

LEGAL
update

05/12

CYPRUS INTERNATIONAL TRUSTS REBORN


KINANIS
LAW & CONSULTING

A. INTRODUCTION

On the 8th of March 2012 the House of Representatives enacted the long awaited International Trusts (Amending) Law of 2012 effecting various structural amendments to the International Trusts Law of 1992.

The amendments effected to the International Trusts Law of 1992 were necessary in order to adapt the Cyprus law on trusts to the current needs of international investors having in mind the new opportunities and the current investment practices.

The amendments are also aimed to strengthen Cyprus as an international financial center and increase its attractiveness as a trust jurisdiction.

A new era on Cyprus trusts begins with a new modern law on international trusts in place.

B. THE MAIN AMENDMENTS - NEW PROVISIONS

The below are the new provisions as enacted by the amending law.

Possibility for the settlor and beneficiaries to relocate to Cyprus after the establishment of the Cyprus International Trust.

According to the provisions of the 1992 Trust Law it was not clear whether the settlor or the beneficiaries could relocate to Cyprus after establishing a Cyprus International Trust. The new law clarifies this uncertainty and gives the opportunity to the settlor and to the beneficiaries to relocate to Cyprus and become tax residents of Cyprus on the condition that both of them were not residents of Cyprus during the calendar year which precedes the year of the establishment of the trust. If such relocation takes place, it does not affect the validity of the Cyprus International Trust.

Trustee

The notion of the trustee has now been clarified to include any legal or physical person who holds the trust property; (a) to the benefit of the beneficiaries irrespectively if the trustee is also a beneficiary of the trust; and/or (b) for any purpose, not exclusively to the benefit of the trustee.

Settlor

Means, a legal or natural person, who grants trust property or makes a disposal for will purposes, subject to trust terms or to a trust.

Beneficiary

Means, legal or natural person including a person not yet born on the date of the establishment of the trust or part of a class of persons, who have a right or interest in property, which is subject to a trust.

Protector

The protector is defined as a person other than the trustee to whom powers of any nature have been granted by the deed establishing the trust, including the power to advise the trustee regarding the exercise of his powers or with regards to the right of the protector to consent or to veto and includes also the power to appoint or cancel the appointment of the trustee.

Trust enforcement supervisor

A new person has been introduced as a part of the members of a trust, namely, the trust enforcement supervisor. The trust enforcement supervisor is the person or persons whose duty is to secure the execution of a Cyprus International Trust established for not charitable purposes.

Resident of Cyprus

The notion of resident of Cyprus has been clarified and has now the meaning given to it by the Income Tax Laws. In effect, a physical person is considered as a resident of Cyprus if he/she resides in Cyprus for a period which exceeds in aggregate 183 days in a tax year. A company is considered as resident of Cyprus if its management and control is exercised in Cyprus.

Clarification of other various terms

The meaning of: "objects of a discretionary trust", "judgment", "creditor", "disposal", "right to an estate", "trust property", "intention to defraud", "personal relationship" and "obligation", have also been defined in the new law.

Powers of a trustee, protector, settlor and trust enforcement supervisor

The powers and authorizations granted by the new law to a trustee, protector, settlor and trust enforcement supervisor respectively, are in addition to the powers and authorizations which may have been granted to them under the trust deed. The powers and authorizations granted by the law apply only if and to the extent that there is no contrary intention expressed in the terms of the trust and apply subject to its terms.

Validity of Cyprus International Trusts

Any matters in relation to the validity, interpretation, amendments and revocation and inter alia, administration of a trust are determined in accordance with the law in force in Cyprus without reference to the law of any other jurisdiction.

Further, the existing legislation of Cyprus or the legislation of any other country regarding inheritance of succession does not affect, according to the new trust law, in any way the transfer or disposal or validity of the Cyprus International Trust. In effect, with this new provision the terms of the Cyprus International Trust prevail over any legal provisions as to inheritance of property.

The validity of the Cyprus International Trust is also not affected or the eligibility of any settlor, trustee, trust enforcement supervisor, protector, beneficiary cannot be disputed and none of the above persons have any liability or obligation or may be deprived of any right, claim or interest by virtue of:

(a) any provisions of any law in any jurisdiction which do not recognize the notion of trusts or (b) that the trust or the disposal : (i) cancels rights, claims or interests, arising from the legal provisions of any jurisdiction due to personal relations with the settlor or beneficiary or due to rights in an estate or (ii) the trust or the disposal is contrary to any law, judgment or order in any other jurisdiction.

