

“The Cyprus International Trust Rises”

By Dimitria Coucouni-Andreou

A. TRUSTS

In a world moving faster than the speed of light, where the needs of individuals and corporations are determined by rapidly changing economic conditions and tax considerations the need for sound, flexible and beneficial legal and tax regulatory frameworks is becoming an ever greater necessity.

International investments are made more and more nowadays through trusts which are no longer seen as useful only in family planning situations.

These ‘vehicles’ if one may be permitted to use the word, while in existence for a long time in countries such as the UK and other common law jurisdictions, were not so well known in other especially civil law jurisdictions but have been rising in popularity for more reasons than one thus providing substantial growth to the ‘Trust Industry’ as ever more non-common law jurisdictions also begun recognising this concept and understanding its particularities.

It is no secret that trusts have been for some time an exciting means of beneficial tax planning, for inheritance purposes or future family planning but also for shielding assets from potential creditors.

B. TRUSTS IN CYPRUS

The concept of the trust in Cyprus is based on the English concept and is similarly used as in other ex-British colonies or countries with similar legal systems.

Cyprus accepts what is provided under article 2 of the Hague Trust Convention ie that a trust is “*a legal relationship created inter vivos or on death of a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specific purpose*”.

In Cyprus trusts were governed by the Trustee Law of 1955, Cap 193, which covers some of the principal aspects of the trust relationship. Furthermore, the Cypriot Courts follow the Common Law and equity principles save insofar as other specific provision has been provided for by law and so long as these principles are not inconsistent with the Cypriot Constitution.

Trusts in Cyprus can be Private or Public-Charitable and they can be, amongst others, Express, Resulting, Constructive, Implied, Fixed, Protective, Discretionary, Trading trusts or trusts for large projects.

They can either be set up for the benefit of one or more individuals or corporations and/or for certain purpose(s) and/or they can form part of a group of entities depending on the requirements at hand.

In Cyprus a trust can be created by a will or by a trust deed i.e. a document executed by a settlor and is a vehicle through which assets can be held or managed by trustees for the benefit of persons both physical and legal indicated by the settlor which can include the settlor himself.

In a fast growing and legally complex world the need to develop tax compliant strategies for families with international connections seeking to protect their assets was recognised early on in Cyprus which sought to enact specific legislation targeted especially on non-residents wishing to set up a trust in Cyprus that would provide the means to hold and manage assets out of Cyprus without suffering any tax consequences whatsoever in Cyprus.

The enactment of The International Trusts Law 69(I) of 1992 (hereinafter ‘the Basic Law’) which has been perhaps the most important piece of legislation in relation to trusts in Cyprus for the last two decades brought into existence the Cyprus International Trust, a concept which has been quite popular amongst settlors since 1992 and which afforded non-resident settlors and beneficiaries immense tax benefit and asset protection and provided the basis for important tax planning.

C. THE CYPRUS INTERNATIONAL TRUST

C.1 General

The Cyprus International Trust has been a very useful tool in international tax planning for the last 20 years.

The main advantages stemming from the use of Cyprus International Trusts have long been recognised as being:

- (a) The possibility to plan beneficially for tax reasons
- (b) Asset protection
- (c) Confidentiality
- (d) Avoidance of forced heirship restrictions &
- (e) Estate Planning after death for the avoidance of problems between families

While the Cyprus International Trust has faithfully served its purpose, the law applicable to such trusts in Cyprus has very recently been the subject of legislative review the aim of which has been to modernise the existing legislation applicable to such trusts. The new revised legislative framework clearly confirms that the Cyprus International Trust is now ready to serve for the next 20 years to come as the revised law applicable now to such trusts is able to meet present day needs and requirements of individuals and corporations.

Cyprus, through passing the amendment to the Basic Law in March of this year and bringing about the International Trusts (Amending) Law of 2012 (Law 20(I) 2012), has sought to modernise the existing Basic Law while preserving at the same time all the benefits that were available under it.

The revised legislation (hereinafter ‘the Revised Trust Law’) provides more certainty on the application of the law, it provides trustees of Cyprus International Trusts with wider powers, enables such trusts to be of unlimited duration while it also generally brings the Cypriot legislation on trusts in line with modern equivalent provisions other trust efficient jurisdictions already have in place which allow for flexibility on the changing conditions that may affect a trust.

