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INTERNATIONAL TRUSTS IN CYPRUS

In July 1992, the International Trusts Law was enacted in Cyprus, regulating the establishment and administration of International Trusts in the island.

The doctrines of equity, on which trust law is based, have long formed part of the legal system in Cyprus, inherited from the time of being a British colony. The object of this legislation was to modernise and update the existing legal framework.

Cyprus International Trusts are exempt from taxation and can be used effectively for tax and other planning considerations.

The definition of an International Trust and the most important provisions of the International Trusts Law of Cyprus provide some unique opportunities for a wide range of investors as compared to the other common-law international jurisdictions.

Nature of Trust

A trust is established by an individual (*the Settlor*) and is a means whereby property (*the Trust Property*) is held by one or more persons (*the Trustees*) for the benefit of another or others (*the Beneficiaries*) or for specified purposes. The Settlor can be a Trustee and the Settlor and the Trustees or any of them can be Beneficiaries. A *Protector* who can be the Settlor may be appointed to oversee the work of the Trustees.

In law, the Trustees are the owners of the trust property, although they may not deal with it as absolute owners but rather in accordance with the provisions of the law relating to trusts and the rights of the beneficiaries as set out in the trust documents. In other words, the trustees are under a binding obligation to deal with the trust property in accordance with the law and the direction set out in the trust document.

Definition

The law defines an International Trust as being a trust in respect of which:

- the settlor is not a permanent resident of Cyprus
- no beneficiary other than a charitable institution is a permanent resident of Cyprus
- the trust property does not include any immovable property situated in Cyprus, and

- at least one of the trustees, during the whole duration of the trust, is a permanent resident of Cyprus.

A trust can still qualify as an International Trust for the purposes of the law even if the settlor, trustee or the beneficiaries are International Business Companies or International Business Partnerships. In fact this provides unique opportunities for a wide range of investors.

Tax Aspects

The Income Tax Law of 2002 did not make any changes to the regime for the taxation of trusts. International Trusts are governed by the local trust law and are not taxed in Cyprus.

In fact, Cyprus International Trusts enjoy important tax advantages providing significant tax planning opportunities to interested parties. The following tax privileges are indicative of the possible options for tax minimisation:

- all income, whether trading or otherwise, of an International Trust (ie a trust whose property is located and income is derived from outside Cyprus) is not taxable in Cyprus
- dividends, interest or other income received by a trust from a Cyprus International Business Company are also neither taxable nor subject to withholding tax provided that the beneficiaries are not tax residents in Cyprus. Even though a trust with shares in a Cypriot company may not be an International Trust, the exemption relies on the fact

that Cypriot tax is imposed only on Cyprus residents. As the beneficiaries are not residents of Cyprus, no tax is imposed on the distributions made to the trust

- gains on the disposal of the assets of an International Trust are not subject to capital gains tax in Cyprus
- an alien who creates an International Trust in Cyprus and retires in Cyprus is still exempt from tax if all the property settled and the income earned is abroad, even if he is a beneficiary
- an International Trust created for estate duty planning purposes would not be subject to estate duty in Cyprus.

Local trusts ie trusts under which either the settlor or any beneficiary is a Cypriot resident, will still be treated as transparent vehicles for income tax purposes. In the case of Cypriot offshore trusts, provided that no local profit is included, no Cypriot tax will be levied on their income, capital or distribution.





Favourable Uses

A Cyprus International Trust can prove advantageous for a number of reasons. These may include:

1. Tax planning considerations

Income arising overseas

An individual who has income arising overseas, which does not wish to remit to the country of residence, can arrange for such income to be directed to a Cyprus International Trust.

Divesting personal assets

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

Pre-migration arrangements

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

Investing in overseas business

An individual who wishes to invest in business overseas but wishes to ensure that the profits and dividends received are not remitted to the country of residence, may set up a Cyprus International Trust to invest in overseas business.

Investment holding company

A trust can be used in one country to own an underlying investment holding company in another. This type of tax planning device has many advantages in providing

the maximum possible protection for both settlor and beneficiaries.

