

Cyprus/ March 2012

## Amending the Cyprus International Trust Law of 1992: the new changes analysed

The much anticipated reform of the Cyprus International Trust Law has finally arrived, as it has been approved by the House of Representatives on March 9 2012. The much debated amended law will modernise the legal framework for international trusts and is expected to boost investment in Cyprus. Although the 1992 Law established a premium regime for international trusts and Cyprus was rendered as an extremely beneficial jurisdiction, developments in the economy and business practices demanded changes in the existing legislation. The new law clarifies grey areas and removes restrictions and limitations that are no longer necessary while the foundations of the law remained intact.

The major changes to the law are demonstrated below:

### Residency Provisions

Section 2 of the 1992 Law was amended to illuminate the provisions on residency. The new law provides that the settlor may not be a Cyprus resident in the year preceding the year of creation of the trust as opposed to the previous law, which limited the use of international trusts to settlors that were not residents. Under the prior law it was not evident whether settlors could reside at Cyprus after forming an International Trust, and this ambiguity surely dissuaded them from relocating. The amendments to Section 2 clarify when a person can reside in Cyprus and still be eligible as a settlor under an International Trust. The same rule also applies to beneficiaries; namely the beneficiary may not be a Cyprus resident in the year preceding the year creation of the trust.

### Reserved Powers of the Settlor

Section 4A was added to the new Law, extending the powers of settlors of Cyprus International Trusts. Revocation and modification of the trust terms by the settlor is now allowed. In addition, the settlor may instruct the transfer, distribution, payment or transfer of income or capital from the trust property or the adoption of directions as regards the above. The settlor may also appoint or remove a Trustee, a Beneficiary or a Director of any of the companies that belong to the trust or the settlor can act as a director himself and a settlor can also issue binding instructions to Trustees in connection with the exercise of any power. What is more, the settlor may choose the applicable law that will govern the Trust.

### Governing Law

All matters arising in relation to an International Trust shall be determined in accordance with the applicable law of the Republic of Cyprus, without reference to the applicable law of any other jurisdiction. Therefore, any matters regarding the validity, interpretation or effect of any trust or transfer will be decided by the laws of Cyprus as well as the fiduciary powers and duties of trustees are regulated solely by the Cypriot Laws. What is more, no International Trust is void or voidable because it is contrary to any law of any other jurisdiction. The Law clearly states that the

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inheritance laws of any other country will not be forced in Cyprus courts and this provision makes sure that the heirship provisions in succession laws of foreign countries do not apply for the Cyprus International Trust.

### Duration of Trusts

In regards to an International Trust which was established during or after the entry into force of this new Law, there is no limit on the period over which a trust may continue to be valid and enforceable. The new law abolishes all restrictions on the duration of trusts. Excluding express terms of the trust to the contrary, no concession, distribution, payment, holding or disposal of the income or capital of the trust to another trust is invalidated merely by reason that the other trust continues to be valid and enforceable after the date on which the first trust ceased to exist.

Under the 1992 law, an International Trust could be valid up to 100 years from the date of creation, with the exception of charitable and purpose trusts which were permitted to exist in perpetuity.

### Charitable Institutions

The new law also redefined Charitable Institutions. As per the amended Section 7, International Trusts are considered as charitable institutions where the trust has the main objective of achieving one or more of the following purposes:

- (a) Prevent or alleviate poverty;
- (b) Promote education;
- (c) The promotion of religion;
- (d) Promoting health or salvation of life;
- (e) Promote the development of citizens and of the community;
- (f) Promoting art, culture, heritage or science;
- (g) The promotion of amateur sports;
- (h) Promoting human rights, dispute settlement or reconciliation or the promotion of religious or national harmony or equality and individuality;
- (i) Promote the protection or development of the environment;
- (j) Relief needs arising from young or advanced age, ill health, disability, economic hardship or other disadvantage;

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(k) Promote the welfare and protection of animals; and

(l) For any other reason for the benefit of the general public or which is consistent with paragraphs (a) - (k) above.

As with the previous law, beneficiaries of Trusts which are considered Charitable Institutions are not required to be non-residents of Cyprus.

### Powers of Trustees

The Powers of Trustees have been extended as Section 8 of the 1992 Law has been amended. The Trustee may hold, maintain or invest in movable property in Cyprus and abroad, including shares in companies formed in Cyprus and in real estate located in Cyprus or abroad. The uncertainty as to whether Trustees can invest in movable or immovable property in Cyprus is therefore removed. This amendment is expected to advance the real estate market of Cyprus and multiply investments in the small island.

The new law recognises the already existing powers of Trustees, which ensure, that the Trustee is capable of performing his tasks. Some of the most important powers are:

- To make capital distribution;
- To borrow;
- To guarantee;
- To mortgage;
- To employ;
- To invest/lend money;
- To make payments for/on behalf of beneficiaries; and
- To advance money to another trust

### Why form a Cyprus International Trust?

There was so much controversy surrounding the new Law, that we forgot why International Trusts are of so much importance to foreign investors. The benefits arising from the use of International Trusts distinguish Cyprus as one of the most advantageous trust jurisdictions:

- Income, gains and profits are exempted from income tax, capital gains tax, special defence contribution or any other taxes in Cyprus;
- No estate duty or inheritance tax;
- There are no reporting requirements in Cyprus for International Trusts; and

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- Dividends, interest or royalties received by an International Trust from a Cyprus Company are non taxable and not subject to any withholding tax.

International Trusts are ideal for asset protection, inheritance and tax planning.

Asset Protection: Assets can be protected by claims brought forward by creditors or others.

Inheritance Planning: An International Trust can operate as a will transferring assets to persons who would have not been allowed to acquire such assets because of other reasons such as irresponsibility or incapacity.

Estate Duty Planning: By using a Cyprus International Trust, an individual can avoid a substantial estate duty when migrating to another jurisdiction, as the assets will remain in the Trust.

Tax Planning: Cyprus International Trusts enjoy one of the most advantageous tax treatments as aforementioned.

What is more, confidentiality and secrecy are of vital significance to International Trusts. The Central Bank of Cyprus or any other Governmental Body, are not entitled to disclose information or documents relating to:

- (a) The Settlor;
- (b) Beneficiaries;
- (c) Trustees; and
- (d) Property or accounts of the International Trust.

## Conclusion

Taking everything into consideration, the long-awaited changes to the 1992 Law modernised and updated the International Trusts Legislation to correspond to the needs of the current economy. Enhanced protection is now provided to Settlers and Beneficiaries as many uncertainties in the law have been clarified and amendments were introduced to illuminate any grey areas. The new law has now been put before the European Commission in order to ascertain alignment with the *acquis communautaire*. The reform of the International Trust Law brought Cyprus once again in the forefront of trust jurisdictions and given the island's beneficial tax regime the new legislation is expected to be one of the most useful tools in tax planning for foreign investors.

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