
Q Cyprus

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Q Cyprus

General Introduction

The Jurisdiction

Q.001

Cyprus is the third-largest island in the Mediterranean, with an area of 9,251km. It is situated at the crossroads of Europe, Asia, the Middle East and Africa. It is approximately 70 km from Turkey, 120 km from Syria, and 400 km from Egypt.

On account of its location, Cyprus has always played a prominent role in regional politics and trade, and traditionally it has been the gateway to the trade routes linking Western Europe with the Arab world and the Far East. After 80 years as a British colony, Cyprus became an independent sovereign republic in 1960. The new republic's institutions and administration, banking system and business and legal environment were heavily influenced by the British legacy.

The Turkish invasion of 1974, which left more than one-third of the island under Turkish rule, has had no effect on day-to-day life in the Republic of Cyprus, which is a cosmopolitan country with a high quality of life, ranking 33rd in the world in the United Nations Human Development Index.

Cyprus became a member of the European Union in 2004 and adopted the euro as its currency in 2008. In preparation for EU accession, the legal framework was thoroughly reviewed to bring it into line with European norms and as a result Cyprus has a modern, business-friendly legal and tax system which is fully compliant with EU and OECD norms.

There is a democratic system of government with effective separation of powers. The President is head of state; he is elected for a five-year term of office and may be re-elected. The President appoints the Council of Ministers, whose members initiate legislation and perform the administration within their respective ministries. The House of Representatives is the legislative body whose members are elected by universal suffrage within a multi-party system. The judiciary is a separate and independent body.

Cyprus maintains extensive diplomatic relations and is a member of the United Nations, the Council of Europe, the Commonwealth, the World Bank, the International Monetary Fund, and the Non-Aligned Movement. It is also a signatory to numerous international conventions and bilateral co-operation agreements.

The population of Cyprus, excluding the area under Turkish occupation, was 1,207,359 at the end of 2020. The official languages are Greek and Turkish, but almost everyone speaks English as a second language. English is the *lingua franca* of international business in Cyprus.

As a result of the British influence, Cyprus law is based on the principles of English law, modified more recently by the European *acquis communautaire*. At independence, the strength of the English principles was enforced by s.29 of the Cyprus Courts of Justice Law 14 of 1960, which expressly instructed the courts to adhere to the principles of common law and equity, “save insofar as other provision has been or shall be made by any law and so long as not inconsistent with the Constitution”. In cases where domestic law has not made a provision for a specific legal point, the courts of the island have held that reliance may be placed on common law or equity.

Q.002 Trust law

Trust law in Republic of Cyprus derives from English sources. During the period of British administration, English common law and the principles of equity were introduced to and applied in Republic of Cyprus and the law governing the formation and administration of trusts in Cyprus was in effect English law. In 1955 Cyprus enacted its own statute, the Trustee Law of 1955 (Cap 193) (the “Trustee Law”) which, with a few changes, reproduced the English Trustee Act 1925. The principles of equity which underlie resulting, constructive and implied trusts and are applied in English cases continue to be applied by the Cyprus courts to such trusts.

As far as the investment powers of trustees are concerned, s.2(2) of the Trustee Law allows the settlor to exercise complete discretion with regard to the powers he wishes to transfer to the trustees. Trustees may invest trust assets either in investments authorised by the trust deed or in those authorised by the law. Power to invest in specific investments may also be authorised by order of a competent court.

On the question of variation of a Cyprus trust, the position closely mirrors that existing in England before the Variation of Trusts Act 1958. Upon application, a Cyprus court may amend the terms of the trust, or the powers of the trustees to manage the trust, if it is satisfied that the proposed amendment is in the interest of the persons on whose behalf the application is made and no substantial prejudice is caused to the interests of any other interested party.

The perpetuity periods of Cyprus trusts are not governed by the English statutory provisions of 1964, as these were enacted after the independence of Cyprus. In the absence of any statutory provision to the contrary the old English equity principles apply, and no trusts other than charitable trusts and Cyprus international trusts may continue in perpetuity. Trusts endure for either the period of the life or

lives in being plus 21 years or, where there is no life in being, merely for 21 years. The accumulation period of a trust may be extended to include the entire perpetuity period.

Trusts can currently be established in Republic of Cyprus either as domestic trusts under the Trustee Law or as Cyprus International Trusts constituted under the provisions of the International Trusts Law (Law 69 of 1992) as amended by the International Trust (Amending) Law of 2012 (together “the ITL”). It should be noted that the ITL is not a self-contained statute but rather a law which builds on the existing statutory base. This has the effect that the general principles of trust law as found in the common law and statutes of Republic of Cyprus continue to apply, unless and to the extent that the existing law is overridden by a specific provision of the ITL. Indeed, as explained below and mentioned above, the 2012 amendments to the ITL include a provision that international trusts may continue in perpetuity.

Charitable trusts

Q.003

The Charities Law (Cap 41) (the “Charities Law”) is the principal legislation governing charities. Section 15 states that all proceedings under that Charities Law shall be determined in accordance with the law relating to charitable trusts for the time being in force in England, which includes the definition of a charitable trust. Charitable trusts in the Republic of Cyprus may continue in perpetuity and a Cyprus international trust may qualify as a charitable trust if it satisfies the test for an ordinary charitable trust.

The International Trusts Law

Q.004

When it was enacted in 1992, the ITL gave Cyprus a “state of the art” international trusts regime, with excellent tax mitigation and asset protection features, and restricted its availability by stipulating that neither the settlor nor any beneficiary could be a permanent resident of the Republic of Cyprus. Over the years, as other jurisdictions modernised their trust regimes, it became apparent that, while the basic structure provided by the ITL remained sound, it required updating to remove a number of outdated restrictions and to meet changed circumstances. A fundamental reform of the law took place in 2012 with the enactment of the International Trust (Amending) Law of 2012.

Residence requirements

Q.005

When the 1992 law was drafted, the availability of international trusts was restricted to non-resident settlors in order to prevent tax avoidance by Cyprus residents. It was not clear whether settlors could relocate to Cyprus after establishing a Cyprus International Trust, and the resultant uncertainty undoubtedly discouraged many of them from doing so. The ITL as amended in 2012 provides only

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 contained in the 1992 law 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.

Q.006 *Asset protection*

The ITL contained strong asset protection features: no foreign law relating to inheritance or succession could invalidate a trust and trusts could not be set aside by the settlor's creditors in the case of the settlor's bankruptcy or liquidation unless and to the extent that the creditors could demonstrate that the trust was made with intent to defraud them. The onus of proof is on the person or persons seeking to upset the trust and the action to do so must be instituted within two years from the date of transfer of assets to the trust. The 2012 reform 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 trustees' fiduciary powers and duties of trustees and the powers and duties 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.

The 2012 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.

These provisions further reinforce the already formidable asset protection features of the Cyprus International Trust.

Q.007 *Reserved powers and interests*

A new section of the ITL introduced by the 2012 reform 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.

Duration of trusts

Q.008

As was usual at the time, the ITL restricted the maximum life of international trusts to 100 years from the date on the trust came into existence. 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 jurisdictions removed any restriction on the duration of trusts.

The 2012 amended law follows this practice, by providing that from the date the amendment takes effect and 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.

Trustees' investment powers

Q.009

Following the 2012 reform, trustees enjoy the investment powers of an absolute owner, allowing them to invest in a broader range of investments for the best interests of the beneficiaries, in line with those of a trustee in England and Wales, and other trust jurisdictions which have followed the English Trustee Act 2000, including Malta.

Trustees may invest in movable and immovable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus.

Variation of trusts

Q.010

The courts have powers to vary the terms of a Cyprus International Trust on the lines of the English Variation of Trusts Act 1958. More specifically, the courts, upon application, may amend or repeal the terms of the Cyprus International Trust or the powers of the trustees to manage the trust if they are satisfied that the proposed arrangement will be in the interest of the person on whose behalf the application is made and no substantial prejudice is caused to the interests of any other interested party. Section 9 of the ITL provides that the law applicable to a Cyprus International Trust can be expressly changed to a foreign law provided that the new law recognises the validity of the trust and the respective interests of the beneficiaries; a trust

established in a foreign jurisdiction may by its terms select Cyprus law provided that the foreign law itself recognises such a change.

