



CHRISTODOULOS G. VASSILIADES & CO. LLC
Advocates - Legal Consultants

CYPRUS:
INTERNATIONAL TRUSTS
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LEDRA HOUSE

15 Ayiou Pavlou Street, Ayios Andreas
1105 Nicosia, Cyprus

MAILING ADDRESS:

P.O. Box 24444, 1703 Nicosia, Cyprus

Tel: +357 22 556677

Fax: +357 22 556688

www.vasslaw.com



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I N T R O D U C T I O N

The Law does not provide a comprehensive definition of ‘trusts’. Trusts law was largely developed by the courts on a case-by-case basis, and it is through the development of case law which has provided us with a better understanding of what a trust arrangement entails. The basic structure is as follows:

- 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.

2 C Y P R U S T R U S T L A W

2.1 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 (the “1992 Law”).

There were a number of discussions and lobbying for the modernization of the 1992 Law which effectively came into fruition on the 9th March 2012, after the Republic of Cyprus’ House of Representatives approved the reform of the 1992 Law. Thus the International Trust (Amending) Law of 2012 (the “2012 Law”) was passed.

2.2 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. Under the 1992 law, an International Trust could last for up to 100 years. If it is a charitable or purpose trust then it could continue indefinitely.

However, under the 2012 Law, an international trust which was established during or after the entry into force of the 2012 Law has no limit on the period over which an international trust may continue to be valid and enforceable. Accordingly, the 2012 Law abolishes all restrictions on the duration of trusts.

Moreover, excluding express terms of the trust to the contrary, no concession, distribution, payment, holding or disposal of the income or capital of the trust to another trust is invalidated merely by reason that the other trust continues to be valid and enforceable after the date on which the first trust ceased to exist.

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

3

TYPES OF TRUSTS

Trusts are divided in the following main categories:

3.1 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.

3.1.1 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, under certain circumstances, orally.

The intention of the settlor must be made absolutely clear. The three certainties listed in paragraph 1 above must be present.

3.1.2 RESULTING TRUST

A resulting trust arises from the implied, rather than the expressed 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.

3.1.3 CONSTRUCTIVE TRUST

They are imposed by law independently of what anyone intended. 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.

3.1.4 IMPLIED TRUSTS

These are trusts that arise from the implied intention of the settlor and will either be resulting or constructive trusts.

3.2 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 by 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.

3.3 FIXED TRUSTS

These are trusts where the share or interest of the beneficiaries in the trust property is specified by the settlor; and

3.4 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.

4 TRUSTEES

4.1 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.

4.2 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 the trustees may vary the trust is when all the beneficiaries are of full age and capacity. If so, then the beneficiaries 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.

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.

4 TRUSTEES

4.3 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.

4.4 TRUSTEE SERVICES

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

4.5 COSTS

There are no stamp duties on the settlement of property in a Cyprus trust. A stamp duty of EUR 430 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.

5 B E N E F I C I A R I E S

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 to the 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.

6 INTERNATIONAL TRUSTS LAW

6.1 GENERAL

To attract foreign investors to Cyprus for the purpose of creating an International Trust, 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. The 1992 Law was not a self-contained law on trust but it built on the existing Cyprus Trust Law, which is based on the English Law. This Law offers freedom of movement of funds and it clarifies the position doubts as to whether the existing legislation could cover arrangements such as those, which are common in other jurisdictions.

On the 9th March 2012, the Republic of Cyprus' House of Representatives approved the passing of the 2012 Law.

Accordingly, the information contained herein below, set out the position regarding international trusts as amended by virtue of the 2012 Law. 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 corporate entities or partnerships.

In order to establish an international trust:

- a)** The settlor must not be a resident of Cyprus in the year preceding the year of the creation of the international trust.
- b)** No beneficiary, other than a charity, is a resident of Cyprus in the year preceding the year of the creation of the international trust.
- c)** There must be at least one trustee resident in Cyprus at all times.

An international trust which was established during or after the entry into force of the 2012 Law has no limit on the period over which an international trust may continue to be valid and enforceable. Accordingly, the 2012 Law abolishes all restrictions on the duration of trusts.

Moreover, excluding express terms of the trust to the contrary, no concession, distribution, payment, holding or disposal of the income or capital of the trust to another trust is invalidated merely by reason that the other trust continues to be valid and enforceable after the date on which the first trust ceased to exist.