2. Other planning considerations

Exchange controls

An individual with assets outside the country of residence, which may in future extend its exchange control restrictions to include remittance of overseas funds, may wish to retain the flexibility of overseas funds by transferring them to a Cyprus International Trust.

Confidentiality

An individual who wishes to keep anonymity can do this by setting up a Discretionary Trust, which owns the shares in a company. This is a particularly useful and popular vehicle for carrying out trading and financial activities, particularly for residents of countries, which do not recognise the concept of a trust.

Global estate planning

An individual, through the use of a trust, can arrange for it to be inherited by persons, who due to the legislation of the individual's country, would otherwise be excluded from the inheritance.

Asset protection

Individuals from volatile parts of the world may wish to protect part of their fortune from high domestic inflation rates by converting it into strong currency assets. Similarly, individuals can protect their assets against possible expropriation laws, future claims of governments, law suits or international blocking or freezing regulations overseas.



Unique Opportunity

The law allows International Business Companies and International Business Partnerships to act as trustees to an International Trust. This provides some unique opportunities for a wide range of investors as compared to the other common – law international jurisdictions.

The provision opens up two main possibilities:

A Cyprus IBC acting as trustee to a particular trust

The advantages of such a set up are mainly two, namely:

- avoiding to incur the 10 percent tax imposed on Cyprus International Business Companies
- complete confidentiality of the beneficial ownership of an underlying asset.

A Cyprus IBC offering trustee services to third parties

This is usually the case where an International Financial Services Company, such as a bank, can set up an IBC for the purposes of offering trustee services to third parties. The financial institution can derive substantial tax benefits from incorporating in Cyprus, as the income from the trustee services will be liable to tax at the rate of 10 percent.



Types of Trusts

There are various types of trusts that can be set up in Cyprus. The choice depends on the circumstances of the settlor and pertinent objectives.

They include:

Discretionary Trust

It is possible for a settlor in Cyprus to establish a Discretionary Trust based on Cap 193, which states that the powers of trustees can be expanded by the settlor in the trust deed.

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

The Discretionary Trust is the most commonly used type of trust in Cyprus due to the many advantages it provides.

These include:

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

It should be pointed out that in the case of Discretionary Trusts, it is customary that the settlor also prepares a “letter of wishes” in which he or she expresses wishes to the trustees on any matters concerning the trust.



Fixed Trust

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

Fixed and Discretionary Trust

It is possible to have a combination of a Fixed and Discretionary Trust. The trustees may have discretion as to the distribution of income for a period of time but are required to distribute the capital ultimately in fixed proportions.

Conversely, they may be required to distribute the income to a specified person or persons in fixed proportions but may have discretion as to how to distribute the capital amongst a class of beneficiaries.

Trading Trust

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

Purpose Trust

The Cyprus International Trusts Law of 1992 provides a legal definition of a Purpose Trust. This can be a useful adjunct to international corporate planning and can be used to accumulate corporate earnings for general corporate purposes rather than for a defined group of individuals.

Protective Trust

This trust is appropriate when a beneficiary is given a life interest which may become discretionary on certain defined events.

Advantages

A Cyprus International Trust has many advantages including:

- it can last for 100 years
- its income can be accumulated for the entire duration of the trust
- if its terms so provide, the law applicable to it can be changed to a foreign law, provided that the new law recognises the validity of the trust and the respective interests of the beneficiaries
- asset protection is the cornerstone of the International Trusts Law. The current legislation is designed to limit the power of creditors to set aside transfers of assets into a trust. The law makes it difficult to invalidate the trust even in the event of a settlor's bankruptcy unless clearly fraudulent intention was behind the creation of the trust. The onus of proof lies on the creditor, and any action must be brought within two years from the payment or transfer
- confidentiality is an additional feature of the new International Trusts law of Cyprus which ensures that the trustee or any other person, including officers of the government and of the Central Bank of Cyprus, may not disclose to any person any information or documents in relation to the name of the settlor or any of the beneficiaries, the consultations or reasoning of the trustee regarding the exercise of his power, discretion or duties and the accounts of the International Trust
- the income and the profits of a Cyprus International Trust derived or deemed to be derived from a source outside Cyprus are completely exempt from income tax or any other tax imposed in Cyprus such as capital gains, special contribution etc. The property of the trust is not subject to estate duty
- no law, Cypriot or foreign, relating to inheritance or succession affect any transfer or disposition in favour of the trust in any way or otherwise affect its validity
- significant tax privileges including:
 - income not taxable
 - dividends, interest exempt from tax
 - gains on disposal of assets being tax free
 - an alien having a trust and retiring in Cyprus is not taxed
- all or any part of the trust funds may be invested in any investment anywhere, so long as the trustee exercises the diligence and prudence that a reasonable person would be expected to exercise in making investments
- it is exempt from registration under any law.

Trust Incorporation Data

1 **Name of trust** (no restrictions)

2 **Trust period** (state if different than the maximum which is 100 years)

3 **Contents of the letter of wishes**

(provide your wishes concerning the distribution of the trust fund and any other matter that you feel the trustee must be aware, of in connection with the trust fund and/or the beneficiaries)

4 **Settlor** (creator of the trust)

Name	Address, tel, fax nos	Occupation	Nationality
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

5 **Beneficiaries**

(They may be defined by a class of persons rather than namely eg, children, grandchildren etc)

Beneficiary's name	Address, tel, fax nos	Occupation	Nationality, passport, ID no, date of birth	Relationship with settlor
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

6 **Protector**

(Usually a trusted friend or professional advisor or even the settlor who may veto certain trustees' decisions can be excluded altogether from the trust deed)

Beneficiary's name	Address, tel, fax nos	Occupation	Nationality, passport, ID no, date of birth	Relationship with settlor
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

7 **Co-trustees** (if required)

Names	Address, telephone and fax nos
<hr/>	<hr/>
<hr/>	<hr/>



8 Bankers of the trust (complete if specific banks are required)

Name of banks	Address, tel and fax	Bank and currency
_____	_____	_____
_____	_____	_____
_____	_____	_____

9 Management accounts

	Tick	Deadline	Nationality of Recipient
Quarterly	_____	_____	_____
½ yearly	_____	_____	_____
Annually	_____	_____	_____

10 Investment advisor/fund manager (if required)

(This is applicable where the trust property is in stocks and shares and the settlor has previous relationship with a specific fund manager or stock broker whom they wish to retain for investment advice).

Names	Address/tel & fax nos
_____	_____

11 Settlor's views regarding the investment of the trust fund and level of settlor's guidance

Method of communication with the contact persons

Names of persons to contact	Address/tel & fax nos
_____	_____
_____	_____

12 Contact persons and method of communication

No communication	Tick <input type="checkbox"/>	Telephone	Tick <input type="checkbox"/>
Fax	<input type="checkbox"/>	Courier	<input type="checkbox"/>

13 Other information



Cyprus Offshore Trusts

A trust which only fails to qualify as an International Trust because it does not comply with all four requirements of such a trust will be classified as an Offshore Trust. It will be free from any exchange control restrictions and entirely exempt from any tax imposed in Cyprus.

An Offshore Trust can have a Cypriot resident as a trustee, subject to the approval of the Central Bank of Cyprus, and can hold immovable property in Cyprus, subject to the permission of the Council of Ministers.



Oneworld

At Oneworld Ltd we provide solutions to clients. Oneworld Ltd is one of the leading corporate providers and brings a depth of experience of its work and its dealings with clients. Our personnel consists of chartered accountants, lawyers, financial advisors, tax specialists, administrators and company secretaries as well as a highly trained and knowledgeable corporate and support staff.

Our core services cover:

- Corporate and Trust
- Financial Advisory
- Business Advisory
- Accounting and VAT
- Tax and Legal
- Corporate Finance
- Governance and Compliance
- Risk Management

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