

CYPRUS INTERNATIONAL TRUSTS

CIT guide



“Our Trustees law in Cyprus is largely based on the English Trustees Act 1925 and the doctrines of Equity. Trusts are created for many important reasons, such as charitable trusts, forced heir ship, for children of vulnerable adults, unit trusts, confidentiality, tax planning, gains tax or income tax, asset protection”.



OVERVIEW

Trusts have been long used as a means of tax planning, business organisation and asset protection vehicles and have recently been, due to amendments in the relevant legislation, modernized and adapted to modern tax planning needs.

Our Trustees law in Cyprus is largely based on the English Trustees Act 1925 and the doctrines of Equity. Trusts are created for many important reasons, such as charitable trusts, forced heir ship, for children of vulnerable adults, unit trusts, confidentiality, tax planning, gains tax or income tax, asset protection.

The Law does not provide a comprehensive definition of ‘trusts’. Trusts law was principally developed by Cyprus case law. Accordingly, a trust arrangement entails the following:

- a. an obligation on the holder of property (the *“trustee”*)
- b. to manage that property (the *“trust property”*) for the benefit of another (the *“beneficiary”*).

The legal title to the trust property is vested in the trustee by its previous owner (the *“settlor”*) and the trust property is managed by the trustee in accordance with the instructions of the settlor, which are usually given in writing or expressed in a trust deed (the *“trust instrument”*).

The instructions may also be oral. It is of utmost importance to note that although the trustee has legal ownership of the trust property, it does not belong to him. The beneficial owner/s of the trust property is/are the beneficiary/ies and the trust property is only available to them.

DURATION

Under the new legislation the previous restriction of a maximum duration of 100 years has been abolished and thus a CIT can now be of indefinite duration.

VALIDITY

The law confirms the validity of a trust created by any person who is of full age and of sound mind, regardless of any provisions relating to inheritance or succession of the law of Cyprus or the law of any other country.

The International Trust is irrevocable unless a specific power of revocation is reserved in the trust instrument and cannot be set aside by the settlor's creditors unless and to the extent that it can be proven that the trust was made specifically with the intent to defraud them. The burden of proof lies with the person wishing to set aside the trust and any such action based on fraud is subject to limitation period of two years from the date the assets are transferred to the trust.

The terms of the trust apply according to the law of the Republic of Cyprus which prevails over that of any other jurisdiction, including provisions relating to inheritance. Furthermore the validity of a trust and the terms of the trust cannot be challenged on the basis that the law of any other jurisdiction does not recognise the notion of trusts or that the terms of the trust are contrary to the law of any other jurisdiction or that the trust cancels rights arising from the law of any other jurisdiction.

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For a valid trust to be created, the following three certainties must be proved:

1. CERTAINTY OF INTENTION

There must be evidence of the express intention of the settlor to create the trust. This is usually evidenced by the trust instrument (it is possible to have orally created trusts);

2. CERTAINTY OF SUBJECT MATTER

The assets that are to become the trust property must be readily identifiable, i.e. money, property, shares etc;

3. CERTAINTY OF OBJECTS

The identity of all the intended beneficiaries of the trust must be ascertained or ascertainable at the time of setting up the trust.

PERPETUITY

Under the 2012 Law, an international trust which was established during or after the entry into force of the 2012 Law has no limit on the period over which an international trust may continue to be valid and enforceable. Accordingly, the 2012 Law abolishes all restrictions on the duration of trusts.

Moreover, 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. The perpetuity rules do not apply in the case of charitable or purpose trusts which may continue indefinitely.

The International Trust is irrevocable unless a specific power of revocation is reserved in it and cannot be set aside by the settlor's creditors unless and to the extent that the creditors can show that the trust was made with the intent to defraud them. The burden of proof of such intent lies with the creditors and an action against the trustees to avoid the trust, on grounds of fraud, must be brought within two years from the date when the relevant transfer or disposition of assets is made to the trust.