One of the most important changes brought about through the legislative revision of the Basic Law has been the removal of the requirement of non-residence ie the application of the Basic Law solely on settlors and beneficiaries that were non-residents of Cyprus.

C.2 Definition of International Trust

Under the Revised Trust Law there is now a revised definition of what constitutes an ‘International Trust’. Hence under the new provisions, an International Trust in Cyprus is a trust of which:

- a) the settlor, either a physical or a legal person, is not a resident of the Republic of Cyprus during the calendar year preceding the year of creation of the trust
- b) none of the beneficiaries, either physical or legal person(s), with the exception of a charitable institution, is a resident of Cyprus during the calendar year preceding the year of creation of the trust and
- c) at least one of the trustees during the whole duration of the trust is a resident of Cyprus

The above new definition now clearly clarifies the position on individuals that wish to set up a Cyprus International Trust prior to re-locating to Cyprus something that before was not entirely certain. The provisions of the Revised Trust Law have eliminated any potential uncertainty in cases of non-resident settlors and/or beneficiaries who, following the setting up of a Cyprus International Trust, wished to relocate to Cyprus and have provided strong tools for advanced planning especially in the instances of such persons or corporations that may want to relocate to Cyprus at some point in time after the setting up of the trust, whether or not they are settlors or beneficiaries under such settlements.

At the same time the above definition still allows for the utilisation of the legislation by individuals or corporations that are and wish to remain non-residents of Cyprus in the same way as this was used before.

In addition under the Revised Trust Law the scope of Charitable Trusts has been widely extended to reflect the charitable purposes as defined by the Charities Act 2006 of England and Wales thus bringing Charitable Trusts also in line with current world trends.

C.3 Definition of Trustee

The new definition of ‘Trustee’, which is defined as a legal or physical person that possesses assets of a trust or has had assets of a trust transferred to him/her, or it is implied that they possess or are expected to have possession of assets of a trust to hold for the benefit of a beneficiary and for any purpose, now enables the trustee to also be a beneficiary under the same trust something that before was not possible.

C.4 Protector - Supervisor on the Application of a Trust

While it was previously also possible to appoint a protector in relation to a trust ie a person that had the power to control key powers of the trustee so that they could only be exercised with the prior consent of such a protector, the Revised Trust Law includes a specific definition on a protector of a trust. The latter is defined as a person, other than the trustee, to whom any type of powers can be allocated through the trust deed, including the power to advise the trustee in relation to the exercise of their powers or in relation to the right of a trustee to consent or veto any action and includes the power of appointment or cancellation of the appointment of the trustee.

The Revised Trust Law introduces also the concept of a ‘Supervisor on the application of the Trust’ whose duty is to ensure the execution of an International Trust set up for a non-charitable purpose.

C.5 Unlimited Duration of the Trust

Cyprus International Trusts can now be of unlimited duration as the Revised Trust Law no longer contains the previous stipulation that such trusts could be of a duration of only up to 100 years from the date they were set up. Instead it provides specifically that there is no limit in relation to the duration of such a trust.

C.6 Powers reserved by a Settlor

A new Article 4A in the Revised Trust Law provides for a wide framework of powers that can now be reserved by the settlor, both as regards the assets of the Trusts but also as regards changes in the applicable law of the trust or the forum of its administration.

Under the Revised Trust Law, settlors are able not only to also be beneficiaries under the trust settlement but they have the ability to maintain for themselves certain powers in relation to the trust and/or to grant themselves certain powers which they can exercise in the capacity of protector of the trust or supervisor on the application of the trust. The maintenance of such rights or powers in relation to the trust does not in any way affect the validity of the trust. Powers that may be maintained by settlors include:

- a) powers of revocation, amendment of the terms of a trust or powers that arise wholly or in part from the trust;
- b) powers in relation to the allocation, distribution, payment or disposition through other means of income or capital from the assets of the trust or the issuing of directions in relation to such granting, distribution payment or disposal;

- c) powers of corporate director or officer or the issuing of binding directions in relation to the appointment or removal of any corporate director or officer of any company belonging in whole or in part to the trust;
- d) the issuing of binding directions to the trustee in relation to the acquisition, holding, disposal, administration, lending, pledging or charging of the assets of the trust or the exercise of any powers or rights resulting from the ownership of such assets;
- e) the appointment or removal of any trustee, protector, beneficiary or supervisor on the application of the trust;
- f) the appointment or removal of an investment manager or investment advisor;
- g) the power to change the applicable law of the trust or the forum of management of the trust;
- h) the restriction on the exercise of any powers or the discretion of the trustee with the ability of the settlor to demand that such powers be exercised only with the prior approval of the settlor or any other person specifically mentioned in the trust deed.