6 INTERNATIONAL TRUSTS LAW

The Law confirms the validity of a trust created by any person who is of full age and of sound mind.

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.

Therefore, any matters regarding the validity, interpretation or effect of any trust or transfer will be decided by the laws of Cyprus. The trustees' fiduciary powers and duties as well as the power of and duties of protectors of the trust are governed and regulated exclusively by the laws of Cyprus.

Moreover, the validity of the International Trust or any transfer or disposition of property to it will not in any way be affected by the law relating to inheritance or succession in force in Cyprus or any other country. 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.

The International Trust is irrevocable unless a specific power 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 or disposition of assets is made to the trust.

Under section 8 of the Law, the trustees of an International Trust have extensive investment powers, which ensure, that the Trustee is capable of performing his tasks. 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/on behalf of beneficiaries as well as to advance money to another trust.

Pursuant to the amended section 8, by virtue of the 2012 Law, the powers of trustees have been extended even further; namely with the amendments the Trustee may hold, maintain or invest in movable and immovable property in Cyprus and abroad, including shares in companies incorporated in Cyprus.

The introduction of a new provision in the 2012 Law, namely section 4A reserves powers to the settlor. Accordingly, section 4A was added to the new Law, extending the powers of settlors of Cyprus international trusts.

Notwithstanding the provisions of any other law or regulation, the retention or granting or disposition to a settlor of an international trust of any right or interest in the assets of the trust or any of the powers provided herein below in (a)-(h), whether retained or given to the settlor in his capacity as a protector or inspector for the application of the trust or otherwise, shall not in any way affect the validity of the trust or delay the execution of the trust.

The powers which are referred to as existing under 4A are the following:

- (a)** the revocation, amendment of the terms of the trust or any trusts or powers arising wholly or partly from the trust;
- (b)** the allocation, distribution, payment or other disposition of income or capital from the trust property or issuance of directions for conducting such a concession, distribution, payment or disposal;
- (c)** the exercise of powers of a director or officer or the issuance of binding directions regarding the appointment or removal of any Board member or officer of any company, which is owned by the trust, either wholly or partially;
- (d)** the issuance of binding directions to the trustee in connection with the purchase, retention, sale, management, loan, pledge or charge over property of the trust or the exercise of any powers or rights conferred on such property;
- (e)** the appointment or termination of any trustee, inspector for the application of the trust, protector or beneficiary;
- (f)** the appointment or termination of any investment manager or investment adviser;
- (g)** changing the applicable law governing the trust or place (forum) of management of the trust;
- (h)** the restriction of the exercise of any power or the discretionary power of the trustee, requesting that these be exercised only with the approval of the settlor or any other person expressly mentioned in the terms of the trust.

Where the powers set out in (a)-(h) herein above have been retained or assigned to the settlor whether in such capacity or in his capacity as inspector for the application of the trust, the trustee acting pursuant to the exercise of such powers shall not be deemed to be acting in breach of trust.

Moreover, where the powers set out in (a)-(h) herein above have been retained by the settlor or have been bestowed upon him as protector or inspector for the application of the trust, no intention to defraud can be attributed to the settlor for the purposes of section 3(2) of the 2012 Law which relates to defrauding of creditors.

These new provisions are similar to the corresponding provision that exist in Jersey and Guernsey laws which bestow the plausibility to make the trust adaptable to any changes that it may be subject to regarding the circumstances surrounding it and the objectives that it seeks to attain.

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 EUR 430 payable on their creation.

6.2 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.

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.

A consideration could be 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 or disposition of the property to the trust.

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

7 S H A M S

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.

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

9.1 LOCAL TRUST

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

9.2 INTERNATIONAL TRUSTS

The 2012 law has replaced the old section 12 regarding taxation and now provides that the income and gains of an international trust which are acquired or deemed to be acquired from sources within and outside Cyprus are subject to any taxation which is imposed in the 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 which are acquired or deemed to be acquired from sources within Cyprus are subject to any taxation which 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 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.

- Trusts are usually used by wealthy individuals for the purpose of personal wealth management and inheritance planning.

9.3 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.

10 ADVANTAGES OF A CYPRUS TRUST

Trusts created in Cyprus can prove advantageous for a number of reasons. The following are examples:

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10 ADVANTAGES OF A CYPRUS TRUST

10.7 LEGAL SYSTEM

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

10.8 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.

9.3 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.

10.9 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.

10.10 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.



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