Q.011 Company law

The Companies Law (Cap 113) (the “Companies Law”) closely follows the Companies Act 1948, the corresponding UK legislation of the time in force at its introduction. It has been amended over the years, particularly to align it with the European *acquis*, but in many respects it remains close to the original. Under the Companies Law as amended, the following types of company may be incorporated in Cyprus:

- a public company limited by shares;
- a private company limited by shares;
- a company limited by guarantee, not having a share capital;
- a company limited by guarantee and having a share capital; and
- a European Public Limited Company or *Societas Europaea*.

Commercial enterprises are generally limited by shares. In such companies the liability of each member is limited to the greater of the nominal value of the shares which he takes up or the amount agreed as the price of the shares. Once the shares have been paid for, the member’s liability for the debts or liabilities of the company is fully discharged. In a company limited by guarantee, each member agrees to contribute a specified amount to discharge the company’s liabilities. This form of company is generally used only for non-profit organisations and is rarely seen in practice.

In all cases the company has a registered constitution which comprises a memorandum of association (“memorandum”) and articles of association (“articles”). In broad terms the memorandum deals with the company’s external relations, for example setting out the activities it is authorised to engage in, while the articles deal with the internal procedures of the company and constitute a contract between the company and its members in respect of their liabilities and rights as members.

Incorporation of a company is effected by submitting copies of the memorandum and articles and prescribed returns to the Registrar of Companies. Only local lawyers are entitled to draft incorporation documents. The memorandum should set out the objects of the company in as wide a form as possible, as the *ultra vires* doctrine applies. The Companies Law includes a “default” set of articles, known as Table A, which may be adopted in their entirety or with modifications.

There may be any class of shares, including ordinary or preference, having different voting, dividend and other rights and there may also be redeemable preference shares. Shares are nominative and bearer shares are not permitted.

The shareholders in general meeting and the board of directors are the primary decision-making organs of the company. Company law envisages distinct roles for shareholders as owners, and for directors as managers. The shareholders in general meeting have ultimate control through their power to appoint and remove the directors and alter the constitution and regulations of the company. The directors are entrusted with responsibility for the day-to-day management and general policy of the company and must act in the best interests of the company as a whole, taking into consideration the interests of all its shareholders, as well as having regard to the interests of creditors and employees.

Private trustee companies

Q.012

A private trustee company is one which acts as the trustee of a single trust, or a restricted number of trusts and whose share capital is held by the settlor, by one or more of the beneficiaries or by a combination of the two.

An international private trustee company is not required to hold a trust licence.

Professional trustee companies

Q.013

The arrangements for the regulation of professional providers of trustee services are set out in the Law Regulating Companies Providing Administrative Services and Related Matters of 2012 as amended (“the ASP Law”).

The ASP Law applies to persons and companies providing relevant fiduciary and other services relating to the administration or management of trusts and companies in or from Cyprus, including directorship and secretarial services provided by a legal person, including acting as an alternate director or secretary, services such as holding of shares of legal persons in a nominee or trustee capacity, provision of a registered office, services related to the opening and operation of bank accounts and services for the ownership of financial assets on behalf of third parties.

The principal objectives of the law are to regulate the provision of relevant services and establish and impose licensing procedures for and supervision of such services, offering security to clients and strengthening confidence in the sector.

The ASP Law provides that relevant services may be offered only by persons or legal entities that hold a licence from the Cyprus Securities and Exchange Commission (“CySEC”) or who are specifically exempted from the licensing requirement. Lawyers and accountants who are regulated by their respective regulatory bodies (the Cyprus Bar Association (“CBA”) and the Institute of Certified Public Accountants of Cyprus (“ICPAC”)) are exempt from the need to obtain a licence.

Licences may be issued on such terms and conditions as CySEC considers appropriate. In order to obtain a licence, providers of rele-

vant services must comply with certain criteria regarding their professional and academic qualifications, experience and their internal procedures.

Service providers establishing trusts are required to obtain documentary evidence of identity of the settlor, the trustees, the beneficiaries (or information on the class of beneficiaries including the beneficiaries to whom any distributions have been made pursuant to the trust) and others associated with the trust, as well as information on the activities of the trust, and keep this information available for inspection by the relevant Competent Authority (CySEC, the CBA or ICPAC, as the case may be) on request.

Furthermore, each Competent Authority is required to maintain a register of trusts established or managed by the service providers it regulates containing the following information:

- the name of the trust;
- the name and full address of every trustee at all relevant times;
- the date of establishment of the trust;
- the date of any change in the law governing the trust to or from Cyprus law; and
- the date of termination of the trust.

When the law entered into force a six-month period was allowed for notification of details of existing trusts. Going forward, any Cyprus-resident trustee of a trust governed by Cyprus law will be obliged to notify the relevant Competent Authority of the relevant information within 15 days from the creation of the trust or the adoption of Cyprus law as the law governing the trust, as applicable. Subsequent changes in any relevant information, including termination of the trust or a change in the governing law from Cyprus law, must similarly be notified within 15 days. In the event of termination of the trust or a change in the governing law from Cyprus law the register will indicate that the trust has been terminated and the information on the trust will be kept for five years.

The regulatory regime ensures the highest standards of transparency and investor protection and enhances Cyprus's reputation and position as a fully transparent and attractive trust jurisdiction with a legal infrastructure which entrenches jurisdictional and asset protection for trusts whilst fully complying with all applicable EU and domestic anti-money laundering laws and regulations.

Q.014 The courts and legal system

There are six District and three Assize courts in the Republic of Cyprus. Original criminal jurisdiction vests in the District Courts for minor criminal offences and in the Assize Courts for more serious criminal offences. Original civil jurisdiction vests in the District Courts, apart from admiralty, some matrimonial cases and administrative law matters, which are heard by specialist courts or by the Supreme Court in its original jurisdiction. The Supreme Court is the

highest court in Cyprus and the final appellate body. It is also empowered to pronounce final judgment on all constitutional law matters as well as to issue prerogative orders. Trust litigation lies within the jurisdiction of the District Court and appeals are heard by the Supreme Court.

There is a unitary legal profession in Cyprus and all practising lawyers have full rights of audience in the courts.

Under Cyprus law there is no requirement for trust instruments to be prepared by local lawyers, but it is advisable that local legal advice is obtained on the implications of each proposed transaction.

Local professional infrastructure

Q.015

A large number of law and accounting firms operate in the island and the quality of professional services is generally high. Because of traditional links with the United Kingdom, many professionals originally studied and obtained their professional qualification there.

Prospective lawyers undergo a training period of one year with a law firm and they must then pass the entrance examinations of the Cyprus Bar Association before being admitted. All the major international accounting firms are represented in Cyprus and there are many local firms as well.

Communications

Q.016

Telecommunications in Cyprus are of a very high standard and Cyprus prides itself as one of the most developed countries in the region in this area.

There are two modern international airports situated near Larnaca and Paphos, providing excellent connections with Europe and the neighbouring region.

Seaborne traffic is served by the two multi-purpose ports of Limassol and Larnaca, which are being increasingly used as regional warehouse, distribution and major container transshipment centres. The Cyprus registered fleet is among the largest in the EU and the tenth largest worldwide, and Cyprus has developed into the largest third party ship management centre in the EU and one of the largest in the world.

Taxation

Q.017

General

The tax system was thoroughly revised and updated in preparation for EU membership and Cyprus has a modern, business-friendly tax regime which complies fully with EU and OECD norms. Cyprus is on the OECD “white list” of tax jurisdictions which comply fully with international standards of disclosure.

The corporate income tax rate and standard rate of VAT are among the lowest in the EU, at 12.5 per cent and 19 per cent respec-

tively. For individuals, the first €19,500 of annual income is tax-free. Above that amount, income is taxed at progressive rates ranging from 20 per cent to 35 per cent.

In 2015 the government introduced a “non-domiciled” regime under which interest and dividends received by individuals who are not domiciled in Cyprus are not subject to any form of Cyprus taxation. In 2017 the tax residence qualification for individuals was amended by Law 119(I) of 2017 with effect from the beginning of the 2017 tax year. Previously, the only way for an individual to qualify as tax-resident in Cyprus was to be physically present for at least 183 days in the tax year. However, the new law introduces an additional route to residence. With effect from 1 January 2017, individuals who meet all the following conditions in respect of a given tax year will be deemed to be tax-resident in Cyprus:

- They are physically present in Cyprus for one or more periods amounting to at least 60 days;
- They do not remain in another country for one or more periods exceeding 183 days in total;
- They are not tax resident in another country;
- They undertake business in Cyprus, have employment in Cyprus or hold a post in a Cyprus-resident company which continues to the end of the tax year; and
- They maintain a permanent residence at their disposal for their use in Cyprus.

