

## The Cyprus International Trust

### Definition of a Trust

Incorporating an international trust provides a variety of financial planning opportunities. The use of the Trust as a vehicle of International Tax planning and business structuring is constantly growing. Trusts are used today more than ever before in a myriad of circumstances, many of which would have been impossible to conceive at the time the concept was originally formed.

### *The Trust*

- The concept of a trust is legally defined as a relationship created during one's lifetime or upon death by a person (the settlor) who places assets under the control of another person (the trustee) for the benefit of a third party (the beneficiary).
- The assets cannot be part of the trustee's own estate and must constitute a separate "fund".
- The title of the trust assets stands in the name of the trustee
- The trustee is empowered and duty bound to manage the assets held in trust in accordance with the terms of the trust agreement.
- A trust can still qualify as an international trust for the purposes of the law even if the settlor, trustee or the beneficiaries are Cyprus International Business Companies or International Business Partnerships. This is a distinguishing element of the definition, which can offer unique opportunities for a wide range of investors as compared to trusts in other international jurisdictions.

### *The Settlor*

An individual may be the settlor if he or she is capable of freely disposing of the property to be settled. A corporate body's power to be a settlor depends upon the powers conferred on it by its constitution or law.

### *The Beneficiaries*

Any individual, including unborn persons, minors, and persons of unsound mind, or a corporate body can be the beneficiary. A settlor creating a trust may also be a beneficiary of that trust. A trustee can also be the beneficiary of a trust provided that he or she is not the sole trustee nor beneficiary as in that instance no trust would effectively exist.

### *The trustees*

An individual who is an adult and of sound mind, or a corporate body, if authorized by its constitution, may be a trustee.

### *The property subject to a Trust*

Property of all descriptions can be settled into trust. However, as will be seen later, the trust fund of a Cyprus International Trust must not include any immovable property in the Republic of Cyprus.

### *The protector*

The settlor may stipulate that the trustees consult a nominated independent third party before exercising any power of discretion, in order that this third party, or protector, can be satisfied that the assets of the trust and the duties of the trustees are being attended to in a satisfactory manner.

### *Duration*

The duration of the trust may continue until the one hundredth anniversary from the date on which it came into existence and accumulation may continue for the duration of the trust. Purpose and charitable trusts may carry on indefinitely.

## **The 1992 Cyprus International Trusts Law**

In 1992 Cyprus enacted The International Trusts Law which complements the Trustee Law which is based on the English Trustee Act 1925. The doctrines of equity, on which trust law is based, have long formed part of the legal system in Cyprus. The object of this legislation was to modernise and update the existing legal framework. The definition of an International Trust and the most important provisions of the Cyprus International Trust Law provide some unique opportunities for a wide range of investors as compared to the other common-law international jurisdictions.

Under section 2 of the Cyprus International Trusts Law, a trust qualifies for a Cyprus International Trust where:

1. the settlor is not a permanent resident in Cyprus, but can live in Cyprus if less than 183 days a year as temporary resident;
2. at least one trustee is a permanent resident in Cyprus for the whole duration of the Trust;
3. no beneficiaries can be permanent residents in Cyprus except for charitable institutions.
4. the trust property does not include any immovable property in Cyprus.

In summary, the Cyprus International trust can be settled in one of the following manners, with the trustee preferably being a Cyprus company either distinct from the Settlor or the beneficiary, or being directly related to/the same person as the Settlor or the beneficiary or to both.

Taking into consideration:

- That a trust is a legal relationship by which the Settlor places assets under the control of the Trustee for the benefit of the third party Beneficiary.
- That a Settlor creating a trust may also be a beneficiary of that trust.
- That at least one trustee must be a permanent resident in Cyprus.

- That a trustee can also be the beneficiary of a trust provided that he or she is not the sole trustee nor beneficiary

- That no beneficiaries can be permanent residents in Cyprus (except for charitable institutions)

- That the Settlor or the trustee or any of the beneficiaries can be a company.

The Cyprus International trust can be settled in one of the following manners:

1. The Settlor, the trustee and the beneficiary are three distinct persons: in this case, the three can be individuals or companies.

2. The Settlor and the trustee is the same person, the beneficiary is a third person: in this case, the Settlor is an individual or a company, the trustee is a company owned by the Settlor and the beneficiary is an individual or a company.