Asset protection clause

The existing asset protection clause has been amended giving additional protection to trust property in such a way that no action can be brought against assets of the trust which have been transferred to a Cyprus International Trust in case of subsequent bankruptcy or liquidation of the settlor or in case of actions brought by the creditors against the settlor irrespectively of the fact that the trust has been set up without consideration or to the benefit of the settlor or his/her wife or his children or to anyone of them, unless it can be proved that the Cyprus International Trust has been set up with the intention of the settlor to defraud his creditors at the time of transferring of his assets to the trust. The existing two-year time limit to file such an action has not changed.

Extended powers to settlor

The new law specifically permits the settlor to reserve for himself certain powers and such reservation of rights, do not affect in any way the validity of the trust or the execution of it. Such powers may include any one of the following:

- (a) to revoke, amend the terms of the trust;
- (b) to grant, distribute, pay or dispose in any form, of income or capital of the trust or give instructions as to the above;
- (c) to exercise the powers of a director or officer or give binding instructions regarding the appointment or removal of any director or officer of any company, which is owned wholly or partly by the trust;
- (d) to give binding instructions to the trustee in relation to the purchase, retention, sale, administration, financing, pledging or encumbering of the trust property;
- (e) to appoint or remove any trustee, trust enforcement supervisor, protector or beneficiary;
- (f) to appoint or remove any investment manager or investment advisor;
- (g) to change the applicable law which governs the trust or the forum of administration of the trust;
- (h) to restrict the exercise of any power or discretion of the trustee demanding that these are exercised only with the consent of the settlor or any other person expressly referred to in the terms of the trust.

Duration of a Cyprus International Trust

The new trust law expressly provides that the Cyprus International Trust may exist in perpetuity and in effect cancels the previous existing limitation which restricted the duration of Cyprus International Trusts up to one hundred years.

Charitable Trusts - Purpose Trusts

The new law lists further purposes which constitute a trust to be a charitable trust. The law also recognizes trusts established for a particular purpose and such a trust is enforceable by the settlor or his personal representatives or the trust enforcement supervisor.

Approved investments by the trustees

The new law has given extended powers to the trustees to invest as if they were the absolute owners of the trust property and also give them express freedom to invest in any property, movable or immovable, situated anywhere in the world including Cyprus.

Immovable property situated in Cyprus

It is now permitted for Cyprus International Trusts to invest in any movable or immovable property situated in Cyprus. The law makes specific reference as to the possibility of investments in shares of companies registered in Cyprus.

Amendment clause

The provisions of the trust deed may now be amended according to the specific clauses of amendment provided in the trust deed itself. Amendments following an application in court are also possible.

Confidentiality of Cyprus International Trusts

The existing confidentiality provision has been extended. The new law provides that unless a court order is issued, the trustee, the protector, the enforcement inspector or any other person, cannot disclose to any person any documents or information, related to the trustees or to the beneficiaries, referring to the exercise of the powers of the trustees or related to the accounts of the Cyprus International Trust. The court may issue an order directing the disclosure of information provided it will consider such a disclosure order is important for the administration of justice. The trustees have the discretion whether they will disclose any account of the trust to the beneficiaries.

Application to court for an order for directions

The trustee may apply to the court to receive directions as to how he/she will act in relation to a particular matter. Also, the court may issue any relevant order as to the trust and such an application may be filed by the trustee, protector trust enforcement supervisor or any other person.

Taxation in relation to trust property and distributions to beneficiaries

The income and gains of a Cyprus International Trust which are acquired or deemed to be acquired from sources inside and outside of Cyprus, are subject to taxation imposed in Cyprus only in the case where the beneficiary is a tax resident of Cyprus.

In the case where the beneficiary is not a tax resident of Cyprus, then, only the income and gains of the Cyprus International Trust which are acquired or are deemed to be acquired from sources inside Cyprus, are subject to taxation in Cyprus.

Income and gains of Cyprus International Trusts acquired or deemed to be acquired outside Cyprus and provided the beneficiaries are not tax residents of Cyprus, are not subject to any tax in Cyprus.

Governing law of the trust

As per a provision in the new law, any trust is governed by the law which the settlor has chosen according to the terms of the trust deed. Where no applicable law has been chosen the trust is governed by the law that is more closely related to it. There are certain guidelines in the law by which the court will identify which is the law more closely related to the trust.