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Although the various types of trust vary in complexity, the common feature or basic Structure is as follows:

- The **Settlor** is the person who creates the trust; he is the owner of the initial property placed under trust; he has the assets and places the same into the trust.
- The **Trustee/s** is the person/s (individual or company) who agree/s to hold the trust assets (the 'trust assets) in its/their name for the benefit of the Beneficiary/ies under the terms of the trust.
- The **Trustee** has the legal title to the trust assets whereas the Beneficiary has beneficial or equitable title to the trust assets. Save in cases of bare trusts the Beneficiary is usually unable to have a say in the management of the trust property or the termination of the trust.
- The **Protector** (is not compulsory but if appointed, it) is the person that has the power to restrict key powers of the trustee, such as the power to add beneficiaries to the trust.
- The **Enforcer** (could be the Protector) is the person or persons whose duty is to enforce an international trust for a non-charitable purpose in accordance with the CIT.

A trust may be created by the owner of property upon his death, by a testamentary disposition of the property into the trust accompanied by a letter or wishes but it is more appropriate and common that the trust is created during the lifetime of the owner of the property by a trust instrument/deed. A trust created through a testamentary disposition would not avoid inheritance laws or taxes where applicable, whereas a disposition of the trust property during the Settlor's lifetime avoids such problems.

CONFIDENTIALITY

The International Trusts Law prohibits any of the trustees, the protector, the enforcer or any other person from disclosing to any other person any information regarding the trust, the trustees, the settlor or the beneficiaries.

It is only possible to disclose such information in pursuance of a court order where the disclosure is of paramount importance to the outcome of specific criminal or civil proceedings.

RELOCATION

The International Trusts Law allows the removal of an existing international trust from Cyprus and vice versa, provided the following conditions are met:

- There must be a stipulation in the trust deed expressly permitting such a change of jurisdiction
- The new jurisdiction must recognise the validity of the trust and the respective rights of the beneficiaries.

Alternatively when a trust is to be moved to Cyprus from another jurisdiction then the Law requires that the move be recognised by the laws of the other jurisdiction. This could be of importance where a change in circumstances may render such a transfer advantageous for fiscal or other reasons.

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CONFIDENTIALITY

TAXATION

International Trusts provide a number of significant tax advantages. To begin with, all income and profits of an International trust are not taxable in Cyprus. Additionally, any dividends, interest or other income received from a trust is not subject to tax or withholding tax if received from an international business company (IBC). Moreover, non-residents who create an International Trust in Cyprus and retire in Cyprus will be exempt from tax provided that the property and income of the trust is situated outside of the Republic. An international trust created for estate duty planning purposes is not subject to estate duty in Cyprus.

Some of the Cyprus International Trust benefits:

A • TAX BENEFITS

- Income, gains and profits from non-Cyprus sources are exempt from income tax, capital gains tax, special defense contribution or any other taxes in Cyprus.
- Worldwide income, profit and gains are taxable in Cyprus only where the beneficiary is a Cyprus tax resident; beneficiaries who are non-residents of Cyprus are taxed only on Cyprus sourced income in accordance with the Cyprus income tax laws.
- Dividends, interest or royalties received by a CIT from a Cyprus international business company are not taxable and not subject to any withholding tax.
- Trust capital received in Cyprus by a foreigner resident or retired in Cyprus from trusts not resident in Cyprus is not taxable on the trustee.
- There is no estate duty or inheritance tax in Cyprus.
- The CIT may be used to distribute untaxed income in Cyprus to the beneficiaries, that is to say, family members.
- Pre-migration: persons who have the intention to migrate to a high tax jurisdiction may obtain tax advantages in their new country by protecting assets in a CIT.

