



PROTECTING YOUR LEGACY THROUGH A CYPRUS INTERNATIONAL TRUST

BY ELENA CHRISTODOULOU, ADVOCATE/SENIOR ASSOCIATE, CORPORATE DEPARTMENT AND ALEXIS CHRISTODOULOU, ADVOCATE/ASSOCIATE, CORPORATE DEPARTMENT, ELIAS NEOGLEOUS AND CO LLP



Trusts are highly versatile instruments which can be used for a wide variety of purposes to achieve specific goals. In simple terms, the common law Trust is structured as a triangular relationship where the Settlor unilaterally transfers property to the Trustee (whilst not forming part of the Trustee's property) for the benefit of a third person which is the Beneficiary.

WHAT IS A CYPRUS INTERNATIONAL TRUST?

IN TERMS OF SECTION 2 OF THE LAW, A CYPRUS INTERNATIONAL TRUST (CIT) IS DEFINED AS A TRUST IN RESPECT OF WHICH:

- the Settlor (whether a natural or legal person) is not a resident of Cyprus for the calendar year prior to the creation of the Trust;
- at least one of the Trustees is, during the whole duration of the Trust, a resident of Cyprus, and
- no Beneficiary (whether a natural or legal person) other than a charitable institution is a resident of Cyprus for the calendar year prior to the creation of the Trust.

UTILIZATION FROM A PERSONAL TAX PERSPECTIVE IN CYPRUS

One of the key standout points in the above definition, from a personal tax perspective, is that Beneficiaries should not be residents of Cyprus for the calendar year prior to the creation of the Trust. What this effectively means is that a Beneficiary of a CIT can take up tax residency in Cyprus at any stage after the Trust has been established and benefit from the benign personal tax system which Cyprus has to offer, specifically in relation to non-domicile tax residents who are exempt from Special Defence Tax on dividend income, interest passive income and rental income (note: rental income is subject to income tax) until they complete 17 years of tax residency in Cyprus (provided that they become Cyprus tax residents for the first time).

CYPRUS IS IN THE "PREMIER LEAGUE" OF TRUST JURISDICTIONS AND A DESTINATION OF CHOICE FOR THE ESTABLISHMENT OF INTERNATIONAL TRUSTS

SETTLORS' RESERVED POWER

THE LAW ALLOWS THE SETTLOR OF A TRUST TO RESERVE POWERS TO HIMSELF OR HERSELF, TO RETAIN A BENEFICIAL INTEREST IN TRUST PROPERTY, OR TO ACT AS THE PROTECTOR OR ENFORCER OF THE TRUST, ALL WITHOUT AFFECTING THE VALIDITY OF THE TRUST. THE POWERS THAT MAY BE RESERVED ARE EXTENSIVE, AND INCLUDE THE POWER:

- to revoke, vary or amend the terms of the Trust;
- to apply any income or capital of the Trust property;
- to act as a director or officer of any corporation wholly or partly owned by the Trust;
- to give binding directions to the Trustee in connection with the Trust property; and
- to appoint or remove any Trustee, enforcer, protector or Beneficiary.

The Settlor may impose a general stipulation that the Trustees' powers are exercisable only with the consent of the Settlor or any other person specified in the terms of the Trust. The Settlor may also reserve the power to change the governing law of the Trust. These provisions give Settlers great flexibility to adapt to changes in circumstances or objectives.

ASSET PROTECTION FEATURES

Asset Protection Trusts ring-fence the Settlor's assets from persons who may have a claim against him or her. An Asset Protection Trust adds another layer to the defences. They are also invaluable in a variety of other contexts. In personal life, in light of the substantial awards that courts in certain jurisdictions are making, an Asset Protection Trust may be used to provide added reassurance against claims on the breakdown of marriage or a civil partnership, particularly for individuals from jurisdictions where prenuptial agreements are ineffective. Many countries have forced heirship provisions in their succession law, reserving a specified portion of the deceased's estate for relatives, and an Asset Protection Trust may provide a means of regaining freedom of testation.

By their nature, all Trusts provide an element of asset protection by segregating the assets held in trust from the Settlor's general assets, which would be available to satisfy his or her debts or, in the worst-case scenario, would pass to his or her Trustee in bankruptcy; however, a CIT has several further advantages.

The Law contains a very strong presumption against avoidance of a CIT. Unless the court is satisfied that the Trust was made with the intent to defraud persons who were creditors of the Settlor at the time when the payment or transfer of assets was made to the Trust, the Trust will not be void or voidable, notwithstanding the provisions of any bankruptcy or liquidation laws of Cyprus or any other

country and notwithstanding the fact that the Trust is voluntary and without consideration, or that it is for the benefit of the Settlor or his or her family members. The burden of proof of the Settlor's intent to defraud lies with the person seeking to set aside the transfer. Furthermore, any action for avoidance of the Trust or setting aside of the transfer must commence no later than two years after the assets were transferred to the Trust.

These provisions, particularly the requirement to prove intent to defraud on the part of the Settlor, set the bar very high for a claimant trying to set aside a transfer to a CIT. Even though the standard of proof is the balance of probabilities, rather than the criminal standard, the claimant must still establish that the Trust was more likely than not a fraud. This is a difficult standard to meet in practice, and the burden of proving fraud is higher than is usual for civil cases. In practice, the claimant would need very strong evidence to show that the Settlor intended to defraud his or her creditors. A claimant domiciled outside the EU without assets in Cyprus would be required to provide security for costs under Order 60 of the Civil Procedure Rules.

Protection against forced heirship and similar claims is provided by Section 3(i) of the 1992 Law, which stipulates that the laws of Cyprus or of any other country relating to inheritance or succession will not in any way affect any disposition of assets to a CIT.

The Law strengthened these defences by explicitly providing 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. It also makes it clear that the 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.

Finally, the 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.

These provisions further reinforce the already formidable asset protection features of the CIT.

The enactment of the Law has elevated Cyprus to the "Premier league" of Trust jurisdictions, making the island a destination of choice for the establishment of International Trusts. Further, upon consideration of other local laws, the island is also an attractive destination of choice for personal residency once an International Trust has been established. With the correct planning and considerations, the creation of a CIT can be a highly valuable tool in relation to asset protection, succession and tax planning.