Cyprus has concluded double taxation agreements (“DTAs”) with more than 60 countries, and these provide important tax advantages. Cyprus-resident companies may beneficially be used as holding, licensing and finance investment vehicles in these countries.

Q.018 *Taxation of trusts*

Trusts, as such, are not taxable in Cyprus, since are considered transparent vehicles and therefore taxation applies at the level of the beneficiaries. Trustees are obliged to make returns and supply financial statements and particulars of beneficiaries.

Provided that no Cyprus-source income is included, no Cyprus taxation will be levied on the income, capital or distribution of offshore trusts. So far as concerns Cyprus International Trusts, the ITL provides that the worldwide income and profits of an international trust attributable to Cyprus-resident beneficiaries are subject to Cyprus tax. In the case of non-resident beneficiaries only Cyprus-source income and profits are subject to Cyprus tax.

Documents creating local and offshore trusts are subject to stamp duty on the value of the assets appointed in the trust. Stamp duty is payable according to the value of the transaction with a capped amount at €20,000 per document. For transactions with a consideration up to €5,000, no stamp duty is payable. A fixed stamp duty of €430 is payable on the establishment of a Cyprus International Trust.

Cyprus trusts and DTAs**Q.019**

Trusts are transparent vehicles for tax purposes. However the trustee will be considered to be a resident of Cyprus according to art.4 of the OECD model treaty if it is, “liable to tax [in Cyprus] by reason of domicile, residence, place of management or any other criterion of a similar nature”. Even though the offshore trust or Cyprus International Trust is exempt from Cyprus tax, the trustee will be liable to tax in respect of fees and income receivable in respect of trustee services.

Most of Cyprus’s DTAs, in line with the OECD model treaty, require the recipient of income to be the beneficial owner of such income if treaty relief and in particular the reduced rates of withholding taxes are to be obtained.

On 7 June 2017, Cyprus formally signed the “Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting” (“MLI”). The effective date of application of the MLI will be 1 May 2020 and for the provisions in relation to the taxes withheld at source, 1 January 2021.

Pursuant to Action 6 of the MLI, Cyprus has notified the amendments on the preamble of all its CTAs through art.6(3) of the MLI clarifying that their purpose is to eliminate double taxation without creating opportunities for non-taxation, or reduced taxation, through tax evasion or avoidance (including through treaty-shopping arrangements). In addition Cyprus has opted for a Principal Purpose Test (“PPT”) alone, that is the general anti-abuse rule based on the principal purpose of transactions or arrangements introduced by art.7 of the MLI. Taking the above into consideration, a Cyprus trust can be established upon the receipt of appropriate high level legal and tax advice.

[Q.034 follows]

Precedent Q1 Discretionary settlement

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THIS SETTLEMENT is made the _____ day **Q.034**
of _____. Two thousand and

BETWEEN:

- (1) _____ ('the Settlor') and
(2) _____ (hereinafter called the 'Trustees' which expression where the context so admits includes the trustees or trustee for the time being of this settlement)

WHEREAS:

- (A) THE Settlor wishes to make this Settlement and has transferred or delivered to the Trustees or otherwise placed under their control the property specified in the Second Schedule, and from time to time further monies, investments or other property may be paid or transferred to the Trustees by way of addition
- (B) IT is intended that this Settlement shall be irrevocable

NOW THIS DEED IRREVOCABLY WITNESSES as follows:

Q.035 1 Definitions

IN this Settlement where the context so admits

- (a) 'the Trust Fund' shall mean
 - (i) the property specified in the Second Schedule and
 - (ii) all money investments or other property paid or transferred by any person or persons to or so as to be under the control of and (in either case) accepted by the Trustees as additions and
 - (iii) all accumulations (if any) of income directed to be held as an accretion to capital and
 - (iv) the money investments and property from time to time representing the said money investments property additions and accumulations
- (b) EITHER the Trust shall endure for an indefinite period OR 'the Trust Period' shall be one Hundred (100) years as from today or such shorter period as the Trustees may direct
- (c) 'the Trustees' means the Original Trustee or other Trustees or Trustee for the time being hereof
- (d) 'the Beneficiary' shall subject as provided by Clauses 3 and 4 mean the following person (whether or not such objects or persons are now in existence or come into existence during the Trust Period)
 - (i) the Settlor's children and remoter issue and the spouses widows and widowers (whether or not such widows or widowers have remarried) of such children and remoter issue
 - (ii) such other persons non-resident in Cyprus as are added under Clause 3
- (e) 'company' shall mean any body corporate (of whatever kind) incorporated or brought into existence in any part of the world
- (f) 'instrument' shall mean an instrument in writing signed by its parties in the presence of an independent witness and dated or in the

case of a company which is a party executed in accordance with its Articles of Association or Statutes

(g) 'minor' shall mean any individual who has not attained the age of 20 years

(h) 'Excluded Person' means any person constituting an Excluded Person under Clause 4

(i) 'the Protector' means [_____] or another appointed protector for the time being of this Settlement

(j) 'the Alternate Trustees' shall mean such persons as may be appointed under Clause 15

(k) 'the Law' means The Trustee Law Chapter 193 of 1955 and The International Trust Law Chapter 69 of 1992 and every modification or re-enactment for the time being in force

2 Trust for sale

Q.036

THE Trustees shall hold the Trust Fund upon trust as to investments or property other than money in their absolute discretion to sell call in or convert into money all or any of such investments or property but with power to postpone such sale calling in or conversion and to permit the same to remain as invested and upon trust as to money with the like discretion to invest the same in their names or under their control in any of the investments authorised by this Deed or by law with power at the like discretion from time to time to vary or transpose any such investments for others so authorised

3 Power to add to the beneficiaries

Q.037

(a) THE Trustees may at any time or times during the Trust Period with the written consent of the Protector (if any) add to the Beneficiaries such one or more objects or persons or classes of persons as the Trustees shall with such consent (subject to the application (if any) of the rule against perpetuities) determine and no Beneficiary may prevent the nomination of new beneficiaries under this Settlement

(b) Any such addition shall be made by instrument

(i) naming or describing the objects or persons or classes of persons to be added and

(ii) specifying the date of the happening of the event (not being earlier than the date of execution of the instrument but before the end of the Trust Period) upon which the addition shall take effect

4 Power of exclusion

Q.038

(a) THE Trustees may at any time or times before the end of the Trust Period, with the written consent of the Protector (if any) declare by instrument that the object or persons named or specified (whether or not ascertained) in such instrument who are, would or might but for this clause be or become one of the Beneficiaries or otherwise able to benefit as the case may be

- (i) shall be wholly or partially excluded from future benefit or
- (ii) shall be an Excluded Person or Persons

Any such declaration may be irrevocable or revocable during the Trust Period and shall have effect from the date specified in the instrument provided that this power shall not be capable of being exercised so as to derogate from any interest to which any of the Beneficiaries has previously become indefeasibly entitled whether in possession or in reversion or otherwise

(b) Any person who has ceased to be a minor who may receive any benefit out of the capital or income of the Trust Fund whether directly or indirectly may by declaration in writing to take effect before the end of the Trust Period

- (i) disclaim such benefit either in whole or in part or
- (ii) declare that such person ceases to be one of the Beneficiaries, or
- (iii) declare that such person shall be an Excluded Person and such declaration shall have effect from the date specified in such declaration provided that where such declaration is made in respect of the whole it shall be irrevocable and where it is made in respect of part only of the declarant's interest and is expressed to be revocable it may be revoked in the manner and under the circumstances referred to in such declaration

(c) No person or persons who shall for the time being be an Excluded Person or the spouse of an Excluded Person shall be capable of benefiting in any circumstances whatsoever under this Settlement

Q.039 5 Trusts of added property

THE Trustees shall hold the Trust Fund upon with and subject to the trusts powers and provisions of this Settlement and the Trustees shall have the right at any time or times during the Trust Period to accept such additional money investments or other property as may be paid or transferred to them upon these trusts by the Settlor or any other person either personally or by testamentary act or disposition (including property of an onerous nature the acceptance of which the Trustees consider to be beneficial)