3. The Settlor is a distinct person, the trustee and the beneficiary are the same person (but with a second beneficiary): in this case the Settlor is an individual or a company, the trustee is a company owned by the beneficiary person and the beneficiary is that individual person or a beneficiary company.

4. The Settlor, the trustee and the beneficiary are the same person (but with a second beneficiary): in this case, the Settlor can be an individual or a company, the trustee is a company owned by the person being the Settlor and the beneficiary is a company owned by the person also being Settlor & trustee

### **Advantages provided by the Law**

#### *Cyprus Companies and Cyprus Partnerships act as trustees to an International Trust*

(i) A Cyprus Company can act as trustee to a particular trust: The advantages of such a set up are mainly two, namely:

- Avoiding to incur the 10% tax imposed on Cyprus International Business Companies
- Complete confidentiality of the beneficial ownership of an underlying asset

(ii) A Cyprus Company can offer trustee services to third parties: This is usually the case where an International Financial Service Company, such as a Bank, can set a Cyprus Company for the purposes of offering trustee services to third parties. The financial institution can derive substantial tax benefits from incorporating in Cyprus, as the income from the trustee services will be liable to tax at the rate of 10%.

#### *Favourable legal system*

The favourable legal system relating to Trusts together with the advantageous geographic position of the island make Cyprus a particularly attractive Trust location.

#### *No exchange control*

Cyprus International Trusts are not subject to exchange control. Bank deposits with Cyprus banks, either onshore or offshore, or with any bank around the world, are also not subject to exchange control. The absence of exchange control restrictions and the availability of excellent telecommunications and international banking services, make Cyprus a convenient base for the remittance and transfer of funds.

#### *Management services*

The presence of a number of reputable international fund management companies on the island and the high standing of the legal and accounting professions ensure the availability of expert advice as well as the competent management services required for the proper operation of a Trust.

#### *Governing Law*

The possibility to change the proper law of a Cyprus International Trust is expressly provided in the Law which allows a Cyprus Trust governed by Cyprus Law to change to a foreign law trust and further allows a foreign trust to adopt Cyprus law if such a change is recognized by the law of the country concerned.

#### *Confidentiality*

International Trusts Law prohibits any of the trustees or any other persons including government officials and officers of the Central Bank from disclosing any information regarding the trust. Only a Court of Justice may by order allow the disclosure of information where the disclosure is of paramount importance to the outcome of the particular civil or criminal proceedings.

### **Formalities & the three “certainties”**

1. Usually, save for a stamp duty of € 427,50 there are no formalities required for the creation of a trust in Cyprus, except where the trust is created by a will, in which case the particular requirements relating to wills have to be observed. Trusts created during the lifetime of the settlor are usually in writing, and the settlor’s discretion on the choice of provisions, powers and restrictions that may be contained therein is almost unrestricted.
2. The trust must, however, satisfy the classic requirements of the three “certainties”: certainty of intention, subject-matter and objects. In other words, by the instrument purporting to create the trust, the settlor must manifest an intention to create a trust, the trust fund must be specified with reasonable certainty and the beneficiaries under the trust must be ascertainable.
3. Subject to the provisions of subsection (2), of the International Trusts Law 1992 an application to the Court may be made by the trustee or by or on behalf of any beneficiary. The Court may on application if it thinks fit, by order approve any arrangement which varies or enlarges or modifies the powers of management or administration of trustees, on behalf of the

persons referred to below, irrespective of whether there is another beneficiary capable of assenting to the arrangement or not, and who are:

- a. any person incapacitated at law having directly or indirectly, an interest, whether vested or contingent, under an international trust or
- b. any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under an international trust as being the person who at a future date or who on the happening of a future event will be a person of any specified description or a member of any specified class of persons referred to in the instrument creating the international trust or
- c. any person unborn or
- d. any person in respect of any interest of his that may arise to him by reason of any discretionary power given to any one the failure or determination of any existing interest that has not failed or determined.

The Court shall not approve an arrangement on behalf of any person referred to in paragraphs (a), (b), or (c) or subsection (1), unless it is satisfied that the proposed arrangement shall be for the benefit of that person without materially adversely affecting the rights of other interested parties.