B • ASSET PROTECTION

- The CIT may be used to protect assets from risks arising in tort, contract or otherwise in relation to transactions entered into by the Settlor. Types of claims may include negligence, breach of contract, and claims of spouses or former spouses, breach of statutory duty and so on.
- A CIT or a transfer of trust assets may only be set aside by the settlor's creditors to the extent that it is proven to the satisfaction of the court that it (the CIT) was made with the intent to defraud creditors. The burden of proof is on the creditors who must prove that the CIT was made with intent to defraud them and that they were creditors at the time of the making of the CIT. An action must be brought within a period of two years from the date when the transfer or disposal of assets was made by the settlor to the CIT and only with regard to those assets and not any assets transferred earlier.

C • CONFIDENTIALITY AND REPORTING

1. Registration of the CIT is optional and therefore confidentiality is safeguarded.
2. There are no reporting requirements in Cyprus for the CITs.
3. The trust may hold shares of a Cyprus company with Cypriot nominee shareholders, who will hold the shares of the company for the real owner.

D • COMPLICATED FAMILY STRUCTURES/MANAGING FAMILY WEALTH/ESTATE PLANNING

- a. The CIT is ideal for high net-worth individuals with somehow complicated family structures, like for instance, divorced spouses and children from different
- b. Because of the economic crisis managing family wealth by means of a CIT has gained great importance because of the way families wish to distribute property.

E • NO EXCHANGE CONTROL REGULATIONS ARE APPLICABLE TO THE CIT

F • THE CIT DURATION CAN BE INDEFINITE.

G • THE CYPRUS LAW IS THE PROPER LAW OF THE CIT.

- a. If the chosen law of the CIT is the law of Cyprus, then Cyprus is under an obligation to protect that trust. All questions relating to CITs are to be determined in accordance with the laws of Cyprus without reference to the law of any other jurisdiction. This protects against the application of foreign laws such as forced heirship laws. It further provides for greater control, protection and security over the CIT.
- b. The new legislation specifies that the CIT or the disposition of trust assets will not be void or voidable or capable of being set aside or be subject to any implied terms and in no circumstances will the capability of the settlor, the trustee, the protector or the beneficiary be subjected to any obligations or be questioned. When the CIT contains a choice of law clause in favour of Cyprus law, the provisions of the CIT law will be applicable irrespective of any other conflict of law provisions in force in Cyprus. This is a fundamental rule which must be abided by as a matter of public

H. THE TRUST INSTRUMENT IS SUBJECT TO STAMP DUTY ONLY IN THE AMOUNT OF EUR430.



PREREQUISITES OF A CYPRUS INTERNATIONAL TRUST

The Cyprus International Trust is a trust:

- whereby the Settlor is not a tax resident of Cyprus during the year preceding the year in which the trust was formed. There is no longer any prohibition on settlors relocating to Cyprus after the establishment of the CIT;
- beneficiaries may also relocate to Cyprus after a year following the trust creation.
- the trust property can include all kinds of assets situated anywhere in the world and it can comprise of real estate property located in Cyprus;
- at least one of the trustees must be a resident of Cyprus;

APPOINTMENT AND DISCHARGE OF TRUSTEES

Trustees are appointed by the settlor. There are no rules as to how many trustees should be appointed in respect of each trust although it is advisable to appoint more than one trustee. A trustee does not have to accept the appointment and may refuse to act as trustee either expressly or by implication. If none of the appointed trustees of a particular trust accept the appointment, then the trust property will revert by resulting trust back to the settlor or his personal representatives. Under the 1955 Trustees Law, the courts may in certain cases discharge or replace trustees and appoint new ones.

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TAXATION

“International Trusts are not taxed in Cyprus. In fact, they enjoy significant tax advantages and create important tax planning opportunities.

These advantages provide foreign investors with the necessary freedom to move their funds”.

SETTLOR RESERVING POWERS TO HIMSELF, p.13

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SOME OF THE CYPRUS INTERNATIONAL TRUST BENEFITS, p.8

TRUSTEES' MAIN DUTIES

1. to administer the trust property prudently; and
2. to comply strictly with the terms of the trust.