Q.040 6 Power of appointment

(a) THE Trustees shall hold the capital and income of the Trust Fund upon such trusts in favour or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them in such shares or proportions if more than one and with and subject to such powers and provisions for their respective maintenance education or other benefit or for the accumulation of income (including administrative powers and provisions and discretionary trusts and powers to be executed or exercised by any persons or person whether

or not being or including the Trustees or any of them) and so that the exercise of this power of appointment may be delegated with the prior written consent of the Protector (if any) to any extent and in such manner generally as the Trustees (subject to the application (if any) of the rule against perpetuities) by any instrument or instruments revocable during the Trust Period or irrevocable and executed during the Trust Period shall with the written consent of the Protector (if any) appoint PROVIDED ALWAYS that no exercise of this power shall invalidate any prior payment or application of all or any part or parts of the capital or income or the Trust Fund made under any other power or powers conferred by this Settlement or by law

(b) Notwithstanding Clause 12 the Trustees may not release or restrict this power without the written consent of the Protector (if any)

7 Trusts in default of appointment

Q.041

UNTIL and subject to and in default of any appointment under Clause 6

(a) The Trustees shall pay or apply the income of the Trust Fund to or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them as shall for the time being be in existence and in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion from time to time think fit

(b) Notwithstanding the provisions of sub-clause (a) the Trustees may at any time or times during the Trust Period in their absolute discretion instead of applying all or any part or parts of the income accumulate the same in the way of compound interest by investing or otherwise applying it and its resulting income from time to time in any applications or investments authorised by this Settlement or by law and subject to sub-clause (c) shall hold such accumulations as an accretion to capital

(c) The Trustees may at any time or times during the Trust Period apply the whole or any part or parts of the income accumulated under sub-clause (b) as if it were income arising in the then current year

(d) Notwithstanding the trusts powers and provisions declared and contained in this clause the Trustees may with the written consent of the Protector (if any)

- (i) at any time or times during the Trust Period pay or apply the whole or any part or parts of the capital of the Trust Fund to or for the benefit of all or such one or more of the Beneficiaries exclusive of the other or others of them in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion think fit
- (ii) (subject to the application (if any) of the rule against perpetuities) pay or transfer any income or capital of the Trust Fund to the Trustees of any other trust wherever

established or existing under which all or any one or more of the Beneficiaries is or are interested (whether or not all or such one or more of the Beneficiaries is or are the only objects or persons interested or capable of benefiting under such other trust) if the Trustees shall in their absolute discretion consider such payment to be for the benefit of all or such one or more of the Beneficiaries

Q.042 8 Ultimate default trusts

SUBJECT as above and if and so far as not wholly disposed of for any reason whatsoever by the above provisions the capital and income of the Trust Fund shall be held in trust for [_____] absolutely

Q.043 9 Administrative powers

THE Trustees shall in addition and without prejudice to all statutory powers and immunities under the Law or otherwise have the powers and immunities set out in the First Schedule provided that the Trustees shall not exercise any of their powers so as to conflict with the beneficial provisions of this Settlement

Q.044 10 Exercise of powers

(a) THE Trustees shall exercise the powers and discretions vested in them as they shall think most expedient for the benefit of all or any of the persons actually or prospectively interested under this Settlement and may exercise (or refrain from exercising) any power or discretion for the benefit of any one or more of them without being obliged to consider the interests of the others or other of them

(b) Subject to sub-clause (a) every discretion vested in the Trustees shall be absolute and uncontrolled and every power vested in the Trustees shall be absolute and uncontrolled and every power vested in them shall be exercisable at their absolute and uncontrolled discretion and the Trustees shall have the same discretion in deciding whether or not to exercise any such power

Q.045 11 Delegation of powers

(a) THE Trustees or any of them shall have power (notwithstanding any rule of law to the contrary) by instrument or instruments revocable during the Trust Period or irrevocable and executed during the Trust Period to delegate to any person or to any corporate trustee the execution or exercise of all or any trusts powers and discretions hereby or by the Law or otherwise conferred on the Trustees provided that all necessary consents shall continue to be required and notwithstanding the fiduciary nature of such power or powers

(b) Every trustee who is a company may exercise or concur in exercising any discretion or power hereby conferred on the Trustees

by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising such discretion or power to one or more members of its board of directors or governing body for that purpose

12 Restriction and release of powers

Q.046

THE Trustees shall have power at any time or times by instrument or instruments revocable during the Trust Period or irrevocable to release or to any extent restrict the future exercise of any powers however conferred on them notwithstanding the fiduciary nature of any such powers and subject to the same consents as are required for the exercise of such power provided that the power conferred upon the Trustees by Clause 3 shall not be capable of being released or restricted unless at the date of any such release or restriction there are at least two Beneficiaries

13 Restriction on exercise of powers

Q.047

DESPITE anything contained elsewhere in this Settlement no discretion shall be exercisable after the expiry of the Trust Period or in such a way as to infringe any rule against perpetuities or excessive accumulations applicable to this Deed

14 Power of appointment of new or additional trustees

Q.048

(a) IF any Trustee whether original additional or substituted shall die or being a company shall be dissolved or shall give notice of a desire to withdraw and be discharged from these trusts or shall refuse or become unfit to act then

- (i) the Protector or if there shall be no Protector or if the Protector shall be unable to act
- (ii) the Trustees or if there shall be no trustee in existence or able to act
- (iii) the District Court of Limassol, Cyprus or the court of such other place which shall then be the forum for the administration of these trusts in accordance with a declaration by the Trustees in the terms of Clause 25, may by instrument appoint one or more other persons or companies (whether resident within or without the Island of Cyprus) to be a trustee or trustees in place of the trustee or trustees so deceased, dissolved, desiring to withdraw and be discharged, refusing or becoming unfit to act

(b) The office of a trustee shall ipso facto be determined and vacated if such trustee being an individual shall be found to be a lunatic or of unsound mind or shall become subject to any proceedings under the insolvency or bankruptcy laws applicable to such trustee or if such trustee being a company shall enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction)

(c) The person for the time being having the power to appoint new trustees shall have power to appoint one or more other persons or companies (whether resident within or without the Island of Cyprus) to be an additional trustee or trustees

(d) Acts and instruments done or executed for the proper vesting of the Trust Fund in new or additional trustees shall be done and executed by the continuing or retiring trustee or trustees at the expense of the income or capital of the Trust Fund PROVIDED THAT an outgoing trustee who is liable as a trustee or who may at the death of any person be liable as a trustee or on any other occasion be liable as a former trustee for any taxes wherever they may be imposed and of whatsoever nature shall not be bound to transfer the Trust Fund unless reasonable security is provided for indemnifying such outgoing trustee against such liability

(e) The District Court of Limassol, Cyprus or the court of such other place which shall then be the forum for the administration shall have power to vest the Trust Fund in the Trustees appointed by such court

(f) On every change in the trusteeship a memorandum shall be endorsed on or permanently annexed to this Deed stating the names of the Trustees for the time being and shall be signed by the persons so named and any person shall be entitled to rely upon such memorandum (or the latest of such memoranda if more than one) as sufficient evidence that the Trustees named in such memorandum are the duly constituted trustees for the time being

(g) The Protector (if any) shall at all times have power to remove by instrument any trustee provided that not all the trustees may be removed unless by the same instrument new or additional trustees are also appointed and references in the preceding sub-clauses to retiring trustees shall include reference to trustees who are removed

(h) [There shall be no requirement that there be more than one trustee but at all times and for the whole duration of the Trust at least one Trustee must be a resident of the Republic of Cyprus]

Q.049 15 Appointment of alternate trustees

(a) DURING the Trust Period the Protector (if any) may at any time or times by instrument delivered to the Trustees appoint a person or persons to be the Alternate Trustee of this Settlement PROVIDED THAT no person may be appointed to be an Alternate Trustee who is resident in a territory in which any of the persons who is at the date of such appointment a trustee of this Settlement is resident

(b) The Alternate Trustees shall become the Trustees upon the person or persons who were previously the Trustees all ceasing to be trustees pursuant to Clauses 16 and 17

(c) An Alternate Trustee not having become one of the Trustees may at any time resign by giving written notice to the Protector (if

any) and the Trustees and may at any time be removed from office by written notice given by the Protector (if any) and received by the Alternate Trustee who is to be removed from office