Where in the management or administration of an international trust any sale, lease, pledge, charge, surrender, release or in any other way disposition, or the purchase, investment, acquisition, or the purchase, investment, acquisition, expenditure or other transaction is in the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee either by the terms of the international trust or by law, the Court may confer on the trustee, either generally or in any particular circumstance, the relevant power under such terms and conditions as it thinks fit, and may direct in what manner and the asset from which the authorised expenditure and the costs of any transaction are to be borne.

4. There is no registration or reporting requirement for trusts established in Cyprus. The only authority to be informed of the creation of an International Trust is the Central Bank of Cyprus and only in cases where the International Trust owns shares in a Cyprus Company.

5. If the "Cypriot" trustee of the international trust will be a Cyprus Company, in the case of non-EU equity participation, prior permission from the Central Bank of Cyprus must have been obtained for the operation of the company under the Capital Movement Law (115(1)2003).

6. For the trust instrument to be properly executed, stamp duty at the standard rate of CYP 250,00 is payable irrespective of the amount of the trust fund.

## **Validity & irrevocability**

1. The law confirms the validity of a trust created by any person who is of full age and of sound mind, regardless of any provisions relating to inheritance or succession of the law of Cyprus, or the law of any other country.
2. 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 of assets is made to the trust.

## **Advantages of Cyprus International Trusts**

Further to the tax advantages mentioned above, there are other advantages provided by Cyprus, including the following:

### *Estate planning*

An individual, through the use of a Cyprus Trust, can ensure that minors, mentally handicapped persons or persons that cannot be trusted with the management of the individual's estate are well provided for, even after the individual's death.

An individual, through the use of a Cyprus Trust, can arrange to be inherited by persons, who due to the legislation of the individual's country, would otherwise be excluded from the inheritance. An individual who wishes to divest himself of personal assets for fiscal or other reasons can achieve that by transferring them to a Cypriot International Trust.

### *Anonymity*

An individual, who wishes to keep the ownership of a company anonymous and confidential, can do this by setting up a Discretionary Cyprus Trust to own the shares in the company.

### *Maintaining funds overseas*

An individual who has or may have income arising overseas which he does not wish to remit to his country of residence, can arrange for such income to be directed to the Trustees of a Cyprus Settlement to be held on Discretionary Trusts in accordance with his wishes.

An individual with assets outside his country of residence, which country 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 a Discretionary Trust.

### *Asset protection*

International Trusts law provides that notwithstanding the provisions of any bankruptcy or liquidation laws in Cyprus or in any other country, unless it is proven to the Court that the trust was made with intent to defraud persons who, at the time when the payment or transfer of assets was made to the trust, were creditors of the settlor, the trust shall not be void or

voidable. The burden of proof lies with the creditors and such an action must be instituted by the creditors within two years from the date of transfer or disposal of the assets of the trust.

## **Taxation**

Cyprus International Trusts are not taxed in Cyprus. In fact, Cyprus International Trusts enjoy important tax advantages, offering significant tax planning possibilities to interested parties. Although taxation considerations relating to Trusts are fairly complicated, the following advantages are indicative of the possible options for tax minimisation.

### *Income*

All income whether local, foreign, trading or otherwise of an International Trust, (i.e. a Trust whose property is located and income is derived from outside Cyprus) is not taxable in Cyprus.

### *Dividends*

Dividends, interest or other income received by a Trust from a Cyprus company are also neither taxable nor subject to withholding tax.

### *Trustee fees*

The Cyprus trustee company pays 10% tax on trustee fees.

### *Payments to beneficiaries*

There is no withholding tax on payments to non-resident beneficiaries.

### *Capital gains*

Gains on the disposal of the assets of an International Trust are not subject to capital gains tax in Cyprus.

### *Retired in Cyprus*

An alien who creates an International Trust in Cyprus and retires in Cyprus is still exempt from tax if all the property settled and the income earned is abroad, even if he is a beneficiary.

### *Estate duty*

An International Trust created for estate duty planning purposes would not be subject to estate duty in Cyprus.

### *Protection of estate*

Trusts are usually used by wealthy individuals for the purpose of protecting their estate from inheritance or capital gain taxes in their home country. They can also be used by expatriates settling into a trust before repatriating assets acquired while working abroad, to protect such assets from the tax net of their home country.