The general rule is that the trustees do not have the power to vary the terms of the trust under any circumstances. The only case when they may vary the trust is when all the beneficiaries are of full age and capacity. The beneficiaries can then authorise the trustees to deal with the trust property in a different manner to that specified in the trust instrument.

In trusts where the beneficiaries belong to certain specific classes (i.e. unsound of mind, incapacitated, infant) the court may vary the terms of the trust if satisfied that the variation is in the best interests of the beneficiary. The trustees in their private lives may not act in any way that brings them in conflict with their duties as trustees. They are also not allowed to make any profit from their position as trustees unless they are expressly authorised by the trust instrument. Also, with some limited exceptions, they may not delegate their duties. The exceptions provided for in the law include the right to employ a solicitor, a banker etc.

TRUSTEES' LIABILITIES

Any action taken by the trustee that is in excess of their powers or contravenes the terms of the trust instrument is a **"breach of trust"** and the trustee is personally liable for the full extent of any loss incurred as a result of such a breach.

BENEFICIARIES

The beneficiaries have the right to enjoy their interest in the trust property. In the case of breach of a private trust, the beneficiaries may bring an action in court to force the trustees to administer the trust property in accordance with the terms of the trust.

The following actions are available to them:

1. They may pursue a personal action against the trustees;
2. They may be able to follow the trust property itself or to claim anything into which it has been converted. This is an equitable claim and the beneficiaries may try to trace the trust moneys even where the trustee has mixed it with his own money. The beneficiaries are held to have a first charge on the traced assets. But there are limitations to this as the tracing must end where i) no traceable product can be found, ii) or where the trust is traced in a bona fide purchaser without notice of the trust, iii) or they may be able to institute criminal proceedings against the trustees.

SETTLOR RESERVING POWERS TO HIMSELF

When relinquishing control to the trustees while setting up a trust, the settlor may reserve for himself powers specifically drafted into the trust instrument. A new section (s.4A) was introduced in the CIT law this year clarifying that 'notwithstanding the provisions of any other law or regulation, the reservation or grant to a settlor of a trust of any right or interest in the trust assets or any of the powers mentioned in subsection (2), whether reserved for the settlor or conferred on him in the capacity as protector or enforcer of the trust or otherwise, shall not in any way affect the validity of the trust nor delay the execution of the trust'.

The powers referred to are the following:

1. To revoke, vary or amend the terms of a trust;
2. To advance, appoint, pay or otherwise apply income or capital of the trust assets or to give directions therefor;
3. To act as, or to give binding directions as to the appointment or removal of a director or officer of any company wholly or partly owned by the trust;
4. To give binding directions to the trustee in connection with the purchase, retention, sale, management, lending, pledging or charging of the trust assets;
5. To appoint or remove any trustee, enforcer, protector or beneficiary;
6. To appoint or remove any investment manager or investment adviser;
7. To change the proper law of the trust or the forum of administration of the trust;
8. To restrict the exercise of any power or discretions of a trustee by requiring that they shall only be exercisable with the consent of the settlor;

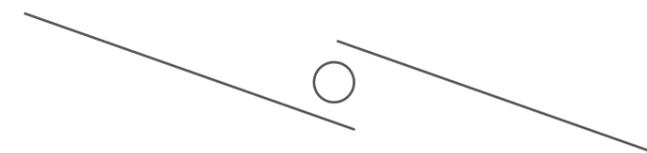
In exercising these powers, the settlor will not be deemed to be acting in breach of the trust.

Where a power as above has been reserved by the settlor or conferred on him in his capacity as protector or enforcer, no intention to defraud may be imputed to the settlor.

International Trusts are not taxed in Cyprus. In fact, they enjoy significant tax advantages and create important tax planning opportunities. These advantages provide foreign investors with the necessary freedom to move their funds.

