

Offshore Services - Cyprus

Long-awaited reform of the International Trusts Law becomes reality

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March 22 2012

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Introduction

The long-awaited reform of the International Trusts Law 1992, a much-needed initiative, has finally become reality with the passing of the International Trust (Amending) Law 2011 by the House of Representatives.

When it was enacted in 1992, the International Trusts Law gave Cyprus a state-of-the-art international trusts regime, with excellent tax mitigation and asset protection features. However, the world has changed considerably in the intervening 20 years, and a number of restrictions and limitations contained in the original law are no longer necessary. New opportunities and investment practices have emerged that the original law did not take into account. As a result, although its basic structure remained sound, the law required updating to adapt it to the needs of investors today and in future.

The amending law makes numerous changes to the original law, many of which are relatively technical. The key changes are outlined in the following paragraphs.

Provisions on residence

When the 1992 law was drafted, the availability of international trusts was restricted to non-resident settlors in order to prevent tax avoidance by Cyprus residents. It was not clear whether settlors could relocate to Cyprus after establishing a Cyprus international trust, and the resultant uncertainty undoubtedly discouraged many of them from doing so. The amending law provides only that the settlor may not be a Cyprus tax resident in the year preceding the year of creation of the trust. It also removes the prohibition on resident beneficiaries and on ownership of immovable property in Cyprus, thus avoiding difficulties that might otherwise arise if the settlor or any beneficiary were subsequently to take up residence in Cyprus.

Exclusion of overseas law

The law as amended explicitly provides that:

- any question relating to the validity or administration of an international trust or a disposition to an international trust will be determined by the laws of Cyprus, without reference to the law of any other jurisdiction;
- the law relating to inheritance or succession in force in Cyprus, or any other country, will not in any way affect the validity of the international trust or any transfer or disposition of property to it;
- the trustees' fiduciary powers and duties, and the powers and duties of any protectors of the trusts, are governed exclusively by Cyprus law; and
- dispositions to a trust may not be challenged on the grounds that they are inconsistent with the laws of another jurisdiction - for example, regarding family and succession issues - or on the grounds that the other jurisdiction does not recognise the concept of trusts.

These provisions further reinforce the already formidable asset protection features of the Cyprus international trust.

Reserved powers and interests

A new section of the law allows the settlor of a trust to:

- reserve powers to himself or herself;
- retain a beneficial interest in trust property; or
- act as the protector or enforcer of the trust without affecting its validity.

The powers which may be reserved are extensive, and include the power to:

- revoke, vary or amend the terms of the trust;
- apply any income or capital of the trust property;
- act as a director or officer of any corporation wholly or partly owned by the trust;
- give binding directions to the trustee in connection with the trust property; and
- appoint or remove any trustee, enforcer, protector or beneficiary.

The settlor may impose a general stipulation that the trustees' powers are exercisable only with the consent of the settlor or any other person specified in the terms of the trust. The settlor may also reserve the power to change the governing law of the trust.

These new provisions, which are similar to the corresponding provisions of Jersey and Guernsey law, give settlors great flexibility to adapt to changes in circumstances or objectives.

Abolition of restrictions on duration of trusts

As was usual at that time, the 1992 law restricted the maximum life of international trusts to 100 years from the date on which the trust came into existence. Only charitable trusts and non-charitable purpose trusts were allowed to exist in perpetuity. In the intervening period, this restriction on the maximum life of trusts came to be seen as a disadvantage of trusts compared with foundations, and several jurisdictions have removed restrictions on the duration of trusts.

The amended law follows this practice by providing that from the date on which the amendment takes effect, and subject to the terms of the trust, there will be no limit on the period for which a trust may continue to be valid and enforceable, and no rule against perpetuities or remoteness of vesting (or any analogous rule) will apply to a trust or to any advancement, appointment, payment or application of property from a trust. Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of the other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Extension of trustees' investment powers

The 1992 law gave trustees freedom in terms of investment powers, merely requiring that such powers be exercised in accordance with the trust instrument and with the diligence and prudence that a reasonable person would be expected to exercise when he or she makes investments. The amended law gives trustees the same investment powers as those of an absolute owner, allowing them to invest in a broader range of investments for the best interests of the beneficiaries. This brings the trustee's investment powers into line with those of a trustee in England and Wales, as well as trustees from other trust jurisdictions that have followed the English Trustee Act 2000, including Malta.

The amending law also removes any doubt regarding trustees' ability to invest in Cyprus by including a new section specifically empowering trustees to invest in movable and immovable property both in Cyprus and overseas, including shares in companies incorporated in Cyprus. The abolition of the prohibition on investment in Cyprus will remove an obstacle to inward investment and provide a boost to the real estate market, which has stagnated since the onset of the global economic crisis.

Public policy

The amending law entrenches jurisdictional protection by providing that an international trust which contains a choice of law clause in favour of Cyprus law is fully protected from unfounded foreign judicial claims as a matter of public policy and order.

Further amendments

A number of further amendments of a more technical and detailed nature have been made, including:

- a redefinition of 'charitable purposes' in line with the definition set out in the Charities Act 2006 (England and Wales);
- the introduction of powers for the trustees and others to apply to the Cyprus court for directions; and
- changes to the list of those subject to confidentiality restrictions regarding the affairs of trusts.

Other technical amendments deal with the rules regarding choice of law, jurisdiction and foreign law trusts.

Comment

The amendments address a number of perceived deficiencies in the trust regime in Cyprus, bringing it back to the cutting edge internationally. They have been welcomed by practitioners and business leaders in Cyprus and abroad, and have received extensive positive comment in the local and international professional press. The new law ensures that settlors and beneficiaries enjoy the highest possible degree of protection, by reason of the clarity of the new provisions and the removal of any ambiguities.

The reform of the law will give Cyprus the most modern and favourable trust regime in Europe and restore it to the premier league of trust jurisdictions.

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