be attributed to him via Section 4A of the IT Law, then it is unlikely that such balance of powers can be said to have been maintained.

If management and/or executive powers vis a vis the international trust are vested elsewhere (other than the Cyprus resident trustee), diligence should be applied in order to avoid shifting substantial powers from the Cyprus resident trustee(s) of the International Trust to the protector, trustee(s), settlor, and supervisor of the performance of a trust, thus shifting the management of the international trust to another jurisdiction.

It is preferable and recommended that neither the trustee(s) and/or the protector and/or supervisor of the performance of a trust should be a family member nor related to the family by blood or marriage. Both positions should be independent of each other acting in the long-term interests of the beneficiaries.

The wording and contents of the instrument creating any trust are crucial, since it is that very document that all parties will look at to determine their obligations, duties [regarding the trustee(s), protector(s), and supervisor(s) of the performance of a trust], and rights (regarding the beneficiaries). Many clients seek to make the instrument as wide as possible in order to capture any eventuality; this is however not the recommended approach. The best angle to tackle this task is to address it from a worst-case scenario basis (ie what mechanisms will be triggered if a nominee turns rogue or hostile) and also ways in which new beneficiaries may be barred even if they per se would qualify under the wording of the trust instrument (due to its wide wording), but the actual settlor did not intend them to qualify or be admitted. One must keep in mind when drafting the trust instrument that once the trust instrument is created and signed, it is a mechanism that should be able to function automatically, without any additions and/or editions. Following the exercise of the rights under Section 4A of the IT Law the settlor may regulate the situation if the above issues ever arise, provided that such settlor wishes to have the applicable powers vest with him.

The Panamanian Foundation: the beneficiary of the international trust?

Most VUNWIs are very clear about who they would like to be identified as beneficiaries of a Cyprus International Trust from the outset; however, following discussions with them and when addressing the practical side, the clarity they initially possessed on who was to be named as beneficiary of the trust, becomes somewhat obscured. What is noticeable is that there is an intention to include specific beneficiaries and also to potentially add new ones thereafter who they consider may qualify in future. Another reason is that they may want start with certain beneficiaries and then wish to add additional beneficiaries, who were actually considered by the settlor as qualifying beneficiaries from the outset, but the settlor at the time of the setting up of the trust did not wish to disclose the beneficiaries who are to be added at a later stage.

This may be avoided by not naming them as beneficiaries at the time that the trust instrument is drafted and executed, but including a mechanism in the same trust instrument which would make such individuals (who shall form the new beneficiaries) able to satisfy the criteria to be added as beneficiaries thereafter.

Accordingly, the way that VUNWIs initially developed to by-pass the possibility that the existing beneficiaries would become aware of the addition of further beneficiaries, was to appoint a corporate entity as a beneficiary (to represent each physical beneficiary and to have as registered shareholder of such corporate entities either physical or legal nominees). The problem with this mechanism though is that in the event of the death of a beneficiary, the legal entities will be in deadlock, since the nominees will no longer be able to obtain instructions in order to be able to act.

Furthermore, the same also applies in situations where there are no nominee(s) acting as registered shareholder(s) for the beneficiary but the physical beneficiary himself is the registered shareholder. If this beneficiary then dies, the applicable death certificate needs to be obtained as well as any applicable tax clearance certificates which may be required in order for that entity to collect payments and/or effect trading/corporate actions.

After much deliberation and research on the matter, a winning combination was reached which was effectively the following; namely the use of a Panamanian Foundation as the beneficiary of the Cyprus International Trust.

Granted, that even though the reserved rights of the settlor give him flexibility regarding appointment and termination of a beneficiary under the new IT Law, the issue of confidentiality and other benefits that the Panamanian Foundation offers in being placed as the beneficiary of an international trust, is one which should be taken into serious consideration, as is explained in the following section.

Step two: the breakthrough

We are now turning to expand on why a Panamanian Foundation is a good choice to be named as beneficiary under a Cyprus International Trust. This is mainly done to meet the wishes of the settlor on the one hand and to avoid the situations which have already been described under Step 1 above, on the other.

The Panamanian Foundation's principal aim is asset protection and it is most notably established for the purpose of dealing with the succession into private assets. It offers high confidentiality and flexibility to the 'real' founder who can retain powers as he wishes while at the same time the his name as well as the names of his successors (ie the beneficiaries) remain absolutely confidential.

Since the founder of the Panamanian Foundation may be any person or entity which forms such Foundation in the Panamanian Public Registry and usually a nominee founder's name may appear, the privacy of the Cyprus International Trust as Founder is maintained. Neither names nor passport numbers are registered in the Panamanian public registry when the Foundation is incorporated. The Foundation Council fulfills the same role as the directors of a corporation.

The protector of the Panamanian Foundation is the ultimate controller of the Panamanian Foundation. Once incorporated, the council appoints the protector. This is done via the Foundation's Regulations which are contained in a private, non-publicly registered document, as already outlined above, and thus the identity of the protector remains absolutely confidential. From this point onwards, the protector has full control over the Panamanian Foundation and of its assets. The beneficiaries of a Panamanian Foundation (which at this time may be the actual individual beneficiaries) are appointed and set out in a separate document, the Regulations, so that the identity of the beneficiaries remains again absolutely confidential. What is noteworthy to point out is that the Foundation's Regulations may be changed or modified at any time, but only by the protector or as otherwise designated therein.

Conclusion

The IT Law that amended the 1992 Law was a long awaited and overdue change. The amendments have reinforced the robustness of Cyprus as a competitive jurisdiction in the field of trusts and have once again placed Cyprus as lead in the race of favourable jurisdictions in international tax planning, personal wealth management, and inheritance planning.

Making a Panamanian Foundation beneficiary of a Cyprus International Trust offers many advantages, inter alia the possibility to keep the identity of the beneficiaries of both trust and foundation confidential as well as a great flexibility to amend the circle of beneficiaries. Coupling the Panamanian Foundation with the Cyprus International Trust bestows upon it a European Union element and truly turns it, as the title of this article suggests, into an 'unrivalled structure'.

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