Cyprus has become a popular trust jurisdiction because of the:

- Complete** tax exemptions;
- Short limitation** period (two years) for challenging a trust;
- No need** for any kind of registration;
- Complete** confidentiality;
- Low cost** of establishment and administration;
- Availability** of competent professional trustees;
- Flexibility** in adopting foreign law.



Example of Cyprus International Trust uses

- **AS A VEHICLE FOR management of funds**

Investment Trust Funds, Banks etc. may through the use of a Cyprus International Trust and a Cyprus International Business Company that acts as a Trustee manage funds on behalf of their Clients.

- **AS A VEHICLE OF holding property which cannot personally be held**

A minor may not be able to hold property in his own name but a Trustee can often hold and manage it on its behalf until its maturity in order to take the control.

- **AS A VEHICLE OF establishing collective investment**

A Cyprus International Trust can be used as a vehicle by several persons to make joint investments. The trust can provide the basis of their co-operation and can regulate their relationships and the sharing of the financial results of their joint venture.

- **AS A VEHICLE OF protection against high taxation**

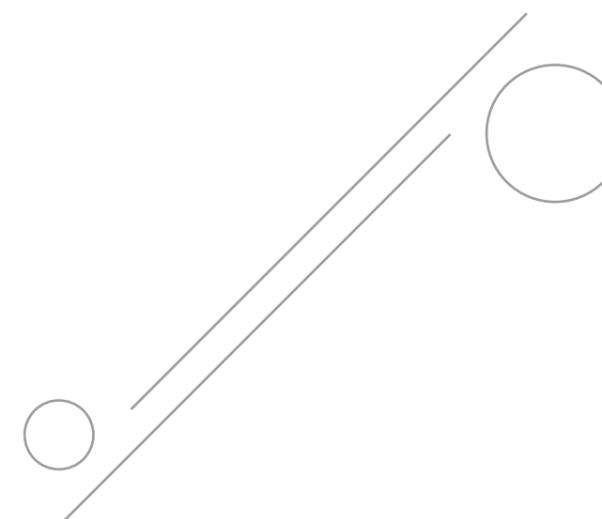
For Clients/Settlors residing in high taxation jurisdictions it is possible to minimize their taxation on income or wealth by transferring their property to a Cyprus International Trust in order to be able to take advantage - (as under a proper tax structure)- of the beneficial extensive double taxation network of Cyprus and the non-taxability of any income of the trust in Cyprus.

- **AS A VEHICLE OF protection against spendthrift beneficiaries**

The Cyprus International Trust can be used as vehicle of protecting family fortunes for future generations by safeguarding capital and avoid it being frittered away by spendthrift beneficiaries.

- **AS A VEHICLE OF managing profit sharing & pension schemes**

Through the use of a Cyprus International Trust, Companies can provide pension schemes benefit plans and profit sharing arrangements declaring their employees as one class of beneficiaries. The Trust provides a most effective method of grouping and sharing benefits and it has also the additional advantage of being able to cover any specific circumstance.



- **AS A VEHICLE OF investing in business overseas**

A Client who wishes to invest in business overseas but wishes to ensure that the profits and dividends are not remitted to the country of his residence, may establish a Cyprus International trust in order to use it as a vehicle for his investment.

- **AS A VEHICLE OF asset protection**

By establishing a Cyprus International Trust, a Client/Settlor can protect his assets against possible expropriation laws, future claims of Governments, claims from creditors, law suits or international blocking or freezing regulations in his home country.

In addition assets can be transferred to a Cyprus International Trust to protect the interests of a beneficiary e.g. sheltering the Inheritance of a daughter from claims in case of divorce or from the disposal of same by the son in law.

- **AS A VEHICLE OF promoting causes and charities**

Through the establishment of a Cyprus International Trust a Client/Settlor can provide for a charity, promote a religious or artistic cause or establish a foundation to support a worthy project.

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