16 Automatic retirement of trustees

Q.050

PROVIDED that on the happening of any of the events specified in the next following clause there shall be an Alternate Trustee or Alternate Trustees any trustee shall automatically cease to be a trustee on such happening in relation to any territory in which that trustee is resident and that trustee shall thereupon be divested of title to all the assets at that time comprised in the Trust Fund which shall vest automatically in the continuing trustee or trustees or (if there are no continuing trustees) the Alternate Trustees (and for that purpose the continuing or Alternate Trustees, as the case may be, are irrevocably granted power of attorney to transfer those assets to themselves on behalf of the person ceasing to be a trustee)

17 Events precipitating the automatic retirement of trustees

Q.051

THE events in which the previous clause shall take effect are:

(a) An attack upon or the occupation of the territory in question by hostile military forces

(b) The occurrence in that territory of civil war or of violent civil disturbances which shall cause or appear likely to cause a serious and prolonged interference with the ability of the trustee to function as such

(c) The acquisition by the government or any other public authority of that territory of a controlling interest in the trustee

(d) The enactment of any law or the taking of any action by the government or any other public authority of that territory the effect of which is (or would be if the trustee in question had sole control of the assets comprised in the Trust Fund)

(i) to expropriate or confiscate any assets comprised in the Trust Fund or to require the making of any substantial payment out of the capital or income of the Trust Fund other than a payment required in the ordinary course of taxation (not being taxation of a penal or confiscatory nature) or as reasonable consideration for services or benefits provided by the government or other public authority

(ii) to determine or substantially restrict the power of the trustee to transfer assets comprising income or capital of the Trust Fund out of that territory for the purpose of investment or distribution

18 Provision for application to protector regarding the events in Clause 17

Q.052

(a) ANY person who is a trustee or former trustee or Alternate Trustee of this Settlement or is a Beneficiary may apply to the

Protector for a written certificate as to whether any of the events specified in the preceding clause has or has not occurred and if it has occurred the date of such occurrence and any such certificate given by the Protector shall be conclusive

(b) If upon any such application the Protector is of the opinion that such an event has occurred but that the removal from office of the trustee in question would be disadvantageous to this Settlement the Protector may direct in writing that Clause 16 shall be deemed not to have had effect in consequence of that event but without prejudice to the validity of anything done by the continuing Trustees or Alternate Trustees referred to in Clause 16 as the case may be prior to the receipt by them of such direction by the Protector

Q.053 19 Application of automatic retirement provisions

THE provisions of Clauses 16, 17 and 18 shall apply to a person to whom any trust power or discretion has been delegated (whether revocably or irrevocably) pursuant to Clause 11 as if such person had been a trustee concurrently with the actual trustees for the time being

Q.054 20 Indemnity of retiring trustee and protector

(a) IF a trustee retires from the trust or becomes by reason of residence or place of incorporation incapable of acting as a trustee such trustee shall be released from all claims demands actions proceedings and accounts of any kind on the part of any other person (whether in existence or not) actually or prospectively interested under this Settlement for or in respect of the capital and income of the Trust Fund or these trusts or an act or thing done or omitted in execution or purported execution of these trusts other than and except only actions

- (i) arising from any fraud or fraudulent breach of trust to which such trustee or (in the case of a corporate trustee) any of its officers or employees was a party or privy
- (ii) to recover from such trustee the whole or any part of the Trust Fund in the possession of such trustee or previously received by such trustee (or in the case of a corporate trustee) any of its officers or employees and converted to the use of such trustee or officer or employee

(b) If the Protector for the time being shall have died or retired as Protector then the Protector or the personal representatives of such Protector shall be entitled to a similar release as that specified above for a retiring trustee in respect of any act or thing done or omitted to be done

Q.055 21 Appointment of new protector

(a) SUBJECT to the appointment referred to in Clause 1 (i) of this Settlement, the Protector shall cease to be the Protector on death if an individual or on dissolution if a company or in either case on becoming unable or unfit to act or making a valid appointment under sub-clause (b)

(b) The Protector may by instrument irrevocably appoint any other person to be protector of this Settlement and if the Trustees have been given written notice of the appointment and if the person appointed consents in writing such person shall immediately become the Protector

(c) The Protector may by instrument revocable during protectorship nominate a person to become the Protector upon the person making the nomination ceasing to be the Protector and thereupon if the nomination remains unrevoked and the Trustees have been given written notice of the nomination and the person nominated consents in writing such person shall immediately become the Protector

(d) If notwithstanding the provision of sub-clauses (a) (b) and (c) there shall at any time be no Protector of this Settlement the Trustees may by instrument irrevocably appoint any person not being one of the Trustees to be the Protector

22 Trustee and protector charging clause

Q.056

(a) ANY trustee or protector (whether original new additional or substituted) which shall be a trust corporation or company authorised by its Memorandum and Articles of Association to undertake trust business shall be entitled in addition to reimbursement of its proper expenses to remuneration for its services in accordance with its published terms and conditions for trust business in force from time to time and in the absence of any such published terms and conditions in accordance with such terms and conditions as may from time to time be agreed between such trustee or protector and the person or persons by whom the power of appointing new trustees is for the time being exercisable

(b) Any trustee or protector who is a solicitor or other person engaged in a profession or business shall be entitled to charge and be paid all normal professional or other charges for business done services rendered or time spent personally or by such trustee's or protector's firm in the administration of these trusts including acts which a trustee not engaged in any profession or business could have done personally

23 Clause headings

Q.057

THE clause headings are included for reference only and do not affect the interpretation of this Settlement

24 Power to vary administrative provisions

Q.058

THE Trustees with the written consent of the Protector shall have power at any time or times during the Trust Period by instrument to revoke or vary any of the administrative provisions of this Settlement or to add any further administrative provisions in such manner in all respects (but subject to the following provisions) as the Trustees may

consider expedient for the purposes of this Settlement including without prejudice to the generality of the above provisions for ensuring that at all times there should be a trustee and that the Trust Fund shall be fully and effectively vested in or under the control of such trustee and that the trusts of this Deed shall be enforceable by the persons interested PROVIDED ALWAYS THAT the power conferred by this clause shall only be exercisable if the Trustees shall be advised in writing by a lawyer of at least 10 years' standing practising in the law of the jurisdiction which is for the time being the proper law of this Settlement that it would be expedient for the purposes of this Settlement that the administrative provisions of this Settlement be revoked varied or added to in the manner specified in such written advice and such power shall be exercisable only by the Trustees causing to be prepared and executed an instrument in the form appropriate to carry such advice into effect

Q.059 25 Proper law forum and place of administration

(a) THE proper law of this Settlement shall be the laws of the Republic of Cyprus and all rights under this Settlement and its construction and effect shall be subject to the jurisdiction of and construed according to the laws of the Republic of Cyprus

(b) The courts of the Republic of Cyprus shall be the forum for the administration of these trusts

(c) Notwithstanding the provisions of sub-clauses (a) and (b)

(i) The Trustees shall have power (subject to the application (if any) of the rule against perpetuities) to carry on the general administration of these trusts in any jurisdiction in the world whether or not such jurisdiction is for the time being the proper law of this Settlement or the courts of such jurisdiction are for the time being the forum for the administration of these trusts and whether or not the Trustees or Trustee is for the time being resident or domiciled in or otherwise connected with such jurisdiction

(ii) The Trustees with the written consent of the Protector may at any time declare by instrument that from the date of such declaration the proper law of this Settlement shall be that of any specified jurisdiction (not being a jurisdiction under the law of which this Settlement would be capable of revocation) and that all rights under this Settlement and its construction and effect shall be subject to and construed according to the laws of that jurisdiction

(iii) The Trustees with the written consent of the Protector may at any time declare by instrument that from the date of such declaration the forum for the administration of these trusts shall be the courts of any specified jurisdiction)

IN WITNESS whereof this Settlement is executed the day and year
first above written

THE FIRST SCHEDULE

Q.060

[Administrative powers]

THE SECOND SCHEDULE

Q.061

[The initial trust fund]

SIGNED as a deed and delivered by the said _____ in the
presence of

[Q.081 follows]

Notes to Precedent Q1 clauses

Q.081 *Clause 1: Definitions*

Clause 1(b) Ordinary offshore trusts must satisfy the requirements of the English common law perpetuity periods. As from 2012 Cyprus international trusts are not subject to any limits on their life.

Clause 1(c) In the case of an international trust at least one of the trustees must, throughout the life of the trust, be a permanent resident of Cyprus. However, this definition expressly includes a Cyprus offshore company.

Clause 1(d) Complete with details of all intended beneficiaries.

