

The Cyprus trust regime—a trusted friend

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Abstract

This article is essentially divided into two main sections. Initially, it purports to offer an analysis of the Cyprus Trust regime, demonstrating it is an ideal location for asset management and tax optimization, especially after the introduction of the International Trust (Amending) Law 2012.¹ Secondly, we will engage in an examination of the new Trust Registry Law.² This article seeks to demonstrate that lawmakers have struck an ideal balance between the need for accountability and the aim for wealth optimisation for those who choose the Cyprus Trust as an asset and tax management vehicle.

An ideal balance between the need for accountability and the aim for wealth optimisation

Introduction

Duke of Westminster v Commissioners of Inland Revenue,³ per Lord Tomlin:

‘Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative . . . his fellow tax-payers may be of his ingenuity, he cannot be compelled to pay an increased tax’.

The trust structure is increasingly becoming one of the most valued asset management tools. Accordingly, choosing the appropriate location for the creation of a trust proves vital for appropriate organization of business affairs and ultimately for effective tax optimization. Cyprus is a renowned financial centre, offering multiple opportunities for the setting up and operation of trusts. Trust Law in Cyprus is based on the well-established English principles of equity and trust. Further, our lawmakers have ensured that applicable laws are business-oriented but also ideal for ‘family situations’, modern and easy to comprehend but at the same time can effectively cater for complex needs. Ultimately, the Cyprus trust vehicle ensures the highest degree of asset protection, both nationally and internationally, and offers unrivalled tax advantages, thus achieving wealth optimization for its users. The analysis of the Cyprus Trust Regime that will follow exhibits this reality.

The Cyprus International Trust and the International Trust (Amending) Law 2012 (Amending Law)

The Cyprus International Trust Law 1992⁴ (ITL) was enacted to adapt existing Trust Law to relevant needs at the time, rendering the Cyprus regime very attractive to international clients. It is interesting to note that the ITL was introduced during the peak of the perestroika period in Russia, which therefore helped Cyprus rise as the ideal regime for settlers

1. L.20 (I) / 2012.

2. L.109 (I) /2013.

3. UK: *Duke of Westminster v Commissioners of Inland Revenue* [1936] AC 1.

4. L.69(I)/1992.

from Russia and other former Soviet Union countries.

A Cyprus International Trust (CIT) is defined as follows:

- the donor must not be a permanent resident of Cyprus for at least one year preceding the date of formation of the CIT;
- at least one of the CIT trustees is a permanent resident of Cyprus;
- beneficiaries *may* be permanent residents of Cyprus—but *this is not a requirement*;
- the trust property *may* include immovable property located in Cyprus—but *this is not a requirement*.

CITs present multiple benefits for their users. As per the Cyprus International Trust Law 1992 section 12, income and gains of an international trust derived or deemed to be derived from sources *outside* Cyprus shall be exempt from all tax imposed in the country. Similarly, no estate duty shall be chargeable in respect of assets belonging to an international trust. As a result, such tax leakages are minimized to a zero level.

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Moreover, property settled by a CIT does not need to originate from Cyprus, enabling pre-immigration tax planning: for example, a foreigner who retires in Cyprus may earn income abroad and still be exempt from taxation if such income is held by a CIT.

Further to the above, the Amending Law has solidified Cyprus' position as a premier league trust jurisdiction. The newly introduced amendments have reinforced asset protection and tax mitigation. As a result, the CIT has become an extremely beneficial wealth-holding structure, rightfully attracting both high net worth individuals but also families who wish to manage their inheritance.

Cyprus Law—the only applicable law

The Amending Law has introduced a strong firewall provision to the Cyprus Trust regime. It explicitly provides that any matters relating to the validity of the trust or its administration such as the trustee's fiduciary powers, will exclusively be governed by Cyprus laws. More specifically, powers and duties of protectors (if any) and trustees are exclusively interpreted with reference to Cyprus laws. Also, succession/heirship, tax laws, and judgments accorded by foreign courts cannot affect the validity of a CIT or the transfer of property (eg the sale of trust assets) of a CIT.

Accordingly, the Cyprus Trust regime governing CITs is effectively injected with further stability, predictability and protection, for example, from forced inheritance/succession or 'claw-back' rules, which are all essential features a settlor would look for when deciding the governing trust law jurisdiction.

