

# TRUSTS

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A Trust is an equitable obligation, binding a person (the trustee) to administer the property (the trust property) which is transferred to him by (the settlor) for the benefit of a person or persons (the beneficiaries) based on the oral or written wishes of the settlor which are expressed in the trust deed or will.

The trustees are appointed by the settlor and can be legal entities or physical persons. The legal entity can be appointed under the condition that it falls into the category "Trust company". There are no specific rules on how many trustees can be appointed for each trust, even though it is recommended to appoint more than one.

According to the Law, the trustees are the owners of the trust property; nevertheless they do not have the right to administer it as absolute owners, but only in accordance to the provisions of the relevant Trust Laws and the rights of the beneficiaries as these are stated in the trust deed.

The duration of an international trust, unless otherwise stated in the contract, is unrevocable and may last up to one hundred years.

## 41. REASONS FOR CREATING A TRUST

There are many reasons for which a settlor may create a trust. The main reasons are set forth below:

- Reduction of tax obligations. Trusts have always been important tools for tax planning and until today a significant percentage of tax saving models include the use of trusts.
- Preservation of family fortune. The beneficiary is financially secured without exhausting the family fortune due to bad management or inappropriate marriage.
- To benefit and protect handicapped persons or persons with mental disabilities by establishing them as beneficiaries, without granting them control of the property.
- For the preservation of all income and other advantages provided by the trust through the appointment of a trustee instead of handing over the fortune to third parties.
- Provides flexibility regarding the identity of the beneficiaries and the amount which corresponds to each of them, in order to be taken into consideration for future valuations.
- Donations to charitable and religious causes, which are controlled by the trustees.

The legal frame which provides for the creation and operation of trusts was based until recently to the Trustees Law, Cap. 193, which is based to a large extent to the British Trustees Law of 1925.

The new International Trust Law (Law 69 (I) of 1992) was added onto the previous Law since July of 1992. The new legal frame provides for the creation and operation of trusts created by non-residents for the benefit of non-residents. Existing Laws will continue to be enforceable for international trusts unless they are amended by the provisions of the new Law or if they are in conflict with it.

The new legal frame has contributed to the development of the Trusts Law and offers the opportunity to non-residents to create trusts in Cyprus.

### Basic characteristics of the International Trusts Law (Law 69 (I) of 1992)

The new Law is only applicable in the case of non-residents and for all intended purposes, non-residents are not only individuals are that are not permanent residents in Cyprus but also international companies and international partnerships. The most important provisions of the Law are summarised as follows:

#### Definition of International Trust

The Law defines the international trust as the trust of which:

- The Settlor and Beneficiaries must definitely be a non-resident of the Republic of Cyprus during the last year preceding the formation of the Trust;
- The Settlor and Beneficiaries may be both a legal or physical person.
- The trust property does not include any real property situated in Cyprus
- There must be at least one trustee resident in Cyprus at all times. For this reason a Trust Company is incorporated in Cyprus under the supervision of the Central Bank of Cyprus fulfilling all the requirements of a trustee.

## 42. TYPES OF TRUST

The choice of trust depends on the circumstances of the settlor and the objectives he is trying to achieve in setting up the trust. See below a brief description of some of the available types of trusts.

### **Discretionary Trust**

A trust which gives the trustees discretion to exercise their own judgement as to the manner which the beneficiaries may benefit.

Discretionary trusts have the capability to include provisions allowing the settlor to express in writing his wishes in regards to the administration of the trust. During the creation of a discretionary trust, the settlor can also state his wishes in the form of a memo. It must be stated that the wishes of the settlor do not bind the trustee. For this reason, special attention must be given at the particular section of the trust in order to avoid the danger of preparing a binding trust.

### **Direct Trusts**

There are different types of direct trusts. These include fixed trusts and discretionary trusts. Direct trusts can also take the form of secret trusts, charitable trusts or protective trusts.

### **Fixed Trust**

The sole purpose of a fixed trust is to benefit the beneficiary in a specific manner. The settlor gives oral or written instructions to the trustees to administer the trust property in the best interest of the beneficiary and will direct them as to the manner and time frame of which they are obliged to distribute the trust's income and capital.

### **Protective Trust**

A protective trust includes the financial security of the beneficiary, without giving him access to the administration of the funds, if he is considered unreliable. The beneficiary's share is determined by specific circumstances.

## **43. TAXATION OF TRUSTS**

Provided that there is no local profit then there is no taxation on the income, capital or distribution of Cyprus International trust.

Cyprus International Trusts, i.e. trusts whose property and income are outside Cyprus and the settlor and beneficiaries (with the exception of charities) are not permanent residents of Cyprus, enjoy important tax and other advantages which may be summarised as follows:

- The income, gains and profits of an international trust derived or deemed to be derived from sources outside Cyprus are not subject to income tax, capital gains tax, special contribution or any other taxes.
- An alien, beneficiary or not, who sets up an International irrevocable trust in Cyprus and retires in Cyprus is exempt from tax if all the property settled and the income earned is abroad.
- The availability of tax treaties between Cyprus and a number of other countries, together with the favourable tax status of trusts in Cyprus, provide the international tax planner with a valuable tool, and are often useful in minimising the tax burden of a trust and its beneficiaries. In the case where "trusts" do not come under the definition of "persons" in a tax treaty, it may be advisable for a trust to establish a Cyprus trust company for trading, investment and other activities, thereby taking full advantage of the treaties. Such a company would, of course, be liable to tax on its profits at a rate of 12.5%.
- The assets of an international trust are not subject to estate duty in Cyprus.
- Trusts are usually used by wealthy individuals for the purpose of protecting their inheritance or capital gains taxes in their home country. They can also be used by expatriates settling into a trust before repatriating, assets acquired while working abroad, to protect such assets from the tax net of their home country.