

At the Cutting Edge of Trust Developments



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CYPRUS IS A WELL-ESTABLISHED FINANCIAL CENTRE WITH A SIGNIFICANT TRUSTS SECTOR.

The period of perestroika in Russia coincided with the introduction of the Cyprus International Trusts Law 1992, which gave Cyprus a 'state of the art' international trusts regime, with excellent tax mitigation and asset protection features, and the additional benefit of circumventing any forced heirship restrictions. As a result Cyprus International Trusts proved particularly popular with settlors from Russia and the other countries of the former Soviet Union.

The world has changed considerably in the 20 years since the original law was introduced, and a number of restrictions and limitations contained in the original law have become redundant. New opportunities and investment practices have emerged, which the original law did not anticipate, and Cyprus has become a member of the EU and the Eurozone and made substantial changes to its tax system.

As a result, while the basic structure provided by the International Trusts Law remained sound, it required updating to adapt it to the needs of investors today and in the coming years.

Reform of the Cyprus International Trusts Law 1992

The long-overdue reform of the Cyprus International Trusts Law finally came about in March 2012 with the enactment of the International Trust (Amending) Law 2012.

Many of the changes are of a relatively technical nature. The key changes are set out in the following paragraphs.

Clarifying the Provisions on Residence

The 1992 law restricted the availability of international trusts to non-resident settlors in order to prevent tax avoidance by Cyprus residents. It was not made clear what would happen if settlors were to relocate to Cyprus after establishing a Cyprus International Trust, and the resultant uncertainty undoubtedly discouraged many of them from doing so. The amending law removes any ambiguity. Its only stipulation is that the settlor may not be a Cyprus tax resident in the year preceding the year of creation of the trust. It also removes the prohibition on resident beneficiaries and on ownership of immovable property in Cyprus, thus avoiding difficulties that might otherwise arise if the settlor or any beneficiary were subsequently to take up residence in Cyprus.

Exclusion of Overseas Law

The law as amended explicitly provides that 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, and that the law relating to inheritance or succession in force in Cyprus or any other country will not in any way affect the validity of the international trust or any transfer or disposition of property to it. It also makes clear that the powers and duties of trustees and of any protectors of the trusts are governed exclusively by Cyprus law. Furthermore, it provides that dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction, for example regarding family and succession

issues, or on the grounds that the other jurisdiction does not recognise the concept of trusts.

These provisions further enhance the formidable asset protection features of Cyprus international trusts.

Reserved Powers and Interests

A new section of the law allows the settlor of a trust to reserve powers to himself or herself, to retain a beneficial interest in trust property, or to act as the protector or enforcer of the trust without affecting the validity of the trust. The powers which may be reserved are extensive and include the power to revoke, vary or amend the terms of the trust, to apply any income or capital of the trust property, to act as a director or officer of any corporation wholly or partly owned by the trust, to give binding directions to the trustee in connection with the trust property and to appoint or remove any trustee, enforcer, protector or beneficiary. 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, which are similar to the corresponding provisions of Jersey and Guernsey law, give settlors great flexibility to adapt to changes in circumstances.

Abolition of Restrictions on Duration of Trusts

As was customary at the time, the 1992 law restricted the maximum life of international trusts to 100 years. Only

charitable trusts and non-charitable purpose trusts were allowed to exist in perpetuity. In the intervening period this restriction on the maximum life of trusts came to be seen as a disadvantage of trusts compared with foundations and several other jurisdictions removed any restriction on the duration of trusts.

Cyprus has followed this trend and the amended law provides that, subject to 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 or any analogous rule will apply to a trust or to any advancement, appointment, payment or application of property from a trust. Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of that other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Extension of Trustees' Investment Powers

The 1992 law gave trustees freedom in terms of investment powers, merely requiring them to be exercised in accordance with the trust instrument and with the diligence and the prudence which a reasonable person would be expected to exercise when he makes investments. The amended law gives trustees investment powers equivalent to those of an absolute owner, in common with trustees in England and Wales and other trust jurisdictions, which have followed the English Trustee Act 2000, allowing them to invest in a wide range of assets for the best interests of the beneficiaries.

The amending law also removes any doubt regarding trustees' ability to invest in Cyprus by including a new section specifically empowering trustees to invest in movable and immovable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus. The abolition of the prohibition on investment in Cyprus will remove an obstacle to inward

investment and provide a boost to the real estate market.

Public Policy

The amending law entrenches jurisdictional protection by providing that an international trust containing 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 amendments of a more technical and detailed nature have been made, including a redefinition of charitable purposes in line with the definition set out in the Charities Act 2006 (England & 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. Other technical amendments deal with the rules regarding choice of law, jurisdiction and foreign law trusts.

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Cyprus Offers many advantages: an EU member; proximity to Africa and the Middle East; and favourable tax treaties. Its fiscal regime is attractive to all areas of business and is highly desirable for holding companies, asset protection and royalty structures.

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Celebrating 20 years in Cyprus

H I G H W O R T H

Regulation of Fiduciary Service Providers

A draft law to strengthen regulation of fiduciaries, administration businesses and company directors was published in 2006. It has suffered a number of delays but the latest version looks set to complete the legislative course in the next few months. Its objectives are to implement the Third EU Anti-money Laundering Directive, which extends to trust and company service providers, and to protect users of trust and fiduciary services by putting in place a robust regulatory system and accounting requirements.

The key provisions of the draft law are as follows:

- Trustee and company management service providers must be run by at

least two appropriately qualified and experienced individuals, who must be licensed and authorised as fit and proper by the Capital Markets Commission, and must act with integrity and diligence.

- Service providers must have adequate internal controls, policies and procedures for segregation of clients' funds, and must comply with prescribed accounting and reporting requirements.

Persons or organisations intending to provide trustee and company management services on a commercial basis must apply for licences, unless they are:

- Advocates practising in Cyprus.
- Persons qualified to be appointed as auditors in Cyprus.
- Entities controlled and where the majority interest is beneficially owned

by locally-registered advocates, banks, investment firms or cooperative credit societies as defined in the respective domestic legislation.

- Any person regulated by a competent regulator in any other EU Member State, provided that there is reciprocity between Cyprus and the Member State.

These exemptions relate only to the requirement to apply for registration: there are no exemptions as regards licensing, supervision and other duties and obligations.

Persons already carrying on any regulated activity by way of business may continue on a transitional basis provided they are qualified and have applied for registration and licensing.

Service providers will be subject to continuous monitoring and the Capital Markets Commission may appoint inspectors to investigate the affairs of a licensed fiduciary or other business offering fiduciary services.

Service providers must put in place adequate arrangements to segregate and account for clients' funds and they must comply fully with all anti-money laundering legislation, including having a clear understanding and evidence of the client's identity and the pattern of the client's business.

Conclusions

The amendments to the International Trusts Law address a number of perceived deficiencies in the trust regime in Cyprus, returning it to the 'cutting edge' internationally. They have been welcomed by practitioners and business leaders in Cyprus and abroad, and have received extensive positive comment in the local and international professional press. The International Trusts Law as amended ensures that settlors and beneficiaries enjoy the highest possible degree of protection, by reason of the clarity of the new provisions and the removal of any ambiguities, giving Cyprus arguably the most beneficial trusts regime in Europe.

When completed, the regulatory reforms will underline Cyprus's reputation as a well-regulated jurisdiction offering the highest standards of security and protection. ■