In addition, the Revised Trust Law now clearly provides that in instances of powers such as the above having been retained by the settlor either in the capacity as settlor or protector or supervisor on the application of the trust and the trustee acting in accordance with such powers, the trustee will not be considered as acting in breach of the trust nor can any intention to defraud be attributed to the settlor for the purposes of Art.3(2) of the Amending Law 2012 i.e. in instances of bankruptcy of the settlor.

The above new provisions brought about following the revision of the Basic Law were seen as necessary to enable an International Trust to be flexible enough in light of changing and evolving conditions. Jurisdictions such as Guernsey and Jersey have had similar provisions in their legislation and now Cyprus International Trust Law provides for instances of change. The need for adaptability can now be better served accordingly.

C.7 Trustee Powers

Powers of trustees depend on the trust deed and in case the said trust deed does not provide for certain situations then the law will be applied.

The Revised Trust Law now has extended the powers of investment. It provides that, subject to the terms of the trust deed, a trustee is able to invest the whole or part of the capital in any investment form as if they were solely entitled to the assets of the trust, no matter where the investment lies and no matter whether the capital is already invested or not. Moreover, the trustee is able to amend the investment or maintain it in its original form, provided they show the care and prudence that a reasonable person is expected to show when making investments.

There are no limitations in the investments trustees can make as regards the trust and in this way they can serve the needs and interests of beneficiaries in the best way possible and one needs to stress that the prior prohibition on the ability of such an entity to hold immovable property located in Cyprus has now also been lifted through the revision of the Basic Law.

A trustee of an International Trust is able to possess, hold or invest in movable property in Cyprus and abroad including in shares of companies that are set up in Cyprus and immovable property that is located in Cyprus or abroad.

Hence it is now possible for a Cyprus International Trust to own immovable property not only anywhere in the world but in Cyprus as well. This has been one of the most important amendments to the Basic Law as it provides new possibilities and potentials for investment in the real estate market in Cyprus which is viewed with increased interest currently also in light of the discovery of natural resources in Cyprus that have placed Cyprus on the energy map of the world. We will examine the tax treatment of property ownership within Cyprus further down in our analysis of the taxation of the Cyprus International Trust.

Trustees, as has always been the case, need to administer the trust property with prudence and they must comply with all the terms of the trust instrument. Under the Revised Trust Law trustees are now clearly able to apply to the courts for directions as to the way they may act in relation to any specific matter which concerns a Cyprus International Trust.

C.8 Accumulation of income

The Revised Trust Law has maintained the beneficial provision on the ability of the trust to accumulate income for any period during the existence of the trust.

C.9 Validity of the Trust

Article 3 of the Revised Trust Law provides clear guidance as to issues of validity of the trust and confirms that such issues are determined solely on the basis of Cyprus Law.

Cyprus International Trusts were always considered as immune from forced heirship rules and provided also the means for substantial asset protection.

Under the aforementioned article of the Revised Trust Law it is clearly stipulated that all matters pertaining to the trust or any disposal of assets to such a trust, including without limitation issues of validity or interpretation, issues of management of the trust whether this is carried out in Cyprus or elsewhere, including issues relating to the appointment, removal of trustees or protectors, issues relating to the powers under the trust or the powers, obligations or duties of trustees or protectors, will be determined on the basis of Cyprus Law without reference to the law of any other jurisdiction.

The new legislation provides that a settlor who transfers or in any way disposes of an asset to a Cyprus International Trust is deemed to possess the ability to do so provided during the time of the transfer of the asset such settlor is of age (i.e. not a minor) and of sound mind in accordance with the law of the country of which they are a resident.

It is further clearly provided that no Cypriot law and no foreign law relating to inheritance or succession will invalidate the trust or affect in any manner any transfer or disposition relating to the creation of such trust or its validity.

Thus, for example the inheritance laws of the country of residence of the settlor relating to forced heirship shall in no way affect a transfer or disposition made by a settlor to a Cyprus International Trust.

This means that a Cypriot International Trust will continue to be immune from forced heirship provisions of foreign laws.

In addition the liquidation or bankruptcy of the settlor of a Cyprus International Trust in no way affects the validity of the settlement notwithstanding any law in Cyprus or in any other country, even if there was no consideration for any disposition made to the trust unless such disposition was made with the intent to defraud the creditors of the settlor at the time the transfer is made.

