

THE CYPRUS INTERNATIONAL TRUSTS LAW

EXPLANATORY NOTE

A. OBJECTIVES

In July 1992, Cyprus enacted The International Trusts Law (Law No. 69/1992) which provides for the formation and administration of international trusts, offering considerable incentives for the establishment of such trusts in Cyprus. This law is not a self-contained law on trusts but it builds on the existing trust legislation (The Trustees Law, CAP. 193, of 1955 which is almost identical to the English Trustees Act of 1925) and introduces certain novel provisions designed to make Cyprus a more attractive centre for international trusts. The law applies only to "international trusts" which are broadly defined as those trusts whose settlor and beneficiaries are non-permanent residents of Cyprus. The existing Trustees Law continues in force and applies to international trusts, except where it is inconsistent with or has been modified by the provisions of the new legislation.

B. COMMENTARY

Clause 1 **Short title**

The use of the word "international" rather than "offshore" was felt to be more appropriate.

Clause 2 **Interpretation**

The settlor and the beneficiaries must be non-resident, but at least one resident trustee is a statutory requirement. This ensures that the Cyprus Courts have effective jurisdiction over the trust. A Cyprus offshore enterprise is, however, entitled to act as trustee, and the proviso to clause 2 clearly states that an offshore company or partnership can be the settlor or beneficiary of an International Trust.

Clause 3 **Validity of International Trust**

The effect of this clause is to confirm the validity of a trust created under this law by any person who is of full age and of sound mind, regardless of any other provision of the law of Cyprus or the law of any other country. Some civil law jurisdictions have rules of inheritance law that potentially conflict with the trust concept. The law, therefore, provides that a Cyprus Court will not enforce the inheritance rules of any country so as to upset the validity of an International Trust.

Clause 4 **Presumption against avoidance of International Trust**

The first subsection merely emphasizes the principle that a trust will be irrevocable unless a specific power of revocation is reserved in it.

The second subsection allows a settlor to create a trust which could not subsequently be set aside by his creditors unless and to the extent that the creditors can show that the trust was made with the intent to defraud them and that they were creditors at the time of making the trust. The burden of proof lies with the creditors.

Many domestic bankruptcy laws (including that of Cyprus) provide that any trust is voided automatically if the settlor becomes bankrupt within two years, and if he becomes bankrupt within a further eight years the creditors may still be able to set aside the trust, unless the beneficiaries can show that the settlor could discharge his debts without recourse to the trust funds.

Subsection (3) of clause 4 introduces a prescription period of two years for the bringing of any action by a creditor. This period will run from the date when the relevant transfer of assets is made to the trust.

It is not intended that the provisions of clause 4 should offer a loophole to every settlor who wishes to cheat his existing creditors. Instead, it is intended to offer a legitimate protection to persons who may be engaged in high risk professional activities, such as surgeons, architects or members of Lloyds where very substantial damage awards made against them at some future time could result in the financial ruin of their families.

Clause 5 **Power to specify the duration of an International Trust**

This clause provides for a modern perpetuity period so that an International Trust can last for up to 100 years. If it is a charitable or purpose trust then it may continue indefinitely.

Clause 6 **Power of accumulation of income**

This clause merely reflects the existing law in Cyprus which allows for trust income to be accumulated throughout the life of the trust.

Clause 7 **Charitable Trust and Purpose Trust**

This clause contains a broad definition of Charitable Trusts and allows the creation of Purpose Trusts which are defined in clause 2. Purpose Trusts can be a useful adjunct to corporate offshore planning and they are often used to accumulate corporate earnings for general corporate purposes, rather than for any defined group of individuals. However, to ensure that the trust funds are ultimately distributed to an identifiable person or entity suitable wording has been included.

Clause 8 **Authorised investments**

The existing rules of Cyprus law in relation to trust investments are rather restrictive. The new law includes wider powers which are essentially similar to the "prudent man" rules found in similar legislation of other jurisdictions.

Clause 9 **Power to change the applicable law of an International Trust**

This is a useful option which is now to be found in most modern offshore trust laws. It allows the law of a Cyprus trust to be changed to a foreign law, and permits a foreign trust to adopt Cyprus law.

Clause 10 **Variation of an International Trust by the Court**

This clause empowers the Court to approve a variation of the terms of a trust. The wording follows closely that of the U.K. Variation of Trusts Act of 1958.