Clause 1(i) Insert the name of the initial protector. A protector, whose role is usually fiduciary, to protect the trust from various hazards, is frequently nominated in discretionary settlements particularly where the settlor is not a trustee and relies heavily on the integrity, capacity and efficiency of the trustees. The exercise of the trustees' key powers, ie those powers which may most fundamentally change the rights of beneficiaries under the settlement, is made subject to the prior written consent of the protector. Such powers include the power to add and exclude beneficiaries, the power to change the proper law, the power to confer additional administrative powers (if included) and the power to appoint and dismiss trustees.

Clause 1(k) If the trust is to be a Cyprus international trust, the International Trusts Law must be specifically mentioned.

Q.082 *Clause 3: Power to add to the beneficiaries*

A power to add beneficiaries has been included because of the flexibility it gives to the trustees, enabling them to consider all developments and future mishaps. As settlors may feel unhappy with such a power, the clause makes it clear that no beneficiaries may be added unless the protector provides the trustees with his written consent.

Q.083 *Clause 4: Power of exclusion*

It is considered that such a clause in a discretionary settlement, giving the trustees a power to exclude beneficiaries subject to the written consent of the protector, may be necessary in order for example to avoid a charge on the settlor.

Q.084 *Clause 8: Ultimate default trusts*

The ultimate default beneficiaries to be inserted in this clause should be presently ascertainable and take absolutely in order that no resulting trust of either income or capital to the settlor arises.

Q.085 *Clause 9: Administrative powers*

This clause provides the trustees with the powers they should have to manage the trust fund in the best interest of the beneficiaries.

Clause 10: Exercise of powers

Q.086

Clause 10 contains the general proposition that trustees' powers may be exercised in their absolute discretion and from time to time as occasion requires. This clause does not allow the trustees to exercise their powers improperly.

Clause 14: Power of appointment of new or additional trustees

Q.087

Clauses (a) to (c) Appointment or removal of a trustee is possible if there are grounds under s 35 of the Trustee Law of 1955 (CAP 193) which is identical to s 36 of the UK Trustee Act of 1925.

Clause (d) It has been common practice to include the proviso to clause (d) in order to afford protection to the trustees.

Clause (e) This section basically incorporates s 40 of the Trustee Law of 1955 (CAP 193).

Clause (h) Brackets should be deleted if it is intended that an international trust is set up.

Clause 15: Appointment of alternate trustees

Q.088

The protector is given power to appoint alternate trustees who must be resident in a different jurisdiction from all of the then trustees.

Clause 20: Indemnity of retiring trustee and protector

Q.089

Trustees are not liable for breach of trust when they have acted honestly and reasonably and ought fairly to be excused: s 58 of the Trustee Law 1955 (CAP 193). Trustees normally ask a wide indemnification which is often restricted by the courts. It should be noted that trustees may be liable for the default of an agent albeit appointed in good faith or where the loss is occasioned other than through wilful neglect.

Clause 22: Trustee and protector charging clause

Q.090

A discretionary settlement must contain a trustee remuneration clause, if it is to have the benefit of professional trustees. Trustees cannot charge for their work unless specifically authorised by the trust instrument. This clause caters for the possibility where a professional protector is appointed and allows for his remuneration.

Clause 25: Proper law forum and place of administration

Q.091

The proper law and forum of administration is declared to be Cyprus. There is nothing to prevent an 'offshore trust' being administered out of the jurisdiction and having non-resident trustees: in the case of an international trust care must be taken to ensure that one of the trustees is a permanent resident of the jurisdiction.

Clause 25(c) This clause should be read together with s 9 of the International Trusts Law which allows for a change in the proper law provided that the validity of the trust and the respective interests of the beneficiaries are recognised. This clause ensures flexibility which might be important in the event that a change in government fiscal or other policy makes it beneficial to change a trust's location.

[Q.111 follows]

Administrative powers

Q.111 No differentiation has been made between powers of a purely administrative nature and powers which have an incidental dispositive effect. Clause 9 of the discretionary settlement precedent specifically restates the general equitable principle that no administrative power shall be exercised in a way that conflicts or is inconsistent with the beneficial provisions of the settlement.

There is no necessity to incorporate all the administrative powers in the precedent into every settlement deed. The notes to the individual powers indicate the use and purposes of each power and the draftsman can decide whether a particular power is required in the circumstances of the deed he has to draft. If a power which is omitted subsequently turns out to be needed then it can be added in the case of a settlement with a wide form power of appointment (see the decision in *Re Rank's Settlement Trusts* [1979] 1WLR 1242). Alternatively, the discretionary settlement may include a power (cl.24) to vary, revoke or add administrative powers.

[Q.131 follows]

Administrative powers (First Schedule)

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THE FIRST SCHEDULE

1 Power of investment Q.131

(a) SUBJECT as provided below any monies requiring investment may be invested in or upon any investments of whatever nature and

wherever situate whether producing income or not (including the purchase of any immovable or movable property or any interest in such property and including purchases made for the purpose of enabling all or any one or more of the Beneficiaries to have the occupation use or enjoyment in specie of the asset purchased or for other purposes which the Trustees consider to be in the interests of any one or more of the Beneficiaries) as the Trustees shall in their absolute discretion think fit so that the Trustees shall have the same full and unrestricted powers of making and changing investments of such monies as if they were absolutely and beneficially entitled to such monies and without prejudice to the generality of the above the Trustees shall not be under any obligation to diversify their investment of such monies

(b) The acquisition of any reversionary interest or any policy of insurance or assurance sinking fund policy or other policy of whatever nature or any annuity or securities or other investments not producing income or of a wasting nature or for any other reason not within the meaning of the word 'investment' strictly construed shall be deemed to be an authorised investment of trust monies if the Trustees shall consider the same to be for the benefit of any one or more of the Beneficiaries

(c) Where any such reversionary interest policy security or investment as is described in sub-clause (b) is comprised in the Trust Fund or where any other security or investment is sold with the right to receive the dividend or interest accrued or accruing no part of any accretion to the value or of any premium or bonus or other sum (whether in respect of arrears of or prospective dividend or interest or income or otherwise) which accrues or is payable when the same falls into possession or is redeemed or matures or on repayment of the capital monies so secured or when any sale or disposal is made shall be apportionable to or be treated as income

(d) The Trustees shall have power to exchange property for other property of a like or different nature and for such consideration and on such conditions as they shall in their absolute discretion think fit

Q.132 2 Power to lend and to give guarantees

(a) THE Trustees shall have power to lend money or property to any one or more of the Beneficiaries either free of interest or on such terms as to payment of interest and generally as the Trustees shall in their absolute discretion think fit

(b) The Trustees shall have power to guarantee the payment of money and the performance of obligations in respect of any existing or future borrowings by any one or more of the Beneficiaries from third parties or guarantees indemnities or other commitments of a like nature given to third parties by any one or more of the Beneficiaries including without prejudice to the generality of the above the power to pledge the whole or part of the assets comprising

the Trust Fund in support of any such guarantee given as above by the Trustees and to enter into such indemnities as they shall in their absolute discretion think fit in connection with any such guarantee

3 Power to permit occupation of property and enjoyment of chattels **Q.133**

THE Trustees shall have power to permit any one or more of the Beneficiaries to occupy or reside in or upon any real or immovable property or to have the enjoyment and use of chattels or other movable property for the time being held upon these trusts on such terms as to payment of rent rates taxes and other expenses and outgoings and as to insurance repair and decoration and generally upon such terms as the Trustees shall in their absolute discretion think fit

4 Power to borrow **Q.134**

THE Trustees shall have power to borrow and raise money on the security of the Trust Fund for any purpose (including the investment of the monies so raised as part of the Trust Fund) and to create a security interest over mortgage charge hypothecate or pledge any part of the Trust Fund as security for any monies so raised and to guarantee the payment of money and the performance of obligations in respect of borrowings by any company fully or partly owned by the Trustees and in connection with such guarantees to enter into such indemnities as the Trustees shall in their absolute discretion think fit

5 Powers in relation to real property **Q.135**

WHERE the Trust Fund for the time being includes any real or immovable property (in this clause referred to as ‘the land’)

(a) The Trustees may lease all or any part of the land for any purpose and whether involving waste or not and for any term and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection improvement or repair or any agreement to erect improve or repair buildings or other structures on the land and may accept (with or without consideration) a surrender of any lease of all or any part of the land

