

The Cyprus International Trust



On 23 March 2012, the International Trust (Amending) Law of 2012 came into effect after the Cyprus House of Representatives passed into law the long-awaited and discussed reform of the International Trusts Law of 1992.

After 20 years with the world changing fast, the then modern and state of the art international trust regime with excellent tax mitigation and protection features, had fallen behind with numerous restrictions and limitations contained in the original law no longer being necessary. The amending law makes a number of changes to the original law, many of which are relatively technical.

On September 2013 the Parliament approved a bill providing for the creation of a Trust Registry, which will be maintained by the relevant supervisory authorities regulating the Fiduciary Companies and the Law Firms. The relevant article in the Cyprus International Trust Law that exempts international trusts from registering will be amended.

The Trust Registry will not be available to the Public and it will only contain the following information about each Trust:

- (a) The name of the Trust;
- (b) The names and addresses of the Trustees;
- (c) The date of the creation of the Trust;
- (d) The date of the termination of the Trust.

It is clarified that no information regarding the beneficiaries and or the settlor and or the property of any Trust will be filed in the Trust Registry.

(a) Benefits from the use of a Cyprus International Trust

no taxation on any income accrued out of Cyprus or capital gains of the trust

no estate duty is payable

complete confidentiality is imposed on the trustees on the disclosure of financial or other information

the settlor may through a Cyprus international business company controlled by him, become a trustee or its sole trustee thus effectively managing the trust

(b) Examples of Advantageous Uses

Protection against high taxation

For settlors resident in high taxation jurisdictions it is possible to minimise their taxation on income or wealth by transferring property to a Cyprus International Trust. Under a proper tax structure they will be able to take advantage of the beneficial double taxation treaty network of Cyprus and the non-taxability of any income of the trust (if accrued from sources out of Cyprus) in the island.

Obtaining confidentiality

Confidentiality is ensured as there is no requirement to register or publish the financial results of an International Trust. The Deed of the Trust is private to the parties concerned and no-one else has access to its contents. In many foreign jurisdictions when a person dies his will becomes open to public inspection. In the case of a trust, a corporate trustee does not die and the continuity of a trust is not affected by the death of the settlor.

Organising collective investment

Where several persons wish to make joint investments a trust can provide the basis of their co-operation and the sharing of the financial results of their joint venture.

Management vehicle

Investment Trust Funds, banks, and other financial institutions may use a trust and an international business company that acts as its trustee, to manage funds on behalf of their clients.

Holding property that cannot personally be held

A minor may not be able to hold property in his own name, but a trustee can often hold it for his benefit, through a Cyprus International Trust.

Protection against spendthrifts

Trustees can protect family fortunes for future generations by safeguarding capital and avoid it being frittered away by spendthrift beneficiaries.

Promoting causes and charities

Through a Cyprus International Trust a person may provide for a charity, promote a religious or artistic cause, or establish a foundation to support a worthy project.

Protection of assets

Assets can be placed into a Cyprus International Trust to safeguard the interests of a beneficiary, e.g. sheltering the inheritance of a daughter from claims in case of divorce. Professional partnerships may also find that a trust assists in providing custody for personal assets and safeguarding them from loss through litigation.

Managing profit sharing and pension schemes

Companies can provide pension schemes, benefit plans and profit sharing arrangements by using a trust with their employees forming the class of beneficiaries. The trust provides a most effective method for grouping and sharing benefits and it has the added advantage of being able to accommodate a rule book designed to suit each specific and individual circumstance.

Power to transfer jurisdiction

Under the new legislation a Cyprus International Trust may be transferred to another country's jurisdiction and at the same time a trust already established in another jurisdiction may be transferred to Cyprus. This facility will help settlers wishing to relocate or benefit from the many advantages of Cyprus as a financial centre.

Formation

The formation of the trust is made by the signing of a Trust Deed by the trustees in which the settlor and the beneficiaries are named.

(c) The key changes of the new legislation are outlined below.