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Protection from external claims

A trust is protected from potential bankruptcy of the settlor, unless it can be proven that the vehicle was used with intent to defraud creditors at the time of creation and transfer of assets into the trust. It should be noted that bringing such a claim would have a two-year limitation period, making it even harder to challenge the validity of the trust.

Increased settlor powers

Settlors have increased autonomy and flexibility to adapt the CIT to future circumstances and needs. Specifically, they can reserve powers to revoke or amend the CIT, to choose trustees or to even alter

the law governing the CIT. Settlers can even act as beneficiaries of trusts, protectors/enforcers or directors of any entity owned by the trust, without affecting the validity of the CIT. Furthermore, they are able to impose general provisions whereby the trustees can exercise their powers only after the settlors' consents. Ultimately, a settlor may achieve effective investment and estate planning under the CIT.

Restrictions on trustee's investment removed

With the introduction of the Amending Law, trustees are accorded investment powers equivalent to those of an absolute owner. The Amending Law also specifically empowers trustees to invest in property—moveable and immovable—both within Cyprus⁵ and abroad, provided such investment is exercised diligently under the standard of a reasonable person. Accordingly, effective investment is achieved since any asset may be included in the trustee's investment strategy.

Duration unlimited

Post the Amending Law a trust would customarily be valid for up to 100 years, placing Cyprus trusts at a disadvantage comparing to foundations governed by jurisdictions, which applied no restrictions. Today, however, the restriction against perpetuity have been abolished and a trust may be enforceable for as long as the settlor wishes, thus introducing increased settlor autonomy to the Cyprus Trust regime. Moreover, the Amending Law entrenches tax mitigation, since any income derived from the assets under the CIT will accumulate for as long as the trust is active.

Conclusion

The CIT is the ideal tool for both commercial and family transactions

To conclude, the CIT is the ideal tool for both commercial and family transactions. It can be used to:

- hold property for minors or future family members;
- make provisions for charitable purposes;
- act as an investment and commercial vehicle, e.g. to protect commercial lenders for example;
- create incentives within the workforce, e.g. to create employee trusts.

Further to the array of uses, settlors of CITs retain significant control over the duration and setup of their trusts, since the legal vehicle may hold Cypriot and non-Cypriot assets without altering the status of the trust. Also, trust assets remain protected from foreign challenges as the only applicable law is the Cyprus Law. In simple words, with the introduction of the Amending Law the CIT may be considered an unrivalled wealth optimization tool.

Trust Registry Law (L. 109(I)/2013)

Following discussions between the Cypriot lenders ('Troika'), the Ministry of Finance and the three Competent Authorities (ie the Institute of Certified Public Accountants of Cyprus (ICPAC), the Cyprus Securities and Exchange Commission (CySEC) and the Cyprus Bar Association), amendments to the Law Regulating the Companies Providing Administrative Services and Related Matters of 2012⁶ ('Basic Law') were agreed upon. The proposed changes were subsequently debated in Parliament on the 5th of September 2013, during which the Basic Law was amended by L.109(I)/2013⁷ ('Trust Registry Law').

Amongst 13 other bills, modifications incurred by the Basic Law formed part of a larger programme carried out by the Cypriot Government, as per the Eurogroup's instructions. Based on the fulfilment of

5. This was previously prohibited.

6. L. 196 (I)/2012—governing the provision of administrative services, including fiduciary, trustee and corporate services, as these are defined by this Law.

7. Into force on the day of its publication in the Official Gazette of the Republic of Cyprus—9 September 2013.

these measures, the Board of Governors of the European Stability Mechanism (ESM) approved the updated Memorandum of Understanding for Cyprus on the 13th of September 2013.

Amendments to L. 196 (I)/2012

Amongst other changes, the Trust Registry Law seeks to introduce a registry of trusts. Specifically:

- A definition of the term ‘Registers of Trusts’ has been included in Article 2 of the Basic Law: they are established and maintained by CySec, the Cyprus Bar Association and the ICPAC where such registers are required as per the newly introduced Article 25A Trust Registry Law.
- Article 25A of the Trust Registry Law lists the situations where the Competent Authorities are required to establish and maintain a Register of Trusts. Article 25A(2) of the above mentioned law states that the Cyprus Bar Association establishes and maintains a register with respect to each trust governed by Cyprus Law and where one of the trustees is an exempted person resident in Cyprus and supervised by the Cyprus Bar Association in its capacity as a Competent Authority. Furthermore, Article 25A(3) states that the ICPAC establishes and maintains a register with respect to each trust governed by Cyprus Law and where one of the trustees is an exempted person resident in Cyprus and supervised by the ICPAC in its capacity as a Competent Authority. Finally, Article 25A(4) states that CySEC establishes and maintains a register with respect to every trust governed by Cyprus Law which does not fall under the provisions of Article 25A(2–3).