(b) The Trustees may in executing any trust or power of sale sell all or any part of the land either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite) and being either reserved out of the land sold or secured in such other manner as the Trustees shall in their absolute discretion think fit

(c) The Trustees may in executing any trust or power of sale or leasing

(i) sell or lease all or any part of the land whether the division is horizontal or vertical or made in any other way

- (ii) sell or lease or reserve any easement or right or privilege over all or any part of the land
- (iii) sell or lease or exempt or reserve any timber or mines or minerals on or in or under all or any part of the land together with any easements rights or privileges of cutting or working and carrying away the same or otherwise incidental to or connected with forestry or mining purposes
- (iv) impose and make binding for the benefit of all or any part of the land sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the land retained
- (v) accept in exchange for all or any part of the land to be sold or leased (either with or without any money paid or received for equality of exchange) any other real or immovable property or any lease
- (vi) enter into any contract or grant any option for the sale or leasing of all or any part of the land or otherwise for the exercise by the Trustees of any of their above powers

(d) The Trustees shall not be bound to see nor be liable or accountable for omitting or neglecting to see to the repair or insurance of any buildings or other structures on the land or to the payment of any out-goings or otherwise as to the maintenance of the land or any buildings or other structures on the land but may maintain repair or insure the same in such manner and to such extent as they shall in their absolute discretion think fit

(e) The Trustees may from time to time expend monies altering or improving the land or any buildings or other structures on the land (including erecting demolishing or rebuilding the same) to such extent and in such manner as they shall in their absolute discretion think fit and any certificate in writing of any architect or surveyor employed by the Trustees to the effect that any work specified in such certificate is or includes an alteration or an improvement to the land or any such building or other structure shall be conclusive as between the Trustees and the Beneficiaries that any money expended on such work was properly expended in exercise of this power

Q.136 6 Powers in relation to chattels

WHERE the Trust Fund for the time being includes any chattels (in this clause referred to as 'the chattels')

(a) The Trustees may sell lease hire deposit store or otherwise deal with the chattels upon such terms as they shall in their absolute discretion think fit

(b) The Trustees shall not be bound to see nor be liable or accountable for omitting or neglecting to see to the repair or insurance of the chattels but may repair and insure the chattels in such manner and to such extent as they shall in their absolute discretion think fit

7 Power to trade**Q.137**

(a) THE Trustees shall have power to trade or take part in any venture in the nature of trade whether solely or jointly with any other person and whether or not by way of partnership (limited or general) and for these purposes make such arrangements as they shall in their absolute discretion think fit and may delegate any exercise of this power to any one or more of their number or to a company or partnership formed for this purpose

(b) Any power vested in the Trustees under this Settlement shall (where applicable) extend to any arrangements in connection with any such trade or venture and in particular but without prejudice to the generality of the above the Trustees' powers of borrowing and charging shall extend to any borrowing arrangements made in connection with such trade or venture and whether made severally or jointly with others or with unequal liability and the Trustees shall be entitled to be fully indemnified out of the Trust Fund against all personal liability to which they may become in any manner subject in connection with any such trade or venture

8 Power to give indemnities**Q.138**

(a) THE Trustees shall have power to enter into any indemnity to the extent permitted by law in favour of any former trustee or any other person in respect of any fiscal imposition or other liability of any nature prospectively payable in respect of the Trust Fund or otherwise in connection with this Settlement and to charge deposit or create a security interest over the whole or any part of the Trust Fund as security for any such indemnity in such manner in all respects as they shall in their absolute discretion think fit

(b) The Trustees shall have power to give or enter into any indemnity warranty guarantee undertaking or covenant or enter into any type of agreement that they shall in their absolute discretion think fit relating to the transfer or sale of a business or private company shareholding held or owned for the time being by the Trustees whether relating to the business or company itself its assets liabilities shares or employees or any other aspect of the business or company in favour of any transferee purchaser or other relevant party and including any limitation or restriction on value or otherwise as the Trustees shall in their absolute discretion think fit

9 Exclusion of apportionment**Q.139**

NO rules of apportionment (if any) under the Law or otherwise shall apply to this Settlement and the Trustees shall be permitted to treat all dividends and other payments in the nature of income received by them as income at the date of receipt irrespective of the period for which the dividend or other income is payable

10 Power to deal with insurance policies**Q.140**

THE Trustees shall in addition and without prejudice to all statutory and other powers conferred upon them have the following powers in

relation to any insurance policy ('the policy') from time to time comprised in the Trust Fund

- (a) To borrow on the security of the policy for any purpose
- (b) To convert the policy into a fully paid-up policy for a reduced sum assured free from payment of future premiums
- (c) To surrender the policy wholly or any part or any bonus attaching to the policy for its cash surrender value
- (d) To sell the policy or any substituted policy on such terms as the Trustees shall in their absolute discretion think fit
- (e) To exercise any of the powers conferred by the policy or with the consent of the insurer to alter the amount or occasion of the payment of the sum assured or to increase or decrease the amount of the periodic premiums (if any) payable under the policy or to alter the period during which the premiums are payable and to do any of these things notwithstanding that the sum assured may be reduced subject always to production of evidence of insurability satisfactory to the insurer

Q.141 11 Power to pay taxes

IN the event of probate succession estate duty or other duties fees or taxes whatsoever becoming payable in the Island of Cyprus or elsewhere in respect of the Trust Fund or any part in any circumstances whatsoever including without limiting the foregoing in respect of any property transferred by or to or under the control of the Trustees or any Beneficiary the Trustees shall have power to pay all such duties fees and taxes out of the capital or income of the Trust Fund as they shall consider just and reasonable and shall have entire discretion as to the time and manner in which such duties fees or taxes shall be paid and so that the Trustees shall be empowered to pay duties fees and taxes arising by virtue of a claim made under any foreign law notwithstanding that the same may not be enforceable against the Trustees under the proper law from time to time governing this Settlement or in the jurisdiction in which they are domiciled or resident and notwithstanding that such payment shall not be to the immediate financial advantage of the Beneficiaries or any of them and no person interested under this Settlement shall be entitled to make any claim whatsoever against the Trustees by reason of them making such payment

Q.142 12 Power to pay costs

THE Trustees shall have power to pay out of the income or capital of the Trust Fund all costs of and incidental to the preparation execution and stamping of this Settlement

Q.143 13 Power of appropriation

THE Trustees shall have power in their absolute discretion to appropriate any part of the Trust Fund in its then actual condition or

state of investment in or towards satisfaction of any interest or share in the Trust Fund as may in all the circumstances appear to them to be just and reasonable and for the above purposes from time to time to place such value on any or all investments or other property as they shall in their absolute discretion think fit

14 Power to vote and to employ nominees and custodians

Q.144

IN respect of any property comprised in the Trust Fund the Trustees shall have power

(a) To vote upon or in respect of any shares securities bonds notes or other evidence of interest in or obligation of any company trust association or concern whether or not affecting the security or the apparent security of the Trust Fund or the purchase or sale or lease of the assets of any such company trust association or concern

(b) To deposit any such shares securities or property in any voting trust or with any depositary designated under such a voting trust

(c) To give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any such property

(d) To hold any or all securities or other property in bearer form or in the names of the Trustees or any one or more of them or in the name of some other person or partnership or in the name or names of nominees without disclosing the fiduciary relationship created by this Deed and to deposit the said securities and any title deeds or other documents belonging or relating to the Trust Fund in any part of the world with any bank firm trust company or other company that undertakes the safe custody of securities as part of its business without being responsible for the default of such bank firm trust company or other company or for any consequent loss

15 Power to delegate management of investments

Q.145

(a) THE Trustees shall have power to engage the services of such investment adviser or advisers as the Trustees may from time to time think fit ('the investment adviser') to advise the Trustees in respect of the investment and reinvestment of the Trust Fund with power for the Trustees without being liable for any consequent loss to delegate to the investment adviser discretion to manage all or any part of the Trust Fund within the limits and for the period stipulated by the Trustees and the Trustees shall settle the terms and conditions for the remuneration of the investment adviser and the reimbursement of the investment adviser's expenses as the Trustees shall in their absolute discretion think fit and such remuneration and expenses shall be paid by the Trustees from the Trust Fund

(b) The Trustees shall not be bound to enquire into nor be in any manner responsible for any changes in the legal status of the investment adviser

(c) The Trustees shall incur no liability for any action taken pursuant to or for otherwise following the advice of the investment adviser however communicated