Clause 11 **Confidentiality relating to International Trusts**

This clause was largely inserted for psychological reasons, because it serves to remind settlors, trustees and beneficiaries that a trust relationship is a highly confidential one, and information should not be disclosed to third

parties, unless of course a Cyprus Court orders the information to be disclosed.

Clause 12 **Taxation of International Trusts**

It is made clear that an International Trust will be exempt from all taxation in Cyprus. It is, however, subject to stamp duty at a fixed rate of C£250.

Clause 13 **Application of this law**

This law will only apply to trusts that are formed as International Trusts, after the enactment of the law.

Clause 14 **Saving of existing law**

The provisions of the existing Trustees Law (and other relevant legislation) will continue to be in force and shall apply to International Trusts, except in so far they are inconsistent with or have been modified by the provisions of this law.

Clause 15 **Registration not compulsory**

This clause provides that International Trusts do not have to register under the provisions of any law of Cyprus.

REPUBLIC OF CYPRUS

THE INTERNATIONAL TRUSTS LAW 1992

(No. 69(I) of 1992)

English translation prepared

by

The Central Bank of Cyprus

ARRANGEMENT OF SECTIONS

Section

PART ONE

PRELIMINARY

1. Short title
2. Interpretation

PART TWO

PROVISIONS FOR INTERNATIONAL TRUSTS

3. Validity of an international trust
4. Presumption against avoidance of an international trust
5. Duration of an international trust
6. Validity of direction for the accumulation of income
7. Charitable trusts and purpose trusts
8. Authorised investments
9. Power to change the applicable law of an international trust
10. Variation of an international trust by the Court
11. Confidentiality relating to international trusts
12. Taxation of international trusts

PART THREE

MISCELLANEOUS

13. Application of this Law
14. Saving of existing laws
15. Registration not compulsory

A LAW to provide for the regulation of International Trusts

Be it enacted by the House of Representatives, as follows:-

PART ONE

PRELIMINARY

Short title. 1. This Law may be cited as the International Trusts Law 1992.

Interpretation. 2. In this Law, unless the context otherwise requires:

"Court" means the President of a District Court or a Senior District Judge of the district where the trustees or the trustee of the International Trust or any one of them who reside in the Republic have their residence;

"international trust" means a trust in respect of which:

- (a) The settlor is not a permanent resident in the Republic,
- (b) at least one of the trustees for the time being is, during the whole duration of the trust, a permanent resident in the Republic,
- (c) no beneficiary other than a charitable institution is a permanent resident of the Republic,
- (d) the trust property does not include any immovable property situated in the Republic:

PROVIDED THAT a trust shall not fail to qualify as an international trust by reason only that either the settlor or the trustee mentioned in paragraph (b) or any one or more of the beneficiaries is a partnership or company qualifying under Section 8 Y and Section 28 A respectively of the Income Tax Laws;

58/1961
4/1963
21/1966
60/1969
47/1973
37/1975
12/1976
15/1977
8/1979
40/1979
24/1981
41/1983
33/1984
76/1984
14/1985
73/1985
180/1986
163/1987
301/1987
26/1988
109/1988
133/1988
173/1988
233/1988
14/1989
39/1989
101/1989
137/1989
77/1990
225/1990
226/1990
245/1990
58/1991
174/1991
240/1991.

CAP 193.

"immovable property" has the meaning given to this term in the Trustee Law;

"purpose trust" or "trust for a purpose" means a trust other than:

- (a) a trust with beneficiaries being particular natural or legal persons whether or not immediately ascertainable, and
- (b) a trust with beneficiaries being an aggregate of particular natural or legal persons ascertainable by reference to some personal attribute or relationship;

"Republic" means the Republic of Cyprus;

CAP 193.

"trust" has the meaning given to this term in the Trustee Law and includes a trust created by will;

"trustee" means the trustee of the trust and includes legal and natural persons.

PART TWO

PROVISIONS FOR INTERNATIONAL TRUSTS

Validity of an international trust.