Article 3 of the Revised Trust Law provides for a right of creditors to raise an action against the trustee to set aside a trust if it is proved in Court that the trust was created with the intention to defraud the settlor's creditors at the time of transfer of the settlor's assets to the trust. The onus of proof of such intention lies with the creditors and any action against the trustees for the avoidance of a trust in such a case needs to be brought within two (2) years from the date of such transfer. After that, no action lies and the trust is immune.

In addition, the Revised Trust Law now under clear provisions to this effect provides that no Cyprus international trust or disposal to such a trust will be void or voidable or subject to a possible set aside by reason that the law applicable in any other jurisdiction forbids or does not recognise the concept of the trust. Nor shall any ability of a settlor, trustee, protector or supervisor on the application of the trust be called into question on this basis and no settlor, trustee, protector or supervisor on the application of the trust shall be deprived of any right, interest or claim by reason of the non recognition of the concept of the trust by any jurisdiction or because the Trust or the disposal cancels or may cancel rights, claims, interests, obligations or responsibilities, that result to or are imposed by law on any persons due to the personal relationship with the settlor or any beneficiary or because of hereditary rights or is or may be against any law or any court or administrative decision, order or action in any other jurisdiction, the intention of which being the recognition, protection, execution or realisation of any such rights, claims, interests obligations or responsibilities and which seeks to cancel the trust or the disposal.

As it can clearly been seen, the level of asset protection maintained by the Cyprus International Trust continues to be the highest possible.

One has to stress that there has been very little litigation in relation to Cyprus International Trusts. Generally, however, on the basis of current legislative framework relating to on International Trusts in Cyprus as we have seen it is very difficult to attack a Cyprus International Trust not only from the point of view of estate rights of heirs on the death of an individual but perhaps most importantly in a commercially complex world from the point of view of disgruntled creditors who may wish to attack trust arrangements. Asset protection is a requirement very high up in the agenda of almost

every person without exception and the Revised Trust Law in Cyprus clearly continues to serve this purpose in the best way possible.

C.10 Taxation

More importantly, however, in relation to revision of the Basic Law, one has to stress that the Revised Trust Law is still able to give rise to taxation at 0% in Cyprus in the instance of non-residents and where the assets and investments of a Cyprus International Trust are out of Cyprus.

Taxation of a Cyprus International Trust under the Revised Trust Law is determined by the tax residency of the beneficiaries of the Trust.

Under Art. 12 of the Revised Trust Law:

- a) the income and the profits of an international trust, which are obtained or considered to derive from sources inside and outside of Cyprus, are subject to every tax that is imposed in the Republic of Cyprus in the instance of a beneficiary who is a resident of the Republic of Cyprus;
- b) in the instance of a beneficiary who is not a resident of the Republic of Cyprus, the income and profits of an international Trust which derive from or are considered as deriving from sources within Cyprus are subject to every tax imposed in the Republic of Cyprus.

In light of Cyprus tax legislation which provides for taxation on the worldwide income of every person that is a tax resident of Cyprus, the important factor to consider here is the tax residency of the beneficiary.

Thus, in the case of a beneficiary of a Cyprus International Trust who is tax-resident in Cyprus, such a person will be subject to taxation in Cyprus on all incomes derived whether from sources both within Cyprus and/r or from sources out of Cyprus.

In the instance, however, of a non Cyprus tax-resident beneficiary such a person will be subject to Cyprus tax only on income that stems from or arises out of sources from within Cyprus.

For example rental income from a Cyprus located property or income from a permanent establishment in Cyprus will be subject to Cyprus tax whether or not the beneficiary is a tax-resident of Cyprus.

In the case however of interest or dividends etc, this will not be subject to taxation in Cyprus where the beneficiary is not a Cyprus tax- resident.

The trustee is under an obligation to make all the necessary arrangements for the registration of a Cyprus tax-resident beneficiary and to ensure the submission of the relevant tax returns and the payment of any tax due.

Taxation is thus clear in instances of trusts where all the beneficiaries are either all Cyprus tax resident or non-Cyprus tax resident.

The issue that remains to be the subject of further guidelines to be issued by the Department of the Inland Revenue in Cyprus is in the instance of a trust that has both Cyprus tax-resident and non Cyprus tax-resident beneficiaries and both Cyprus source income and income that arises from sources outside of Cyprus.