Q.146 16 Power to receive remuneration

NO trustee shall be liable to account for any remuneration or other profit received by such trustee in consequence of such trustee acting as or being appointed to be a director or other officer or servant of any company notwithstanding that such appointment was procured by an exercise by such trustee or by the Trustees of voting rights attached to securities comprised in the Trust Fund

Q.147 17 Power to promote companies

THE Trustees may (without prejudice to the generality of their powers of investment) promote or join with any other person or persons in promoting or incorporating any company or subscribe for or acquire any of the shares or stock or debentures or debenture stock or loan capital of any company with a view to or in consideration of

- (i) the establishment and carrying on by such company of a business of any kind which the Trustees are for the time being authorised to carry on themselves and the acquisition of any of the assets comprised in the Trust Fund which may be required for the purposes of such business
- (ii) the acquisition of the assets and undertaking of any business being carried on by the Trustees under the above power
- (iii) the acquisition of all or any of the assets comprised in the Trust Fund to be held as investments of the company acquiring the same

Q.148 18 Trustees not bound to interfere in business of a company in which the settlement is interested

THE Trustees shall not be bound or required to interfere in the management or conduct of the business of any company in which the Trustees as trustees of this Settlement shall be interested although holding the whole or a majority of the shares carrying the control of the company but so long as the Trustees shall have no notice of any act of dishonesty or misappropriation of monies on the part of the directors having the management of such company the Trustees shall be at liberty to leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors and the Beneficiaries shall not be entitled to require the distribution of any dividend by any such company or require the Trustees to exercise any powers they may have of compelling any such distribution

Q.149 19 Power to insure property

THE Trustees shall have power to insure against any loss or damage from any peril any property for the time being comprised in the Trust Fund for any amount and to pay the premiums out of the Trust Fund

20 Power to take counsel's opinion

Q.150

THE Trustees shall have power to take the opinion of legal counsel locally or where necessary or appropriate elsewhere concerning any difference arising under this Settlement or any matter in any way relating to this Settlement or to their duties in connection with these trusts and in all matters to act in accordance with the opinion of such counsel

21 Power to appoint agents

Q.151

THE Trustees shall have power instead of acting personally to employ and pay at the expense of the Trust Fund any agent in any part of the world whether attorneys solicitors accountants brokers banks trust companies or other agents without being responsible for the default of any agent if employed in good faith to transact any business or act as nominee or do any act in the execution of these trusts including without prejudice to the generality of the above the receipt and payment of monies and the execution of documents

22 Power to permit self-dealing

Q.152

THE Trustees shall have power to enter into any transaction concerning the Trust Fund notwithstanding that one or more of the Trustees may be interested in the transaction other than as one of the Trustees, provided that such a trustee makes a full disclosure of his interest

23 Power to effect compromises

Q.153

THE Trustees shall have power to

(a) Accept any property whether movable or immovable before the time at which it is transferable or payable

(b) Pay or allow any debt or claim on any evidence which they may think sufficient

(c) Accept any composition or any security movable or immovable for any debt or any property due to or claimed by the Trustees

(d) Allow any time for payment of any debt

(e) Compromise compound abandon submit to arbitration or otherwise settle any debt account claim or thing relating to the Trust Fund without being liable for any loss to the Trust Fund thereby occurring

24 Power to keep trust property outside the jurisdiction

Q.154

THE Trustees shall have power to keep the whole or any part of the Trust Fund within or outside the jurisdiction of the proper law

25 Power to have accounts audited

Q.155

THE Trustees shall have power from time to time and at such intervals as they shall in their sole discretion think fit to cause the

accounts kept by them relating to this Settlement to be examined or audited by such person or persons as they shall designate and to pay the costs of such examination or audit out of the capital or income of the Trust Fund

Q.156 26 Indemnity

IN the execution of these trusts no trustee shall be liable for any loss to the Trust Fund arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent employed by such trustee or by any of the Trustees although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by such trustee or by any of the Trustees or by reason of any other matter or thing except wilful and individual fraud or dishonesty on the part of the trustee who is sought to be made liable

Q.157 27 Payments to minors

WHERE any payment is made or property transferred to or for the benefit of a minor the Trustees may pay or transfer the same to the parent or guardian of such minor without enquiring as to its application and the receipt of such parent or guardian shall be a sufficient receipt to the Trustees for the same

Q.158 28 Non-disclosure

SUBJECT to an order of any competent court the Trustees shall not be bound to disclose to any person other than the primary beneficiary any document or other matter relating to this Settlement

[Q.178 follows]

Notes to administrative powers (First Schedule)

Clause 1: Power of investment

Q.178

This is a wide form of investment power which provides the required degree of practical and permissible flexibility. In the absence of the power, a trust would have such a wide investment power, so long as it was an international trust pursuant to s 8 of the International Trusts Law. In the case of other trusts, investments would be restricted to the ones permitted by law which are considered inappropriate for modern conditions and it is therefore advised that such a power is included.

Clause 3: Power to permit occupation of property and enjoyment of chattels

Q.179

This power operates in conjunction with the wide investment power to permit the enjoyment in kind of trust property (whether land or chattels) by a beneficiary on whatever terms the trustees decide. Obviously the trustees must exercise this power and decide terms in the context of the beneficial trusts of the settlement.

Clause 4: Power to borrow

Q.180

This clause gives the trustees unrestricted powers to borrow. It should be noted that the general law only gives trustees powers to borrow for restricted purposes but not *inter alia* for investment purposes.

Clause 6: Powers in relation to chattels

Q.181

These are required in practice to enlarge restrictive statutory powers.

Clause 7: Power to trade

Q.182

This power permits trustees to trade. It should be read in conjunction with the power to promote companies (clause 17) as the trustees will usually trade through a company promoted for that purpose by the settlement.

Clause 8: Power to give indemnities

Q.183

Where trustees have granted appropriate indemnities, they can also rely on s 30 of the Trustee Act 1955 to reimburse themselves out of the Trust Fund if the indemnity is called upon.

Clause 9: Exclusion of apportionment

Q.184

This clause excludes statutory and equitable rules of apportionment which would otherwise require the trustees to make time-consuming calculations over small amounts of income.

Clause 13: Power of appropriation

Q.185

A specific power of appropriation is included which permits trustees to appropriate specific assets to a beneficiary in satisfaction in whole or in part of his interest.

Q.186 *Clause 14: Power to vote and to employ nominees and custodians*

This power allows the trustees the administrative convenience of holding trust investments in nominee names. It can be adopted in conjunction with the power to delegate investment management (see clause 15).

Q.187 *Clause 15: Power to delegate management of investments*

The power is widely framed to permit the trustees to employ an investment adviser and to delegate to that adviser the management of trust investments on a discretionary basis if desired without any consequent liability. Increasingly trustees are looking to set up such agreements with investment advisers on the grounds that a better investment performance will result as well as administrative savings. Nevertheless, trustees still retain their overall fiduciary responsibilities and they should exercise control over the investment adviser by imposing adequate guidelines and limits within which the investment adviser has to operate.

Q.188 *Clause 16: Power to receive remuneration*

This power in effect operates in parallel to the professional charging clause in the main body of the settlement and enables a trustee to be paid for his services as a director of a company in which the trust holds shares. It negatives the equitable rules to the contrary.

Q.189 *Clause 17: Power to promote companies*

See note on clause 7 above.

Q.190 *Clause 18: Trustees not bound to interfere in business of a company in which the settlement is interested*

This requires trustees to take action if they have knowledge of circumstances which call for enquiry. In the absence of such a provision, it is the duty of trustees, under the decision in *Bartlett v Barclays Trust Co (No 1)* [1980] Ch 515 which applied established principles, to keep a close eye on the running of a trust company.

Q.191 *Clause 19: Power to insure property*

This permits trustees to insure trust property properly. It should be noted that s 19 of the Trustee Act 1955 only allows trustees to insure against loss by fire to the full value.

Q.192 *Clause 22: Power to permit self-dealing*

The general rule is that trustees may not enter into any transaction which gives rise to a conflict of interest. This clause authorises such transactions provided that the trustee makes a full disclosure of his interest.

Q.193 *Clause 27: Payments to minors*

Where income is to be applied for a child under 18, trustees will often pay the income to a parent on behalf of the child. This clause relieves the trustees of the duty to monitor the parents' use of the money and trust administration is thus facilitated.