- 3.(1) A settlor who transfers or who in whatever manner disposes of assets to an international trust shall be deemed to have the capacity to do so, if at the time of such transfer such person is of full age and of sound mind, under the law of the country of which he is permanent resident. The law relating to inheritance or succession in force in the Republic or in any other country shall not affect in any way the transfer or disposition referred to above or the validity of the international trust.
- 3.(2) An international trust shall not be void or voidable in the event of the settlor's bankruptcy or liquidation of his property or in any action or proceedings against the settlor at the suit of his creditors notwithstanding any provision of the law of the Republic or of the law of any other country and notwithstanding further that the trust is voluntary and without consideration having been given for the same, or is made for

the benefit of the settlor, the spouse or children of the settlor or any of them, 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. The onus of proof of such intent on the part of the settlor lies with such creditors.

3.(3) An action against a trustee of the international trust pursuant to the provisions of subsection (2) is brought within a period of two years from the date when the transfer or disposal of assets was made to the trust.

Presumption against avoidance of an international trust.

4. If an international trust does not contain an express power of revocation it shall be deemed to be irrevocable by the settlor or his legal personal representatives notwithstanding that it is voluntary.

Duration of an international trust.

5.(1) For the purposes of this Law and notwithstanding the existence of any contrary legal provision or rule of law of the Republic or of any other country the duration of an international trust may continue until the one hundredth anniversary of the date on which it came into existence and will then terminate unless terminated sooner pursuant to a relevant direction which is included in the instrument creating it or for any other reason.

(2) Subsection (1) shall not apply to charitable trusts or purpose trusts referred to in this Law which may continue in force without any time limitation.

Validity of direction for the accumulation of income.

6. A direction which is included in an instrument creating an international trust for the accumulation of income is valid for any period within the period of the duration of the trust.

Charitable trusts
and purpose trusts.

- 7.(1) Subject to the provisions of the Constitution of the Republic of Cyprus and notwithstanding the existence of any contrary legal provision of the law of the Republic or any other country an international trust shall be deemed to be charitable where the trust has as its main purpose the achievement of one or more of the following:
- (a) the relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) other purposes beneficial to the public in general.
- (2) An international trust established for one or more of the objects or purposes set out in subsection (1) shall be deemed to be charitable notwithstanding:
- (a) that the object or purposes may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or that it may benefit particularly one or more persons or objects or persons within a class of persons, or
 - (b) that the international trust is liable to be modified or terminated whether by the exercise of a power of appointment or the disposition of assets, or
 - (c) that the trustee has the power to defer the distribution of the benefits to any charity of the trust for a period not exceeding the period of the trust, or
 - (d) that the international trust is or is considered to be in the category of discretionary trusts.
- (3) Notwithstanding the existence of any contrary legal provision of the law of the Republic or of any other country, an international trust shall not be void or voidable by reason only that it is a purpose trust provided that in the cases when the trust is not a perpetual trust or when it may be terminated, the instrument creating the trust shall specify the

event or the events upon which the trust terminates and shall provide for the disposition of its net assets upon its termination. An international trust so created shall be enforceable by the settlor or his personal representatives or by the person or persons named in the instrument establishing the trust as the person or persons appointed to enforce the trust and trust shall be enforceable at the instance of the person or persons so named notwithstanding that such person or persons are not beneficiaries under the trust.

Authorised investments.

- 8.(1) Subject to the provisions of the instrument creating an international trust, a trustee may at any time invest the whole or any part of the trust funds in any kind of investment:
- (a) wherever the investment is situated, and
 - (b) whether or not the funds have already been invested.
- (2) The trustee may vary the investment or retain it in its original state, as long as he exercises the diligence and the prudence which a reasonable person would be expected to exercise when he makes investments.

Power to change the applicable law of an international trust.

9. If the terms of an international trust so provide, the applicable law of the international trust may be changed to or from the law of the Republic, provided that:
- (a) in the case of a change from the law of the Republic to another law, the new applicable law would recognise the validity of the trust and the respective interests of the beneficiaries;
 - (b) in the case of a change from another law to the law of the Republic such change is recognised by the applicable law of the trust previously in effect.

Variation of an international trust by the Court.

