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Cyprus trust law

Cyprus's basic law on trusts, the Trustee Law of 1955, closely resembles the English Trustee Act 1925. Like many laws of the colonial era, it continues in force under the Constitutional provision that pre-independence laws should remain in force in the Republic until repealed or amended by its own laws. The English doctrines of equity, the basic foundation of trust law, were formally introduced into the post-independence legal order by section 29 of the Courts of Justice Law (14 of 1960), which requires the courts to follow English common law and equitable principles.

However, arguably the most important single development in Cyprus trust law was the enactment of the International Trusts Law, Law 69 of 1992. By providing a framework for the establishment of trusts in Cyprus by non-residents the International Trusts Law represented a giant step forward in establishing Cyprus as an international financial centre.

The Cyprus international trust

An international trust must satisfy all the following requirements, set out in section 2 of the International Trusts Law:

- the settlor may not be a permanent resident of Cyprus;
- no beneficiary (other than a charity) may be a permanent resident of Cyprus;
- the trust property may not include any real property situated in Cyprus;
- at least one trustee must be resident in Cyprus at all times.

Section 5 of the International Trusts Law provides that an international trust may remain in force for up to 100 years. Certain trusts, such as charitable trusts, may continue indefinitely. The income of an international

trust can be accumulated for the entire duration of the trust (section 6).

Apart from a prohibition on investing in real estate in Cyprus (which will be removed by a proposed amendment to the law), there is no limitation on trustees' investment powers, but merely a requirement that they should be exercised in accordance with the trust instrument and with the diligence and prudence expected of a reasonable person when making investments (section 8). In summary, in terms of establishment and maintenance, the Cyprus international trust provides convenience, security, simplicity, flexibility and confidentiality, based on a well-established legal framework. However, its special features are its tax advantages and asset-protection features.

Tax advantages

Cyprus international trusts enjoy a number of tax exemptions, providing significant tax planning possibilities, both for high net worth individuals and for corporate structures.

Asset protection

The purpose of an asset protection trust is to establish a firewall around the settlor's assets to protect them from claims that may subsequently arise. Certain countries have forced heirship provisions in their succession law, reserving a specified portion of the deceased's estate for relatives, and an asset protection trust provides a means of regaining freedom of testation. Section 3(1) of the International Trusts Law explicitly states that a Cyprus court will not enforce the inheritance rules of any country so as to upset the validity of a Cyprus international trust. By their nature, all trusts provide an element of asset protection, by separating the assets held in trust from the settlor's general assets, which would be available to satisfy his debts or, if the worst came to the worst, pass to his trustee in bankruptcy. However, the Cyprus



international trust has additional advantages.

The first is that the International Trusts Law contains a very strong presumption against avoidance of a Cyprus international trust. A Cyprus international trust can be set aside only if it is proved to the court that the trust was made with intent to defraud persons who were creditors of the settlor at the time when the payment or transfer of assets was made to the trust. The burden of proof of the settlor's intent to defraud lies with the person who is seeking to annul the transfer. The right to take action is lost unless an action is instituted within two years from the date of transfer or disposal of the assets to the trust.

These provisions, particularly the requirement to prove intent to defraud, make it very difficult to set aside a transfer to a Cyprus international trust. In practice, the claimant would need very strong evidence indeed to demonstrate that the settlor intended to defraud his creditors. A plaintiff domiciled outside the European Union would be required to provide security for costs under Order 60 of the Civil Procedure Rules.

The person challenging the trust must establish that he was a creditor of the settlor at the time the assets were transferred to the trust. The International Trusts Law does not elaborate on the definition of creditor, and it is not clear whether a contingent or prospective creditor would qualify and, if so, what likelihood of the claim crystallising would be required.

For British settlors Cyprus has a distinct advantage over many other competing jurisdictions, in that it is not a party to the arrangements established by section 426 of the Insolvency Act 1986, which commit British courts and the courts of certain other jurisdictions to co-operate in insolvency cases.

Finally, the Statute of Elizabeth 1571, which invalidates arrangements made to hide assets from future creditors and remains in its original or modified form on the statute books of many offshore trust jurisdictions, is expressly negated in Cyprus.

In summary, therefore, within Cyprus the asset protection defences of the International Trusts Law are likely to stand firm as long

as the trust is properly constituted and is established to provide prudent protection against potential claims rather than as an attempt to fraudulently deprive existing creditors of their legitimate rights.

In conclusion

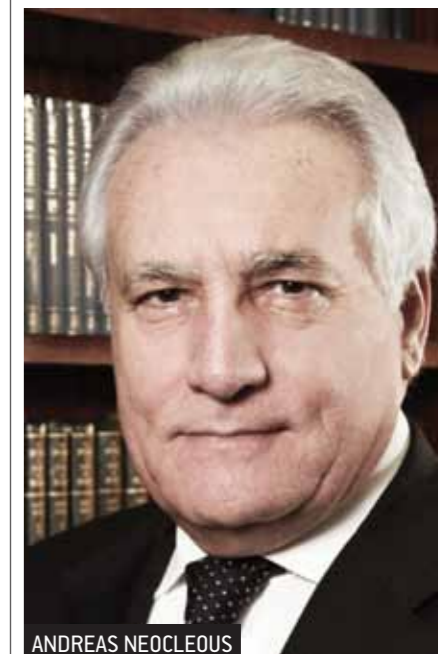
Since its introduction at the beginning of the 1990s the Cyprus international trust has proved very popular with settlors from around the world. It has benefited Cyprus by attracting substantial funds and business, not merely for the professional and financial services sector, but also for other sectors, including tourism, accommodation and retail.

However, circumstances have changed a great deal since the 1990s. Cyprus has joined the EU and the eurozone, and has completely updated its tax regime. A number of missed opportunities and outdated restrictions in the current law (such as the prohibition on investing in real estate in Cyprus) have become apparent. Meanwhile, competing jurisdictions such as the Channel Islands and Malta have streamlined their trusts legislation, making it more flexible and better suited to current requirements. It is generally agreed that the International Trusts Law urgently needs updating, to align it with EU requirements and to restore Cyprus's competitiveness as an international trust jurisdiction.

A proposed amendment, currently under consideration by Parliament, will make a number of changes to the International Trusts Law. It will remove any doubt about a settlor's ability to move to Cyprus with his family after establishing a Cyprus international trust and will abolish the prohibition on investment in Cyprus real estate, encouraging investment in Cyprus. It will increase settlors' freedom by allowing them to retain certain powers while allowing trusts of unlimited duration to be established. By excluding the application of the law of any other jurisdiction it will substantially enhance the "firewalls" and asset protection offered by Cyprus international trusts. Once these amendments are in place, Cyprus will be back in the "premier league" of European trust jurisdictions.



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