We will no doubt have the ability to examine these issues in more details once the new guidelines have been issued which will specifically relate to the way a trustee will need to handle these issues however it is possible to say that in cases of a mixture of both Cyprus tax- resident and non Cyprus tax-resident beneficiaries the issue will need to be determined again by virtue of the specific rights that the beneficiaries have in the trust.

The trustee in such cases will need to provide for Cyprus tax in relation to the Cyprus tax-resident beneficiaries and/or to the Cyprus related income.

By way of additional obligation imposed on trustees, the latter are now also under a clear legal obligation to comply with all anti money laundering regulations.

C.11 Confidentiality- Disclosure of Information

The Revised Trust Law has preserved the confidentiality of the Cyprus International Trust and the prohibition, in the absence of a court order to this effect, on the disclosure by the trustees or protector of any information or document to any party that is not entitled to by law to receive such documents or information.

Hence apart from the duty of trustees to comply with the terms of the trust deed, they need only comply with any Court order for disclosure, if such is issued.

Under the Revised Trust Law the trustee may not generally disclose documents or information:

- a) which may reveal the identity of the settlor, or
- b) which may reveal the identity of the beneficiaries, or
- c) which may reveal the trustee's decision making as to the way in which their power or discretion has been exercised, or
- d) which relate or are part of the accounts of the International Trust.

Subject to any contrary provisions in the trust deed and on the basis of basic trust law principles, beneficiaries normally had the right to ask for a copy of the trust deed and any other information pertaining to the trust, e.g. information on the assets of the trust which in any case would form part of the accounts of the trust which could also be requested and considered. The equitable duty of trustees to provide trust information to beneficiaries was also upheld.

Now under the Revised Trust Law it is clearly stipulated that on application by a beneficiary for the disclosure of the accounts of the International Trust or any document or information that has to do with the income and expenditure by the trustees which are part of the accounts, the trustee has the power to disclose such accounts, documents or information to the beneficiary if in their opinion such disclosure is necessary and secures the interests of the trust.

A court before which civil or criminal proceedings are pending may allow the disclosure of information or documents relating to the trust after an application is submitted in such civil or criminal proceedings.

However, the court will only issue an order for disclosure if it is satisfied that such disclosure is important to the outcome of the proceedings before it.

Hence, the current legislative framework maintains the very important aspect of confidentiality that has been one of the main advantages of the Cyprus International Trust throughout time.

C.12 Miscellaneous

In the absence of clear provision to the contrary in the trust deed a Cyprus International Trust is considered as irrevocable.

The initial stamp fee of €430 for the legalisation of the trust deed document on creation of the Cyprus International Trust has been maintained under the Revised Trust Law.

Under the Revised Trust Law, a Cyprus International Trust is still under no obligation to be registered under any registry nor are there any reporting requirements imposed by the law to the authorities.

A trust is usually governed by the law chosen as the applicable law of the trust by the settlor. Subject to the provisions of the trust deed, it is possible on the basis of the Revised Trust Law to change the applicable law of the trust.

Moreover, it is now also possible under the provisions of the Revised Trust Law to seek to amend the terms of an International Trust through filing an application before the Cyprus Courts with such a request.

Changing needs and requirements of investors as well as investments can thus now be served under a more flexible regulatory framework.

D. CONCLUSION

The opportunities to expand the use of trusts in one's affairs are ever growing. It cannot be denied that this has to be done always with caution as the misunderstanding of trusts or the legislation applicable to such a vehicle in different jurisdictions can give rise to problems, trusts may come under attack and trustees have been known to suffer damaging litigation in different jurisdictions.

We strongly believe however that the modern and up to date legislative framework under which the Cyprus International Trust is able to operate, continues to provide considerable advantages that can be utilised under the correct advice and guidance to promote and advance one's needs not only for mitigating tax consequences but equally in relation to instances of necessary arrangements in relation to future family planning, asset protection as well as in instances of holding and managing international operations and/or making and holding new investments.

For certain the revised International Trust legislation in Cyprus forms the basis of exciting new prospects relating to the setting up and utilisation of a long established entity such as the Cyprus International Trust that has been favoured throughout many years, has endured time and has survived so as to be revitalised and continue stronger than ever.

Mrs Dimitria Coucouni-Andreou is a senior partner in the law firm of Andreas Coucounis & Co LLC (www.coucounis.com)