- 10.(1) Subject to the provisions of sub-section (2), the Court may on application if it thinks fit, by order approve any arrangement which varies or revokes the terms of the international trust or enlarges or modifies the powers of management or administration of trustees, on behalf of the persons referred to below, irrespective of whether there is another beneficiary capable of assenting to the arrangement or not, and who are:
- (a) any persons incapacitated at law having directly or indirectly, an interest, whether vested or contingent, under an international trust, or
 - (b) any person, whether ascertained or not, who may become entitled, directly or indirectly, to an interest under an international trust as being the person who at a future date or who on the happening of a future event will be a person of any specified description or a member of any specified class of persons referred to in the instrument creating the international trust, or
 - (c) any person unborn, or
 - (d) any person in respect of any interest of his that may arise to him by reason of any discretionary power given to any one on the failure or determination of any existing interest that has not failed or determined.
- (2) The Court shall not approve an arrangement on behalf of any person referred to in paragraphs (a), (b) or (c) of subsection (1), unless it is satisfied that the proposed arrangement shall be for the benefit of that person without materially adversely affecting the rights of other interested parties.
- (3) Where in the management or administration of an international trust any sale, lease, pledge, charge, surrender, release or in any other way disposition, or the purchase, investment, acquisition, expenditure or other transaction is in

the opinion of the Court expedient but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustee either by the terms of the international trust or by law, the Court may confer on the trustee, either generally or in any particular circumstance, the relevant power under such terms and conditions as it thinks fit, and may direct in what manner and the asset from which the authorised expenditure and the costs of any transaction are to be borne.

- (4) An application to the Court under this Section may be made by the trustee or by or on behalf of any beneficiary.

Confidentiality relating to international trusts.

- 11.(1) Subject to the terms of the instrument creating an international trust and where the court has not issued an order for disclosure in accordance with the provisions of subsection (2) the trustee or any other person, including government officials and officers of the Central Bank of Cyprus, shall not disclose to any person not legally entitled thereto any information or documents:
- (a) which disclose the name of the settlor or any of the beneficiaries;
 - (b) which disclose the trustee's deliberations as to the manner in which a power or discretion was exercised or a duty conferred or imposed by law or by the terms of the international trust was performed;
 - (c) which disclose the reason for any particular exercise of such power or discretion or performance of duty or the material upon which such reason had been or might have been based;
 - (d) which relate to the exercise or proposed exercise of such power or discretion or the performance or proposed performance of such duty;
 - (e) which relate to or form part of the accounts of the international trust:

provided that where a request is submitted by a beneficiary for the disclosure of any document or information relating to or forming part of the accounts of the international trust or, in the case of a charitable trust, is submitted by a charity which is referred to by name in the instrument creating the trust as a beneficiary, the trustee shall be obliged to disclose the document or the information requested.

- (2) Notwithstanding the provisions of any other law and subject to the provisions of subsection (3) a Court in any civil or criminal proceedings may by an order allow the disclosure of information or documents referred to in subsection (1) on application by a litigant or by a party in the above civil or criminal proceedings depending on the circumstances.
- (3) The court shall issue an order in accordance with subsection (2) if it is satisfied that the disclosure of the information or the document referred to in subsection (1) is of paramount importance to the outcome of the case.
- (4) For purposes of this section "information or document" includes information or documents stored in a computer and in such a case an order for disclosure is executed with the disclosure or the supply of the information or the document in a visible, legible and portable form.

Taxation of international trusts.

- 12.(1) The income and gains of an international trust derived or deemed to be derived from sources outside the Republic shall be exempt from all taxes imposed in the Republic and no estate duty shall be chargeable in respect of assets belonging to an international trust.

- 19/1963
21/1967
36/1968
17/1969
26/1971
38/1972
79/1977
29/1980
8/1984
60(I)/1992.
- (2) Notwithstanding the provisions of the Stamp Duty Law, the instrument creating an international trust shall be liable to a stamp duty of 250 Cyprus pounds or such other fixed amount as may from time to time be prescribed by the Council of Ministers.

PART THREE

MISCELLANEOUS

- Application of this law. 13. This Law shall apply to all international trusts created after the commencement of this Law.
- Saving of existing laws. 14.(1) The laws of the Republic applicable to trusts and to the transfer of assets to trusts in force prior to the commencement of this Law shall continue in force and shall apply to international trusts except where they are inconsistent with or have been modified by the provisions of this Law.
- (2) The Laws and Regulations from time to time applicable to investments made in the Republic by non-permanent residents of the Republic shall also apply to any investments of an international trust in the Republic.
- Registration not compulsory. 15. International trusts are exempted from the requirement of registration under the provisions of any law.

16th July, 1992