

## **GUEST ARTICLE: Asset protection through a Cypriot International Trust**

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*Cyprus has a modern trust regime that offers confidentiality while still complying with international money-laundering standards. It protects assets comprehensively and allows individuals to take advantage of the favorable tax regime in Cyprus. People who want to retain some level of control have many opportunities to arrange this in a Cypriot International Trust or CIT.*

In a world that is becoming ever-more litigious, where assets can be frozen by competitors and frozen by and ultimately forfeited to governments on the basis of unsubstantiated allegations, where governments have deliberately blurred the distinction between tax avoidance and tax evasion, where ever-more aggressive tax authorities retroactively move goalposts, and where pre-nuptial agreements in many countries only have limited effect, it is only prudent to protect one's assets. In the CIT, Cyprus offers one of the best asset protection vehicles available.

Trust legislation in Cyprus contains two main statutes: the *Trustee Law 1955, based on the English Trustee Act 1925*, and the *International Trusts Law 1992*. Whenever these statutes do not make an express provision for a particular matter, English common law and equity can be relied on. In 2012 the International Trusts Law was amended to add asset protection features and make the trust regime available to residents as well as non-residents.

The requirements for creating a trust in Cyprus that falls under the CIT regime are that in the year prior to its creation neither the settlor nor the beneficiaries are residents of Cyprus. Subsequent to its creation, though, the settlor and beneficiaries can become residents of Cyprus. Also, at all times at least one of the trustees should be a tax resident of Cyprus.

A CIT is taxable only on local source income in case all the beneficiaries are non-residents and on worldwide income in case the beneficiaries are resident (income to be attributed proportionally in case the beneficiaries are both resident and non resident). The trust will be tax-transparent and taxed according to the tax that would be payable by the beneficiaries if they had received the income directly. In July 2015, resident but non-domiciled individuals in Cyprus ceased to be subject to the Special Contribution of Defence, which is a tax levied on dividends, interest and rental income. Capital gains are not taxed in Cyprus, with the exception of gains on real estate located there.

### **Badges of intent to defraud**

The *International Trusts Law*, as amended, provides one of the strongest asset protection features available. No claim may be made in respect of the assets that have been transferred to an international trust unless and to the extent that it is proven to the satisfaction of the court that the international trust was made with the intent to defraud the creditors of the settlor at the time of the transfer of his assets to the trust. "Intent to defraud" means the intention of a settlor to dishonestly avoid any obligation that he owes to a creditor. Moreover, the obligation would have to be known to the settlor at the time of the transfer of assets. The onus of proof of such intent on the part of the settlor lies with the creditors. The law states specifically that neither the reservation of certain powers by the settlor, nor his retention of a beneficial interest in the trust, can be construed as badges of an intent to defraud.

Any claim of a creditor on this basis in respect of the assets that have been transferred to a trust must be made within a period of two years from the date on which the transfer or disposal of assets was made to the trust.

Cyprus does have forced heirship provisions in its Wills and Succession Law which are applicable to domiciled persons unless these are from the United Kingdom or most Commonwealth countries. However, if one has set up a CIT before becoming resident, one can then circumvent these provisions by transferring assets to a trust. The CIT law states that the laws in force in Cyprus or in any other jurisdiction in respect of any inheritance or succession should not affect the transfer or disposition or validity of any international trust in any manner. Also a trust or disposition to a trust will not be invalidated by the law of any jurisdiction by reason of a personal relationship to a settlor or any beneficiary. So any claims arising out of a divorce case will not be entertained.

Finally, to drive home the point that Cyprus takes asset protection very seriously, the new *section 12C* states that compliance with the CIT is a matter of public order. This would suggest that should there be any 'conflict of law' issues, such as those arising out of forced heirship or divorce claims, that the trust law will prevail.

Aside from the asset-protection elements of the law, here are some other noteworthy features of the amended law.

- Perpetual trusts are allowed.
- Trust property can be situated anywhere, including Cyprus.
- Purpose trusts, including charitable trusts, are allowed. The requirement that beneficiaries of a trust must be ascertainable is waived when the trust is established for a specific purpose.
- Reserved powers, i.e. a specified list of powers that a settlor or protector may exercise (subject to the trust instrument), are provided for in the law. An exercise of some or all of these powers will not in any way affect the validity of the trust, nor delay its execution. A trustee who complies with the exercise of these retained powers can not be held to be acting in breach of trust.
- Exclusive jurisdiction applies. Unless the trust instrument states otherwise, the trust will be subject to the exclusive jurisdiction of the Cypriot courts. A foreign judgment dealing with any issues pertaining to a CIT is not enforceable in Cyprus. Any matters related to the validity, interpretation, amendments, revocation and administration of a CIT are determined in accordance with Cypriot law without reference to the law of any other jurisdiction.

Subject to the terms of the instrument creating an international trust, the law imposes specific confidentiality provisions on trustees, protectors and enforcers – for instance, the name of the settlor and beneficiaries may not be disclosed. Pursuant to an amendment of the CIT Law as well as the Law on the provision of Administrative Services in 2013, trustees are regulated with the exception of Private Trust Companies (PTCs). The three supervising authorities are the Cyprus Securities and Exchange Commission (CySec; for Administrative Services Providers), the Cyprus Bar Association (for Advocates) and the Institute of Certified Public Accountants of Cyprus (for Accountants and Auditors).

Trustees must collect and have at all times available for disclosure to the relevant authority the following information, where applicable:

- the identities of all trustees;
- the identity of the settlor;
- the identities of all beneficiaries or information on the class of beneficiaries;
- the identity of the protector (if applicable);
- the identity of the fund manager, accountant, or tax official (if applicable); and
- the activities of the trust.

Moreover, certain limited information ought to be provided to the supervising authorities for the purpose of maintaining a trust registry. The trust registries maintained by each of the supervising authorities contain the following information on CITs.

- Name of the trust.
- Name and full address of every trustee at all material times.
- Date of creation of the trust.
- Date of any change in the law governing the trust to or from Cypriot law.
- Date of termination of the trust.

The trust registers are not available for inspection by the public. The roles of protector and that of enforcer are excluded from the scope of the *ASP Law* on the grounds that these are people whom the settlor appoints to oversee things in a personal capacity.

PTCs are not regulated but still trusts administered by PTCs are responsible for maintaining and reporting certain information to CySec. There are restrictions on the type of trust arrangement for which a PTC can act as a trustee. Specifically, a director of a PTC must be:

- a person who is the settlor of the trust; or
- a person who is the beneficiary of the trust or the spouse of a beneficiary; or
- a family member of the beneficiary or his spouse up to the fourth degree of relation.

The PTC would need to have at least a secretary who is resident in Cyprus with responsibility for collecting information pertaining to the trust and making it available for disclosure to CySec. The PTC would be responsible for notifying CySec of the information to be maintained in the trust register.

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