Exclusive jurisdiction of Cyprus courts

According to a provision in the new law, Cyprus courts have exclusive jurisdiction on a Cyprus International Trust once it is provided that the applicable law of the trust is the law of Cyprus or the trustee is a resident of Cyprus or any asset of the trust is situated in Cyprus or the administration of the trust is carried out in Cyprus or the parties accept the jurisdiction of Cyprus courts or the trust deed establishing the trust provides that any dispute will be decided by the Cyprus courts.

In case of a foreign court judgment dealing with any issues of Cyprus International Trust on which Cyprus courts have exclusive jurisdiction, then a foreign court judgment might not be enforceable in Cyprus as being contrary to public policy issues.

Election of Cyprus Law in Cyprus International trusts

In the case where the Cyprus International Trust is governed by Cyprus Law, then the provisions of the new law apply irrespectively of any contrary provisions in any other law in Cyprus and as provided in the new law, the provisions of the trust law are of superior power of any other law in Cyprus and are considered to be provisions of public order.

Enforceability of foreign trust in Cyprus

Foreign trusts are enforceable in Cyprus unless the court declares that they contravene public interest.

Express duty of the trustee

The trustee is obliged to comply and apply the provisions of the Prevention and Suppression of Money Laundering Activities Law and hence is obliged to carry out proper due diligence by implementing the “know-your-client” principle and maintain an adequate record-keeping procedure.

Retrospective effect of the law

According to a particular provision the new law its provisions are applicable to all Cyprus International Trusts whenever established and the relevant provisions of the law do not affect the validity of any precedent valid, disposal or transfer.

C. CONCLUSION

The Cyprus law on trusts has been reborn. Trusts in Cyprus begin their new era giving a favourable trust regime ensuring that international investors, settlors and beneficiaries enjoy the highest possible decree of protection in a modern and attractive favourable environment.

Settlors, trustees and beneficiaries are highly protected as the provisions of the international trust law clearly provide that in case the trust is governed by Cyprus law any foreign jurisdiction laws can not affect their rights as identified in the trust deed. In addition, strict confidentiality is secured prohibiting any disclosure of information unless a court order is issued.

From the tax aspect, in case the beneficiaries are not residents of Cyprus and the generated income of the trust is acquired from sources outside Cyprus, then there is no taxation on the income and gains of the trust.

Cyprus as a trust jurisdiction has now become an important player and prime location in the field of international trusts.

D. DISCLAIMER

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

Our Firm

Kinanis LLC, a law and consulting firm, is one of the leading business law firms in Cyprus and advises the international investor and private clients on all aspects of law, tax and accounting.

Kinanis LLC continues the business of Kinanis & Co established in 1983. The firm started its operation as a traditional law firm. Experience and practice over the years brought forward the need for transformation from a traditional law firm to a more innovative multidisciplinary firm providing a full range of services combining law and accounting with the extensive expertise in corporate and tax advice to ensure that our clients will obtain the best possible spherical advice.

Our involvement and participation in international transactions over the years, have established our firm as one of the key players in the field.

The firm is staffed with over 80 young, energetic and ambitious professionals, including lawyers, accountants and administrators who provide prompt, efficient and high quality services and who are capable of meeting the current demanding challenges of the local and international business environment.

Contact Us

If you would like to receive further information or to contact us on any relevant matter, please contact the below persons at the respective divisions or departments.

Kinanis LLC

12 Egypt Street, 1097, Nicosia
P.O. Box 22303, 1520 Nicosia, Cyprus
Tel: + 357 22 55 88 88
Fax: + 357 22 66 25 00
E-mail: KinanisLLC@kinanis.com
Web site: www.kinanis.com

Corporate Division

Irene Christodoulou
Fax: +357 22 76 28 08
corporate@kinanis.com

Litigation Division

Despo Andreou
Fax: +357 22 45 81 95
litigation@kinanis.com

Property Division

Vicky Petrides
Fax: +357 22 76 28 08
property@kinanis.com

Accounting Division

Charalambos Meivatzis
Fax: +357 22 75 14 74
accounting@kinanis.com

Tax Department

Marios Palesis
Fax: +357 22 75 14 74
tax@kinanis.com

Accounting & VAT Department

Demetra Constantinou
Fax: +357 22 75 14 74
accounting@kinanis.com

Banking Department

Myroulla Kyriacou
Fax: +357 22 75 39 15
banking@kinanis.com

HR Department

Alexia Petrides
Fax: +357 22 45 81 95
hr@kinanis.com

Business Development Department

Nicky Xenofontos- Fournia
Fax: +357 22 76 28 08
businessdevelopment@kinanis.com