### *Double Tax Treaties*

Cyprus has a wide network of double tax treaties, which are accessible by "residents" of the contracting states. The OECD in its article 4 defines a resident as a person liable to tax in the contracting state and does not refer to trusts, but even though a trust may not be considered a

“person” or “body of persons” under article 3(1) of the OECD model, the trustees certainly are. The Cyprus trustee company will pass the “two fold test” and qualify both as a person and a resident liable to tax on trustee fees as long as its management & control is in Cyprus, therefore the ‘other source country’ will accept that benefits of the trust are distributed.

We can say that for a Cyprus trustee company acting as trustee and which is liable to tax in Cyprus at full rates (even though it only pays tax in its trustees’ fees and not on the income of the trust itself), the benefit of certain Cyprus’ double tax treaties may be available in respect of trust income and gains.

## **Tax-planning**

*Income Arising Overseas:* An individual who has income arising overseas, which he does not wish to remit to his country of residence, can arrange for such income to be directed to a Cyprus International Trust.

*Divesting Personal Assets:* An individual who wishes to divest his personal assets for fiscal or other reasons can achieve that by transferring them to a Cyprus International Trust.

*Pre-migration Arrangements:* Individuals moving to a high-tax country may obtain fiscal advantages in their new country by placing funds in a Cyprus International Trust.

*Investing in Overseas Business:* 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 a Cyprus International Trust 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 type of tax planning device has many advantages in providing the maximum possible protection for both settlor and beneficiaries alike.

### *Using the Cyprus International Trust as an alternative option to the Cyprus Company*

- A Cyprus Company pays 10% tax on income received from the assets of the foreign permanent establishment whereas the Cyprus International Trust does not pay tax.
- A Cyprus Company pays 15% defence contribution tax on dividends received if it holds less than 1% of the shares of the paying company, the Cyprus International Trust does not pay any tax in the same situation as long as the beneficiaries are not Cyprus residents.
- A Cyprus Company pays 10 tax on interest received, the Cyprus International Trust does not pay any tax on interest received.
- In absence of any Double tax treaty between the payer and the recipient, the Cyprus International Trust will replace the Cyprus company in order to avoid taxes.

### *Using the Cyprus International Trust together with the Cyprus Company:*

A trust can be used as beneficiary owner of a Cyprus Holding Company holding shares of foreign investment companies. There will be low or no withholding tax on dividends, royalties and interest paid from the foreign investment companies to the Cyprus Holding Company

depending on the Double tax treaty and EU Directives, and there will be no withholding tax on dividends, royalties and interest paid from the Cyprus Holding Company to the Cyprus International Trust.

## **Types of Trusts**

The choice of trust depends on the circumstances of the settlor and his objectives. These may include:

### *1. Discretionary Trust*

An individual who wishes to keep anonymity can do this by setting up a discretionary trust, which owns the shares in the company. This is a particularly useful and popular vehicle for carrying out trading and financial activities, particularly for residents of countries, which do not recognise the concept of a trust. It is possible for a settlor in Cyprus to establish a Discretionary Trust based on Cap 193, which states that the powers of trustees can be expanded by the settlor in the trust deed.

A Discretionary Trust grants the trustees discretion to pay the income or capital of a trust fund to any or all of a particular class of persons defined in the trust deed. The trustee may also be given discretion in deciding when to pay any money to any of the members of the class. Thus, none of the beneficiaries has any right to be paid any money out of the trust fund, since the trustee may exercise his discretion and postpone any such payment or even decide not to pay a particular beneficiary at all.

The Discretionary Trust is the most commonly used type of trust in Cyprus due to the following advantages :

- The beneficiaries cannot be taxed on the trust fund, because they have no legal right in the trust fund until the trustees exercise their discretion in their favour.
- Similarly, the beneficiaries cannot be subject to local exchange control regulations regarding compulsory repatriation of assets until the trustees exercise their discretion.
- Since the beneficiary only has contingent interest, the trust assets are not available to his creditors, should he go bankrupt.
- It is a flexible instrument, allowing trustees to vary the various interests under the trust, as and when circumstances change, without the need to have recourse to the procedures of variation of trusts (i.e. getting the agreement of all the beneficiaries or asking the court to vary the terms of the trust).

