

*"Put not your trust in money, but
put your money in trust."*

*"However vast the demand
we must supply our own effort"
- Stanley Cavell*



Cyprus International Trust



PANAYIOTIS Z. TOULOURAS LLC

Introduction

Cyprus has become an exceptional international economic centre with great advantages for setting up and operating a trust. Cyprus International Trusts are 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 also supplemented by the English doctrine of equity and English case law prior to 1960 that provides more clarity on the Trustee law.

Cyprus enacted the International Trusts Law in 2012 that updated and modernized the law by giving more protection and flexibility to trust structures but also the people involved.

The island famous for once being considered the centre of the world in ancient times is now an important hub for trust creation and a key trusts jurisdiction for all types of structures and purposes.

Trust Creation

For a valid trust to be created, the following three certainties must be present:

- a) Certainty of intention – evidence of the express intention of the Settlor to create the trust
- b) Certainty of subject matter – the assets part of the trust property must be easily identifiable
- c) Certainty of objects – the identity of the trust beneficiaries must be ascertained or ascertainable at the time of setting up the trust

The restrictions imposed by the Law mainly focus on the residency status:

- The Settlor - Can be either a natural or legal person but must not be resident of the Republic of Cyprus during the calendar year immediately preceding the creation of the trust
- The Trustee - At least one of the Trustees must be resident of the Republic of Cyprus* for the whole duration of the Cyprus International Trust
- The Beneficiary - Must not be resident/s of the Republic of Cyprus during the calendar year immediately preceding the creation of the trust and that applies equally whether the beneficiary is a natural or legal person

*The term “resident of the Republic of Cyprus” has the same meaning as under the Income Tax Laws of Cyprus i.e. physical person considered a resident in Cyprus if they reside in Cyprus for a period exceeding in aggregate 183 (One Hundred Eighty Three) days in any calendar year. A company is considered a resident provided its management and control is exercised in the Republic of Cyprus.

Power of Settlor

New amendments of the Law provide more protection and flexibility for the CIT as the Settlor is able to reserve certain powers for himself, rights over or in the trust property either in his capacity as a Settlor, as Protector or Enforcer of the Trust without it affecting the validity nor the execution of the Trust:

- 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 to conduct any of these actions
- 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 conferred on such property
- 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
- e) The appointment or termination of any investment manager or investment adviser
- f) Changing the applicable law governing the trust or place of management of the trust
- g) The restriction of the exercise of any power or the discretionary power of the trustee:
e.g. requesting that these be exercised only with the approval of the settlor or any other person expressly mentioned in the terms of the trust

Trustees

Trustees are appointed by the Settlor. There are no rules as to how many trustees should be appointed.

Main Duties:

- a) To administer the trust property prudently, and
- b) To comply strictly with the terms of the trust

Trustees do not have the power to vary the terms of the trust under any circumstances. However all beneficiaries of full age and capacity, can authorise all together to alter the trust. Trustees in their private lives may not act in any way that brings them in conflict with their duties as trustees.

Under the Law, the Trustees can have extensive investment powers, e.g. to make capital distribution, to borrow, to guarantee, to mortgage, to employ, to invest/lend money. They may also hold, maintain or invest in movable and immovable property in Cyprus and abroad, including shares in companies incorporated in Cyprus.

Unless the trust instrument expressly provides otherwise, trustees are not entitled to any payment for their services but can be reimbursed from the trust property for any expenses they incur in performing their duties. 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”.

Formal Requirements To Create a CIT

The formalities that need to be met for the creation of a Cyprus International Trust are:

- a) Comply with the residency requirements of the International Trusts law
- b) Provide the information related to the Trustees to the relevant competent authority
- c) If the Cyprus International Trust is created by a will, the formal requirements indicated in the relevant law on wills must be complied with
- d) Payment of stamp duty of €430
- e) Make sure that the CIT satisfies the “Three Certainties” stated above

Types of Trust

- a) Private Trusts (Express, Resulting, Constructive, Implied)
- b) Charitable Trusts
- c) Fixed Trusts
- d) Discretionary Trusts

Trust Registration

Trusts must be registered to 3 competent authorities, one being the Cyprus Bar Association. To ensure confidentiality, only the 3 authorities will have access to trust information and it will not be made publicly available under any circumstances. The Settlor and Beneficiaries are not registered and this is kept confidential. Trustee’s responsibility is to notify the relevant competent authority fifteen (15) days after the creation of the Cyprus International Trust and to notify for any amendment made to the Trust.

Purposes

- Tax Planning
- Protection of Assets
- Preservation of Family Assets
- Administration of Estate/Avoidance of Forced Heirship
- Confidentiality
- Investment
- Pension Schemes - Employees or Dependents
- Charitable Initiatives
- Reward Schemes - Employees or Dependents
- Continuation of a Family Business

Benefits

1. CIT can last for an indefinite time

2. Convenience

- a. CIT laws does not require Settlor or Beneficiary to be resident of Cyprus
- b. CIT laws requires one trustee to be a Cyprus resident

3. Confidentiality

Confidentiality is of supreme importance as the law prohibits disclosure of any information or documents regarding the Trust by the Trustees or any other person. Only the Court may order and result in disclosure of such information e.g. in cases of fraud.

4. Tax Benefits

Income

- If the Beneficiary is not a resident in Cyprus and the CIT receives income from outside of Cyprus this income will not be subject to tax
- If the Beneficiary is not a resident in Cyprus and the Cyprus International Trust receives income from Cyprus this income is subject to tax
- If the Beneficiary is resident in Cyprus and the CIT receives income from outside of Cyprus or from Cyprus then this income will be subject to tax
- A CIT does not pay any tax on income received from outside of Cyprus whereas a Cyprus Company pays income tax on its worldwide income
- A CIT does not pay any tax on the interest received provided that the beneficiaries are not resident in Cyprus;

Double Taxation

International Trusts are possible to come under the scope of double taxation treaties

Dividends

Dividends, interest and other income received by a trust from a Cyprus company are not taxable

Payments to beneficiaries

No withholding tax on payments to beneficiaries provided that they are not resident in Cyprus

Capital Gains

Any gains from asset disposal, other than immovable property situated in Cyprus, made by the CIT are not subject to capital gains tax in Cyprus.

Estate Duty

No estate duty is payable by a CIT that was formed for the purposes of estate duty planning.

Advantages of the CIT

Divesting of personal assets - An individual who wishes to divest himself of personal assets can achieve this by transferring them to a CIT.

Investing in business overseas - An individual can invest in business overseas to ensure profits and dividends received are not remitted to the country of his residence, by setting up a CIT to invest in overseas business

Investment Holding company - A trust can be used in one country to own an underlying investment holding company in another. This can provide the maximum protection for both settlor and beneficially alike.

Flexibility - The Cyprus law allows the removal of a trust from its jurisdiction and vice versa. This gives the necessary flexibility where transfer becomes advantageous because of change of circumstances.

Panayiotis Z. Toulouras LLC provides assistance concerning the formation and administration of Cyprus International Trusts.

Our areas of work include, among others:

- Trustee Services
- Advising on family asset protection and inheritance issues
- Creation of tailor made wealth management structures to safeguard your assets
- Opening, administrating and monitoring all bank accounts
- Making distributions to the beneficiaries



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