It should further be noted that, per Article 2(a)(i–iii) Basic Law, ‘exempted persons’ means: (a) lawyers and limited liability companies (LLC) according to the Lawyers Law (Cap.2), (b) general partnerships or limited partnerships whose general partners

are lawyers or LLCs or (c) subsidiary companies, owned directly or indirectly by any of the above.

- Article 25A(5) Trust Registry Law states that a trust must be kept in the relevant register for as long as it is governed by Cyprus Law.
- Article 25A (6)(a) Trust Registry Law states that the Registers of Trusts will *not* be available to the public, but will be for inspection by the Competent Authorities.
- Article 25A(6)(b) Trust Registry Law describes the information that the Registers of Trusts must contain. This includes the (a) name, date of establishment and termination of a trust, (b) name and full address of all trustees at all relevant times and (c) date of any change in the law governing the trust to or from Cyprus Law.
- Article 25A(7) Trust Registry Law outlines the obligation of all trustees resident in Cyprus and of a trust governed by Cyprus Law to—*within fifteen (15) days of the creation of the trust or the adoption of Cyprus Law as the applicable governing law*—notify the Competent Authority maintaining the relevant Register of Trusts of the information indicated in Article 25(6)(b).
- Article 25A(8) Trust Registry Law deems that if this information changes, any trustee resident in Cyprus and of a trust governed by Cyprus Law must, *within fifteen (15) days of such change*, notify the Competent Authority.
- Article 25A(10) Trust Registry Law deems that trustees who are residents of Cyprus and of trusts governed by Cyprus Law which exist at the date this Law comes into force—being the 9th of September 2013⁸—shall have six months to comply with the provisions of this Law.
- Article 26(1) Trust Registry Law now also includes criminal liability for failure to comply with the provisions of (Article 24 and/or) Article 25A.

Furthermore, relevant amendments have also been made to the directly associated International Trust

8. Date L.109 (I)/2013 came into force.

Law⁹—now International Trusts (Amending) Law¹⁰—in order to reflect the introduction of Registers of Trusts. More specifically, Article 15, which excluded international trusts from registration under any law, was removed. The International Trusts (Amending) Law has also come into force as of its publication in the Official Gazette of the Republic of Cyprus on the 9th of September 2013.

Admittedly, the above analysed amendments will inject the Trust Regime in Cyprus with additional responsibilities for the interested parties to ensure transparency. However, there are three conclusions to be drawn.

Firstly, the Trust Registry Law acts as proof of the country's commitment to its obligation as per its agreement with Troika. Secondly, the transparency burden should not be overplayed. Anonymity and a level of confidentiality are retained. The Register of Trust will not be available to the public but will only be available for inspection by the Competent Authorities. Thirdly, the Trust Registry Law does not eradicate the benefits presented by the Cyprus Trust regime. Clients and trust planners seek for certainty when structuring their financial affairs. To conclude, legislators in Cyprus have indeed struck the ideal boundary between the need to retain privacy and the need to have an accountable and transparent

financial sector and confidentiality of a person's financial affairs.

Ideal boundary between the need to retain privacy and the need to have an accountable and transparent financial sector and confidentiality of a person's financial affairs

Conclusion

To conclude, recent regulatory changes have brought the Cyprus trust vehicle to an internationally acknowledged leading position as a jurisdiction offering highest standards of asset protection and wealth optimization due to its tax-neutral environment. Notwithstanding the introduction of a Cyprus Trust Registry, arguably, Cypriot legislators have achieved an appropriate amalgamation of a beneficial and attractive location for international investment, but also secure, stable, and legally transparent.

Cypriot legislators have achieved an appropriate amalgamation of a beneficial and attractive location for international investment, but also secure, stable, and legally transparent

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9. L. 20(1)/2012.

10. L.98 (I)/2013.