Residence provisions

Trying to restrict its application to Cypriots, the 1992 Law was unclear as to whether settlers could relocate to Cyprus after establishing a Cyprus international trust. The amending law clarifies this uncertainty by providing that the settlor may not be a Cyprus tax resident only in the year preceding the year of creation of the trust. It also removes the prohibition on Cyprus tax resident beneficiaries and on ownership of immovable property in Cyprus. Therefore settlers or beneficiaries can now take up residence in Cyprus.

Exclusion of overseas law

The amending law provides explicitly for the following:

- Any question relating to the validity or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus, without reference to the law of any other jurisdiction.
- 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 in any other country.
- Cyprus law governs exclusively the trustees' fiduciary powers and duties, and the powers and duties of any protectors of the trusts.
- Dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction. This is particularly important if there is a challenge on the grounds that the other jurisdiction does not recognise the concept of trusts.

The above provisions further add to the already formidable asset protection features of the Cyprus international trust.

Reserved powers and interests

With the new amendments the law allows the settlor of a trust to have the following options:

- Reserve powers to himself or herself
- Retain a beneficial interest in trust property
- Act as the protector or enforcer of the trust
- Revoke, vary or amend the terms of the trust
- Apply any income or capital of the trust property
- Act as a director or officer of any corporation wholly or partly owned by the trust
- Give binding directions to the trustee in connection with the trust property
- Appoint or remove any trustee, enforcer, protector or beneficiary

Further the settlor may impose a general stipulation that the trustees' powers are exercisable only with the consent of the settlor or any other person specified in the terms of the trust. The settlor may also reserve the power to change the governing law of the trust. These new provisions give settlors great flexibility to adapt to changes in circumstances or objectives and are similar to the corresponding provisions of Jersey and Guernsey law.

Duration of trusts

The restriction of a maximum of 100 years that existed with the 1992 trust law is now abolished. The amending law provides that, unless otherwise provided for in the terms of the trust, there will be no limit on the period, for which a trust may continue to be valid and enforceable, and no rule against perpetuities or remoteness of vesting will apply to a trust or to any advancement, appointment, payment or application of income or capital from the trust.

Investment powers of trustees

The amending law brings the trustees' investment powers into line with those of a trustee in England and Wales, as well as trustees from other trust jurisdictions that have followed the English Trustee Act 2000, including Malta. The 1992 law gave trustees freedom in terms of investment powers, merely requiring that such powers be exercised in accordance with the trust instrument and with the diligence and prudence that a reasonable person would be expected to exercise when he or she made investments. The amending law gives trustees the same investment powers as those of an absolute owner, allowing them to invest in a broader range of investments for the best interests of the beneficiaries. Further the amending law clarifies that trustees can invest in movable and immovable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus.

Public policy

The amending law entrenches jurisdictional protection by providing that an international trust which contains a choice of law clause in favour of Cyprus law is fully protected from unfounded foreign judicial claims as a matter of public policy and order.

Other amendments

A number of other technical amendments include the redefinition of 'charitable purposes' in line with the definition set out in the Charities Act 2006 (England and Wales), the introduction of powers for the trustees and others to apply to the Cyprus court for directions and changes to the list of those subject to confidentiality restrictions regarding the affairs of trusts.

(d) Conclusion

The amending law ensures that settlors and beneficiaries enjoy the highest possible degree of protection, due to the clarity of the new provisions and the removal of any ambiguities. The amendments give Cyprus the most updated and favourable trust regime and reinforce the position of Cyprus as an ideal trust jurisdiction within the EU.

Disclaimer

The above information is only a brief description of the provisions of the relevant Law up to the date of publication of this Memo and this shall not be regarded as exhaustive. Further professional advice should be sought on a case by case scenario. Our firm does not accept any responsibility for any loss or damage occurring by acting on the basis of this information.

Please consider the environment before printing.



Adiuvo Trustees Ltd

165, Spyrou Araouzos, Lordos Waterfront Court, Office 201A, P.O. Box 53556, 3303, Limassol, Cyprus
T: +357 25819292 | F: +357 25661717 | E: admin@adiuvo-trustees.com | www.adiuvo-trustees.com

Registration No. HE307693