Letter of wishes:

- in the case of Discretionary Trusts, it is usual that the settlor also prepares a “letter of wishes” in which he expresses his wishes to the trustees on any matters concerning the

trust. A letter of wishes is a non-binding indication by the settlor of the manner in which he wishes the trustees to exercise their discretion in relation to a discretionary trust.

- Letters of wishes are normally used in testamentary trusts, although theoretically there is no reason why they should not be used in an *inter vivos* trust.
- Letters of wishes are useful where a trust instrument gives the trustees very wide powers and discretions. The letter of wishes principally sets out the manner in which the settlor wishes the trustees to exercise their powers and discretions, but is not binding on the trustees. All binding requirements must be contained in the trust instrument itself. It is also quite common for letters of wishes to make posthumous expressions of thanks or love to the objects of the trust.

## *2. Fixed Trust*

Another type of trust is a Fixed Trust, which does not give the trustees any discretion when distributing the assets to the beneficiaries. An example of this type of trust is one, which requires the trustees to distribute the income of the trust property to a particular individual, during that individual's lifetime and thereafter distribute the capital to a named beneficiary or beneficiaries in specified shares.

## *3. Fixed and Discretionary Trust*

It is possible to have a combination of a Fixed and Discretionary Trust. The trustees may have discretion as to the distribution of income for a period of time, but are required to distribute the capital ultimately in fixed proportions. Conversely, they may be required to distribute the income to a specified person or persons in fixed proportions but may have discretion as to how to distribute the capital amongst a class of beneficiaries.

## *4. Trading Trust*

Under a Trading Trust the trustee is usually a limited liability company which has powers to carry on business and the trust has trading functions and employees to manage its business. Third parties are not aware of the existence of the trust as all documentation used is in the name of the Trustee Company.

## *5. Purpose Trust*

The Cyprus International Trusts Law of 1992 provides a legal definition of a Purpose Trust. This can be a useful adjunct to international corporate planning and can be used to accumulate corporate earnings for general corporate purposes rather than for a defined group of individuals. The perpetuity period of a non-charitable trust is one hundred years and accumulation of income may continue for the duration of the trust. Charitable and Purpose Trusts may carry on indefinitely.

## *6. Charitable Trust*

Subject to the provisions of the Constitution of the Republic of Cyprus and notwithstanding the existence of any contrary legal provision of the law of the Republic or any other country an international trust shall be deemed to be charitable where the trust has as its main purpose the achievement of two or more of the following:

- the relief of poverty;
- the advancement of education;
- the advancement of religion;
- other purposes beneficial to the public in general.

An international trust established for one or more of the objects or purposes set out above shall be deemed to be charitable notwithstanding:

- that the object or purposes may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or that it may benefit particularly one or more persons or objects or persons within a class of persons or
- that the international trust is liable to be modified or terminated whether by the exercise of a power of appointment or the disposition of assets or
- that the trustee has the power to defer the distribution of the benefits to any charity of the trust for a period not exceeding the period of the trust or
- that the international trust is or is considered to be in the category of discretionary trusts.

## *7. Protective Trust*

This trust is appropriate when a beneficiary is given a life interest which may become discretionary on certain defined events, such as the bankruptcy of the beneficiary.

## *8. Declaration of Trust*

This is a variation of the discretionary trust in which the settler is not named in the trust deed and the trustees declare that they hold the assets which were transferred to them on trust. In such a case, the trustees accept a Letter of Wishes.

### **Relocation of Cyprus International Trust**

International Trusts Law allows the removal of an International trust from Cyprus and vice versa, provided the following conditions exist:

1. There must be a stipulation in the trust deed allowing such a change of jurisdiction
2. When a trust moves to another jurisdiction from Cyprus, Cyprus law requires that the new jurisdiction recognizes the validity of the trust and the respective rights of the beneficiaries.
3. When a trust is to be moved to Cyprus from another jurisdiction, the move must be recognized by the laws of the jurisdiction it intends to leave and which had governed the trust previously. This could be important in case where a change in circumstances may render such a transfer advantageous for fiscal or other reasons. the relief of poverty;